2023:DHC:9347

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

Judgment reserved on: 26.09.2023
Judgment delivered on: 22.12.2023

\+ **RFA 462/2023 & CM APPL. 30481/2023**

NAWABUDDIN …….. APPELLANT

versus

SHAFFIULLA @ RAJA ..... RESPONDENT

For Appellant: Mr. Santosh Pratap, Adv.

For Respondent: Mr. Samyan Khetarpal, Mr. Nitesh Goyal, Mr. Vijay Waghe, Ms. Prakriti Anand, Advs

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J.

CM APPL. 30484/2023

1. This is an application seeking condonation of 10 days delay in re-filing the appeal.

2. For the reasons stated in the application, the application is allowed and delay of 10 days is condoned in re-filing the present appeal.

RFA 462 of 2023

3. This is an appeal challenging the order dated 21.02.2023 (*"impugned order"*) passed in C.S. No. 55 of 2019 titled as *"Shafiullah @ Raja v. Salman Malik and others"* wherein the learned trial court allowed the application filed by the respondent under Order 12 Rule 6 of Code of

Civil Procedure (*"CPC"*) by passing a preliminary decree for possession and directing the appellant and Mr. Salman Malik/defendant no. 1 to vacate the suit premises within two months and hand over the vacant and peaceful possession to the respondent.

PLEADINGS

4. Shorn of details, the facts leading to the present appeal is that the respondent is the absolute owner of the property i.e. Shop No. 1 and 2 at Ground Floor of property No. 12A/52F, Khasra No. 319, Maujpur, Shahdara, Delhi (*"tenanted premises"*). A lease deed was entered into dated 27.08.2016 (*"first agreement"*) with respect to the tenanted premises for commercial purposes for a fixed period of 11 months from 15.08.2016 to 14.07.2017 at a monthly rent of Rs. 30,000 per month.

5. Appellant along with defendant no. 1 started doing the business of sale and purchase of electronic gadgets in the name and style of M/s. Malik Electronics. As appellant and defendant no. 1 were irregular in payments of rents and electricity bills, respondent reminded them to make such payments but despite that they gave false assurances and later on they stopped making payments.

6. On expiry of lease period, respondent asked appellant and defendant no. 1 to vacate the tenanted premises. However, both of them requested respondent to extend the lease and, on their assurances, respondent agreed to extend the lease further for a period of 11 months with increased rate of rent by 30% per annum instead of 10% per annum as per clause 14 of the first agreement.

7. Appellant and defendant no. 1 paid the increased rent i.e. Rs. 40,000/- per month from August, 2017 till May, 2018, but thereafter, appellant and defendant no. 1 stopped paying rent. Appellant and defendant no. 1 were in unauthorized possession of the tenanted premises without any payment of rent or arrears. Since appellant and defendant no. 1 were in default in paying rent, respondent has sought the recovery of the same.

8. Respondent issued legal notice dated 11.09.2018 to defendant no. 1 calling upon him to hand over the vacant and peaceful possession of the tenanted premises after expiry of lease period. Since, said notice was not responded and appellant and defendant no. 1 failed to hand over the possession, respondent was constrained to file the suit for possession, arrears of rent, electricity, and mesne profits against the appellant and defendant no. 1.

9. Pursuant to the issuance of summons to the appellant and defendant no. 1, they entered appearance but sought adjournments to file written statement. Despite several opportunities, appellant and defendant no. 1 did not file their written statement and vide order dated 14.10.2019, their right to file written statement was closed as they failed to file written statement within limitation. Consequently, their defence was also struck off.

10. Thereafter, respondent filed an application under Order 15A of CPC seeking a direction to appellant and defendant no. 1 to deposit an amount of Rs. 40,000 per month from 01.05.2018 and continue to pay Rs. 40,000 per month during the pendency of the suit.

11. To the above application, appellant filed his reply wherein it was contested that the rent is continuously being paid to the respondent. So far as electricity bills are concerned, the appellant stated that the respondent failed to show that how much electricity bill is pending towards the appellant and in connivance with electricity department, respondent had cut the electricity supply.

