

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : INCOME TAX ACT , 1961**

RFA No.12/2011

DATE OF DECISION : 13th July, 2011

ASSOCHAM

..... Appellant

Through: Mr. Ashwani Kr. Mata, Sr. Adv. with  
Mr. Sumit Attri, Adv.

VERSUS

Y.N.BHARGAVA

..... Respondent

Through: Mr. N.S. Vasisht & Mr. Vishal Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 CPC is to the impugned judgment dated 4.9.2010, by which, the suit of the respondent/landlord/plaintiff was decreed on an application under Order 12 Rule 6 of the Code of Civil Procedure (CPC).

2. This appeal had come up for admission for the first time on 10.1.2011 when, it was not felt that this was a case where a notice could be issued, but since the learned senior counsel who appeared on behalf of the appellant stated that if notice is issued, the parties in the meanwhile, would settle the disputes, notice was

issued. This aspect was again reiterated on 9.3.2011 when the matter was adjourned to 6.4.2011. On 6.4.2011 a request for adjournment on behalf of the appellant was vehemently opposed and it was stated that there was no possibility of compromise, however, in the interest of justice, one more opportunity was granted so that the parties could resolve the matter. No compromise has however been arrived at. The appeal has to be therefore considered and disposed of on merits.

3. The facts of the case are that the respondent is the owner/landlord of the premises bearing plot no. 1, Block No.1, 47, Prithviraj Road, New Delhi-110001. The subject property was taken on lease by the appellant/defendant/tenant vide an un-registered lease deed dated 10.7.1995. Vide this un-registered lease deed, the period of lease was mentioned as 27 years plus a period of 7 years, i.e. a total period of 34 years. Since the lease was unregistered and the tenancy was only a monthly tenancy, the respondent/plaintiff/landlord, terminated the tenancy vide notices dated 31.7.2007 and 1.8.2007 sent under Section 106 of the Transfer of Property Act, 1882. A reply was sent on behalf of the appellant/tenant/defendant dated 30th August, 2007 disputing the contents of the notice of the landlord and taking up a stand that the rent payable was annual rent, i.e. the tenancy was an annual tenancy. Since the respondent/plaintiff in the notice terminating tenancy also alleged breach of terms and the conditions of the lease deed, the appellant/defendant disputed the violation of the terms and conditions of the lease on the alleged grounds.

4. On the appellant failing to vacate the suit property, the subject suit for possession came to be filed and in which suit the respondent/plaintiff filed an application under Order 12 Rule 6 CPC dated 25.3.2009, which after being replied to and argued, has been allowed by the impugned judgment thereby passing a decree for possession with respect to the suit property in favour of the landlord/respondent/plaintiff and against the tenant/appellant/defendant.

5. A resume of the aforesaid facts show that:-

(i) there is no dispute that there is a relationship of landlord and tenant between the parties. I am saying that there is no dispute because in the notice terminating the tenancy, it is specifically stated by the respondent/plaintiff that the appellant herein is a tenant, and this was not denied by the appellant in the reply dated

30.8.2007. In fact, a reference to the parawise reply given with respect to paras 1 and 2 of the notice shows that the appellant/defendant specifically states that the appellant “took on lease” the subject property from the plaintiff. Even in the application under Order 12 Rule 6 CPC the factum of the appellant having taken the premises on lease and the premises being on rent with the appellant/defendant is not disputed, and what was only alleged was that the rent which was payable was not a monthly rent but annual rent.

(ii) The lease deed between the parties dated 10.7.1995 is an un-registered lease deed. Section 49 of the Indian Registration Act, 1908 bars this Court from looking into the terms and conditions of an un-registered lease deed. Once the lease deed is un-registered, the tenancy in law would be a monthly tenancy. Once the lease deed is not registered, the period stated therein viz the lease being of 27 years plus 7 years will also not come into operation and the tenancy would be a month-to-month tenancy under Section 107 of the Transfer of Property Act, 1882. As per Section 106 of the Transfer of Property Act, 1882, unless there is a contract to the contrary, a lease (except a lease for manufacturing or agricultural purposes) is a month-to-month lease. The language of Section 106(1) of the Transfer of Property Act, 1882 being “in the absence of a contract ... to the contrary ...” indicates that there can be a contract to the contrary, however such a contract would have to be a legal contract, i.e. if a contractual period contained in the lease deed is of the period of more than a year, then, the lease deed can only be looked into if the same is registered since the registration is mandatory in terms of Section 17(1)(b), 17(1)(d) of the Indian Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882.

(iii) The monthly rate of rent for the premises was Rs.58,338.33 per month as contended by the respondent/plaintiff, whereas the appellant/defendant contended that the rent was an annual rent of Rs.7 lacs per year. Since the lease is a month-to-month lease and the monthly rent is more than Rs.3,500/- per month, the suit premises have no protection of the Delhi Rent Control Act, 1958.

(iv) The legal notice terminating tenancy was in fact duly served and replied too by the appellant. One part of the notice talks of breach of terms and conditions of lease, however, the last para of the notice clearly specifies that the notice is sent under Section 107 of the Transfer of Property Act, 1882.

6. Accordingly, there is a relationship of landlord and tenant between the parties, the rate of rent is more than Rs.3,500/- per month taking the tenancy is outside the protection of Delhi Rent Control Act 1958, the tenancy is a month-to-month tenancy since there is no contract to the contrary as required by Section 106(1) of the Transfer of Property Act, 1882 and that the tenancy was terminated by a legal notice sent under Section 106 of the Transfer of Property Act. These admissions thus clearly justify passing of a decree in the suit for possession under Order 12 Rule 6 CPC.

