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Judgement Reserved on : 18.01.2024
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Court No. - 50

Case :- S.C.C. REVISION No. - 157 of 2023

Revisionist :- M/S Kaizen India And 2 Others
Opposite Party :- M/S Rangoli Garments Private Limited

Counsel for Revisionist :- Anurag Vajpeyi,Dinesh Kumar Rai,Gaurav Tripathi,Sr. Advocate,Vishakha Pande
Counsel for Opposite Party :- Nikhil Agrawal,Nipun Singh

Hon'ble Ashutosh Srivastava,J.

1. Heard Sri Manish Goel, learned Senior Counsel, assisted by Sri Gaurav Tripathi, learned counsel for the Revisionists and Sri Nikhil Agarwal along with Nipun Singh, learned counsel for the sole Respondent.

2. The instant SCC Revision under Section 25 of the Provincial Small Cause Courts Act, 1887 at the instance of the Tenants/Defendants in SCC Suit No. 05 of 2021 has been filed against the judgment and order dated 06.12.2022 passed by the District & Sessions Judge, Gautam Buddh Nagar in so far as it rejects the Applications/Paper No. 41-Ga, 43-Ga and 51-Ga preferred by the Revisionists in the SCC Suit as also the order dated 28.04.2023 passed by the Additional District & Sessions Judge-3, Gautam Buddh Nagar acting as the Judge, Small Cause Court whereby and where-under the SCC Suit No. 5 of 2021 (M/s Rangoli Garments Pvt. Ltd. Vs. M/s Kaizen India & 2 others) has been decreed and the defendants have been ordered to vacate the Premises No. B-137, Sector 63 Noida, District Gautam Buddh Nagar and hand over its actual physical and legal possession to the plaintiff along with arrears of rent and damages for use and occupation till handing over of possession.

3. The facts shorn of unnecessary details, necessary for adjudicating the lis between the parties is that the Plaintiff/Respondent M/s Rangoli Garments Pvt. Ltd. being a Private Limited Company is the owner/lessor of the industrial building bearing No. B-137, Sector-63 Noida, District Gautam Buddh Nagar, which was leased out to the Defendants/Revisionists under a Registered Lease Agreement dated 27.12.2018 at an agreed monthly rent of Rs. 4,34,250/- excluding GST and all other charges for a period of 3 years w.e.f. 01.01.2019 upto 31.12.2021. Clause 6 of the Agreement provided for an increase of rent by 7% yearly w.e.f. 01.01.2020. It as averred in the

plaint that the Revisionists issued cheques of Rs. 5,01,819/- each which included the rent at the rate of Rs. 4,64,648/- for each month, less the TDS along with GST thereon at the rate of 18% towards rent for the period 01.02.2020 to 31.05.2020. The rental towards the month of February, 2020 was, however, not deposited by the Defendants/Revisionists. It was also alleged in the plaint that the Defendants/Revisionists were not regular in depositing the rent of the premises. The cheques (four in number) were dishonoured on account of insufficient funds in the Bank Account of the Defendants/Revisionists.

4. Clause 20 of the lease agreement contained a stipulation that if the rent remained unpaid for more than two consecutive months the tenancy would stand automatically terminated. The plaint further averred that the Defendants/ Revisionists sought waiver of payment of rent for the months of March and April, 2020 and for issuance of credit note for the same and, accordingly, sent E-mail dated 22.05.2020. The request was declined by the plaintiff. The Defendant/Revisionists thereafter sent another E-mail dated 16.06.2020 again requesting for issuance of credit notes for the moths of April and May, 2020.

5. The Plaintiff/Respondent left with no option sent legal Notice to Defendants/Revisionists on 12.06.2020 under Section 106 of the Transfer of Property Act, terminating the Tenancy Lease Agreement dated 27.01.2018 and also terminating the leasehold rights of the Defendants/Revisionists asking them to vacate the premises before 31.08.2020. The Defendants/Revisionists again issued cheques towards rent for the months of June, July, August and September, 2020 but the said cheques were also dishonoured. The Plaintiff/Respondent in the aforesaid circumstances instituted the Suit for eviction, and recovery of rent and damages for use and occupation.

