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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 50/2016
CHANDRESH GOEL

..... Petitioner
Through Mr.R.K.Sharma and Mr. S.S.Jain, Adv.

versus

KANWAR SINGH

..... Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.01.2016**

C.M. No.1893/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 50/2016 & C.M. No.1892/2016 (stay)

The petitioner is aggrieved by the impugned order dated 04.01.2016 vide which the application filed by the petitioner/plaintiff seeking a judgment on admission (under Order 12 Rule 6 of the CPC) had been declined and rightly so.

Present suit is a suit for recovery of possession and mesne profits. The suit property was a part of property bearing No. 472/2, Dargah Chisti Chaman, Bagh Kare Khan, Kishan Gang, Delhi consisting of 22 servant quarters to which the premises in occupation of the defendant is quarter No. 11. In the written statement which was filed by the defendant, his submission is that the suit is not maintainable as the plaintiff is neither the owner of the suit property and nor the landlord.

The defendant has never paid rent to the plaintiff. There is no relationship of landlord and tenant. The defendant is assessed to house tax and is continuously paying the same in his individual capacity as a owner. This was the defence in the written statement.

Attention has been drawn by the learned counsel for the petitioner to a part of the cross-examination of DW-1 wherein in one part of his cross-examination, he had stated that he is living in the premises as a tenant. Submission being that this admission made by the respondent/defendant that he is a tenant clearly shows that the defence taken by him in his written statement is incorrect; this amounting to an admission, the suit of the plaintiff is liable to be decreed as the defendant has no locus to remain in the property.

The additional submission made by the learned counsel for the petitioner is that he had filed earlier an eviction petition against the respondent which had been dismissed on 31.05.2010; present suit has been filed thereafter; the defence of the respondent in the eviction petition is also contrary to the admission made by the defendant in his cross-examination. The application under Order 12 Rule 6 of the CPC should have been allowed. The impugned order suffers from an illegality.

The submission of the petitioner is wholly misconceived. An order under Order 12 Rule 6 of the CPC can be passed, if there is an unequivocal and unambiguous admission made by one party qua the other. This is clearly not so in the present case. The defendant has set up a plea of adverse possession. The defence of the defendant has to be read in its entirety and no one line from his examination can be extracted to give it a meaning which does not appear from the wholesome reading of

the same. The submission of the learned counsel for the petitioner that the defendant having admitted that he was a tenant calls for a decree under Order 12 Rule 6 of the CPC is a misconceived argument. There is no unambiguous or transparent admission made by the defendant which entitles the plaintiff to a decree under Order 12 Rule 6 of the CPC.

Petition is wholly without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 19, 2016

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