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

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*Date of decision: 2.11.2016.*

+ CM(M) 595/2016 & CM No.22560/2016

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|-------------------|----------------------------|
| ASHOK KUMAR GUPTA | ..... Petitioner           |
| Through           | Mr.M.L.Mahajan & Mr.Gaurav |
|                   | Mahajan, Advocates         |
| versus            |                            |
| VARUN KUMAR GOEL  | ..... Respondent           |
| Through           | Mr.Kumar Vikram, Advocate  |

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 14<sup>th</sup> July, 2014 by which order the trial court dismissed the application of the petitioner under Order 12 Rule 6 CPC.
2. The petitioner has filed the suit for possession, recovery of arrears of rent, damages and mesne profits for property bearing No.08, Chabra Complex, situated at Veer Savarkar Block, Delhi 110092. The parties entered into a rent agreement dated 23.02.2011 duly registered in the office of Sub-Registrar-VIII, Delhi. The agreed monthly rent was Rs.16,000/-.
3. It is the case of the petitioner that the respondent stopped making payment of rent from the month of September, 2011. It is further stated that the petitioner sent a notice dated 07.07.2012 terminating the tenancy. Based

on this averment, the suit was filed.

4. The impugned order dismissed the application of the petitioner noting that a decree under Order 12 Rule 6 CPC can be passed only if a party makes an admission, explicitly or by implication, precluding the necessity of evidence being led. The trial court concluded that it cannot be averred from the written statement that there is an admission on the part of the respondent that the rent has not been paid continuously for more than two months. Regarding termination of tenancy vide notice dated 07.07.2012, it is stated that tenancy was terminated w.e.f. 30.06.2012 and that period of 25 months does not expire till 30.06.2012. Based on these observations, the trial court dismissed the application.

5. I have heard the learned counsel for the parties.

6. A perusal of the plaint shows that essentially the argument was two folds as to why tenancy has come to an end. Firstly, on the ground that as per clause 8 of the registered lease deed, if the tenant fails to pay the rent continuously for two months, the rent agreement stands cancelled and secondly, on the ground that under clause 12 of the registered lease deed a party can give one month notice before the termination of the tenancy which in this case has been given on 07.07.2012. Both these contentions were rejected by the trial court on the ground that there is no admission on the part of the respondent.

7. However, it may be noted that as per registered lease deed the tenancy is for a period 25 months and expires by efflux of time in March, 2013. When the impugned order was passed. The tenure of the tenancy had already come to an end. This crucial aspect was completely ignored by the trial court.

8. The trial court failed to notice the clear admissions of the respondent of expiry of the term of the lease.

9. In the application under Order 12 Rule 6 CPC, the petitioner mentioned that the tenancy period has come to an end. Para 6 of the application reads as follows:

“6. That the tenancy period has been expired as per the aforesaid rent agreement dated 23.02.2011. Therefore, the defendant is liable to handover the vacant and physical possession of the suit premises to the plaintiff and also liable to pay the arrears of rent and the penalty/unauthorised occupation charges to the plaintiff as claimed by the plaintiff in the suit.”

10. The respondent did not categorically deny this fact as is apparent from the reply to the application under Order 12 Rule 6 CPC. Relevant portion of the same reads as follows:

“6. That the contents of para 6 are false, frivolous hence denied. It is plaintiff who is playing hot and cold simultaneously with ulterior motive. Plaintiff who in one hand seeking eviction on the basis of default and another hand on the basis of efflux of time, which cannot be permitted in the law. It is defendant who has suffered a lot due to irresponsible conduct of plaintiff. It is denied that defendant is liable to pay any amount to the plaintiff or any unauthorised occupation charges.”

11. It is clear that the respondent did not deny the registered lease deed, agreed rent of Rs.16,000/- and the tenure of the agreement. The petitioner is seeking eviction on the basis of default in payment of rent and also on the basis of efflux of time. There is no bar to seeking eviction on these two grounds as the lease could stand terminated on default of payment of rent if so provided in the lease and on efflux of time. There is a clear admission in the pleadings of the parties about expiry of the lease by efflux of time.

