

CASE NO.:
Special Leave Petition (civil) 20914 of 2004

PETITIONER:
Charanjit Lal Mehra & Ors.

RESPONDENT:
Smt. Kamal Saroj Mahajan & Anr.

DATE OF JUDGMENT: 11/03/2005

BENCH:
P.VENKATARAMA REDDI & A.K. MATHUR

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This Special Leave Petition is filed against an order dated August 25, 2004 passed by the learned Single Judge of the High Court of Delhi at New Delhi whereby learned Single Judge has set aside the order dated February 13, 2004 passed by the trial court whereby the trial court declined to pass an order of eviction moved by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure (hereinafter to be referred to as "C.P.C.") and observed that the application made at this stage is not maintainable and the suit shall be decided recording necessary evidence of the parties in order to do complete justice and dismissed the application of the plaintiff filed under Order XII Rule 6, C.P.C. Hence the present revision was filed before the High Court. The said revision application came to be disposed of by the learned Single Judge of the High Court on August 25, 2004.

In order to dispose of the present petition, brief facts may be detailed herein. Respondent No.1 filed a suit for eviction, arrears of rent and damages/ mesne profit against the defendant-petitioners alleging therein that the premises in question was let out to the defendant- petitioners jointly on a monthly rent of Rs.2500/- vide agreement dated September 4, 1977. The tenancy commenced with effect from October 1, 1977. The rent was increased from time to time at the rate of 10 per cent per month. For the period from September 1, 1998 to August 31, 2001 the defendant- petitioners paid rent at the rate of Rs.3327/- per month. On July 28, 2001 the plaintiff-respondent No.1 served a notice on the defendant- petitioners under Section 6A read with Section 8 of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as " the Act"), notifying therein that the rent would be increased by 10 per cent with effect from September 1, 2001. Since the monthly rent of the demised premises became Rs. 3659/- which is more than Rs.3500/-with effect from September 1, 2001, the provisions of the Act ceased to apply to the demised premises. The plaintiff- respondent No.1 then terminated the tenancy of the defendant-petitioners by separate legal notice dated October 8, 2001. The said notice was duly served on the defendant- petitioners by registered post with acknowledgment due on October 11, 2001. The plaintiff-respondent No.1 thereupon filed the suit for recovery of possession as well as for recovery of arrears of rent for the month of September & October, 2001 and pendente lite and future interest and mesne profit/ damages at the rate of Rs.40,000/-.

The suit was contested by the defendant- petitioners by filing written statement. The defendants did not dispute the existence of

relationship of landlord and tenant between the parties. It was also admitted that the tenancy commenced from October 1, 1977 on a monthly rent of Rs.2500/- under rent note dated September 4, 1977. The rent was increased from time to time by serving notice under Section 6A of the Act. Service of notice dated July 28, 2001 under Section 6A of the Act and notice dated 8th October, 2004 under Section 106 of the Transfer of Property Act was not denied. The defence put in by the defendant-petitioners was that the tenancy was not a joint one but it was a separate, independent and distinct tenancy of the four individuals and they were liable to pay rent individually. In their written statement they also made a reference to letters dated August 3, 1992 and September 17, 1992, which according to the defendants, supported their version that they were separate, independent and distinct tenants. It was pointed out that in the communication made by the plaintiff on September 17, 1992 the plaintiff refused to accept the cheque for a sum of Rs. 42,000/- as it was tendered on behalf of one of the defendants only. But later on the plaintiff accepted the cheque on March 24, 1994 for a sum of Rs.60,000/- which was tendered on behalf of all four defendants. This according to the defendants, indicated that the plaintiff herself treated the defendants as separate tenants. It was also contended that the defendants' individual share of rent never reached the figure of Rs.3,500/-. Therefore, the question of non-applicability of the provisions of the Act does not arise. The defendants did not dispute their liability to pay the arrears of rent from September, 2004 but they denied the liability to pay damages/ mesne profits.