6. The Suit was contested by the Defendants/Revisionists by filling written statement. In the written statement inter-alia it was stated that the Suit is not maintainable and the plaintiff has no authority to file the Suit. In Para 27 of the written statement it was stated that the Suit is premature and the plaintiff should have given at least six months notice as contemplated under Section 106 of the Transfer of Property Act considering the nature of the premises which was an industrial plot. In Para 30 it was stated that the Defendants had paid the entire rent and that no conditions of the Tenancy agreement had been breached. In Para 32, it was stated that the Plaintiff presented two cheques given to the plaintiff in advance/security for a sum of Rs.3,38.868/- each without informing the Defendants/Revisionists. It was also averred that the plaintiff has no cause of action and the Suit is liable to be rejected under Order 7 Rule 11 CPC. Besides it was also averred that the Court had no jurisdiction to try the Suit as the Suit was of commercial nature and should be tried by the Commercial Court.

7. The Plaintiff/Respondent in support of the plaint case filed the certified copy of the Registered Lease Agreement dated 27.12.2018 executed between the parties, the Notice under Section 106 of Transfer of Property Act dated 12.06.2020, postal

receipts dated 12.06.2020, photocopies of the cheques and also the return memos showing insufficient funds in the Bank Account of the Defendants/Revisionists. The plaintiff filed the affidavit of Examination-in-Chief of Nitin Gulati dated 25.01.2023, Director of the Plaintiff Company under Order 18 Rule 4 CPC. The plaintiffs witness Nitin Gulati was cross examined.

8. The Defendants/Revisionists did not file any evidence in rebuttal rather moved an Application under Order 7 Rule 11 CPC (Paper No. 33 Ga). The Application was rejected by the Court vide order dated 23.03.2022. The order dated 23.03.2022 was challenged in SCC Revision (D) No. 70 of 2023. The Defendants/Revisionists did not press the Revision despite several date being fixed. Thereafter, various dates were fixed for defendants evidence but evidence was not led and ultimately vide order dated 23.02.2023 the opportunity of the defendant to file evidence was closed and case was fixed for arguments.

9. In the interregnum, the Plaintiff/Respondent filed an Application (41-Ga) dated 12.05.2022 under Order 15 Rule 5 CPC for striking of the defence of the defendants. The Defendants/Revisionists filed Application (43-Ga) for impleading NOIDA Authority as party defendant and another Application (51-Ga) for return of the plaint under Order 7 Rule 10 CPC.

10. The District Judge, Gautam Buddh Nagar took up the three Applications i.e. 41-Ga, 43-Ga and 51-Ga and decided the same by a common order dated 06.12.2022 and rejected the Applications.

11. The Suit meanwhile was being fixed for final arguments. In the absence of the defendants the Court fixed the Suit for ex-parte arguments vide order dated 11.04.2023. On 11.04.2023, the Suit was fixed for 26.04.2023. No Application for recalling the ex-parte order was filed by the defendants nor they appeared to argue the matter. The Suit was finally heard and fixed for 28.04.2023 on which date the judgment was delivered and the plaintiffs suit was decreed.

12. In the instant SCC Revision the order dated 06.12.2022 rejecting the Applications i.e. Paper No. 41-Ga, 43-Ga and 51-Ga have also been assailed along with the order dated 28.04.2023 deciding the Suit finally. The Court sees no reason as to why the order dated 06.12.2022 so far as it rejects the Application 41-Ga moved by the Plaintiff/Respondent for striking of the defence under Order 15 Rule 5 CPC would be challenged by the Revisionist.

13. Sri Manish Goel, learned Senior Counsel for the Tenants/Revisionists has confined his submissions to the order dated 28.04.2023 and assailed the impugned judgment and order dated 28.04.2023 primarily on the following grounds:-

i. The impugned judgment of the Judge, Small Cause is ex-parte and the Court has not tested the issue of notice or the veracity of the evidence rendering the entire judgment vitiated in law.

ii. The notice under Section 106 of the Transfer of Property Act, 1882 was invalid, being founded on the Lease Rent Agreement dated 27.12.2018 which was not proved nor produced in original and could not form the basis of the Suit.

iii. The suit was not maintainable based on an invalid notice and was not liable to be decreed.

