

OD-11

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

GA/4/2021
In
CS/85/2016

AWAM MARKETING LLP
VS.
M/S. ORIENT BEVERAGES LTD. & ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Heard On : 03.11.2022, 04.11.2022, 14.11.2022 & 18.11.2022

Order On : 05.12.2022

Appearance:

Mr. Sabyasachi Chowdhury, Adv.
Mr. Souvik Majumdar, Adv.
Mr. Soumabho Ghose, Adv.
Ms. D. Chomal, Adv.
... for the petitioners.

Mr. Kaushik Banerjee, Adv.
Ms. Rashmita Sen, Adv.
...for the defendant no. 1.

Mr. L. Haque, Adv.
...for the defendant nos. 7, 8, 9(b).

Ms. Arpita Saha, Adv.
Ms. Rituparna Chatterjee, Adv.
...for the respondent no. 13.

Mr. Rishav Banerjee, Adv.
Mr. R. Reyaz, Adv.
...for the respondent no. 14.

ORDER

The plaintiff has filed the instant application praying for judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure.

The Counsel for the plaintiff submits that the suit property belongs to the Trust Estate of Raja Rajendra Mullick Bahadur of which the defendant nos. 7, 8, 9(a) & 9(b) are the present trustee. On 29.09.1965, the trustee of the said Estate granted lease in favour of Alepe Finance Limited and subsequently by an order dt. 11.01.1979, the said Alepe Finance Ltd. merged with the defendant no. 1 and became the lessee. On 31.03.2001, the trustees of the Trust Estate of Raja Rajendra Mullick Bahadur executed a lease deed in favour of the plaintiff with respect of the entire 10th floor of the Rear Block of the building i.e. Eastern Block of the building at measuring 7395 sq.ft at 50, Chowringhee Road along with undivided 1/5 the share in the lease out area for the purpose of air conditioning plant, generator, right to use the common areas and three covered car parking. The said lease was executed in favour of the plaintiff in pursuance to leave granted by this Court vide order dt. 19.12.2000. The lease granted in favour of the plaintiff was commenced from 01.10.2015. The lease granted by the Trustees of the said Trust Estate of Raja Rajendra Mullick Bahadur expired by efflux of time on 30.09.2015 and upon such expiry the defendant no. 1 bound to vacate the possession of the suit property with all buildings without payment of any compensation of price whatsoever. The defendant nos. 2 to 5 have surrendered their possession and relinquish their

right in the suit property and the defendant nos. 11, 13, 14, 15 and 18 alleged to have been inducted by the defendant nos. 2 to 5 are bound to yield up and make over vacant possession of the suit property to the plaintiff.

Most of the sub-lessees have vacated the various portion of the suit property under their respective occupation but the defendant nos. 11, 13, 14, 15 and 18 are still in occupation of the portion and claiming their right over the suit property.

The defendant nos. 2 to 5 by way of an affidavit affirmed by Rajendra Shroff in the instant suit in an earlier interlocutory proceeding and have admitted the following :

“a) The right of the Shroffs was pursuant to a lease dated 18th August, 1989, where the Shroffs has been described as the sub-lessee under the defendant No. 1, being the sub-lessor ;

b) The original owners (i.e., the Mullicks), by a registered Deed of Lease dated 29th September, 1965, had granted lease for a period of 50 (fifty) years to the defendant No. 1;

c) The possession of the Shroffs [being the defendant Nos. 2 to 5] is pursuant to the Deed of Lease dated 18th August, 1989;

d) The right of the petitioner is in respect of a lease dated 31st March, 2001, which is to take effect upon expiry of the lease dated 29th September, 1965;

e) The lease dated 29th September, 1965 had expired on 30th September, 2015;

f) By reason of threats to evict the Shroffs (being the defendant Nos. 2 to 5) otherwise than due process of law, the Shroffs had instituted T.S. No. 1405 of 2015 against the defendant No. 1, the trustees [being the Mullicks] and the petitioner;.”