7. When the Civil Court deals with an application under Order 12 Rule 6 CPC, the Court is entitled to see, not only the pleadings but also documents in order to find out the admitted position emerging from the record. This is because of the expression 'or otherwise' as found in Order 12 Rule 6 CPC. The issue is now sufficiently pronounced upon by the Supreme Court and the leading judgment in this regard is the decision in the case of Uttam Singh Duggal & Co. Ltd. v. United Bank of India 2008 (7) SCC 120. In fact, subsequently, the Supreme Court in the case of Charanjit Lal Mehra & Ors. vs. Kamal Saroj Mahajan & Anr. (2005) 11 SCC 279 has gone to the extent of stating, (in a case where the premises were in Delhi and falling outside the Delhi Rent Control Act, 1958) that even an implied admission can be looked into for the purpose of Order 12 Rule 6 CPC. The relevant observations of the Supreme Court in the case of Charanjit Lal Mehra & Ors. (Supra) are found in para 8 of the judgment and which reads as under:-

“8. Learned counsel made an alternative submission that the revision petition was not maintainable and the lease deed is not a registered one and therefore, it is not maintainable. None of these objections were raised by the defendants before the learned Single Judge. Even before the trial court, the non-registration of lease deed(which did not prescribe any term) was not put in issue. It is only devised now to somehow defeat and delay the eviction and possession of the premises to the landlady. In fact, Order 12 Rule 6 CPC is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. In the present case, looking at the terms of the lease deed, there can be no two opinions that the tenancy was joint/composite and not an individual one. Therefore, on these admitted facts the

view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of *Uttam Singh Duggal & Co. Ltd. v. United Bank of India*. Their Lordships have held as follows:

“In the objections and reasons set out while amending Rule 6 of Order 12 CPC 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. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled’.

The Supreme Court should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment.”

Therefore, in the present case, as appearing to us, there is a clear admission on behalf of the defendants that there existed a relationship of landlord and tenants, the rent is more than Rs.3500 and the tenancy is a joint and composite one. As such, on these admitted, facts, there are no two opinion in the matter and the view taken by the learned Single Judge of the High Court appears to be correct and there is no ground to interfere in this special leave petition and the same is dismissed.” (emphasis added).

8. In view of the admitted facts which have emerged from the record being the pleadings of the suit, the documents including the legal notice terminating tenancy and reply thereto, the application under Order 12 Rule 6 CPC and reply thereto (and which themselves are pleadings in terms of Order 12 Rule 6 CPC by virtue of the decision in the case of *Uttam Singh Duggal (Supra)*), the requirements of Order 12 Rule 6 CPC are complied with for the suit to be decreed under the same.

9. Learned senior counsel for the appellant sought to place reliance upon *Jeevan Diesels And Electricals Ltd. vs. Jasbir Singh Chadha (HUF) & Anr. (2010) 6 SCC 601* where the Supreme Court held that the provisions of Order 12 Rule 6 CPC did not apply in the facts and circumstances of that case. A reference to para 12 in the said judgment shows that the said judgment would have no applicability in the facts of the present case where not only the pleadings but also other

documents besides the application and reply under Order 12 Rule 6 CPC have been considered for passing a judgment under Order 12 Rule 6 CPC. Para 12 of the judgment in the case of Jeevan Diesels And Electricals Ltd.(supra) reads as under:-

“It may be noted here that in this case parties have confined their case of admission to their pleading only. The learned counsel for the respondent-plaintiffs fairly stated before this Court that he is not invoking the case of admission “otherwise than on pleading”. That being the position this Court finds that in the pleadings of the appellant there is no clear admission of the case of respondent-plaintiffs.”

The aforesaid para of the judgment in the case of Jeevan Diesels And Electricals Ltd.(supra) makes it clear that in that case for passing of a judgment under Order 12 Rule 6 CPC only pleadings were relied upon and the said case did not proceed on “otherwise than on pleadings” and is undoubtedly permissible by virtue of the said expression as found in Order 12 Rule 6 CPC.

10. In deference to certain legal arguments of the learned senior counsel for the appellant, I note that it was sought to be argued on the basis of certain clauses in the lease deed that there is no relationship of landlord and tenant between the parties and the tenancy was an annual tenancy. Other issues were also sought to be argued that lease was not registered because of certain requirements of taking prior permission under Section 269UC of the Income Tax Act, 1961 and Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976. Firstly, I must note that such a case was never taken up in the pleadings in Trial Court; either in the written statement or in the reply to the application under Order 12 Rule 6 CPC. Not only that, no such arguments were raised when the case was heard in the Trial Court with respect to the application under Order 12 Rule 6 CPC, and consequently, there is no discussion in the judgment of the Trial Court on this aspect. Finally, even in the grounds of appeal before this Court, no such grounds are raised. I would therefore feel that surely a case today cannot be argued on a totally new basis which has no existence either in the Trial Court or in the grounds of appeal. However, even if I consider the arguments, the fact of the matter is that the lease deed is un-registered. Once lease is un-registered, no clause of the same can be considered by virtue of Section 49 of the Indian Registration Act, 1908. No arguments therefore can be predicated on the basis of terms of the lease. There may be reasons for not registering the lease, whether due to provisions of the

Income Tax Act, 1961 or Urban Land (Ceiling and Regulation) Act, 1976 or otherwise for the convenience of the parties, but, the fact remains that the lease deed was un-registered. The lease deed being un-registered all other consequences flow of the tenancy being a monthly tenancy and the fact that it can therefore be terminated by the notice under Section 106 of the Transfer of the Property Act. To avoid repetition, I am not reiterating the reasons and conclusions given by me above.

11. In view of the above, there is no merit in the appeal which is accordingly dismissed leaving the parties to bear their costs.

Sd/-

JULY 13, 2011

VALMIKI J. MEHTA, J.