14. Elaborating the above-mentioned grounds, Sri Manish Goel, learned Senior Counsel for the Revisionists submits that even in an ex-parte judgment, the Court is required to test the case of the plaintiff and the plaintiff is required to prove his own case. It is only after being satisfied through the material placed by the plaintiff, which is permissible under the law, that the Court will either decree or dismiss the Suit of the plaintiff ex-parte. To reach its conclusion, the Court will record its findings based upon the material led before it and also test whether such material is admissible or not admissible and under what circumstances admissibility is permissible. Reliance is placed upon the decisions of this Court reported in ***2009 (3) ADJ 175 (Nitin Kumar and others versus Rajendra Kumar), 1995 ALR 1355 (Commissioner of Income Tax versus Surindra Singh Pahwa) and AIR 1988 Ker 304 (AKP Haridas versus Madhavi Amma and others)*** to submit that in ex-parte proceedings the Trial Court is required to test the case of the plaintiff and not merely believe whatever has been stated by the plaintiff in his plaint.

15. Sri Manish Goel, learned Senior Counsel elaborating his submissions further submits that the entire case of the Plaintiff/Respondent is based upon the registered lease agreement dated 27.12.2018. Attention of the Court is invited to Clause 34 of the lease agreement filed on record as Annexure No. 2 to the affidavit filed in support of the stay application to submit that the original agreement was to be retained by the Lessor/Plaintiff, while the copy of the same would be provided to the Lessee/Defendants/Revisionists. In the SCC Suit the original lease agreement was not produced and thus the Plaintiff/Respondent failed to bring on record of the SCC Suit the primary evidence which was very much in the possession of the Plaintiff/Respondent. He submits that an adverse inference was liable to be drawn against the Plaintiff/Respondent inasmuch as the plaint case was sought to be proved by Secondary evidence without stating or establishing why primary evidence was not led. It is contended that in the absence of primary evidence the notice of termination of tenancy cannot be said to be proved. The learned Judge Small Cause while decreeing the SCC Suit failed to record any finding that the notice stood proved. Sri Manish Goel has invited the attention of the Court to Sections 61, 62, 63, 64 & 65 of the Indian Evidence Act to submit that in the absence of the plaintiff having failed to lead primary evidence of the lease agreement that formed the basis of the notice, the notice itself fell to the ground and since the notice formed the basis of the Suit, there being no valid notice in the eye of the law the Suit itself was liable to fail but the JSCC proceeded to decree the Suit. Reliance is placed upon the decision of the Apex Court reported in **2016(16) SC 483, 2020(5) SCC 176 and AIR 1966 SC 1457.**

16. Sri Goel further submits that the learned JSCC committed manifest error in relying merely on the secondary evidence which was not even an exhibited document and proceeded to hold the document namely the alleged Lease Agreement to be duly executed between the parties. It is argued that in the absence of leading any primary evidence and no reasons for leading secondary evidence the Rent/Lease Agreement could not have been taken into consideration as a valid piece of evidence particularly when it was not admitted and not exhibited. Learned Counsel for the Defendants/Revisionists submits that in Para 3 of the plaint, the Plaintiff/ Respondent had alleged that there is a registered lease deed through which the Defendants/Revisionists took lease of the premises in question for the period 01.01.2019 to 31.12.2022. In the written statement, the Defendants/Revisionists refuted the allegation by stating that the plaintiff was required to prove the said document especially the different clauses. The Defendants/Revisionists had not admitted the document and its contents. The plaintiff in such circumstances was required to prove the document through primary evidence. The plaintiff merely filed the certified copy of the Lease Agreement even though the original was very much in his possession. The plaintiff attempted to prove the Lease Agreement though secondary evidence which was not permissible in the facts and circumstances that stood attracted to the case at hand. The Suit could not have been decreed on the basis of secondary evidence when admittedly primary evidence was very much available and in possession of the plaintiff. The entire approach of the leaned JSCC is not in accordance with law and has resulted in grave miscarriage of justice vitiating the entire judgment and decree passed in the SCC Suit.

