

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

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 2 of 2023

In CS 126 of 2019

Karnani Properties Ltd.

Versus

M/s. Bhalla's Carpets

Mr. Sabyasachi Chowdhury

Mr. Neelesh Chowdhury

Mr. Pranit Bag

Ms. Anuradha Poddar

Mr. Shaunak Mukhopadhyay

... For the plaintiff/petitioner.

Mr. Surojit Nath Mitra, Sr. Adv.

Mr. Rohit Das

Ms. Kishwar Rahaman

Ms. Sristi Roy

Mr. Preetam Majumdar

... For the defendant/respondent.

Hearing Concluded On : 24.07.2023

Judgment on : 01.09.2023

Krishna Rao, J.:

1. The plaintiff has filed the present application praying for judgment and decree on admission. The plaintiff has filed a suit against the defendant for eviction and recovery of khas possession and mesne profit.
2. The plaintiff is the landlord of the suit premises and the defendant is in occupation of the property and the defendant claims to be a tenant of the premises in question.
3. According to Mr. Sabyasachi Chowdhury, learned Counsel appearing for the plaintiff assuming but not admitting the allegations made by the defendant in the written statement can be said to be correct and referred the written statement which reads as follows:

“a. One Gunamal Dayaram Bharwani was inducted as a monthly tenant in respect of the suit property by the plaintiff.

b. The defendant firm entered into a partnership with the said Gunamal Dayaram Bharwani and carried on the business from the suit property which “remained in the possession of Gunamal Dayaram Bharwani as a partner”.

c. Thereafter, the defendant firm was reconstituted from time to time, and such reconstituted firm entered into various agreements with the said Gunamal Dayaram Bharwani, who “while retaining possession of the suit property, authorized the Defendant to use the said suit property as a Show Room...”.

d. The “aforesaid Gunamal Dayaram Bharwani died in or about the year 1978”, and the defendant firm, as reconstituted from time to time, continued in possession of the suit property under the window of the said Gunamal Dayaram Bharwani, being Kishori G. Bharwani by way of various agreements executed

from time to time between the defendant and the said Kishori G. Bharwani.

e. "The aforesaid Kishori G. Bharwani expired on April 16, 1999 and thereafter her daughter Duro Bharwani as her heir and successor, inherited the monthly tenancy in respect of the suit property in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997".

f. The said Duro Bharwani, executed "fresh Agency Commissioning Agreement" with the defendant "thereby continuing the arrangement..... for use of the suit property as a Show Room"

g. The defendant firm has thereafter been reconstituted and the reconstituted firm has constituted the "business of the Defendant of sale of carpets from the suit property with the tenant of the suit property i.e. Duro Bharwani"."

4. Mr. Chowdhury submitted that the possession of the defendant over the suit property has always been illegal and the defendant is a trespasser over the suit property. He submits that Duro Bharwani is admittedly not in possession of the suit property. Even on the basis of the allegations made in the written statement, Duro Bharwani under whom the defendant allegedly claims to have arrangement in relation to the suit property, has no right, title or interest in respect of the suit property since 11th July, 2006 being 5 years from the date of coming into force of the West Bengal Premises Tenancy Act, 1997.
5. Mr. Chwudhury submitted that there exist no triable issue in respect of the claim of the plaintiff for eviction and recovery of possession against the defendant.

6. Mr. Chowdhury relied upon unreported judgment in the case of ***Shivani Properties Pvt. Ltd -vs- Rama Shankar Pandey and Others*** passed in ***G.A. No. 1 of 2020 in C.S. No. 74 of 2018*** dated 26th March, 2021 and submitted that *“the 1997 Act does not provide for an automatic devolution of tenancy on any person who continues being in possession after the death of a tenant, the defendants must prove that the conditions for the defendants to be recognized as tenants after the death of the original tenant satisfies the requirement of Section 2(g) of the 1997 Act which case has not been made out by the defendants”*.
7. Mr. Chowdhury relied upon the judgment reported in ***(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes and Ors -vs- Erasmo Jack De Sequeria (dead) Through Lrs.)*** and submitted that *“if the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission”*.
8. Mr. Chowdhury relied upon the judgment reported in ***(2000) 7 SCC 120 (Uttam Singh Duggal & Co. Ltd. -vs- United Bank of India)*** and submitted that *“as to the object of Order 12, Rule 6, this Court need not to say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim”*.

