

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 2 of 2022

In CS 95 of 2019

Sadhana Mehra
Versus
Arvind Kumar Jayaswal

Mr. Swatarup Banerjee

Ms. Somali Mukhopadhyay

... For the plaintiff/petitioner.

Mr. Rupak Ghosh

Mr. Debmalya Ghosal

Mr. Dilip Kumar Ghosh

... For the defendant.

Hearing Concluded On : 11.04.2023

Judgment on : 28.06.2023

Krishna Rao, J.:

1. The plaintiff has filed the present application under Order XII, Rule 6 of the Code of Civil Procedure, 1908 praying for Judgement and Decree on admission.
2. The plaintiff has filed suit being C.S. No. 95 of 2019 against the defendant for recovery of Khas, peaceful and vacant possession of premises situated on the building known as Power Court situated at the premises No. 20A Abanindra Nath Thakur Sarani, Kolkata.
3. The plaintiff has filed the application for Judgement on admission on the ground that in paragraph 5 (a) of the written statement, the defendant has admitted that:

“In terms of the agreement as made between the parties hereto this defendant continue to tender rent for a sum of Rs. 9,000/- per month with Mr. Mukesh Sood and in consequence thereto the rent receipts were issued in favour of defendant.”

4. It is also contended that in the written statement the defendant has also admitted the fact that the defendant was inducted by Mr. Mukesh Sood, who by a registered Deed of Gift dated March 26, 2008 has transferred his share along with the share of his mother Pushpavati Sood and his brother Rakesh Sood in the suit premises in favour of the plaintiff.
5. Mr. Swatarup Banerjee, learned Advocate representing the plaintiff submits that by way of Deed of Gift dated March 26, 2008, Smt.

Pushpavati Sood, Sri Rakesh Sood and Sri Mukesh Sood transferred the entire first floor, third floor, fifth floor and sixth floor of the eight storied building together with undivided proportionate share of the land measuring 4 Cottahs and 12 Chittaks being the premises No. 20A Camac Street, Kolkata in favour of the plaintiff.

6. Mr. Banerjee submitted that the defendant is in occupation of residential flat admeasuring super built-up area of 2095 sq.ft. on the sixth floor of the building known as Power Court situated at premises No. 20A Abanindra Nath Thakur Sarani (formerly known as Camac Street), Kolkata.
7. Mr. Banerjee submitted that since admittedly the tenancy of the defendant is from month by month without having any registered lease, the same is terminable by 15 days notice in accordance with Section 106 of the Transfer of Property Act, 1882.
8. Mr. Banerjee submitted that there is a clear admission on the part of the defendant that he is a tenant under the Transfer of Property Act, 1882 and there is no defence against the eviction of the lease.
9. Mr. Banerjee submits that the plaintiff had issued notice under Section 106 of the Transfer of Property Act, 1882 to the defendant on October 13, 2018 and the said notice was duly received by the defendant which is being proved from the Acknowledgement Due Card wherein signature of the defendant is appearing and the defendant has not denied with regard to acknowledgement of said notice.

10. Mr. Banerjee relied upon the following judgments:

- i. *(2010) 4 SCC 753 (Karam Kapahi and Others -vs- Lal Chand Public Charitable Trust and Another).*
- ii. *2016 SCC OnLine Del 3835 (Bhawanjeet Singh -vs- Diwan Singh).*
- iii. *(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes and Others -vs- Erasmo Jack De Sequeira (Dead) Through Legal Heirs).*
- iv. *(2008) 2 SCC 728 (Nopany Investments (P) Ltd. -vs- Santokh Singh (Huf)).*
- v. *(1996) 6 SCC 373 (Sk. Sattar Sk. Mohd. Choudhari -vs- Gundappa Amabadas Bukate).*
- vi. *(2015) 9 SCC 287 (S.M. Asif -vs- Virender Kumar Bajaj).*
- vii. *(2015) 13 SCC 13 (Ambica Prasad -vs- Mohd. Alam and Another).*

11. Mr. Rupak Ghosh, learned Advocate representing the defendant submits that plaintiff is not the landlord of the defendant and there is no existence of landlord and tenant relationship between the plaintiff and the defendant.

12. Mr. Ghosh submitted that defendant was inducted by one Mukesh Sood for a monthly rent of Rs. 9000/- per month and it was agreed between them that from the month of April' 2017, the defendant shall pay towards the electricity bill including repairing works, maintenance of lifts as well as the water pumps of the entire building situated at the premises and such payment as to be made by the defendant shall be adjusted on account of rent to be paid by the defendant.

