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

+ **CS(OS) 1394/2011**

M/S RAHUL CARGO PRIVATE LTD Plaintiff
Through **Mr. Sanjeev Singh, Advocate**

versus

M/S PRESIDENT CONSULTANT Defendant
Through **Mr. I.S. Alag with Mr. J.S.
Lambha and Ms. Ishita
Chakrabarti, Advocates**

Reserved on: 25th April, 2013.
Date of Decision: 17th May, 2013.

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

I.A. 5059/2012 in CS(OS) 1394/2011

1. Present application has been filed by the plaintiff under Order 12 Rule 6 CPC for decreeing the present suit for specific performance in view of the admissions made by the defendant.
2. The facts of the present case are that defendant had entered into an Agreement to Sell dated 08th August, 2008 with the plaintiff for purchase of an industrial plot bearing No.A-282, Okhla Industrial Area, Phase-I, New Delhi (hereinafter referred to as 'suit property') for a total consideration of Rs.6,26,00,000/-. It was agreed between the parties that the balance sale

consideration of Rs.4,01,00,000/- shall be paid by the defendant within thirty to sixty days or earlier from the date of getting the suit property converted into freehold. It was also agreed between the parties that if the plaintiff failed to complete its obligations within the stipulated period of four months, defendant shall be entitled to complete the pending/due work of conversion of the suit property into freehold. The relevant terms of the Agreement to Sell are reproduced hereinbelow:-

- “1. That the consideration of the aforesaid total sum of Rs.6,26,00,000/-.....*
- 2. That through this agreement to sell, at the time of signing the same the vendee has committed to pay a sum of Rs.2,25,00,000/- (Rupees two crores twenty five lakhs only) as earnest money.....*
- 3. That after receiving the advance/earnest money, as decided within 25 days, to 30 days time (on or before 10th September 2008), the vendor/first party, will vacate the premises and deliver the possession of entire ground floor, first floor, and second floors to the vendee/second party, and the part of basement will also be delivered on 30th of September 2008, and the remaining part of basement, as rest part of the said property will be retained by the vendor/first party and which shall be delivered to the vendee/second party on full and final payment of the said deal.*
- 4. That the payment of the balance sale consideration of Rs.4,01,00,000/- (Rupees four crores one lakhs) will be paid by the vendee to the vendor within 30 to 60 days time, or as earlier from the date of getting the property converted into freehold, and the formality of freehold should completed within a maximum time limit of three to four months (on or before 20th of December 2008) simultaneously on full-final payments, vacant physical*

possession of the remaining part of the basement of said property will be delivered by the vendor to the vendee, along with all original documents in sequence with up to date references related to the said property, and also all the deed and documents as may be required by the vendee for the conveyance, transfer and sale of the said property will also be executed and registered by the vendor in favour of the vendee on his/her, nominee.

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13. *Provided further that if first party fails to complete all the aforesaid obligations, or ignore/back from any commitments, within stipulated time period of four months, second party shall be entitled at second party's discretion under notice to first party to either complete the pending/due, work of conversion in to freehold, of said property or himself take the initiative towards its completion, but in that case the vendee/second party will deduct the expenditures along with other expenses from the remaining/balance, sale price of the said property, or to enforce specific performance hereof as per court of law."*

3. According to the plaintiff, though immediate and sincere efforts were made by it to get the conversion carried out within the stipulated time, yet as there was delay on the part of the authorities, plaintiff in accordance with the terms of the Agreement asked the defendant to take up the task of getting the suit property converted into freehold.

4. While it is the plaintiff's case that the defendant took no action, it is the defendant's case that plaintiff did not hand over the requisite documents.

5. In any event, the admitted position as of today is that conversion of the suit property to freehold has been effected by the Delhi Development

Authority and a registered Conveyance Deed dated 12th January, 2011 has been executed in favour of the plaintiff.

6. Admittedly, as on date, the defendant despite taking possession of ground, first and second floors of the suit property has paid only Rs.2,25,00,000/- to the plaintiff.

7. Mr. Sanjeev Singh, learned counsel for plaintiff stated that present application had been filed under Order 12 Rule 6 CPC for decreeing the suit as there was a clear admission by the defendant in its written statement with regard to execution of the Agreement to Sell dated 08th August, 2008, consideration amount, part payments made and also of the facts mentioned in the plaint.

8. Mr. Sanjeev Singh, learned counsel further stated that defendant before this Court had made a clear and unequivocal admission of all relevant issues in its written statement and therefore, there was no necessity of delaying the adjudication or proceeding to trial as no triable issue arose. He prayed that on the basis of admissions made by the defendant in its written statement, a decree be passed in favour of the plaintiff and against the defendant.

9. In support of his submission, learned counsel for plaintiff relied upon a judgment of the Supreme Court in ***Charanjit Lal Mehra and Others Vs. Smt. Kamal Saroj Mahajan and Another***, AIR 2005 SC 2765 wherein it has been held as under:-

“8.....In fact, Order XII Rule 6, C.P.C. is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and

dispose of the matter such admission can be acted upon. In the present case, looking at the terms of lease deed, there can be no two opinions that the tenancy was joint/ composite and not individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of Uttam Singh Duggal & Co.Ltd. vs. United Bank of India & Ors. reported in (2000) 7 SCC 120. Their Lordships have held as follows:

" 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."

