REPORTED

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

% DATE OF RESERVE: March 11, 2010

DATE OF DECISION: June 04, 2010

\+ **RFA 30/2010 and CM Nos.1149/2010 and 2489/2010**

M/S. SHAREX ACTING THROUGH
VINOD KUMAR CHADHA ..... Appellant
Through: Mr. R.K. Saini, Advocate

versus

SMT. SUDERSHAN SURI ..... Respondent
Through: Mr. Manish Gandhi, Advocate

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. This appeal seeks to assail the judgment and decree dated 12.12.2009 passed by the learned Additional District Judge whereby on a suit filed by the respondent against the appellant for ejectment and for recovery of Rs.4,03,519/-, the learned Additional District Judge held the respondent entitled for possession of the suit premises and directed the appellant to hand over and deliver the actual, physical, vacant and peaceful possession of the premises in question to the respondent.

2. The facts as set out in the plaint by the plaintiff-respondent are as follows. The respondent is the exclusive and absolute owner of property No.309, 3rd floor, Padma Tower-II, Rajindra Place, New Delhi-110008 (hereinafter called the suit property) by virtue of allotment made in favour of the respondent by Bhatia Sehgal Construction Corporation through builder's agreement dated 22.09.1983. By a lease deed dated 1st December, 2000 and registered vide Registration No.154, Additional Book No.1, Volume No.10149 on pages 25-30 on 10.01.2001, the said suit property was given on lease by the respondent to the appellant, as per detailed terms and conditions contained therein and on consideration of rent of Rs.10,500/- (Rupees Ten Thousand and Five Hundred Only) for a period of three years commencing from 1st December, 2000.

3. As per Clauses 4 and 5 of the aforesaid lease deed, the appellant was contractually bound to pay all charges for the consumption of electricity and proportionate water charges from the date of the validity of the said deed, as per bills received from the concerned authorities and also contractually bound to pay the maintenance charges to the Society of the common facilities, as per the bills raised by the Society. Clause 6 of the lease deed laid down that the respondent will have the contractual right, without prejudice to his rights in law, to recover from the appellant all the amounts on which the appellant has defaulted in terms of the conditions and covenants contained in the lease deed. As per Clause 16 of the said deed, the appellant was to enjoy peaceful possession of the suit property only as long as the appellant continued to pay the rent

reserved as per the said deed and also performed the several covenants on its part contained in the said deed. Clause 27 of the lease deed stipulated that in case of breach of the terms and conditions of the said deed, the tenancy of the said suit property would stand terminated forthwith.

4. It is the case of the respondent that ever since the appellant took over the said premises on lease, he had been extremely irregular in payment of the lease rent to the respondent. In fact, after a great deal of follow up and persuasion on the part of the respondent, the appellant paid to the respondent rent upto February, 2001 only. The rent from the month of March, 2001 upto the date of the institution of the suit, amounting to Rs.3,04,500/-, remained unpaid in spite of several reminders and personal visits by the respondent on the appellant and notice dated 04.10.2001. Not only this, ever since the appellant took over the flat on lease, the appellant failed to pay the charges on account of the electricity bills raised by BSES in connection with the suit property totaling Rs.17,547/- and the same were due till the date of the institution of the present suit. The appellant also failed to pay the maintenance charges to the Society of the said building and allegedly an amount of Rs.39,217/- remains outstanding in this regard upto the period of July, 2003.

5. The appellant accordingly served upon the respondent a registered notice dated 04.10.2001, calling upon the appellant to pay forthwith the outstanding and overdue amounts on account of unpaid rent, unpaid

electricity bills as well as unpaid maintenance charges and to forthwith vacate the suit property and hand over possession of the same back to the respondent. The appellant not only failed to pay the aforesaid unpaid amount, but even refused to acknowledge the registered notice. Accordingly, as per Clause 27 of the lease deed, the lease deed stood determined as a result of the contravention of the terms and conditions thereof on the part of the appellant.