17. Sri Goel has further argued that the Notice under Section 106 of the Transfer of Property Act dated 12.06.2020 was invalid for the reason that it was based upon the registered lease deed dated 27.12.2018 which was not proved in accordance with law and besides the Notice under Section 106 of the Transfer of Property Act merely terminates the lease agreement and not the tenancy and as such the Suit for recovery of arrears of rent and eviction based on an invalid Notice was clearly not maintainable. Reliance is place upon the Paras 1, 8 and 9 of the Notice which has reference to Clause 20 of the Lease Agreement to submit that Section 106 of the Transfer of Property Act comes into play only when there is no contract to the contrary. In the case at hand, there existed a contract between the parties containing a termination clause. The lease created under the lease agreement was being terminated. It is contended that the Notice dated 12.6.2020 at most can be said to be a Notice under Section 111 (g) of the Transfer of Property Act, 1882. However, the notice under the said provision cannot be utilized to evict the Defendants/Revisionists in the absence of a clause in the Lease Agreement granting the right to the lessor to re-enter. Clause 20 of the Lease Agreement does not contain the clause to the effect that the lessor has a right to re-enter. The obligation is upon the lessee to handover the vacant possession. Right to re-entry and handing over of vacant possession lie on different footings. It is thus submitted that the Notice dated 12.6.2020 cannot be said to be valid even for the purpose of Section 111 (g) of the Transfer of Property Act, 1882 as it does not stipulate the following:-

(a) there is a forfeiture of tenancy invoked by the plaintiff of the defendants Tenancy.

(b) the plaintiff/respondent has decided to re-enter the demised premises in case the premises is not vacated by the date mentioned in the Notice falling which he will file suit.

18. Lastly, it has been submitted by Sri Manish Goel, learned Senior Counsel that in a Suit for eviction and arrears of rent and damages before the Small Causes Court, equity has no role to play and the Court does not exercise equitable jurisdiction and is to decide the lis on the basis of pleadings and evidence led by the parties. Conduct cannot be considered to be a relevant factor for deciding the Suit.

19. To sum up his arguments, Sri Goel, submits that no findings have been recorded by the Small Cause Court. The judgment and decree passed is perverse. The Plaintiff/Respondent failed to prove his case as the original documents were not produced and there is no valid notice that terminates the tenancy of the Defendants/ Revisionists. Despite, the existence of due pleadings and denial of the document, no evidence was available before the Trial Court which ultimately decreed the Suit without even considering whether the contents of the Notice complied with Section 106 or Section 111 of the Transfer of Property Act, 1882. It is, accordingly, submitted that the SCC Suit No. 5 of 2021 was not liable to be decreed and the instant SCC Revision is liable to be allowed with costs throughout.

20. Per contra, Sri Nikhil Agarwal, learned counsel appearing along with Shri Nipun Singh, learned counsel for the Plaintiff/Respondent controverting the submissions of Sri Manish Goel submits that the relationship of landlord and tenant is admitted between the parties. There is no specific denial in the written statement about the execution/registration of the Lease Agreement dated 27.12.2018. No evidence was led by the Defendants/ Revisionists despite several opportunities having been granted by the Court. The evidence led by the Plaintiff/ Respondent documentary as well as oral stood un-controverted and unrebutted. Clause 20 of the Lease Agreement in respect to break of the lease conditions would automatically terminates the lease on account of default of rent for consecutive two months. The lock in period contained in Clause 8 and 21 of the Lease Agreement would not override Clause 20 and rather Clause 20 would override all other clauses. Admittedly, there was a clear cut default in the payment of rent for more than two consecutive months. The Plaintiff/ Respondent duly proved not only the service of notice viz-a-viz the execution of the registered Lease Agreement executed between the parties. The Plaintiff/Respondent also proved the default of payment of rent by showing the bank returns memos after dishonour of cheques issued by the Defendants/Revisionists. Certified copy of the Lease Agreement is a public document as contemplated under Section 74 of the Indian Evidence Act, 1972.

21. Sri Nikhil Agarwal, learned counsel for the Plaintiff/Respondent has further placed the provisions of Section 65 (e) and (f) of the Evidence Act to submit that

secondary evidence may be given when the original is a public document within the meaning of Section 74 and certified copies of the original document is admissible in evidence. It is asserted that the absence of specific denial of execution and registration of the registered Lease Agreement dated 27.12.2018 in the written statement, there would be a deemed admission of the Lease Agreement by the Defendants/Revisionists and no further evidence was required to corroborate and prove the existence and registration of the Lease Agreement.