12. Order 12 Rule 6 CPC reads as follows:

**“6. Judgment on admissions.-** (1) Where admissions of 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 an 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) Whenever 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.”

13. Catena of judgments of this court and the Supreme Court have settled the requirement of Order 12 Rule 6 CPC i.e.:

- (i) *Vijay Mayne v. Satya Bhushan Kumar* 142(2007)DLT483(DB)
- (ii) *Usha Rani Jain v. Nirulas Corner House Pvt. Ltd.* 73(1998)DLT124
- (iii) *Bhupinder Singh Bhalla v. Neelu Bhalla@Neelam Singh* 2014(207)DLT5872
- (iv) *Himani Alloys Ltd. v. Tata Steel Ltd.* 2011 (3) RCR (civil)

14. Reference may be had to judgment of this Court in the case of *Usha Rani Jain vs Nirulas Corner House Pvt.Ltd(supra)* where in paragraph 18 the Court held as follows:-

“18. The object of Order XII Rule 6 CPC is to enable a party to obtain a speedy judgment, at least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a Court can act under Order 12 Rule 6, the admission must be clear, unambiguous, unconditional and unequivocal.

Admissions in pleadings are either actual or constructive. Actual admissions consist of facts expressly admitted either in pleadings or in answer to interrogatories. In a suit for ejectment, the factors which deserves to be taken into consideration in order to enable the Court to pass a decree of possession in favour of the plaintiff primarily are:-

A. 1) Existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as tenant;

B 2) Determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act.”

15. Admissions can be inferred from vague and evasive denials or admissions can even be inferred from the facts and circumstances of the case. In the present case there are clear admissions as stated above.

Reference in this regard maybe had to the judgment of this court in ***National Textile Corporation Ltd. And Anr. vs Ashval Vadera*** 2010 (167) DLT 602

where in para 17 the court held as follows:

“17. It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour. In order to invoke the provisions of Order 12 Rule 6, CPC, admissions *de hors* pleadings may also be considered as is evident from the use of the word “otherwise” in the said provision [see *Shikharchand v. Mst. Bari Bai*, AIR 1974 MP 75; *K. Kishore v. Allahabad Bank*, 1997 (41) DRJ 698; *Uttam Singh Dugal v. UBI*, (2000) 7 SCC 120; *Rajiv Srivastava v. Sanjiv Tuli*, 119 (2005) DLT 202; *Rama Ghei v. U.P. State Handloom Corpn.*, 91 (2001) DLT 386 and *R.N. Sachdeva v. R.L. Mahajan Charitable Trust*, 1997 (41) DRJ 698]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements recorded under Order 10 Rule 1, CPC. Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been

deliberately made in order to mislead the Court, or gathered from the non-traversal of specific averments made in the pleadings and documents.

16. The facts of the present case show that even if we ignore the plaint and the written statement for a moment, it is manifest from a reading of the reply filed by the respondent to the application under Order 12 Rule 6 CPC that there is an admission about the tenure of the lease having come to end by efflux of time. Hence without going into the issue as to whether the lease stood terminated under Clause 12 of the registered lease deed in view of the notice dated 07.07.2012 and as to whether there are admissions in the written statement about the same, it is manifest that there is admission in the reply of the defendant under Order 12 Rule 6 CPC which warranted passing of a decree against the respondent.

17. In the light of the above, it is apparent that the impugned order suffers from errors of law. The impugned order is set aside and the application of the petitioner under Order 12 Rule 6 CPC is allowed and a decree is passed in favour of the petitioner and against the respondent for possession of the suit property. All other issues are left open to be adjudicated upon by the trial court in the suit.

18. The petition and all the pending applications stand disposed of.

**JAYANT NATH, J.**

**NOVEMBER 02, 2016/v**