12. It was further stated that the respondent with *malafide* intentions and to extort money had not disclosed the true facts with respect to the rent agreement dated 01.07.2018 (*"second agreement"*) between respondent and appellant.

13. Further the appellant urges that respondent has not disclosed about the advance money which was paid to the respondent by the appellant at the time of execution of second agreement to the tune of Rs. 10 lakhs in cash and the rate of rent of the tenanted premises was agreed between the parties as Rs. 5,000/- per month which the appellant is paying continuously to the respondent in cash as per wish of the respondent and it was also agreed between the parties that the tenancy period shall be of 10 years.

14. Appellant further submitted in the reply that rent to the respondent is continuously being paid as per the agreement and has been paid till April, 2019 and further submitted that appellant is ready and willing to deposit the rent with the court from May, 2019.

15. Respondent thereafter filed an application under Order 12 Rule 6 of CPC to pass a decree of possession of the tenanted premises on the basis of admissions made by the appellant on the ground that relationship of landlord and tenant is admitted.

16. Appellant filed an application seeking recall of order dated 14.10.2019. The same stood dismissed *vide* order dated 09.06.2022 and by same order, the application of respondent under Order 15A of CPC was allowed, whereby the appellant and defendant no. 1 were directed to make payment of arrears of rent to the tune of Rs.5,000 per month with effect from 01.05.2018.

17. Despite multiple opportunities, appellant and defendant no. 1 failed to comply even with the directions in the order dated 09.06.2022.

18. Thereafter, learned trial court proceeded and heard the arguments on application under Order 12 Rule 6 of CPC.

OBSERVATIONS OF THE LEARNED TRIAL COURT

19. The learned trial court after hearing both the parties, held as under:-

A. Appellant and defendant no. 1 have not disputed them being tenants under the respondent. In their reply to the application of respondent filed under Order 15A CPC, they have clearly admitted such relationship.

B. The rent agreement referred to and execution of the same is admitted by the appellant and defendant no. 1 in the pleadings as well as during proceedings.

C. With regard to the plea that at the time of execution of agreement, Rs. 10 lakhs were paid as advance money to the respondent and rate of rent was orally decided as Rs. 5000 per month, learned trial court held that the said plea is completely untenable in view of rule of estoppel contained in Section 116 of Indian Evidence Act, 1872.

D. The execution of lease deed has been admitted and grounds on which appellant and defendant no. 1 sought to contest was found to be devoid of merits. The averments that Rs.10 lakhs was paid in cash was also found to be meritless.

E. Learned trial court further observed that the admissions made by appellant and defendant no. 1 are unequivocal and unambiguous which entitle the respondent to a decree on admissions.

F. Learned trial court further held that respondent had sent a legal notice terminating the tenancy under Section 106 of Transfer of Property Act, 1882 (*"TP Act 1882"*) which was admittedly served upon the appellant and defendant no. 1 and thus the termination in accordance with law, also stands admitted.

G. With these observations, learned trial court passed a preliminary decree for possession and directed the appellant and defendant no. 1 to vacate and handover the possession of the tenanted premises within two months to the respondent.

20. Appellant feeling aggrieved by the order passed by the learned trial court, the instant appeal is being filed challenging the impugned order dated 21.02.2023.

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. Mr. Pratap, learned counsel for the appellant urges that no notice of termination was served upon the appellant.

22. He further argues that the learned trial court did not consider the second agreement executed between the appellant and respondent. Further the second agreement specifically mentioned that the lease period being 10 years from 01.07.2018 to 30.06.2028 at a monthly rental of Rs. 5,000 per month.

23. Mr. Pratap further argues that the first agreement cannot bind the appellant as the same was executed between respondent and Mr. Salman Malik who was defendant no.1 in the suit. Appellant comes into the picture on 01.07.2018 when respondent let out the tenanted premises on lease to the appellant for a period of 10 years.

24. He urges that this fact was concealed by the respondent and it was brought to the knowledge of the learned trial court by filing an application under section 151 of CPC on 27.10.2021 for recall of the order dated 14.10.2019.