22. Sri Nikhil Agarwal, learned counsel for the Plaintiff/Respondent has also argued on the conduct of the Defendants/Revisionists by submitting that the Defendants/Revisionists did not approach the Court with clean hands inasmuch as it has not been disclosed as to how the premises is being occupied without payment of rent or the lease period as per the terms of the lease which was upto the year 2021 has expired. Even if the Lease Agreement is ignored, the tenancy of the Defendants/Revisionists stood terminated by virtue of Notice sent under Section 106 of the Transfer of Property Act.

23. It is next contended by Sri Nikhil Agarwal, learned counsel for the Plaintiff/Respondent that the learned Judge Small Causes Court, under the impugned judgment and order dated 28.04.2023 has recorded that there existed a relationship of Landlord and Tenant between the parties. The evidence submitted by the Plaintiff/ Respondent stood uncontroverted as no evidence was led by the Defendants/Revisionists. The Plaintiff/ Respondent duly sent the Notice under Section 106 of the Transfer of Properties Act terminating the tenancy. The Defendants/Revisionists even after receiving the Notice failed to pay the rent. The learned Judge Small Causes Court placed reliance upon the registered Lease Agreement and after considering the cheque return memo regarding the default proceeded to decree the Suit. The judgment and decree dated 28.04.2023 does not warrant any interference in Revision and the same is liable to be dismissed with costs.

24. I have heard the learned counsel for the for the parties and have perused the record.

25. Sri Manish Goel, learned Senior Counsel appearing for the Defendants/Revisionists has vehemently submitted that the impugned judgment and Decree of the Judge Small Cause is ex-parte and the Court has not tested the validity of the notice or the veracity of the evidence rendering the entire judgment vitiated in law. There can be no quarrel on the legal position that in ex-parte proceedings the Court is required to test the case of the plaintiff and not merely believe whatever has been stated in the plaint. The Court proceeds to test the submissions of Sri Manish Goel, learned counsel for the Defendants/Revisionists. The impugned order records that the Defendants/Revisionists had filed written statement (Paper No. 24C) however, at the stage of evidence did not file any evidence in support of his written statement or in rebuttal of the plaint nor examined the plaintiff witnesses. The Defendants/Revisionists also did not appear

at the time of arguments and the case in such circumstances proceeded ex-parte against the Defendants/Revisionists. The Plaintiff/Respondent filed the certified copy of the registered Lease Agreement executed between the parties on 27.12.2018, Notice under Section 106 of the Transfer of Property Act dated 12.06.2020, Postal receipts showing service of the Notice upon the Defendants/Revisionists, photocopies of the cheques dated 07.09.2020 along with the Bank return memos showing insufficient funds in the Bank account of the Defendants/Revisionists. The Court recorded the factum that such evidence of the Plaintiff/Respondent stood unrebutted. The Court further recorded the fact that the oral evidence in the form of Affidavit under Order 18 Rule 4 CPC was unrebutted and uncontroverted. Taking note of the above in the absence of any contest from the Defendants/Revisionists learned Judge Small Causes Court proceeded to decree the suit of the Plaintiff/Respondent.

26. The Apex Court in the Case of ***Rasik Lal Manikchand Dhariwal Vs. M.S.S. Food Products,*** reported in ***2012 (2) SCC 196*** has held that where the plaintiff has tendered evidence by affidavit and the defendant did not cross examine him despite several opportunities given to him and the Trial Court accepted the plaintiff's evidence which remained unrebutted and unchallenged and also relied upon the documents produced by the plaintiff, it cannot be said that any illegality has been committed by the Trial Court in decreeing the plaintiff's Suit.

27. In the same decision the Apex Court further held that where witness affidavit is tendered in evidence, the affidavit is already on oath/affirmation and is, therefore, not required to be reproved by the deponent.

28. In the opinion of the Court the aforesaid decision of the Apex Court is applicable to the case at hand with all its vigour. This Court finds no illegality in the procedure adopted by the learned Judge Small Causes Court in decreeing the Suit of the Plaintiff/Respondent.

29. Sri Goel, learned Counsel for the Defendants/Revisionists has laid much emphasis on the plea that no reliance could be placed upon the Lease Agreement dated 27.12.2018 which formed the basis of the Notice dated 12.06.2020 and the SCC Suit in view of the fact that the original Lease Agreement had not been brought on record and only a certified copy of the said registered agreement was filed rendering the document inadmissible in evidence.