- 13.** Mr. Ghosh submitted that the defendant has not received any notice of eviction and the said notice in any event is inoperative, ineffective and does not terminate the right of the defendant to continue in possession of the suit property.
- 14.** Mr. Ghosh submitted that the plaintiff had filed the present application only on the basis of the averment made in paragraph 5(a) of the written statement and relying upon the Gift Deed dated March 26, 2008.
- 15.** Mr. Ghosh submitted that the statements made in the written statement does not constitutes a clear specific and unambiguous admission for the purpose of passing judgement under Order XII, Rule 6 of the Code of Civil Procedure, 1908.
- 16.** Mr. Ghosh submitted that defendant was inducted as tenant by one Mukesh Sood and the defendant was paying monthly rent to Mr. Sood against which he has issued rent receipts to the defendant.
- 17.** Mr. Ghosh denied the receipt of notice alleged to have been issued by the plaintiff under Section 106 of the Transfer of Property Act, 1882.
- 18.** Mr. Ghosh submitted that there was no attornment or any letter issued by the plaintiff indicating that the plaintiff has become the sole and absolute owner of the premises to the defendant.
- 19.** Mr. Ghosh relied upon the judgements reported in:

 - i. (1996) 6 SCC 373 (Sk. Sattar Sk. Mohd. Choudhari -vs- Gundappa Ambadas Bukate).*

- ii. (2015) 9 SCC 287 (S.M. Asif -vs- Virender Kumar Bajaj).

20. Considered the rival submissions of the respective parties, perused the materials on record and the judgments relied by the parties.

21. The plaintiff has filed the suit against the defendant on the ground that the plaintiff is the owner of the suit premises as per the Deed of Gift dated March 26, 2008. The defendant was inducted into the suit premises in the month of April 2008 as a monthly tenant at the agreed monthly rent of Rs. 9000/- and the defendant make payment of monthly rent by cash and also paid electrical charges on the basis of consumption. The monthly rent was enhanced on and from April' 2017 at the rate of Rs. 30,000/- per month. On and from April 5, 2017, the defendant has failed and neglected to pay the monthly rent. On October 13, 2018, the plaintiff had issued notice to the defendant under Section 106 of the Transfer of Property Act, 1882, which was duly received by the defendant and accordingly tenancy of the defendant has been terminated.

22. In the written statement, the defendant has made out the following case:

- “a. In terms of the arrangement as made between the parties hereto, this defendant continued to tender rent for a sum of Rs. 9,000/- per month with Mr. Mukesh Sood and in consequence thereto, rent receipts were issued in favour of this defendant. In this connection, copies of some rent receipts issued by Mukesh Sood in favour of the defendant are annexed hereto and collectively marked with the letter “A”.*

- b. *On and from the month of April, 2017 an arrangement was made between this defendant and Mr. Mukesh Sood that the dues towards the electricity bills and other maintenance charges including repairing works/maintenance of lift as well as water pump be paid by this defendant and such payment shall be adjusted on account of rent to be paid by this defendant.*
- c. *In terms of such arrangement being made this defendant on and from the month of April, 2017 started making payment towards the electricity connection, maintenance and receipts of the lift as well as pipes and fittings of the water pump. Copies of documents to such records are annexed hereto and collectively marked with the letter "B".*
- d. *In this context, it is pertinent to state that this defendant is not only a bonafide tenant making payments of the rent which are being adjusted on account of the electricity, lift, water pump, but is also taking necessary steps towards proper maintenance of the entire building and making payment on account thereto which is still needs to be reimbursed by this plaintiff."*

23. Order XII, Rule 6 of the Code of Civil Procedure reads as follows:

"6. Judgment on admissions.- (1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) *Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

- 24.** The defendant relied upon a rent receipts dated April 5, 2008, May 6, 2008, June 3, 2008, July 5, 2008, August 6, 2008 and September 5, 2008 showing that the defendant has paid monthly rent of Rs. 9000/- to Mukesh Sood on the other hand, the plaintiff claims that the defendant has paid monthly rent of Rs. 9000/- from the month of April 2008 to the plaintiff in cash and also paid electricity charges on the basis of consumption.
- 25.** The defendant in his defence has enclosed electricity bill as well as other bills with regard to his contentions that the defendant has made expenditures on account of electricity bills, repairing works including maintenance of lifts as well as water pump of the entire building featured in the said premises and the said expenditures are to be adjusted on account of rent to be paid by the defendant.
- 26.** In paragraph 12 of the written statement, the defendant had denied the receipt of the notice dated October 13, 2018 issued by the plaintiff under Section 106 of the Transfer of Property Act, 1882. The defendant has also denied the relationship between the plaintiff and the defendant as landlord and tenant.
- 27.** The judgment relied by the plaintiff in the case of ***Karam Kapahi & Others (Supra)***, in the said case, the Club did not respond to the notice and it was further stated in paragraph 10 of the plaint that the said notice dated October 28, 1997 sent by the advocate on behalf of the Trust was received by the Club but Club did not give any reply and the

said fact was not denied in para 10 of the written statement filed by the Club. In the present case in paragraph 12 of the written statement, the defendant has denied with regard to receipt of the notice dated October 13, 2018.

28. In the case of **Bhawanjeet Singh (Supra)**, the defendant in the written statement made the following statement:

“7. The defendant in his written statement has contended in para 2 of page 1 that he has been “paying agreed rent regularly” and in para 4 of page 2, it is alleged that “plaintiff has breached the agreement conditions”, which implies that the defendant admits existence of an agreement between the parties violation whereof is alleged on the part of the plaintiff.