25. He further submits that when the appellant was not the party in the first agreement then the suit for possession filed by the respondent cannot be maintained against the appellant. Hence, the impugned order is liable to be set aside.

26. He further submits that the learned trial court did not consider the pleadings of reply to application under Order 15A of CPC and also failed to consider the fact that defendant no. 1 is no more tenant of the respondent.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

27. *Per contra*, Mr. Khetarpal, learned counsel for the respondent argues that despite multiple opportunities, written statement was not filed and

the defence of the appellant was struck off vide order dated 14.10.2019.

28. He further argues that there is no denial of ownership by the respondent and the relationship between the landlord and tenant is admitted. He also points out from the reply filed by the appellant to the application filed under Order 15A of CPC wherein appellant relies upon the first agreement. As a result, first agreement stands admitted and proved. Both appellant and defendant no. 1 are related to each other and sitting in the same tenanted premises.

29. He further argues that second agreement is forged and fabricated. Also, respondent did not get a chance to file replication as regards to the second agreement. Further he contends that second agreement cannot be relied upon as the appellant right to file written statement stands closed. Even if for the sake of argument second agreement is considered, wherein it is stated that Rs. 10 lakhs were paid to the respondent in cash and wants to recover the same, then the appellant would need to file counter claim and by virtue of order dated 14.10.2019, defence of the appellant was struck off.

30. It is further submitted that there is no error in the impugned order passed by the learned trial court while allowing the application under Order 12 Rule 6 CPC. Hence, the appeal is liable to be dismissed.

ANALYSIS AND FINDINGS

31. I have heard the rival contentions and perused the impugned order and the pleadings on record.

32. It is a settled law that Order 12 Rule 6 is an enabling provision and it is exercised when the opposite party admits certain facts alleged in the

plaint, then the Court can pass a decree. Reliance is placed on ***Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753*** and the relevant extract reads as under:-

> ***"37.*** *The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about "which there is no controversy" (see the dictum of Lord Jessel, the Master of Rolls, in Thorp v. Holdsworth [(1876) 3 Ch D 637] in Chancery Division at p. 640).*
>
> ***38.*** *In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:*
>
> > *"6. Judgment on admissions.—Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."*
>
> ***39.*** *In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by*

empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. *If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely:"admission of fact ... either in the pleading or otherwise, whether orally or in writing".*

41. *Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mullas's Commentary on the Code, 16th Edn., Vol. II, p. 2177).*

42. *In Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] this Court, while construing this provision, held that the Court should not unduly narrow*

down its application as the object is to enable a party to obtain speedy judgment."

……..

***48.** However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word "may" has been used……."*

33. Further, the Hon'ble Supreme Court in ***Payal Vision Ltd. v. Radhika Choudhary, (2012) 11 SCC 405*** 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 12 Rule 6 CPC……."*

34. Keeping the above principles in mind, let me examine the facts of the present case.

35. In the present case at hand, the respondent filed suit for possession against the appellant and defendant no. 1 who were tenants in the tenanted premises. The appellant failed to file their written statement, as a result, his defence was struck off vide order dated 14.10.2019. The only written pleading filed by the appellant is the reply to the

application filed under Order 15A of CPC and no reply was filed by the defendant no. 1/Mr. Salman Malik.

36. In reply, appellant states that after vacation of the tenanted premises by the defendant no. 1, appellant came into the tenanted premises. By virtue of this, it is admitted that the first agreement was in existence. Assuming the best case of the appellant, second agreement was entered into by the respondent and the appellant on 01.07.2018. On perusing the second agreement, appellant is the tenant and respondent is the landlord. Hence even relying upon the second agreement, the relationship between the landlord and tenant stands satisfied. Further as per the second agreement, the rate of rent agreed between the parties was Rs. 5,000 per month i.e. above the limit of Rs. 3,500 per month and therefore it would be outside the scope of Delhi Rent Control Act, 1958. The relevant extract from the reply read as under:-