30. Section 64 of the Indian Evidence Act, 1872 provides that document must be proved by primary evidence. Section 65 however lays down certain exceptions and permits Secondary evidence relating to documents to be given to prove the same. Primary evidence is defined in Section 62 to mean the document itself produced for inspection of the Court. Secondary evidence is defined under Section 63 and includes for the purposes of the present Case the certified copies given under Sub Clauses 63 (2) and 63 (3). There can be no dispute that the certified copy of the Lease Agreement dated 27.12.2018 will fall under the category of secondary

evidence. The question is as to whether the secondary evidence could be admissible or inadmissible in evidence. The pith and substance of the argument of Sri Manish Goel, learned Senior Counsel, appearing for the Defendants/ Revisionists is that the learned Judge Small causes Court manifestly erred in law in relying upon the Lease Agreement and decreeing the Suit, in the absence of any factual foundation to lead secondary evidence where the primary evidence was very much in the possession of the Plaintiff/Respondent.

31. Reliance has been placed upon the decisions in the case of ***Rakesh Mohindra Vs. Anita Beri & others,*** reported in ***2016 (16) SCC 483,*** case of ***Jagmail Singh and Another Vs. Karamjit Singh and Others,*** reported in ***2020 (5) SCC 178*** and in the case of the ***Roman Catholic Mission Vs. State of Madras and Another,*** reported in ***AIR 1966 SC 1457.***

32. The Court finds substance in the submissions of learned counsel for the Plaintiff/Respondent that certified copy of the Lease Agreement is a Public Document, as contemplated under Section 74 of the Indian Evidence Act, 1972 and in terms of the 3rd Proviso to Section 65(e) or 65(f) the certified copy is admissible in evidence.

33. Section 74 of the Indian Evidence Act, 1972 deals with documents, which are public documents. Sub Section (2) thereof makes public records kept (in any State) of private documents within the purview of "Public Document" under Section 74. Going by Section 76, certified copies of the public documents shall be given, on demand, by the Public Officer having the custody of the public document, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be and such certificate shall be stated and subscribed by such officer with his name and his official title such copies so certified shall be called certified copies in terms of Section 76.

34. In the case at hand, the certified copy of the Lease Agreement dated 27.12.2018 was filed as evidence by the Plaintiff/Respondent. The contention of the Defendants/Revisionists is that it is only a certified copy and not the original document and as such not admissible in evidence. In the opinion of the Court, the aforesaid submission on behalf of the Defendants/Revisionists does not merit consideration in the light of the aforementioned provisions of the Indian Evidence Act and there can be no doubt with regard to the permissibility for the production of such a certified copy as secondary evidence in law, to prove the existence, condition or contents of a document. The Court further notes that Section 77 of the Indian Evidence Act provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of law declaring certified copy of a document of such nature to be admissible as evidence. Admittedly, the document at hand is the certified copy of the registered Lease Agreement between the Plaintiff/ Respondent and the Defendants/Revisionists. Sub Section 5 of Section 57 of the Registration Act

provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. The certified copy issued under Section 57 of the Registration Act is not only a copy of the original document but is also a copy of the registration entry which is itself a copy of the original and is a pubic document under Section 74(2) of the Evidence Act and Sub Section 5 thereof makes it admissible in evidence for proving the contents of its original. The cumulative effect of above mentioned Sections of the Evidence Act and Section 57(5) of the Registration Act shall make the certified copy of the registered Lease Agreement dated 27.12.2018 admissible in evidence for the purposes of proving the contents of the original Lease Agreement. This being the legal position, the contention of Sri Manish Goel, learned Senior Counsel that the Lease Agreement being only a certified copy was not admissible in evidence is liable to be rejected and is accordingly rejected. It is held that the certified copy of the registered Lease Agreement dated 27.12.2018 was legally admissible and rightly relied upon by the learned JSCC while decreeing the Suit.

35. Reliance placed by Sri Manish Goel, learned Senior Counsel, on the decision in the case of ***Jagmail Singh and Another Vs. Karamjit Singh and Others,*** reported in ***2020 (5) SCC 17***8 is completely misplaced inasmuch as the same is not applicable to the facts of the present case. In the said case, copy of Will was sought to be produced as secondary evidence as the original Will was filed before the Revenue Authorities for mutation. The said judgment does not consider the scope of certified copies being admissible in evidence as per Section 65(e) and 65(f) of the Evidence Act as well as Section 74(2) and the presumption of genuineness of certified copies as mentioned in Section 79 of the Evidence Act.