6. The appellant filed a written statement wherein the execution of the lease deed dated 01.12.2000 and the terms and conditions thereof were admitted by the appellant. However, a preliminary objection was taken to the effect that the lease deed dated 01.12.2000 is insufficiently stamped and the respondent's claim based on the said lease deed cannot be looked into without impounding the same. A number of other preliminary objections were also raised in the written statement. On merits, the covenants of the lease deed were admitted, but it was stated that the lease deed was executed for income-tax purposes and for the benefit of the MCD by the respondent much later, and was meant only for creating some kind of document to show to MCD or income-tax by the respondent. Paragraphs 4 and 6 of the additional pleas, being apposite, are reproduced hereunder:-

PARA 4

> *"4. That the defendant was interested in purchase of the flat. After negotiations the price was fixed at Rs.8.50 Lacs. Plaintiff was in urgent need of money and as there was a close friendly relation between plaintiff's husband and the defendant, plaintiff's husband agreed to sell the*

flat for Rs.8.5 Lacs. A sum of Rs.5 lacs was paid on 1.9.2000 and the possession was handed over to the defendant. The balance was to be paid within 60 days. That the flat was in a very dilapidated condition. Deft invested Rs.2 lcs app in renovating the flat for his own use and started his own business in the same after renovating the same. However as luck would have the defendant suffered heavy loss in his business and was unable to arrange the balance amount within 60 days and showed his inability to pay the same to Plaintiff's husband. Considering the circumstances Plaintiff's husband offered the deft to continue using the flat and agreed to allow him to use the same for 3 years without the payment of rent. Plaintiff's husband was not in a position to refund Rs.5 Lacs and as such made this offer. It was further agreed that the electricity and maintenance would be paid by the deft to the plaintiff till the time the flat is transferred in the name of the defendant when the deft pays the balance amount. A receipt cum agreement was executed at that time. Plaintiff's husband however got a lease deed executed as a sham document to be shown to House Tax and the Income Tax dept till the time the sale was complete. One Blank cheque was taken by the plaintiff's husband for Rs.10,500 to show the rent and to show that the lease was genuine and not sham. In fact no rent was ever paid by the defendant as defendant was in occupation as a proposed buyer and not as a lessee. The original agreement was retained by the plaintiff's husband and photocopy was given to deft. As deft had cordial relation with the plaintiff's husband he never doubted his intentions and acted according to the wishes of plaintiff's husband as defendant respected him throughout. However due to the existing cordial relationship between defendant never insisted on the original agreement as he was confident that he would be able to pay the balance amount very soon for purchasing the flat. Plaintiff's husband however kept on receiving the maintenance and electricity charges from the defendant. That the plaintiff handed over the possession of the suit premises in September 2000 however the alleged sham lease agreement was got prepared by the plaintiff in

December 2000. The plaintiff never received any rent as alleged."

PARA 6

"6. That the defendant is willing to pay the balance amount of sale consideration if the plaintiff wants to sell the flat and in case plaintiff is not interested in sale now she should refund the advance of Rs.5 Lacs received by her."

7. After the completion of the pleadings and framing of issues, the parties proceeded to trial. An affidavit by way of evidence was filed by the respondent-plaintiff. The record reveals that thereafter several adjournments were sought by the appellant for the purpose of cross-examining the respondent and dilatory tactics were resorted to. Eventually the non-cooperation of the appellant motivated the respondent into moving an application under Order XII Rule 6 read with Section 151 CPC praying for a decree of possession in their favour in view of the admissions made by the appellant. Regarding the rest of the reliefs, it was prayed that the suit may be continued in accordance with law.

8. By the impugned judgment and decree, the learned Additional District Judge after noticing the facts and a large number of decided cases cited at the bar, allowed the aforesaid application under Order XII Rule 6 CPC and held the respondent entitled for possession of the suit premises along with all the fittings, fixtures, apparatus, electrical fittings, etc. annexed thereto.

9. Aggrieved by the aforesaid judgment, the present appeal has been preferred, on which I have heard Shri R.K. Saini, the learned counsel for the appellant and Shri Manish Gandhi, the learned counsel for the respondent.

10. The learned counsel for the appellant assailed the judgment principally on the ground that the decree of possession could not have been passed on the application of the respondent under Order XII Rule 6 of the Code of Civil Procedure in the light of the fact that, according to the appellant, the lease deed was a sham document which was executed for income-tax and MCD purposes by the respondent. It was also contended by the learned counsel for the appellant that it was in effect a sale transaction in as much as a receipt-cum-agreement to sell had been executed at that time, and a sum of Rs.5 lakhs paid on 01.09.2000, on which date possession was handed over to the appellant. It was further contended that the appellant is willing to pay the balance amount of the sale consideration if the respondent wants to sell the flat and in case the respondent is not interested in sale, the respondent should refund the advance of Rs.5 lakhs received by her.