> *"**1.** The application filed by the plaintiff against the defendant is not maintainable as the plaintiff is fail to show that how the present application is maintainable against the defendants as after vacate the premises by the defendant number 1 the defendant number 2 comes into the light after due agreement with the plaintiff and defendant number 2 is continuously paying the rent to the plaintiff."*
>
> ……
>
> ***4.** The present application is also not maintainable as the plaintiff did not disclose that true fact before this Hon'ble court and the plaintiff with malafide intention did not disclose the factum of agreement executed between the*

plaintiff and defendant number 2 in respect of the tenancy, rent and advance money given to plaintiff as at the time of agreement between the plaintiff and defendant number 2 the plaintiff taken rupees 10 lakh in cash and the rate of rent of the premises was agreed between the parties rupees 5000/- (five thousand only) per month which the defendant number 2 is paying continuously to the plaintiff in cash as per wish of the plaintiff and it is also agreed between the parties that is plaintiff and defendant number 2 the period of tenancy shall be 10 year.

……

***6.** The application is also not maintainable because, the defendant number 2 was continuously paying the rent to the plaintiff as per agreement executed between the plaintiff and defendant number 2 till April 2019 and defendant number 2 is ready to deposit the rent with the court from May 2019 to till date as agreed between the plaintiff and defendant as plaintiff with malafide intention file the present suit to grab the money e of the defendant number 2 of rupees 10 lakh given by the defendant number 2 to the plaintiff at the time of agreement .”*

37. Further in the reply, it is admitted that appellant is still in possession of the tenanted premises and admits that the rent is paid till April, 2019 and is ready to deposit the rent from May, 2019.

38. The notice under section 106 of TP Act is served upon defendant no. 1 only and hence there is no service of notice on the appellant. This

court in numerous judgment and more particularly in ***M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha, 2011 SCC OnLine Del 1515*** has observed as under:-

> *"**11.** The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows : -*
>
> *(i)....*
>
> *(ii)The Supreme Court in the case of Nopany Investments (P)Ltd. v. Santokh Singh (HUF), (2008) 2 SCC 728 has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.*
>
> *(iii) .....In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule*

7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(iv)…

***12.** Therefore, looking at it from any point i.e. the fact that legal notice terminating tenancy was in fact served, the suit plaint itself can be taken as a notice terminating tenancy or that the copy of the notice alongwith documents was duly*

served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over possession of the tenanted premises."

39. The above said judgment was challenged before the Hon'ble Supreme Court in SLP (C) No. 15740 of 2011 and was dismissed by *vide* order dated 07.07.2011. Thus the order has attained finality. I am in agreement with the said judgement that although notice under section 106 of TP Act 1882 is not served or is disputed by the appellant who is the tenant then also upon issuance of summons with the copy of plaint and notice, it is deemed that notice has been served and 15 days period is to be counted therefrom. Therefore, the tenancy of the appellant is terminated upon receiving summons. Hence the argument of the appellant that no notice under Section 106 of TP Act was served upon him does not hold any merit and is rejected.

40. Further with respect to the second agreement on which the appellant is relying upon, it is apposite to refer the relevant sections of the TP Act 1882 which reads as under:-

107. *Leases how made—A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.]

[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee :]

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

41. Section 17 and 49 of The Registration Act, 1908 reads as under:-

*"**17.** Documents of which registration is compulsory. — (1)The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

* * *

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

……

***49.** Effect of non-registration of documents required to be registered.— No document required by section 17 [or by*

any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]"

42. On perusing the above sections of TP Act 1882 and The Registration Act 1908, it is evident that lease deed for more than a year has to be a registered document and in the absence a registered document, it can only be used for the collateral purpose.

43. Reliance is placed on a recent judgment passed by the Hon'ble Supreme Court in ***M/S Paul Rubber Industries Private Limited vs. Amit Chand Mitra and Anr., 2023: INSC: 854*** which has extensively dealt with the same issue, relevant paras are quoted below:-

"11. The aforesaid provisions were analysed by this Court in the case of Anthony v. K.C. Ittoop & Sons [(2000) 6 SCC 394], and this authority was also cited before the High

Court. This was a case in which the respondent was inducted into possession of a premises under a lease deed for a period of five years, but the deed was not registered. It has been held in this judgment:—