The main thrust of the defendants was that this tenancy which was entered into between the plaintiff and the four defendants namely; Sh Charanjit Lal Mehra, Sh. Ashok Kumar Mehra, Sh. Aswini Kumar Mehra and Sh. Yashpal Mehra was not a joint tenancy but it was an individual tenancy and each one of them had to pay his share towards the rent. Therefore, it was not a joint/ common tenancy and as such the quantum of rent of each individual tenant did not exceed Rs.3500/- per month. It was also contended that the notice under Section 106 of the Transfer of Property Act has been taken to be one whereas there should have been four separate notices for four separate tenancies and this single notice cannot terminate the four tenancies.

From the pleadings of the parties the trial court framed certain issues and when the case was at the stage of evidence an application under Order XII Rule 6 was filed by the plaintiff on April 26, 2002 for passing a judgment on the admission made in the pleadings. This application was opposed by the defendants by filing a detailed reply and a plea taken was that it was not a joint tenancy and it was individual tenancy and each one of the tenants has to pay rent at the rate of Rs.625/-. However, learned trial court did not decide this issue and felt that the same be decided after evidence was adduced and therefore, dismissed the said application. Aggrieved against the said order, a revision application was filed before the High Court and the learned Single Judge of the High Court after hearing the parties and examining the matter in detail came to the conclusion that the admitted facts are that (i) there existed the relationship of landlord and tenants between the parties which is created by the lease deed executed on 4th September 1997; (ii) notice of termination under Section 106 of the Transfer of Property Act has been duly served and notice for enhancement of rent from time to time under Section 6A of the Act had also been served; (iii) the rate of rent exceeded Rs.3500/- per month when the notice under Section 106 of the Transfer of Property Act was served; (iv) the rent was always tendered on behalf of all four brothers and not individually on behalf of any of them. Learned Single Judge of the High Court examined the matter in detail and found that in fact there was a common/ composite tenancy and not individual tenancy

created in favour of four defendants each. Learned Single Judge also referred to certain communications referred to by appellants. One of the communications was of the date August 19, 1992 when a cheque for a sum of Rs.42,500/- as arrears of rent was tendered to the respondent No.1- plaintiff for the period from April 1, 1991 to August 31, 1992 and the cheque was signed by only one person i.e. Yashpal Mehra. In this connection, the plaintiff wrote a letter on September 17, 1992 that Yashpal Mehra is one of the tenants and he is not the only tenant. From this letter an argument was sought to be raised that this was not a composite tenancy but it was an individual tenancy. The learned Judge rightly commented that the letter did not indicate that there were separate tenancies. In fact, in the said letter, Yashpal Mehra was described as a co-tenant. Subsequently when a cheque for a sum of Rs.60,000/- was sent as rent for the period from April 1, 1991 to May 31, 1993 the same was accepted by the landlady vide receipt dated May 24, 1993. This cheque was tendered on behalf of the four brothers. Therefore, the argument is advanced on the basis of the letter dated September 17, 1992 that it is not a case of admission as the plaintiff herself treated it as a separate tenancy. The learned Single Judge examined the matter and found that this subsequent cheque of Rs.60,000/- was sent on behalf of four brothers. Therefore, one isolated letter does not change the character of the tenancy and accordingly, learned Single Judge found that there is admission on the part of the defendants that there is a joint tenancy and the rent exceeded more than Rs.3500/-. Therefore, on the admission of the defendants, learned Single Judge accepted the application under Order XII Rule 6 C.P.C. and passed a decree for eviction. Aggrieved against the said order, the present Special Leave Petition has been filed.

A caveat was filed on behalf of plaintiff- respondent No.1. Therefore, both the parties were heard at length. They have also filed their written submissions.