The Counsel for the plaintiff further submits that the defendant no. 13 in the affidavit-in-opposition had disclosed that the right of the defendant under the defendants no. 2 to 5 arose out of an agreement dt. 01.04.2004 wherein the defendant nos. 2 to 5 have been described as lessor and the defendant no. 13 is stated to be lessee till 2015.

Counsel for the plaintiff further submits that the defendant no. 14 in his affidavit-in-opposition mentioned that the right of the defendant no. 14 flows from the defendant nos. 2 to 5. The defendant no. 1 whose lease has expired on 30.09.2015 by efflux of time admitted the terms of settlement arrived between the parties. In the said terms, it is recorded that the plaintiff has become the rightful lessee after the expiry of 1965 lease, the determination which took place by efflux of time 30.09.2015. The Counsel for the plaintiff submits that the plaintiff is entitled to a decree against the defendant no. 1 by virtue of the settlement.

The Counsel for the plaintiff submits that the right of the defendant no. 1 being admitted arise out of the registered lease which expired on 30.09.2015 and the plaintiff's right is also admitted and thus the plaintiff is entitled to a decree against the defendant even on admission of the said fact as recorded in the terms of settlement.

Counsel for the plaintiff submits that the defendant nos. 13 and 14 are claiming their right through the defendant nos. 2 to 5 as sub-lessees and the lease of the defendant nos. 2 to 5 has already determined by efflux of time on

30.09.2015 and as such the plaintiff is entitled to get decree on admission.

Counsel for the plaintiff submits that it is well settled law that an application under Order 12 Rule 6 of the Code of Civil Procedure, it is the endeavour of the Court to see that unnecessary trial for the sake of formality does not take place and as such in the instant case also, it is an admission on behalf of the defendants and thus the plaintiff is entitled to get decree can be passed on admission.

Counsel for the plaintiff relied upon the following judgments :

- i. *(2007) 7 SCC 120 (Uttam Singh Duggal and Company Ltd. -versus- United Bank of India & Ors.)*.
- ii. *(2012) 11 SCC 405 (Payal Vision Ltd. -versus- Radhika Chowdhury)*.

Counsel for the defendant no. 13 submits that the plaintiff has entered into a Terms of Settlement with the defendant no. 1 wherein the defendant no. 1 has admitted that the lease in the suit premises in its favour has expired by efflux of time on 30.09.2015, plaintiff is the rightful lessee and the plaintiff has the right to collect occupational charges from unauthorized occupants of the suit premises. The defendant nos. 2 to 5 in their affidavit filed in GA No. 407 of 2017 in the instant suit have admitted that they have entered into an Agreement dt. 18.08.1989 with the defendant no. 1 and obtained sub-lease of the suit premises and the lease in favour of the defendant no. 1 had expired on 30.09.2015. Apart from the two instances, the plaintiff has not relied upon any

other instances of alleged admission for the purpose of getting a decree on admission.

Counsel for the defendant no. 13 further submits that the plaintiff has relied upon new grounds of alleged admission being Agreement dt. 01.04.2004 between the defendant nos. 2 to 4 and the defendant no. 13.

Counsel for the defendant no. 13 has pointed out the following undisputed facts between the parties :

“a) Defendant nos. 7 to 9b are the owners of the premises where the suit premises is situated.

b) The defendant nos. 7 to 9b granted a lease dated 29/09/1965 in favour of the defendant no. 1 for a period of 50 years.

c) During the subsistence of the first lease, the defendant nos. 7 to 9b granted a lease dated 31/03/2001 in favour of the plaintiff with effect from 01/10/2015.

d) The defendant no. 1 granted a sub-lease in favour of the defendant nos. 2 to 5.

e) The defendant nos. 2 to 5 inducted the Defendant no. 13 as a lessee by an agreement dated 01/04/2004 for a period of three years till 31/03/2007.

f) Even after the expiry of the lease dated 01/04/2004, the Defendant no. 13 continued in occupation of its portion of the suit premises. Rent was tendered and duly received by the Defendant nos. 2 to 5 till January 2016.

g) The defendant no. 13 continued in occupation of its portion of the suit premises as a tenant by holding over from month to month at the last paid monthly rent of Rs. 6,361/-.”