8. Defendant's submission as made in the written statement are relevant indicating that he treated plaintiff as his landlord to whom he paid rent regularly :-

- that “answering defendant has always paid rent on time” (para 2 of para 4)
- that “plaintiff was paid the remaining amount in cash” (para 6 of page 7)
- that it is made clear that the said cheque was given on account of rent from 15.10.2010 to 14.12.2010 amounting to Rs. 19,000/- and Rs. 1,000/- was added as electricity bill and when the same was not honoured the answering defendant took the cheque and paid to the plaintiff in cash (para 7 of page 8).”.

In the present case, the defendant has made out a specific case that since his induction he had paid rent to Mr. Mukesh Sood and had relied upon rent receipts and subsequently the monthly rent is to be adjusted on the expenditure made by the defendant for electrical

bill, maintenance of lifts and water pumps of the entire building and had enclosed certain documents.

29. In the case of ***Maria Margarida Sequeira Fernandes (Supra)***, the Supreme Court held that:

“66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.”

In the present case, the defendant had denied the relationship as landlord and tenant between the plaintiff and the defendant and it is the specific case of the defendant that the defendant had paid rent to Mr. Mukesh Sood and subsequently the amount is adjusting from the expenditure made by the defendant for maintenance of the suit premises.

30. In the case of **Nopany Investments (P) Ltd. (Supra)**, the Hon'ble Supreme Court held that :

“22. In the present case, after serving a notice under Section 6-A read with Section 8 of the Act, the protection of the tenant under the Act automatically ceased to exist as the rent of the tenanted premises exceeded Rs 3500 and the bar of Section 3(c) came into play. At the risk of repetition, since, in the present case, the increase of rent by 10% on the rent agreed upon between the appellant and the respondent brought the suit premises out of the purview of the Act in view of Section 3(c) of the Act, it was not necessary to take leave of the Rent Controller and the suit, as noted hereinabove, could be filed by the landlord under the general law. The landlord was only required to serve a notice on the tenant expressing his intention to make such increase. When the eviction petition was pending before the Additional Rent Controller and the order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of Rs 3500 was also subsisting, the notice dated 9-1-1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 per cent. Subsequent to this notice, another notice dated 31-3-1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9-1-1992 and in view of Section 6-A of the Act, the rent stood enhanced by 10 per cent i.e. from Rs 3500 to Rs 3850. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16-7-1992/17-7-1992. Subsequent to this, Eviction Petition No. 432 of 1984 was withdrawn by the respondent on 20-8-1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6-2-1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of the said suit, the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16-7-1992/17-7-1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6-A of the Act was earlier in date than the notice dated 16-7-1992/17-7-1992. In any view of the matter, it is well

settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V. Dhanapal Chettiar v. Yesodai Ammal .”

In the present case, it is the specific case of the plaintiff that the plaintiff had sent notice under Section 106 of Transfer of Property Act, 1882 to the defendant and the defendant had received the said notice but the defendant had denied with respect of receipt of the notice.

31. In the case of the ***Ambica Prasad (Supra)***, the Hon’ble Supreme Court held that :

“15. On the question of tenancy, both the trial court and the High Court have not considered the provision of [Section 109](#) of the Transfer of Property Act.

"109. Rights of lessor's transferee.- *If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:*

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the

lessee shall not be liable to pay such rent over and again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under [Section 106](#) in terms of the old terms of lease by the transferor (sic transferee) landlord would be proper and so also the suit for ejectment."

In the present case though the plaintiff had sent notice under Section 106 of the Transfer of Property Act, 1882 to the defendant but the defendant has denied with regard to receipt of the said notice but the contention of the defendant with regard to there was no attornment or letter issued by the plaintiff indicating that the plaintiff has become the sole and absolute owner of the suit premises is not sustainable.

32. In the case of **SM Asif (Supra)**, the Hon'ble Supreme Court held that :

“8. The words in Order 12 Rule 6 CPC “may” and “make such order ...” show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.

9. In the suit for eviction filed by the respondent landlord, the appellant tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted the respondent-plaintiff's claim by setting up a defence plea of agreement for sale and that he paid an advance of Rs 82.50 lakhs, which of course is stoutly denied by the respondent landlord. The appellant-defendant also filed the suit for specific performance, which of course is contested by the respondent landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 CPC.”

- 33.** In the present case, this Court finds that the defendant has raised the issue with regard to relationship of the plaintiff and the defendant as landlord and tenant, payment of monthly rent by the defendant to Mr. Mukesh Sood, the expenditures made by defendant for the purpose of maintenance of the premises is to be adjusted from the monthly rent and had not received the notice issued by the plaintiff to the defendant under Section 106 of the Transfer of Property Act, 1882 and all the issues raised by the defendant are to be decided only on trial and it

cannot be said that there is an unequivocal admission on the part of the defendant for which the plaintiff is entitled to get Judgment and Decree on admission.

34. In view of the above, this Court finds that there is no unequivocal admission on the part of the defendant and the issues raised by the defendant are to be decided in trial, thus the application filed by the plaintiff under Order XII, Rule 6 is rejected.

35. G.A 2 of 2022 is thus **rejected**.

(Krishna Rao, J.)