> *"11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide* Shantabai *v.* State of Bombay *[AIR 1958 SC 532 : 1959 SCR 265],* Satish Chand Makhan *v.* Govardhan Das Byas *[(1984) 1 SCC 369] and* Bajaj Auto Ltd. *v.* Behari Lal Kohli *[(1989) 4 SCC 39 : AIR 1989 SC 1806].*
>
> ……

12. *The same view was broadly reflected in the cases of Shri Janki Devi Bhagat Trust, Agra v. Ram Swarup Jain (Dead) by Lrs. [(1995) 5 SCC 314] and Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369]. Section 107 of the 1882 Act which we have quoted above stipulates that a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument……But here, the agreement itself provides a five year duration, and hence ex-facie becomes a document that requires compulsory*

registration. That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence, as per the judgment in the case of Anthony (supra). A coordinate Bench in the case of Shyam Narayan Prasad v. V. Krishna Prasad [(2018) 7 SCC 646] has re-affirmed this view, referring to Section 49 of the Registration Act. This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage. The parties cannot by implied consent confer upon such document its admissibility……."

44. As per second agreement, the tenancy period is for 10 years and the rate of rent is Rs. 5,000 per month. It is an unregistered agreement which was required to be registered. In the absence of registration, the said document can only be seen for collateral purpose. In this context, ***M/s Paul Rubber Industries (supra)*** has observed as under:-

"14……The expression "collateral purpose" has been employed in proviso to Section 49 of the Registration Act to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction. This view was taken by this Court in an earlier decision, in the case of K.B. Saha and Sons Private Limited v. Development Consultant Limited [(2008) 8 SCC

564]. The position of law on this point has been summarized in paragraph 34 (of the report) in this judgment:—

> *"**34***. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*
>
> *1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
>
> *2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
>
> *3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
>
> *4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
>
> *5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

15. ……. In our opinion, nature and character of possession contained in a flawed document (being

unregistered) in terms Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the Court……"

45. Hence, the second agreement in the absence of registration cannot be looked into.

46. It is necessary to mention that there is no written statement and averments made in the reply to the application cannot be substituted in place of a written statement as it is the primary pleading. Otherwise the purpose of filing written statement will become redundant as the plaintiff and court is required to know as to what is the defence of the defendant in response to the plaint. The Hon'ble Supreme Court in ***C.N. Ramappa Gowda v. C.C. Chandregowda,*** **(2012) 5 SCC 265** and more particularly in para 25 and 26 has observed as under:-

"25. *We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical*

manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint."

26. *It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."*

47. In the present case at hand, it is already noted above that the appellant failed to file written statement and consequently their defence was struck off. Learned Trial court rightly proceeded in the manner provided as per law. Further, the only written pleading filed by the appellant was reply to the application under Order 15A which cannot replace the purpose and effect of the written statement. Written statement is a part of the pleading and on the basis of the plaint and written statement, trial court is obliged to frame issues and proceed in the manner in accordance with law. Learned trial court in the present case on the basis of written pleadings including the only reply filed by the appellant passed the preliminary decree of possession on the basis of admissions made by the appellant. Hence, there is no pleading on record to show that the appellant was not in possession of the tenanted premises pursuant to the first agreement.

CONCLUSION

48. For the aforesaid reasons, I am of the view that:

(i) the relationship between landlord and tenant stands proved;

(ii) as per the appellant own admission, the rate of rent is Rs. 5000 per month, therefore tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958;

(iii) there is no registered subsisting lease agreement;

(iv) tenancy has been terminated and tenant failed to hand over the possession of the tenanted premises.

All these ingredients have been satisfied for passing a decree of possession under Order 12 Rule 6 of CPC and the same have been

correctly appreciated by the learned trial court in the impugned order. In view of the foregoing reasons, there are no infirmities in the impugned order and does not require any interference by this Court, hence the instant appeal is dismissed.

49. It is clarified that the learned trial court shall proceed in accordance with law and shall not be influenced by the observations made hereinabove.

50. Interim order, if any, stands vacated.

51. Pending application(s), if any, are disposed of accordingly.

JASMEET SINGH, J

DECEMBER 22nd, 2023/(MSQ)