11. Mr. Saini on behalf of the appellant also urged that the admission contemplated under Order XII Rule 6 CPC is an unequivocal and unambiguous admission, which is the essential requirement of law for a decree on admission. There was no such admission on the record of the present suit to justify the passing of a decree for possession under Order XII Rule 6 CPC, and in any event the suit could not have been decreed at

such a belated stage under the aforesaid provision of law, more so, as the issues had been framed and the respondent had filed her affidavit by way of evidence. Mr. Saini categorically denied that the respondent was compelled to move an application under Order XII Rule 6 CPC in view of the dilatory tactics adopted by the appellant before the learned trial court and the adjournments sought by the appellant for the purpose of cross-examining the respondent (PW-1) Smt. Sudershan Suri.

12. Shri Manish Gandhi on behalf of the respondent, on the other hand, argued that the learned trial court had rightly decreed the suit under the provision of Order XII Rule 6 CPC in view of the decisions of this Court rendered in ***P.S. Batra v. S. Anoop Singh & Anr. 155 (2008) DLT 431, Uttam Singh Duggal & Co. Ltd. v. United Bank of India AIR 2000 SC 2740, ITDC Ltd. v. M/s. Chander Pal Sood & Son 84 (2000) DLT 337 (DB), Rajiv Srivasatava v. Sanjiv Tuli and Anr. 119 (2005) DLT 202 (DB), Pooja Aggarwal v. Sakata Inc (India) Ltd. 154 (2008) DLT 237, Prem Narain Misra v. Faire Brothers Export and Import Ltd. 2006 (126) DLT 98***.

13. The learned counsel for the respondent also relied upon the judgment rendered by the Supreme Court in ***Charanjit Lal Mehra and Ors. Vs. Smt. Kamal Saroj Mahajan and Anr. (2005) 11 SCC 279***, in which relying upon the following observations made in the case of ***Uttam Singh Duggal (supra)***:-

> *"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."*

it was held as under:-

> *"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……."*

14. Reliance was also placed by him upon the judgment of the Delhi High Court in ***Shri Madhu Sudan vs. Smt. Valsala Jayamani, 165 (2009) DLT 1*** to contend that unscrupulous persons such as the appellant enjoy the property without paying any rent/occupation charges and have no intention of paying the same, and instead their desire is to grab the property leased to them, such persons deserve to be dealt with a heavy hand.

15. After hearing the parties, I am of the considered view that there is no illegality or perversity in the judgment of the learned trial court. The appellant in his written statement has not denied the ownership of the respondent in respect of the suit property. It is also unequivocally admitted by the appellant that the respondent is the landlord of the suit property. The execution of the lease deed dated 01.12.2000 is specifically and unequivocally admitted by the appellant. The rate of

rent being Rs.10,500/- per month is also specifically admitted by the appellant along with the other terms of the lease deed. All the aforesaid constitute admissions within the meaning of Rule 6 of Order XII of the Code.

16. Adverting next to the defence of the appellant, the case of the appellant is that the appellant was interested in the purchase of the property in question and that after negotiations the price was fixed at Rs.8.50 lakhs. A sum of Rs.5 lakhs was paid on 01.09.2000 when the possession was handed over to the appellant. The balance was to be paid within sixty days which could not be paid as the appellant suffered heavy loss in his business. A receipt-cum-agreement to sell had been executed at that time. The respondent's husband, however, got a lease deed executed as a sham document to be shown to the house-tax and the income-tax department till the time the sale was completed. The appellant invested Rs.2 lakhs in renovating the flat for his own use. Due to the financial loss suffered by him and considering the circumstances, the respondent's husband offered that the appellant continue to use the flat and agreed to allow him to use the same for three years without the payment of rent.

17. Apart from the fact that the above story is a highly implausible one, it is clear that on one hand it is the case of the appellant that the appellant had entered into an agreement to purchase the suit property after making payment of Rs.5 lakhs on 01.09.2000, i.e., before entering into the lease deed dated 01.12.2000 and on the other hand, it is the case

of the appellant that the respondent's husband, keeping in view the financial condition of the appellant, offered to the appellant to use the suit property without payment of rent for a period of three years. The aforesaid pleas are altogether contradictory to each other and in fact have been rightly held by the learned trial court to be mutually destructive pleas. This apart, there is nothing on record to support the bald contention of the appellant that an agreement to sell-cum-receipt was executed on 01.09.2000 when possession of the flat was handed over to the appellant. Neither an agreement to sell nor a receipt is forthcoming on the record, despite opportunities granted by the learned trial court to the appellant to place the same on record. Even with the present appeal, no agreement to sell or receipt has been filed or sought to be filed.