9. Mr. Chowdhury relied upon the judgment reported in **(2012) 11 SCC 405 (Payal Vision Limited -vs- Radhika Choudhary)** and submitted that *“in a suit of recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of the landlord and the tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two are not in dispute the Court can pass a decree in terms of Order 12, Rule 6 of the CPC”*.
10. Mr. Surojit Nath Mitra, learned Senior Advocate, representing the defendant submitted that in none of the pleading, the plaintiff has described since when the defendant is in wrongful and illegal occupation of the suit premises and since when the defendant is being treated as rank trespasser over the suit premises. Mr. Mitra, learned Senior Advocate submitted that the plaintiff has to first succeed on the basis of the pleadings in the plaint and only then the question of admission by the defendant comes.
11. Mr. Mitra submitted that in the application as well as in the plaint, there is no particular as to when and how the defendant became a trespasser in respect of the suit property. He submitted that in the notice dated 16th March, 2019 also there is no whisper as to how and when the defendant trespassed into the suit property.

- 12.** Mr. Mitra submitted that plaintiff has admitted that one Gunamal Dayaram Bharwani since deceased was the original tenant with respect of the suit premises. The said tenancy ceased to exist after his death and the legal heirs of the tenant never had any right either as a tenant or otherwise on and after expiry of five years coming into force of 1997 Act, but neither in the plaint nor in the present application, there is any whisper about when the original tenant died.
- 13.** Mr. Mira submitted that in none of the paragraphs of the plaint, the plaintiff has mentioned about the cause of action. He submits that the plaint does not say when and how the cause of action for filing the suit arose. Mr. Mitra relied upon Order VII, Rule 1 of the Code of Civil Procedure and submitted that the plaint itself is not maintainable and thus no decree can be passed.
- 14.** Mr. Mitra submitted that the defendant in the reply to the notice as well as in the written statement made out a specific case that:

“The said Gunamal Dayaram Bharwani, being the tenant of the Plaintiff, with the prior approval, consent, knowledge and accord of the Plaintiff, entered into a Partnership Agreement dated July 4, 1953 with the Defendant for establishment of a partnership business to operate in the name and style of “Bhalla’s Carpets Calcutta” with an objective to sell and manufacture carpets. In terms of the said Partnership Agreement dated July 4, 1953 the partnership business was to operate from the suit property while the same remained in the legal possession of the Late Gunamal Dayaram Bharwani as a partner, and as such he was entitled to a portion of the sales made in the capacity of a partner. The said Late Gunamal Dayaram Bharwani, with the prior approval, consent, knowledge and accord

of the Plaintiff extended the said partnership business vide a Partnership Agreement dated September 7, 1959 with the Defendant for continuing the partnership firm name and style of "Bhalla's Carpets Calcutta" and use the suit property for sale of carpets while the said Late Gunamal Dayaram Bharwani as a partner, remained in legal possession of the suit property. Thereafter, the said Late Gunamal Dayaram Bharwani, with the prior approval, consent, knowledge and accord of the Plaintiff entered into an Agency Commissioning Agreement dated May 14, 1964 with the Defendant by virtue of which the said Late Gunamal Dayaram Bharwani became a Commission Agent of the Defendant and while retaining the legal possession of the suit property, and authorized the Defendant to use the suit property as a Show Room for making local sales of their products and as consideration, the Late Gunamal Dayaram Bharwani was entitled to receive a commission fees from local sales of the Defendant's products. As a Commission Agent, the said Late Gunamal Dayaram Bharwani was required to attend at the said Show Room in the suit property on every working day thus maintaining his legal possession. Upon the death of the said Gunamal Dayaram Bharwani, the same arrangement continued with the heir, Late Kishori Bharwani with the prior approval, consent, knowledge and accord of the Plaintiff, and upon the death of the said Kishori Bharwani, the same arrangement continued with her heir Duro Bharwani, with the prior approval, consent, knowledge and accord of the Plaintiff."

- 15.** Mr. Mitra relied upon the judgment reported in **(1986) 3 SCC 360 (Dudh Nath Pandey (dead) By Lrs. -vs- Suresh Chandra Bhattasali (Dead) by Lrs.)** and submitted that *"the admission must be taken as a whole and it is not permissible to rely on a part admission ignoring the other"*.