36. Likewise, the case of ***Rakesh Mohindra Vs. Anita Beri & Others,*** reported in ***2016(16) SCC 483*** is also not applicable to the case at hand. The said case was in respect of a letter of disclosure which was sought to be produced as secondary evidence. The said letter of disclosure was not a certified copy issued by any Public Officer as per the provisions contained under Section 76 of the Evidence Act.

37. The decision in the case of ***Roman Catholic Mission Vs. State of Madras and Another***, reported in ***AIR 1966 SC 1457*** was in respect of certified copies of certain leases obtained from record of Suit No. 124 of 1924 filed before the Subordinate Judge, Madurai and not in respect of certified copies duly issued by any Public Officer as per Section 76 of the Evidence Act in respect of any public record kept in State of public document.

38. There is yet another aspect of the matter. The execution of the lease Agreement has not been disputed. In the absence of any specific denial to the registered Lease Agreement executed between the parties, there is a deemed admission on the part of the Defendant/Revisionist. The Apex Court in the case of ***Muddasani Venkata Narsaiah (dead) through Legal Representative Vs. Muddasani Sarojana,*** reported in ***2016 (10) SCC 228*** in paras 14, 15, and16 held has under:-

*"**14**. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in Jahuri Sah & Ors. v. Dwarika Prasad Jhunjhunwala AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors. 1978 MPLJ 717. The High Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors. AIR 1959 MP 305 relying on P.L.N.K.L. Chettyar Firm v. Ko Lu Doke AIR 1934 Rang 278 and Lakhmi Chand v. Ram Lal AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.*

***15.** Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW-2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440.*

***16.** In Maroti Bansi Teli v. Radhabai w/o Tukaram Kunbi & Ors. AIR 1945 Nagpur 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian AIR 1961 Cal. 359 has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram & Ors. AIR 1950 Nagpur 83 has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of Patna High Court in Karnidan Sarda & Anr. v. Sailaja Kanta Mitra AIR 1940 Patna 683 has laid down that it cannot be too strongly emphasized that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first Appellate Court as to the factum of execution of the sale deed in favour of the plaintiff".*

39. In the case at hand, there is no effective cross examination made of the

plaintiffs witness on the question of registration or denial of the Lease Agreement. No facts have been stated as to how the Defendants/Revisionists came in possession over the leased premises. In the opinion of the Court in the absence of any explanation towards the occupancy of the rented premises as also in the absence of an examination of the plaintiffs witness with respect to the Lease Agreement and taking note of the fact that the Plaintiff/Respondent has duly proved the execution of the Lease Agreement by filing a certified copy thereof and examining the defendant witness on this aspect the Defendants/Revisionists does not dispute the relationship of Landlord and Tenant between themselves and the Plaintiff/Respondent. The notice under Section 106 of the Transfer of Property Act for granting recovery of possession was valid. The Apex Court in ***Payal Vision Limited Vs. Radhika Chaudhary*** reported in ***2012 (11) SCC 405*** in paras 7 & 8 has held as under:-

> *"**7.** In a suit for 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 landlord and 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 aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC, which reads as under:*
>
> > *"**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."*
>
> ***8.** The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in Jeevan Diesels & Electricals Ltd. (supra) relied upon by the High Court where this Court has observed:*
>
> > *"**10.** Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the*

decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation."

40. The Court finds that the Judge Small Causes Court under the impugned judgment and order dated 28.04.2023 has recorded findings of fact that there existed relationship of Landlord and Tenant between the Plaintiff/Respondent and the Defendants/Revisionists. The Notice under Section 106 of Transfer of Property Act was a valid Notice terminating the tenancy of the Defendants/Revisionists and was duly served. Despite service of Notice the Defendants/Revisionists failed to make good the default and pay the rent. The learned JSCC rightly placed reliance upon the certified copy of the registered Lease Agreement and the Cheque Return Memos regarding the default committed to decree the Suit. The findings recorded by the learned JSCC calls for no interference by this Court.

41. In view of the above, this court finds no merit in the instant SCC Revision. It is, accordingly, **dismissed.**

42. No order as to costs.

Order Date :- 16.7.2024
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