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

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Date of decision: 12.7.2016

+ C.R.P. 93/2016

PREM GABA

..... Petitioner

Through

Mr.Avadh Kaushik & Ms.Deepika
Raghav, Advocates

versus

PINKI

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner has impugned the order dated 02.06.2016 by which order the application of the petitioner/plaintiff filed under Order XII Rule 6 CPC read with Section 151 CPC seeking passing of judgment and decree against the defendant was dismissed.
2. The petitioner has filed a suit for possession of tenanted premises, recovery of rent, usage charges/mesne profit, damages and permanent injunction etc. against the defendant/respondent. It is averred that the petitioner is the owner of the house No.130, Pocket D-13, Sector-7, Rohini Delhi. The respondent is the tenant and he was inducted in the house for a period of eleven months commencing from 22.09.2010 at the rate of monthly rent of Rs.10,000/- per month. Subsequently, the rate of rent has been increased. The defendant had paid the last rent for the month commencing from 22.05.2013 till 21.06.2013. The plaintiff sent a legal notice on 19.07.2014 which is said to have been duly served on the

respondent.

3. The defendant/respondent has entered appearance and filed her written statement. She admitted that the lease deed dated 22.09.2010 was executed and she also admitted that from that date she has been running a Beauty Parlour. It is averred that on 07.05.2013 the defendant/respondent had agreed to purchase the suit property against a sale consideration of Rs.17,00,000/- and an oral agreement of the sale/purchase of the suit property was entered into between the plaintiff/petitioner and the defendant/respondent. The defendant/respondent is said to have given a sum of Rs.3,00,000/- in the month of June, 2013. It is further averred that the defendant/respondent asked for acknowledgement of the payment by the plaintiff/petitioner but the petitioner said that there is no need of the same. The plaintiff/petitioner also stated that from now the defendant/respondent is not required to pay the rent of the suit property and she had now become the owner of the suit property by virtue of the oral Agreement to Sell dated 07.05.2013 and that the defendant was no more a tenant in the suit property.

4. The above averments show that the relationship of the landlord and the tenant is admitted in the written submission. The defendant has relied upon some oral Agreement to Sell and allegedly a sum of Rs.3,00,000/- was paid without any receipt.

5. Thereafter, the respondent had stopped appearing and proceeded *ex-parte*.

6. A perusal of the application under Order XII Rule 6 CPC filed by the petitioner shows that the relief sought in the application is confined to a decree against the respondent for possession of the suit property/tenanted premises.

7. The trial court has only noted in the impugned order that the written statement does not contain any clear admission on the part of the defendant in the pleadings of the defendant, warranting passing of judgment at this stage in the case. Hence, the application was dismissed.

8. Catena of judgments of this court and the Supreme Court had settled the requirement of Order 12 Rule 6 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)***

9. 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.”

10. Admissions can be inferred from vague and evasive denials or admissions can even be inferred from the facts and circumstances of the case.

11. In my opinion, the impugned order has ignored the above noted legal position and has been passed contrary to the said legal position. The impugned order was passed in the absence of the respondent inasmuch as the respondent is *ex-parte* before the learned trial court. Accordingly, I do not see any reason to issue notice to the respondent. The said order dated 02.06.2016 is quashed. The matter is remanded back to the trial court to consider afresh and decide the application of the petitioner under Order 12 Rule 6 CPC.

12. The matter be listed before the concerned trial court on 06.08.2016. The trial court is requested to complete the hearing/judgment in the said application within two months from the first date of hearing.

JAYANT NATH, J.

JULY 12, 2016/v