16. Mr. Mitra relied upon the judgment reported in **(2015) 14 SCC 450 (State of Madhya Pradesh -vs- Nomi Singh and Another)** and submitted that *“it is settled principle of law that in respect of the relief claimed by a plaintiff, he has to stand on his own legs by proving his case and the burden of proof cannot be shifted upon the defendant”*.
17. Mr. Mitra submitted that the issues raised by the defendant is to be decided during the trial and no judgment can be passed on admission as the defendant has not admitted any fact as alleged by the plaintiff.
18. The issue for consideration in the present application is whether the defendant has made any admission in the pleading for pronouncing judgment.
19. Order 12, Rule 6 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 up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced”*
20. It is not in dispute that the plaintiff is the owner of the property in question. It is also admitted that the one Gunamal Dayaram Bharwani was the original tenant with respect of the suit premises. As per the case of the plaintiff, the original tenant has never sought any approval

or consent of the plaintiff to enter into any partnership business and for allowing the suit premises to be used for such partnership business. It is also admitted that the Gunamal Dayaram Bhawani has passed away. As per the case of the plaintiff, after the death of original tenant the legal heirs have no right over the tenanted premises after expiry of five years after coming into force of the West Bengal Premises Tenancy Act, 1997.

21. The specific defence raised by the defendant in their written statement and in the reply to the notice that the original tenant Gunamal Dayaram Bharwani with the approval of the plaintiff entered into a partnership on 4th July, 1953 with Mr. R.L. Chopra and Late B.D. Khullar representing the Defendant firm for establishment of partnership business under the name and style of "*Bhalla's Carpets Calcutta*". It is the further case of the defendant that the said partnership was reconstituted and reorganised on 1st September, 1956, 1st April, 1958 and 17th September, 1959 with the approval of the plaintiff for continuing the partnership business in the name of "Bhalla's Carpets Calcutta" and use the property for sale of carpets while the said Gunamal Dayaram Bharwani as a partner, remain in legal possession of the property.

22. As per paragraphs 1 (g) and 1(h) of written statement on 14th May, 1964, Gunamal Dayaram Bharwani with the approval of the plaintiff entered into an Agency commissioning Agreement with the defendant and Gunamal Dayaram Bharwani became a commission agent of the

defendant firm. As per Clause 5 of the Agency Commissioning Agent Gunamal Dayaram Bharwani entitled to commission of 1 ³/₄ per month from sale of carpet but will not exceed Rs. 9,000/- annually.

- 23.** The original tenant died sometimes in the year 1978. As per paragraph 1(k), 1 (l), 1(m), 1 (o), 1(p), 1(q), 1(r) and 1 (s) of the written statement the defendant has made its defence that after the death of the original tenant, Gunamal Dayaram Bharwani, his wife Kishori G. Bharwani inherited the monthly tenancy with respect of the suit premises and with the approval of the plaintiff, the Agency Commissioning Agreement was extended. The Kishori G. Bharwani died on 16th April, 1999 and after her death her daughter Duro Bharwani inherited the tenancy in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997.
- 24.** The defendant in paragraph 1 (p) of the written statement admitted that the daughter Duro Bharwani inherited the monthly tenancy with respect of the suit property in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997. In paragraph 1 (q), the defendant has further admitted that Duro Bharwani is a commission agent of the defendant and is using the suit property as a show room.
- 25.** Section 2(g) of The West Bengal Premises Tenancy Act, 1997 which defines "tenant" makes it clear that a tenant would include, in the event of death of any tenant, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of

this Act, whichever is later, the spouse, son, daughter, parent and the widow of the pre-deceased son of the tenant, who were ordinarily living with the tenant up to the date of death of the tenant, as family members and were dependent on him and who do not own or occupy any residential premises, etc. The first proviso to Section 2(g) makes an exception to the time limit of five years for the spouse of the tenant who was ordinarily living with the tenant up to his death together with certain other conditions while the second proviso deals with the son, daughter, parent or the widow of the predeceased son of the tenant who were ordinarily residing with the tenant in the same premises up to the date of death of the tenant as a family member, etc., and shall have a right of preference for tenancy if a fresh agreement is executed in respect of the said premises.

