

**15 SCOB [2021] HCD 108**

**HIGH COURT DIVISION**

CIVIL REVISION NO.374 of 2009.

**Kazi Sanaul Karim alias Nadim**  
..... Petitioner

Mr. Golam Ahmed, Advocate  
... For the petitioner.

-Versus-

**Advocate Md. Mozammel Haque and others**

...opposite parties

Mr. Mohammad Ali Akanda, Adv with  
Mr. Md. Golam Rabbani, Advocates  
... for the opposite party Nos.1-8

Heard on:27.02.20, 05.03.20 &  
08.09.2020.

Judgment on:10.09.2020.

**Present:**

**Mr. Justice S M Kuddus Zaman**

**Editor's Note:**

The predecessor of the opposite parties of this Civil Revision instituted S.C.C. Suit for a decree of ejectment against the defendant alleging, inter alia, that the defendant defaulted in paying rent and municipality taxes of the disputed premises, the disputed premises has become old and of dilapidated condition which requires immediate refurbishment and the plaintiff requires the disputed premises for starting a business by her youngest son. The trial court on the basis of a reply of D.W.1 to an extraneous question in cross-examination which was out of pleadings, held the defendant a defaulter in paying rent and decreed the suit. A single Bench of the High Court Division appreciating the evidence adduced by both parties came to the conclusion that finding of the trial court as to the admission of the DW-1 was erroneous and the plaintiff-opposite parties could not substantiate their claim in the suit. The High Court Division also pointed out that the House Rent Control Act, 1991 does not provide for eviction of a tenant on the ground that the premises is necessary for use of a son of the owner. Consequently, the judgment and order of the trial court was set aside.

**Key Words:**

Section 18 of the House Rent Control Act, 1991; monthly tenant; ejectment, admission, possession, Rent Controller;

**Section 18 of the House Rent Control Act, 1991:**

At the outset it may be mentioned that the House Rent Control Act, 1991 does not provide for eviction of a tenant on the ground that the premises is necessary for use of a son of the owner.  
...(Para 14)

**An admission must be in clear, consistent and unambiguous terms:**

An admission is an acceptance or endorsement of a claim or statement of the opposite parties which is against the interest of the party making the admission. Admission is an important legal evidence which does not require further prove and can be used against its maker. As such, an admission must be in clear, consistent and unambiguous terms.

**For making an admission there must have a specific claim or statement of the opposite party which can be admitted. ... (Para 18)**

**The learned Senior Assistant Judge on the basis of a reply of D.W.1 to an extraneous question in cross-examination which was out of pleadings erroneously held the defendant a defaulter in paying rent and decreed the suit which is not tenable in law. ... (Para 23)**

## **JUDGMENT**

**S M Kuddus Zaman, J:**

1. This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 20.01.2009 passed by the learned Senior Assistant Judge, Sadar, Mymensingh in S.C.C. Suit No.13 of 2003 should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

2. Facts in short are that the predecessor of the opposite parties instituted S.C.C. Suit No.13 of 2003 in the Court of Senior Assistant Judge, Sadar, Mymensingh for a decree of ejection against the defendant alleging that the defendant is a monthly tenant under the plaintiff. But since Chaitra, 1407 B.S. the defendant defaulted in paying rent and municipality taxes of the disputed premises. The disputed premises has become old and of dilapidated condition which requires immediate refurbishment. The youngest son of the plaintiff namely Md. Azharul Haque is sick and unemployed. The plaintiff requires the vacant possession of the disputed premises for starting a business by her above son. The plaintiff had served a notice under section 106 of the Transfer of Property Act, 1882 upon the defendant but the defendant did not handover vacant possession.

3. Defendant No.1 contested the suit by filing a written statement wherein he had denied all material claims and allegations made in the plaint. It was further alleged that the plaintiff had received the rent of Kartick, 1407 B.S. but the plaintiff refused to receive rent for the month of Chaitra, 1407 B.S. The defendant sent above rent by money order on 01.05.2001 which was returned undelivered on 09.05.2001. As such, within 15 days from above date of return of money order defendant deposited the rent to the Rent Controller. The disputed premises is strong enough and in good condition which needs no refurbishment. The youngest son of the plaintiff Md. Azharul Haque had a business in another shop of the plaintiff. But he has closed above business and rented out above shop. The false suit of the plaintiff is liable to be dismissed.