Counsel for the defendant no. 13 submits that in the year, 2013 when the plaintiff started creating disturbance in the suit premises, the defendant

nos. 2 to 5 have initiated Title Suit No. 1405 of 2015 before the Learned City Civil Court but during the pendency of the suit, the defendant nos. 2 to 5 have fraudulently surrendered their possession in favour of the plaintiff.

Counsel for the defendant no. 13 submits that defendant no. 1 filed Title Suit No. 456 of 2017 before the Learned City Civil Court and in the said suit on 12.04.2017 wherein an interim order was passed restraining the defendant no. 13 from encumbering/transferring/parting with the possession or creating an interest in respect of its tenancy. The plaintiff was restrained from entering into any arrangement with the defendant no.13 and the defendant no. 13 was restrained from creating any interest in respect of any tenancy in favour of the plaintiff or any third party.

The Counsel for the defendant no. 13 submits that the plaintiff has filed the instant suit by impleading only defendant no. 1 and the defendant no. 13 was not made party to the instant suit and subsequently the plaintiff had impleaded defendant no. 13 and 14 in the instant suit.

The Counsel for the defendant no. 13 submits that the defendant no. 13 filed Title Suit No. 1381 of 2018 before the Learned City Civil Court at Calcutta for declaration of tenancy right and protection of its possession and in the said suit there is an order of injunction dt. 10.10.2018 wherein the Learned City Civil Court directed the defendant no. 13 and defendant no. 1 to maintain a status quo with regard to nature, character and possession of the tenancy of the defendant no. 13.

The Counsel for the defendant no. 13 submits that the plaintiff has filed the purported terms and settlement dt. 11.02.2020 with the defendant no. 1 in Title Suit No. 1381 of 2018 but the said settlement is not yet been admitted by the Learned Court.

The Counsel for the defendant no. 13 submits that the plaintiff has failed to demonstrate any semblance of such admission on the part of the defendant no. 13 and prayed for dismissal of the instant application. Counsel for the defendant no. 1 relied upon the following judgments :

- i. (2011) 15 SCC 273 (Himani Alloys Limited –vs- Tata Steel Ltd.).
- ii. (2007) SCC OnLine Bom 247 (Beryl M/s. Murzello & Ors. –vs- Ramchandra Bhairo Mane & Ors.).
- iii. (2010) 6 SCC 601 (Jeevan Diesels and Electricals Ltd. –vs- Jasbir Singh Chadha (HUF) & Anr.).
- iv. (2009) SCC OnLine Bom 405 (Shantez and Anr. –vs- Applause Bhansali Films Pvt. Ltd. Company & Ors.).
- v. (2006) 129 DLT 755 (Raj Kumar Chawla –vs- Lucas Indian Services).

Counsel for the defendant no. 14 submits that the defendant no. 14 has filed a suit before the Learned City Civil Court being Title Suit No. 1382 of 2018 in which the plaintiff is arrayed as defendant no. 1 and in the suit, there is an interim order in favour of the defendant no. 14 directing the plaintiff herein to maintain a status quo with regard to its nature and character and possession of the property and the said order is still in subsistence.

Counsel for the defendant no. 14 submits that the plaintiff has filed the instant suit had not made the defendant no. 14 as party and subsequently to the order of injunction passed by the Learned City Civil Court, only to frustrate the order of injunction, the plaintiff has made defendant no. 14 as party to the instant suit.

Counsel for the defendant no. 14 submits that the right of the defendant no. 14 will be decided in the suit pending before the City Civil Court being Title Suit no. 1382 of 2018 and any decision of this Hon'ble Court as regard the right of the defendant no. 14 will make the suit filed by the defendant no. 14 infructuous.

Counsel for the defendant no. 14 by referring Section 115 of the Transfer of Property Act submits that the surrender of lease does not prejudiced an under lease of the property or in part thereof previously granted by the lessee.