- 26.** As per the case of the plaintiff, the defendant is a rank trespasser and has no right to occupy the suit property. In none of the paragraphs of the plaint, the plaintiff has not mentioned how and when the defendant occupied the suit premises. In reply to the notice date 16th March, 2019, the defendant has made out the specific defence but even after receipt of the said reply, the plaintiff has not made Duro Bharwani as defendant in the suit.
- 27.** After the death of the original tenant his wife continued with the possession of the suit premises and the wife has also died on 16th April, 1999 and in the meantime the West Bengal Premises Tenancy Act, 1997 came into force. After the death of wife her daughter alleged to be

continued with the possession. The defendant has initially made out a case with respect of the partnership deed. After the death of the Kishori G. Bharwani, there is no partnership business entered between the defendant and Duro Bharwani. Duro Bharwani is only a commission agent. Admittedly, the premises is for commercial purpose and as per Section 2(g) of the West Bengal Premises Tenancy Act, 1997 five years after the death of original tenant, the Duro Bharwani has no right to continue with the possession of the tenanted premises but Duro Bharwani is not the party to the instant suit, though the specific case of the defendant that Duro Bharwani is in occupation of the property.

28. In the case of ***Devi Sahai Palliwal (Supra)***, the Hon'ble Supreme Court held that :

“2. The appellant filed suit against Respondent 2 herein and claimed possession of suit premises. Respondent 2 had taken possession of the premises on February 1, 1954. On September 17, 1954 Respondent 2 gave notice to the appellant that the premises occupied by it would not be required by it after September 30, 1954.

3. The controversy is that Respondent 2 did not deliver vacant possession to the appellant or his son though the appellant specifically wrote to the respondent in that behalf.

4. The case of the respondent is that the respondent had entered into possession on February 1, 1954 and one Gaya Prasad agent of the appellant had let the respondent into possession. The same Gaya Prasad who as agent of the appellant had let the respondent into possession took vacant possession of the premises.

5. The appellant's suit apart from possession was for mesne profits. The High Court upheld the

decree for Rs 600 against the respondent. There is no dispute with regard to that portion of the judgment.

*6. The only dispute raised by counsel for the appellant is that the respondent did not deliver vacant possession in accordance with the contract and therefore the respondent is liable for mesne profits. The High Court found that there was no enforceable contract and the appellant was not entitled to rely on it. The High Court was correct in holding that. We have examined the plaint. There is no allegation in the plaint to support any pleading under Section 70 of the Indian Contract Act. In our recent unreported decision dated October 28, 1976 in *Union of India v. Sitaram Jaiswal* [Since reported in (1976) 4 SCC 505] we have held that in the absence of proper pleadings under Section 70 of the Indian Contract Act the plaint should not be entertained.*

7. The greater hurdle and one which is insurmountable in the way of the appellant is that the entire cause of action is misconceived. If Gaya Prasad had taken possession and if Gaya Prasad according to the appellant is a trespasser the suit would lie against Gaya Prasad. It is admitted that the respondent is no longer in possession and was not in possession of the premises after he had delivered possession to Gaya Prasad. If any decree was passed in favour of the appellant against the respondent obviously if the decree had to be executed it could not be executed against the respondent. Therefore the only remedy that the appellant had was to file a suit against Gaya Prasad. The appellant chose not to do so.”

29. In the case of ***Dudh Nath Pandey (Supra)***, the Hon’ble Supreme Court held that:

“Even on merits, if the High Court had to rely upon the alleged admission in the written statement, the admission must be taken as a whole and it is not permissible to rely on a part of the admission

ignoring the other. The High Court, in our opinion, has erred in making a fresh appraisal of the evidence to come to a different conclusion. Even otherwise, the plaintiff has to stand on his own strength.”

- 30.** Considering the entire written statement and the defense set out by the defendant this Court find that the defendant has made out a specific case that the during the life time of the original tenant of the plaintiff, the original tenant had entered into a partnership with the defendant with the knowledge and consent of the plaintiff for establishment of partnership business to sell and manufacture of carpets and the said partnership business was to operate from the suit property and the possession was remain with the original tenant as partner. Thereafter the original tenant with approval of the plaintiff had entered into an Agency Commissioning Agreement by virtue of which the tenant become the commission agent of the defendant and retained with the suit property. Even after the death of the original tenant, the legal heirs of the original tenant continue with the same arrangement. As per the defense set out by the defendant, still the premises is in occupation of legal heir of the original tenant namely Duro Bharwani and he being the commission agent of the defendant is running the business in the suit property but the said Duro Bharwani is not a party to the suit.
- 31.** In view of the above, this Court do not find any reasons to pass judgment and decree for recovery of possession with respect of the suit property.

32. G.A No. 2 of 2023 is thus **dismissed**.

(Krishna Rao, J.)