10. On the other hand, Mr. I.S. Alag, learned counsel for defendant submitted that the application under Order 12 Rule 6 CPC was absolutely misconceived and was not maintainable either in law or on facts.

11. Mr. Alag, learned counsel submitted that an Order 12 Rule 6 CPC application was not maintainable in a suit for specific performance. He further submitted that as readiness and willingness was not admitted by the defendant, the suit had to proceed to trial. In this connection, he relied upon a judgment of a Division Bench of this Court in ***Mrs. Gopal Devi Vs. Mrs. Kanta Bhatia, AIR 1994 Delhi 349***, where it has been held as under:-

"17. The plaintiff is not only to aver but is also to prove that he has performed or has always been ready and

willing to perform the essential terms of his part of the contract. It is nobody's case that the plaintiff before us was prevented from performing any particular terms of the agreement to sell, or she could perform those terms having been prevented or waived by the defendant. Here is a case where she completely renounced the agreement to sell. Provisions contained in clause (c) are very stringent. If the plaintiff does not aver in the plaint that he was ready and willing to perform his part of the contract, his suit is likely to fail. Then, as stated above, the plaintiff is not only to aver but also to prove that all through he was ready and willing to perform his part of the agreement. Though the plaintiff in the case before us did aver that she was ready and willing to perform her part of the agreement to sell, but she has failed to prove that she was ready and willing to perform the same. We would, therefore, hold issue No. 3 in favour of the appellant-defendant, and the suit for specific performance filed by the plaintiff-respondent must fail.”

12. Mr. Alag contended that the plaintiff was not ready and willing to perform his part of the Agreement and intentionally delayed performance of his part of the Agreement after receiving a huge sum of Rs.2.25 crores from the defendant.

13. He stated that plaintiff mis-represented to the defendant that the suit property was free for commercial use and further that it would get the user of the suit property changed. He emphasized that the plaintiff was never ready and willing to perform its obligation under the Agreement to Sell and therefore, delayed the whole issue. According to him, the present suit required detailed evidence and complete trial before arriving at any conclusion regarding the rights and liabilities of the parties in the suit vis-à-vis the Agreement to Sell.

14. Mr. Alag submitted that there was no admission on the part of the defendant and that reading one line in one paragraph and another line in the

another paragraph could not be held to be an admission on the part of the defendant entitling the plaintiff for a decree on admission. In this connection, he relied upon a judgment of the Supreme Court in ***Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Another, (2010) 6 SCC 601***, wherein it has been held as under:-

“11. In Uttam Singh Duggal & Co. Ltd. v. United Bank of India the provision of Order 12 Rule 6 came up for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear “wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed” the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondent-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the application of the respondent-plaintiffs under Order 12 Rule 6.

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14. Mellish, L.J. expressing the same opinion in Gilbert case made the position further clear by saying:

“it must, however, be such an admission of facts as would shew that the plaintiff is clearly entitled to the order asked for”.

The learned Judge made it further clear by holding: (Gilbert case, Ch D p. 689)

“... The rule was not meant to apply when there is any serious question of law to be argued. But if there is an admission on the pleadings which clearly entitles the plaintiff to an order, then the intention was that he should not have to wait, but might at once obtain any order....”

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20. *For the reasons discussed above and in view of the facts of this case this Court cannot uphold the judgment of the High Court as well as of the Additional District Judge. Both the judgments of the High Court and of the Additional District Judge are set aside. The matter is remanded to the trial court for expeditious disposal of the suit as early as possible, preferably within a period of six months from the date of service of this order on the learned trial court. It is made clear that this Court has not made any observation on the merits of the case.*

15. Having heard learned counsel for the parties, this Court of the opinion that an application under Order 12 Rule 6 CPC is maintainable in a suit for specific performance. The judgment in ***Mrs. Gopal Devi vs. Mrs. Kanta Bhatia*** (supra) is clearly inapplicable to the present facts as it is not a case under Order 12 Rule 6 CPC. Further, the judgment in ***Jeevan Diesels and Electricals Limited vs. Jasbir Singh Chadha (HUF) and Another*** (supra) is clearly distinguishable as in that case no specific performance of Agreement to Sell had been sought. In fact, this Court in ***Sunrise Construction Vs. Veena Wahi, 2009 (111) DRJ 710*** after finding that the defence of the defendant was unsustainable in law and contrary to admitted documents, passed a decree for specific performance under Order 12 Rule 6 CPC. The relevant portion of ***Sunrise Construction*** (supra) is reproduced hereinbelow:-

"33. If the plaintiff has made its claim founded upon a documented transaction and the execution of the document is admitted, one of the fundamental concern of a court while considering whether a case for passing of a decree under Order 12 Rule 6 CPC is made out or not, is that the defendant is given ample opportunity to prove his pleaded defence. However, in a case where defence itself is unstateable and/or is barred under some law, it is a case of "no defence" and in my view it is not necessary to drag the suit. The court can proceed to decide the

matter on its merits. After all, the purpose of holding a trial is only to enable the parties to lead evidence in support of their stated case. A party cannot spring a surprise upon the opposite party at the stage of trial. His case, whether as a plaintiff or as a defendant has to be clearly stated in his pleading. He cannot set up a new case at the stage of trial, which is not even pleaded by him.