Counsel for the defendant no. 14 relied upon the following judgments :

1. *AIR 2002 Cal 108 (Mehta Suraya –vs- United Investment Corporation).*
2. *(2003) 8 SCC 319 (Ram Chandra Singh –vs- Savitri Devi & Ors.).*
3. *(1987) 1 SCC 712 (Tirath Ram Gupta –vs- Gurubachan Singh & Anr.).*
4. *(1997) SCC OnLine Cal 411 (Ballygunge Properties Development Corporation –vs- Shree Shree Anandamoyee Charitable Society & Ors.).*

Heard the Learned Counsel for the respective parties, perused the pleadings materials on record and the judgments relied by the parties.

The plaintiff has prayed for judgment on admission on the ground that the plaintiff entered into Terms of Settlement with the defendant no. 1 wherein the defendant no. 1 admitted that the lease of the suit premises has expired by efflux of time on 30.09.2015 and the plaintiff as the rightful lessee of the premises and the defendant nos. 2 to 5 admitted in the affidavit filed in GA 407 of 2017 in connection with the instant suit that the defendant nos. 2 to 5 have entered into an indenture on 18.08.1989 with the defendant no. 1 whereby the defendant no. 1 as a sub-lessor created sub-lease of the suit property in favour of the defendant nos. 2 to 5 and it has also been admitted by the defendant nos. 2 to 5 that the lease in favour of the defendant no. 1 expired on 30.09.2015.

As per the submissions of the Counsel for the defendant nos. 13 and 14, no decree can be passed if an order of injunction is in existence, the settlement entered between two parties, third party cannot be given effect to. The plaintiff is in collusion with the other parties and the plaintiff has not disclosed the order of status-quo in the plaint inspite of having knowledge about the same to the plaintiff. It is further the case of the defendants that as per Section 115 of the Contract surrender of the lease by the defendant nos. 2 to 5 will not affect the right of the defendant's no.13 and 14.

Order 12, Rule 6 reads as follows :

“6. Judgment on admissions.- (1) *Where admissions of the 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) *Whether a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”*

Terms of Settlement entered between the plaintiff and the defendant no.

1 reads as follows :

“TERMS OF SETTLEMENT

The plaintiff and the defendant No. 1 jointly files this Terms of Settlement to bring on record the following facts :

1. *The plaintiff and the defendant No. 1 have settled the issues pertaining to C.S. No. 85 of 2016 among themselves.*
2. *The defendant No. 1 has accepted the plaintiff as the rightful lessee of premises No. 50, Chowringhee Road, Rear Block, Eastern Block, 10th Floor, (Now known as Jawaharlal Nehru Road), Kolkata – 700 071, P.S. Shakespeare Sarani by virtue of the registered Lease deed dated 31st March, 2001, after the determination of the lease of the defendant No. 1 by efflux of time on 30th September, 2015.*
3. *The defendant No. 1 has accepted the plaintiff’s right to collect/recover unauthorised occupational chares from all the unauthorized occupants, occupying various portions of the 10th Floor of the Premises No. 50, Chowringhee Road, Rear Block, Eastern Block, (Now known as Jawaharlal Nehru Road), Kolkata – 700 071, P.S. Shakespeare Sarani.*
4. *It is made clear that subsequent to filing of this terms of settlement the respective parties i.e. plaintiff and defendant No. 1 will have no claims against each other pertaining to the issues involved in C.S. No. 85 of 2016.”*

In the suit filed by the defendant no. 13 against the plaintiff and others being Title Suit No. 1381 of 2018, the defendant no. 1 (plaintiff is the instant suit) and defendant no. 2 (Defendant no.1 in the instant case) have entered into a settlement which reads as follows :

“TERMS OF SETTLEMENT

The defendant No. 1, i.e. Awam Marketing LLP and defendant No. 2 i.e. Orient Beverages LLP jointly files this Terms of Settlement to bring on records the following facts.

1. The defendant No. 1 and the defendant No. 2 have settled the issues pertaining to T.S. No. 1381 OF 2018 among themselves.

2. The defendant No. 2 has accepted the defendant No. 1 as the rightful lessee of premises No. 50, Chowringhee Road, Rear Block, Eastern Block, 10th Floor, (Now known as Jawaharlal Nehru Road), Kolkata – 700 071, P.S. Shakespeare Sarani, by virtue of the registered Lease deed dated 31st March, 2001, after the determination of the lease of the defendant No. 2 by efflux of time on 30th September, 2015.