4. At trial plaintiff examined 5 witnesses and defendant examined one. Documents produced and proved by the plaintiff were marked Exhibit Nos.1,2-2(ka), 3-3(ka), 4-4(ka),5-5(ka),6-7,8-8(ka), 9-11 and those of the defendant were marked as Exhibit Nos.ka, kha and ga respectively.

5. On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge decreed the suit holding that the plaintiff is a habitual defaulter in paying rent and the disputed premises is needed for the use of the plaintiff.

6. Being aggrieved by the above judgment and decree the defendant has preferred this Civil Revision Case and obtained this Rule.

7. No one appears on behalf of the petitioner when the case is taken up for hearing.

8. Mr. Md. Golam Rabbani, the learned Advocate for the opposite parties submits that the defendant is a habitual defaulter in paying rent and this fact has been admitted by the defendant in his cross-examination as D.W.1. The learned Advocate further submits that at paragraph GA of the written statement defendant has admitted that he did not pay the rent of Chaitra 1407, B.S. within 7 days of the next month as per terms of the rental agreement, but sent the same by money order on 24 Baishak 1408 B.S. As such admittedly defendant is a defaulter in paying rent and liable to be evicted. In support of above submission the learned Advocate refers to the case law reported in 63 DLR(AD)84.

9. The learned Advocate submitted that since the disputed premises is required for the use of the youngest son of the plaintiff on this ground alone the defendant is liable to be evicted as well. In support of above submission the learned Advocate refers to the case law reported in 59 DLR(AD) at page 65.

10. Considered the submissions of the learned Advocate for the opposite parties, perused the impugned judgment and order and other materials on record.

11. It is admitted that the plaintiff is the owner of the disputed premises and the defendant is a monthly tenant of the same.

12. As mentioned above in this case plaintiff has examined as many as 5 witnesses. Plaintiff herself gave evidence as P.W.1. In her examination-in-chief P.W.1 stated that she has filed this case for eviction of the defendant from the disputed premises. P.W.1 did not corroborate the claims made in the plaint that the defendant is a habitual defaulter or the disputed premises is in a dilapidated condition and requires immediate refurbishment or reconstruction or the disputed premises is needed for her own use or for the use of the person for whose benefit the premises has been retained. Since the plaintiff did not support any claim or allegation against the defendant the whole plaint remains uncorroborated and plaintiff's initial onus to prove the case also remains unfulfilled.

13. As P.W.2 Md. Mozammel Haque, a son of the plaintiff has given evidence and he has tried to fill-up the deficiencies of the evidence of P.W.1 Jahanara Begum, which is not legally permissible. But he also merely stated that the defendant did not pay rent and monthly taxes of the disputed premises regularly and the defendant is a habitual defaulter. The witness did not make any specific claim as to how the defendant has become a defaulter in paying rent or for which month and year he failed to pay the rents. The further claim of the witness that the plaintiff also failed to pay the municipal taxes is also vague and not supported by any documentary or oral evidence.

14. At the outset it may be mentioned that the House Rent Control Act, 1991 does not provide for eviction of a tenant on the ground that the premises is necessary for use of a son of the owner. According to section 18(1) (P) of the above Act a tenant shall also be liable to eviction on any of the following grounds:

(ঙ) বাড়ীর নির্মান বা পুনঃনির্মানের জন্য অথবা নিজ দখলের জন্য অথবা যাহার উপকারার্থে বাড়ীটি রাখা হইয়াছে তাহার দখলের জন্য বাড়ী-মালিকের প্রকৃতই প্রয়োজন হয় অথবা বাড়ী-মালিক এমন কোন কারণ দর্শাইতে পারেন যাহা আদালতের নিকট সন্তোষজনক বলিয়া গন্য হয়;

15. The plaintiff did not claim that the disputed premises is necessary of her own use. Plaintiff has three sons and there is no case that the disputed premises is retained for the benefit of her youngest son and the same is required for his use. The plaintiff has failed to prove that the disputed premises is required for her own use. As such the case law cited above by the learned Advocate for the opposite parties in this regard has no relevance to this case.