34. In the present case, in my view, the defence set up by the defendant is unstatable and no other averment of the defendant gives rise to any material issue, the decision of which could have a bearing on the eventual outcome of the suit.

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38. When no material issues of fact arise from the pleadings of the parties, merely because legal issues remain to be determined the Court may not postpone the decision of the legal issues till after the conduct of a meaningless trial. Looking to the burgeoning dockets of the Courts, I feel the Court should seize the opportunity at the earliest to examine whether material triable issues of fact arise which would require a trial, or whether the suit can be decided on the basis of the admitted facts by application of established legal principles. The prescribed procedures have been evolved to serve as the hand maids of justice; to comply with the rules of natural justice, and a routine adherence to procedure in the facts of a given case may not necessarily be called for and may work injustice to one of the parties. However, departure from the uniform procedure would require the existence of justifiable reasons in a given case. If justifiable reasons exist, the procedures cannot weigh down the progress and disposal of a cause. I may refer to the decision of the Division Bench of this Court in 142 (2007) DLT 483 (DB) Vijaya Myne Vs. Satya Bhushan Kaura. The Division Bench summarized the purpose and objective of enacting Order 12 Rule 6 CPC, which enables the court to pronounce judgment and save parties from going through the rigmarole of a protracted trial. The Division Bench held:

“The admission can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.”

39. What remains to be now examined is whether the plaintiff has been ready and willing to complete the transaction contained in exhibit P-1 and whether relief of specific performance, which is a discretionary relief under the Specific Relief Act should be granted or only the alternative relief of damages should be awarded, in case the former issue is decided in favour of the plaintiff.

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47. For the aforesaid reasons I am of the view that the receipt-cum-agreement Ex.P-1 being an admitted document, and the defence of the defendant being barred, inter alia, under the laws of evidence, in equity, and it, being contradictory, there is no issue arising in the present case which requires the holding of a trial. The case of the plaintiff stands established to the hilt. Accordingly, I pass a decree under Order 12 Rule 6 CPC in favour of the plaintiff and against the defendant for specific performance of the agreement contained in the receipt cum agreement dated 18.09.2007 exhibit P-1.

(emphasis supplied)

16. In the present case defendant in its written statement has admitted execution of Agreement to Sell dated 08th October, 2008 and has also admitted that the suit property has now been converted to freehold. The defendant has not disputed even a single term of the Agreement to Sell.

17. The only defence of the defendant is that the plaintiff was not ready and willing to perform his part of the agreement within the stipulated time inasmuch as the plaintiff misrepresented to the defendant that the property is free to be put to commercial use.

18. In the opinion of this Court, the said defence of the defendant is contrary to facts and untenable in law. There is no recital or covenant in the admitted Agreement to Sell dated 08th August, 2008 that the usage of the property would be changed from industrial to commercial.

19. This Court is also of the view that said plea is an afterthought inasmuch as in none of the contemporaneous correspondence including the defendant's letter dated 25th March, 2011, the issue of change to commercial use was ever raised. The only obligation under the Agreement to Sell dated 08th August, 2008 was to get the property converted to freehold - which has been done. Further, the time period for getting the property converted was not of essence of the contract.

20. In any event, Section 92 of the Indian Evidence Act, 1872 states that when the terms of a contract have been reduced in the form of a document, 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 from its terms. Consequently, defendant's defence is barred by Sections 91 and 92 of the Indian Evidence Act, 1872.

21. Admittedly, the plaintiff has discharged all the obligations cast upon it under the Agreement to Sell dated 08th August, 2008 and no issue under the said Agreement to Sell, as of date, is outstanding. The defendant's defence that plaintiff was not ready and willing to perform his part of the Agreement to Sell is a moonshine and a sham.

22. The defendant's conduct in the present case is highly inequitable as despite taking possession of ground, first and second floors of the suit property and despite the Agreement to Sell dated 08th August, 2008 being fully performed, it has paid only Rs.2,25,00,000/- to the plaintiff out of total consideration of Rs.6,26,00,000/-.

23. Consequently, this Court passes a decree under Order 12 Rule 6 CPC in favour of plaintiff and against the defendant for specific performance of the Agreement to Sell dated 08th August, 2008 directing the defendant to make balance payment of Rs.4,01,00,000/- within eight weeks and also to purchase the stamp duty for execution of Sale Deed by the plaintiff in favour of the defendant in respect of the suit property comprising basement, ground floor, first floor and part of second floor built on plot of land admeasuring 511.33 square yards with all fittings, fixtures, connections structure standing thereon. Registry is directed to prepare a decree in the above terms. With the aforesaid observations, present suit and application stand disposed of.

MANMOHAN, J

MAY 17, 2013

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