3. The defendant No. 2 has accepted the defendant No. 1's right to collect/recover unauthorised occupational charges from all the unauthorized occupants, occupying various portions of the 10th Floor of the Premises No. 50, Chowringhee Road, Rear Block, Eastern Block, (Now known as Jawaharlal Nehru Road), Kolkata – 700 071, P.S. Shakespeare Sarani.

The defendant No. 2 states that it has no right or interest over 50, Chowringhee Road, Rear Block, Eastern Block, 10th Floor, (Now known as Jawaharalal Nehru Road), Kolkata – 7---71, P.S – Shakespeare Sarani and the defendant no. 1 is entitled to receive rent/occupational charges from CTI Logistics Pvt. Ltd. (formerly Siddharth Carriers Pvt. Ltd.). The defendant no. 2 accepts the same.

4. It is made clear that subsequent to file of this terms of settlement the respective parties i.e. the defendant No. 1 and the defendant No. 2 will have no claims against each other pertaining to the issues involved in T.S. No. 1381 of 2018.”

Admittedly, lease was granted in favour of the defendant no. 1 by the Trustees of the Trust Estate of Raja Rajendra Mullick Bahadur on 19th September, 1965 for a term of 50 years with effect from 1st October, 1965. During the subsistence of the said lease, the Trustees of the said Trust have entered into a lease with the plaintiff on 31st March, 2001 in terms of the order passed by the Hon'ble High Court and in the said lease deed it is mentioned that the lease deed will be commencing from the expiry of the earlier lease deed entered between the defendant no.1 i.e. from 1st October, 2015. The defendant no. 2 had affirmed an affidavit in connection with G.A. 407 of 2017 wherein the defendant nos. 2 to 5 have admitted that the defendant no.1 had entered into a sub-lease with the defendant nos. 2 to 5 on 18th August, 1989 with respect of the suit property and the said deed of lease expired on 30th September, 2015.

It is also admitted case of the defendants nos. 13 and 14 that in the year 2004 defendants nos. 2 to 5 have inducted them as sub lessee and the period of sub lease expired in the month of March, 2007 but the defendant nos.13 and 14 uninterruptedly continued in settled possession and occupation of the portion of the suit property upon payment of rent and the rent receipts are enclosed in Affidavit-in-opposition which reflect that the defendants no.13 and 14 have paid rent till the month of January, 2016.

The defendant nos. 13 and 14 have filed suits being Title suit no.1381 of 2018 and 1382 of 2018 before the Learned City Civil Court and in the said suit

the defendant nos. 13 and 14 have obtained an order of injunction against the plaintiff and the defendant no.1.

The judgment referred by the plaintiff in the case of Uttam Singh Duggal (Supra), the Hon'ble Supreme Court held that the object of the Rule is to enable the party to obtain speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. In the case of Payal Vision Limited (Supra), the Hon'ble Supreme Court held that :

“Suffice it to say that the averments made in the written statement clearly accept the existence of the jural relationship of landlord and tenant between the parties no matter the lease agreement was not duly registered. Whether the tenancy was for residential or commercial use of the property is wholly immaterial for the grant of a decree for possession. Even if the premises were let out for commercial and not residential use, the fact remained that the respondent-defendant entered upon and is occupying the property as a tenant under the plaintiff. The nature of this use may be relevant for determination of mesne profits but not for passing of a decree for possession against the defendant.”

The judgment referred by the defendants in the case of Himani Alloys Limited (Supra), the Hon'ble Supreme Court held that :

“But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it ... The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear “admission” which can be acted upon.”

In the case of Beryl (Mrs.) Murzello (Supra), the Hon'ble Bombay High Court held that :

“Being so, in a case wherein the plaintiff himself approaches the Court starting that on account of certain acts on the part of the concerned defendant, the third parties are claiming some right to the property in question and on that count those parties are joined as the defendants to the suit, merely because one of the defendants has made some admission regarding the claim of the plaintiff, unless the rights which have been claimed by the third party through such defendant are adjudicated upon, it would be too premature for the Court to decree the suit in relation to such property merely on the basis of any admission made by the concerned defendant.”