16. As far as dilapidated condition of the disputed premises is concerned the plaintiff did not substantiate this claim in her evidence as P.W.1. D.W.1 Kazi Sanaul Karim who is the tenant of the disputed premises stated that the disputed premise is strong and in good shape and not in a dilapidated condition. P.W.2 Md. Mozammel Haque has supported above claim of the defendant by stating that the plaintiff wants to construct a multi storied commercial building on the land of the disputed premises. Moreover, if the disputed premises is in a dilapidated condition then how the plaintiff wants her a youngest son to start a business in the same? As such plaintiff has failed to prove that the disputed premises is in a dilapidated condition and needs immediate refurbishment or reconstruction.

17. As far as the submission of the learned Advocate that the defendant is an admitted defaulter is concerned, defendant has examined one witness. As D.W.1 Kazi Sanaul Karim has stated that the plaintiff having refused to receive the rent of Choitra, 1407 B.S. and he sent the same by money order on 07.05.2001. Above money order was returned undelivered on 09.05.2001 and thereafter has deposited the rent to the Rent Controller. The witness was not cross-examined on above evidence nor any suggestion was put to him that he sent above rent after the expiry of the date for payment of rent as agreed upon in the tenancy agreement.

18. An admission is an acceptance or endorsement of a claim or statement of the opposite parties which is against the interest of the party making the admission. Admission is an important legal evidence which does not require further prove and can be used against its maker. As such, an admission must be in clear, consistent and unambiguous terms. For making an admission there must have a specific claim or statement of the opposite party which can be admitted. As mentioned above, the plaintiff did not make any specific claim against the defendant that he defaulted in paying rent.

19. The learned Advocate further stated that P.W.2 Md. Mozammel Haque is a son and authorized attorney of the plaintiff and in fact he gave evidence on behalf of the plaintiff. Since plaintiff herself gave evidence in this suit as P.W.1 there is no scope for her attorney to again give evidence on her behalf. Moreover, above mentioned Mozammel Haque gave evidence as P.W.2 and he did not claim that he was giving evidence on behalf of the plaintiff.

20. Moreover, P.Ws. 1-2 did not produce and prove any tenancy agreement between the plaintiff and defendant. But D.W.3 Mahfuz has in his evidence mentioned about two deeds of Rental agreements between the parties. The first agreement is of 13.06.1988 and the latter one was subsequently prepared on 11.09.1993. Above witness had produced and proved above mentioned two tenancy agreements and those were marked as exhibit-4 and 4(ka) respectively. P.W.2 Md. Mozammel Haque and P.W.3 Mamun Mahfuz have unanimously stated that the latter agreement was prepared on the basis of consent of both the parties but defendant abstained from executing the same. Above claim of P.Ws 2-3 shows that the plaintiff abandoned Exhibit-4 and defendant did not excuse Exhibit-4(ka) and there is no agreed deed of tenancy between the parties.

21. Moreover, the defendant has contested this suit claiming that he is not a defaulter in paying rent.

22. As such, the submission of the learned Advocate that the defendant has admitted to have sent the rent by money order beyond the agreed date of the tenancy agreement is devoid of any substance. The facts and circumstances of this case is distinguishable from that of the case of 63 DLR(AD)85, as such, above case law is not applicable in this suit.

23. The learned Senior Assistant Judge on the basis of a reply of D.W.1 to an extraneous question in cross-examination which was out of pleadings erroneously held the defendant a defaulter in paying rent and decreed the suit which is not tenable in law.

24. In the result, the Rule is made absolute without any order as to costs.

25. The impugned judgment and decree dated 20.01.2009 passed by the learned Senior Assistant Judge, Sadar, Mymensingh in S.C.C. Suit No.13 of 2003 is set aside.

26. The interim order passed at the time of issuance of the Rule stands vacated.

27. Let a copy of this judgment be transmitted down to the Court concerned at once.