The only question that needs to be determined in the

present case is whether there was a joint tenancy or an individual tenancy. In order to decide this basic question we have to peruse the lease deed which has been filed by the parties in the Court, the execution and contents of which are not in dispute. The lease deed recital reads as under :

" LEASE DEED

This lease deed made this 4th day of Sept.1977 between Smt. Kamal Saroj Mahajan wife of Shri Madan Mohan Mahajan, r/o Asandh Road, Panipat, hereinafter called the lessor (which expression shall include unless repugnant to the context its heirs, successors, executors, administrators and assigns of the one part.

A N D

S/Shri Charanjit Lal Mehra, Ashok Kumar Mehra, Ashwani Kumar Mehra and Yash Pal Mehra all sons of late Shri Devi Dass Mehra r/o G-25, N.D.S.E.I, New Delhi (hereinafter called the lessees) which expression shall include unless repugnant to the context its heirs, successors, executors, administrators and assigns and shall include partnership firms and private limited companies in formation by the partners of the above said firms of the other part.

Whereas the Lessor has agreed to let out of the "Showroom-on-Western side on the ground from

together with the entire lot on the verandah of the commercial building No.E-1 and E-2 (facing main Ring Road) in the New Delhi South Extension Part-II, Market, New Delhi known as Mahajan House, measuring about 1200 sq.ft and bounded as under:-
North Main Ring Road
South Shop No.E-3
East- Showroom of Escorts & Modelle
West Verandah and Road.
Hereinafter referred to as the "Deemed Premises".

And whereas the Lessees have agreed to take the demised premises on lease on the covenants and conditions mutually agreed to and appearing hereinafter:

NOW THIS DEED OF LEASE WITNESSETH
AS UNDER:

In consideration of the rent hereby reserved and the covenants hereinafter contained to be observed and performed, the "Lessor" do hereby grant to the Lessees ALL THAT the aforesaid demised premises more particularly shown in the plan annexed hereto on a monthly rent of Rs.2500 (Rs.Two thousand five hundred only).

The above stipulated rent will include the ground rent (if any) house tax and all other Government and Municipal Corporation rates, charges and taxes of all kinds which are payable by the lessor as owner or which may be levied by any Authority hereinafter on the Lessor as owner. All the taxes and all other Govt. and Municipal rates, charges and taxes of all kinds shall be payable by the Lessor.

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A perusal of the lease deed clearly shows that the demised premises was taken on monthly rent of Rs.2500/- by the sons of Late Devi Dass Mehra i.e. all the four brothers and it further says as follows:

" And whereas the Lessees have agreed to take the demised premises on lease on the covenants and conditions mutually agreed to and appearing.."

Therefore, it clearly stipulates that this lease deed has been executed in favour of all the brothers jointly and it is a composite one and not individual one. Detailed perusal of the lease deed leaves no manner of doubt in the matter that this was a composite and joint tenancy and it was executed on behalf of the landlady on the one side and all the four brothers on the other side. The rent stipulated in the lease deed is Rs.2500/- in toto. It is not disputed that the total rent now payable is more than Rs.3500/-. It cannot be split up into four portions so as to bring the building within the fold of Rent Act. Therefore, we are of opinion that the tenancy in question was a joint/ composite one and it is not an individual lease of the demised premises which is a show room and the defendants had to pay the rent jointly. This was the only basic question which needed to be determined and the learned Single Judge of the High Court has correctly appreciated the matter. The letters exchanged do not in any way demolish the admissions flowing from the lease deed which is the primary document.

Learned counsel made an alternative submission that the revision petition was not maintainable and the lease deed is not 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 some how defeat and delay the eviction and possession of the premises to the landlady. In fact, Order XII Rule 6, C.P.C. 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 lease deed, there can be no two opinions that the tenancy was joint/ composite and not 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. vs. United Bank of India & Ors.* reported in (2000) 7 SCC 120. Their Lordships have held as follows:

" In the Objects 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 joint and composite one. As such on these admitted facts, there is 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.