In the case of Jasbir Singh Chadha (HUF) and Electricals Limited (Supra), Hon'ble Supreme Court held that :

“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. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent.”

In the case of Shantez & another (Supra), the Hon'ble Bombay High Court held that :

“It is not proper for the Court to pass a decree on inference ... Admission has to be unambiguous, clear and unconditional and the law would not permit admission by inference as it is a matter of fact. Admission of a fact has to be clear from the record itself and cannot be left to the interpretative determination by the Court ... There is a very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the later category.”

In the case of Mehta Suryta and etc (Supra), the Coordinate Bench of this Court held that :

“19.1 A decree for eviction against the lessee/tenant is binding on the sub-lessee/tenant. But there are some exceptions to it. One such exception is that the sub-tenant/lessee has a right independent of the lessee/tenant. In case the sub-lessee/tenant is able to prove collusion then the sub-lessee/tenant is said to have right independent of the lessee/tenant. In this case collusion is alleged in this application as well as in the suit. The question can be properly and comprehensively dealt with in the suit. It would not be wise to decide the said question at this stage. But for a decision on these applications, a prima facie case is required to be found out. Apparently it appears that the lease rent payable for the land is meager. The lessee was permitted to raise construction and to sublet the same. UIC constructed the building on the land. It is, admittedly, a ten storeyed building. The cost of construction of such building must be substantial. UIC had sub-let the building to various tenants and has been receiving rent. The income appears to be substantial. There cannot be any earthly reason to surrender the lease or to quit. It would be a normal presumption having regard to the allegations made in the plaint, the face value whereof is to be taken into account, that there is every likelihood of existence of collusion between the parties. It appears to be confirmed by reason of the fact that the judgment-debtor did not oppose the amendment of the plaint, application for decree on admission and the decree by the trial Court, after the decree had merged with that of the appeal Court, and that the decree-holder has not opposed to the continuation of collection of rent by the Judgment-Debtor. Thus, there appears to be a very strong prima facie case of collusion between the lessor and the lessee.

19.4 So far as the question of collusion or the question that the notice was a notice to quit or to surrender, are all matters, which could be considered before the decree is passed. The executing Court cannot go behind the decree. As such it is not open to be decided by this Court on the basis of G.A. No. 3 of 2001, made in the execution proceedings. Therefore, the executability of that decree, as it stood prior to its amendment, cannot be questioned in these proceedings. The decree, as it stood prior to its amendment, appears to be executable and can be executed as against the judgment-debtor.

35.1. Now, we may deal with respective cases cited by the respected parties, having regard to the facts and circumstances of the present case and the questions that this Court is called upon to deal with, at this stage.”

In the case of Thirath Ram Gupta (Supra), the Hon'ble Supreme Court held that :

“9. *There was also a contention that when there was a surrender of tenancy rights restricted to the two flats in question, the first respondent is bound by the surrender and cannot claim sub-tenancy rights any further. The contention is unsustainable for a host of reasons. A lease is a transfer of a right to enjoy the property. It creates an interest in the property by virtue of the contract of lease which may be either oral or written. The interest created in the property can be put an end to by terminating the contract. The contract, however, cannot be terminated in part. In this case though the two items of property were given on lease at different times, the parties had treated the lease as a composite one and that was why a common notice had been issued for terminating the tenancy of both the items and furthermore a single petition had been filed under Section 13(2) to seek an order of eviction, in respect of both the items of the lease property.*