18. As regards the other plea of the appellant, that in view of the fact that there were cordial relations between the parties the respondent's husband allowed him to use the flat for three years without payment of rent, the said plea is not only at variance with the plea that an agreement to sell was entered into between the parties but is also belied by the lease deed, the execution of which has been unequivocally admitted by the appellant. In a Division Bench judgment of this Court in ***Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra and Ors., AIR 2000 DELHI 349***, on which reliance has been placed by the appellant himself, the following apposite observations have been made in this regard:-

> *"9. Bare perusal of the above rule shows, that it confers very wide powers on the court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been*

> *made either in pleadings, or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis.* ***Any plea raised against the contents of the documents only for delaying trial being barred by the Sections 91 and 92 of Evidence Act or other statutory provisions, can be ignored.*** *These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in* ***Dudh Nath Pandey (dead by L.R's) Vs. Suresh Chandra Bhattasali (dead by L.R's) AIR 1986 SC 1509; Atma Ram Properties Pvt. Ltd. v. Air India (1997) 65 DLT 533; Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. 1997 (2) AD (Delhi) 518; Abdul Hamid v. Charanjit Lal 1998 (2) DLT 476*** *and* ***Lakshmikant Shreekant v. M.N. Dastur & Co. 1998 (71) DLT 564****."*

19. Adverting next to the submission made by Mr. Saini that the application under Order XII Rule 6 CPC ought not to have been allowed the same having been filed belatedly, reference may once again be made to the observations made by the Division Bench of this Court in the ***Parivar Seva Sansthan*** *case* ***(supra)*** wherein this Court held as follows:-

> *"10. The use of the expression "any stage" in the said rule itself shows that the legislature's intent is to give it widest possible meaning. Thus merely because issues are framed cannot by itself deter the court to pass the judgment on admission under O. 12 R. 6, C.P.C."*

20. To conclude, in the instant case the execution of the lease deed has been unequivocally admitted by the appellant. Once the execution of the

document has been admitted, Sections 91 and 92 of the Evidence Act, come into play. Section 91 lays down that when the terms of a contract or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract or other disposition of property, except the document itself. Section 92 further lays down that when the terms of any such contract or other disposition of property have been proved according to the last Section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting therefrom. Thus, quite obviously, the pleas raised by the appellant against the contents of the lease deed are barred by Sections 91 and 92 of the Evidence Act and appear to have been made only for the purpose of delaying the trial of the case. Such pleas as ruled by this Court in the ***Parivar Seva Sansthan*** **case** ***(supra)*** can be ignored by the Court while adjudicating an application under Order XII Rule 6 CPC if otherwise the Court finds, either on an application of any party or on its own motion, that the admissions made in the pleadings or otherwise taken as a whole justify the passing of a decree thereon. In fact, the Court in the said case has gone so far as to say that even a constructive admission firmly made can be made the basis of the decree. All that the Court is required to do is to satisfy itself that the question raised in the suit can be determined without evidence. The Court having satisfied itself, there does not appear to be any justifiable reason why the appellant should be allowed

to enjoy the premises of the respondent without payment of rent to the respondent, more so, as his own case is that he was permitted to stay for a period of three years only without rent. The said three years admittedly came to an end on 1st December, 2003. The occupation of the respondent of the suit property thereafter is not even sought to be justified by the appellant himself. In the instant case, insofar as the respondent-plaintiff has prayed for the recovery of the sum of Rs. 4,03,519/- and other reliefs are concerned, the trial court has yet to frame issues on the rest of the reliefs and the parties thereafter shall be allowed to adduce evidence in support of their respective cases.

21. In the aforesaid circumstances, I have no hesitation in holding that the present appeal is a sheer abuse of the process of law. The Courts cannot be instrumental in allowing such a state of affairs to continue indefinitely. The judgment and decree of the learned trial court directing the appellant to hand over actual physical and peaceful possession of the suit property is accordingly affirmed. Resultantly, the appeal is dismissed.

22. RFA 30/2010 and CM Nos.1149/2010 and 2489/2010 stand disposed of. All interim orders stand vacated.

REVA KHETRAPAL
(JUDGE)

June 04, 2010
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