10. *The lessee has a right to transfer by sub-lease even a part of his interest in the property as provided in Section 108(j) of the Transfer of Property Act. A transferee from the lessee has a right to claim the benefit of contract to the lessee's interest, vis-à-vis the landlord, (vide Section 108 second para of clause (c) of the Transfer of Property Act). Thus a sub-lessee who has obtained a part of the interest of the head tenant will be entitled to claim the benefit of the contract vis-a-vis the lessor, as the lessee (head tenant) cannot surrender the lease in part. Section 111(e) contemplates a surrender of the entire interest under the lease and not a part of the interest alone. Moreover, a lease can be determined only by restoring possession in respect of the entire property which was taken on lease [see Section 108(m)]. Section 115 of the Transfer of Property Act provides that the surrender of a lease does not prejudice an underlease of the property or any part thereof previously granted by the lessee. The lessee, having parted with a part of the interest in the property in favour of the sub-lessee, cannot surrender that part of the property which is in the possession of the sub-lessee for he cannot restore possession of the same to the lessor apart from the fact that he can terminate the contract of lease only as a whole and not in respect of a part of it. Having regard to all these factors, even without going into the question of the partial surrender of lease being vitiated by collusion, it is not open to the appellant in law to contend that the second respondent is entitled to and had validly surrendered a portion of the leasehold property and the first respondent, being the sub-tenant is bound by the surrender and should deliver possession.”*

In the case of Ramchandra Singh (Supra), the Hon'ble Supreme Court held that :

“34. *So far as the order dated 10-5-1999 passed in Civil Review No. 245 of 1998 is concerned, suffice it to say that the High Court should have considered the question as to whether the right of the auction-purchaser could have been set at naught by reason of a consent order passed in his absence. The appellant was not a party in the first appeal. He was also not a party to the compromise.*

35. *The consent order, as is well known, is an agreement between the parties with the seal of the court superadded to it. The appellant herein in the review application categorically stated that the parties to the appeal had suppressed the auction-sale as also the confirmation thereof. The effect of the events appearing subsequent to the filing of the first appeal resulting in creation of a third-party right was bound to be taken into consideration by the High Court. A third-party right cannot be set at naught by consent. The High Court, therefore, was required to consider the contention of the appellant in its proper perspective. The High Court, in our opinion, was obligated to address itself on these questions for the purpose of reviewing its order.”*

In the present case the defendants nos. 13 and 14 have specifically averred with regard to fraud and collusion in the suit filed before the City Civil Court at Calcutta against the respondent nos. 2 to 5 stating that defendant nos. 2 to 5 have fraudulently and in collusion with the plaintiff have surrendered the suit property in favour of the plaintiff and the said suits are pending before the City Civil Court for adjudication. The defendant nos.13 and 14 have also made out a case that the defendants are in occupation of the suit property and have paid rent to the defendant nos. 2 to 5 at the rate of Rs. 6,361/- and the rent receipt enclosed with their affidavit is upto January, 2016. In the said suits the defendants have also obtained an interim order of

status quo with regard to nature and character of the suit property and restrain from creating any third party interest over the suit property. As the defendants have taken the ground of fraud and collusion between the plaintiff and the defendant nos. 2 to 5 and thus the judgment referred by the defendants are applicable in the instant case.

The defendant nos. 13 and 14 have narrated the facts of the case and settlement entered between the plaintiff and the defendant nos. 2 to 5 but the defendant nos. 13 and 14 have not admitted with regard to the contention made by the plaintiff against the defendant nos. 13 and 14 in the instant application or in the plaint. On the other hand, the defendant nos. 13 and 14 have filed their respective suits against the plaintiff and others for declaration as a tenant in the part of the suit property and in the said suits the defendants have also obtained an order of injunction and thus the judgment referred by the plaintiff is distinguishable.

In exercising the discretion under order XXII, Rule 3 of the Code of Civil Procedure, the Court has to satisfy its judicial conscience alike other instances of exercise of such discretion by the Court. Secondly, the admission must be clear, unequivocal, unconditional and unambiguous so that there may not be necessity for the Court to wait determination of other question. Thirdly, the admission must be taken as a whole unless the part of the claim which the Court proposes to allow on admission is severable from other parts of the plaintiff's claim.

In view of the above, this Court finds that the defendant nos. 13 and 14 have raised triable issue with regard to sub-lease entered by the defendant nos. 2 to 5 with the defendant no.13 and 14 and have accepted the rent of the premises from the defendants nos. 13 and 14 and the defendants have specifically pleaded about alleged fraud and collusion and have also filed their respective suit for declaration of tenancy right over the suit property and thus judgment on admission on the instant application cannot be passed.

G.A. No. 4 of 2021 is thus dismissed.

(KRISHNA RAO, J.)

p.d/