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

+ **RFA 14/2015**

Reserved on: 30.11.2016
Date of decision: 09.01.2017

IN THE MATTER OF:

HAJRA PARVEEN

..... Appellant

Through: Mr. Sukhbir Singh, Advocate

versus

SAEED AHMAD KHAN AND ANR

..... Respondents

Through: Ms. Rana Parveen Siddiqui, Advocate
for R-1.

Mr. Nishant Singh, Advocate for R-2.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The appellant (daughter-in-law of the respondent No.1 and wife of the respondent No.2) has filed the present appeal, assailing a judgment on admission dated 24.9.2014, pronounced by the trial court in a suit for possession, recovery of mesne profit and damages instituted by the respondent No.1/plaintiff against her and her husband, (respondent No.2/defendant No.1) in respect of a part of premises No. H-57, New Seelampur, Delhi.

2. Stated briefly, the case set up by the respondent No.1/plaintiff in the suit is that he is the registered owner of the suit premises, which he had purchased from his own funds. The respondent No.2 is the son and the

appellant is the daughter-in-law of the respondent No.1/plaintiff and they are residing in one room in the suit premises with access to the common toilet and bathroom. Alleging that they had started to humiliate and disrespect him and his family members within a month of their marriage, the respondent No.1/plaintiff instituted a suit for possession, damages etc. against them. He claimed that his son and daughter-in-law had threatened to implicate him in a false case so as to grab his sole residential premises. Unable to take their misbehaviour any longer, the respondent No.1/plaintiff had left the suit premises alongwith his wife and children on 27.12.2013 and they went back to his native village in District Bulandshehar, UP. Later on, when the respondent No.1/plaintiff returned to the suit premises, the appellant and the respondent No.2 continued to misbehave with him. On 22.01.2014, they had lodged a false complaint against the respondent No.1/plaintiff and his family members with Police Station: Seelampur. Intervention of some relatives was sought to resolve the dispute between the parties and on 24.01.2014, a meeting was held in the suit premises but to no avail. As a result, the respondent No.1/plaintiff left the suit premises again after locking one room and shifted to his elder brother's residence at Shakurpur, Delhi, while his wife and daughter continued to reside at their native place. On 22.2.2014, a legal notice was dispatched by the respondent No.1/plaintiff to the appellant and the respondent No.2 by registered post, calling upon them to deliver the vacant peaceful possession of the suit premises and pay the mesne profits. It has been averred in the plaint that the AD card was not returned by the postal authorities but a copy of the legal notice alongwith the postal receipt has been filed alongwith the documents of title in respect of the suit premises.

3. Based on the aforesaid narrative, the respondent No.1/plaintiff had instituted the aforesaid suit against his son and daughter-in-law in July, 2014. After service of summons was effected on them, the appellant and the respondent No.2 filed separate written statements. In the written statement filed by the appellant, several preliminary objections were taken, which included pleas of lack of jurisdiction; objection to the *locus standi* of the respondent No.1/plaintiff to institute the suit; an assertion that the suit was based on fabricated facts and a concocted story and that no cause of action had arisen in his favour for the respondent No.1/plaintiff to have instituted the suit as she and her husband had never dispossessed him from the suit premises. Lastly, it was alleged that the respondent No.1/plaintiff is an advocate and on the basis of his position in the profession he, in collusion with his son, the respondent No.2 herein had instituted the eviction suit as they wanted the appellant/defendant No.2 to divorce her husband. On merits, the appellant/defendant No.2 has averred that she is the daughter-in-law of the respondent No.1/plaintiff and the suit premises is her matrimonial home, where she had been residing from the beginning. Rest of the contents of the plaint were denied by the appellant except to the extent that the respondent No.2/defendant No.1 is the real son and she is the real daughter-in-law of the respondent No.1/plaintiff and they are residing in the suit premises. The appellant also denied service of any legal notice on her.

4. In August, 2014, the respondent No.1/plaintiff filed an application under Order XII Rule 6 CPC praying *inter alia* that a judgment on admission be passed in his favour to the extent of recovery of possession of the suit premises on the ground that the admissions made by the appellant and the respondent No.2 in their written statements were sufficient to pass a decree

of possession against them and that vague denials in respect of the averments made in the plaint without raising any substantial defence, should be treated as admissions. A reply in opposition to the said application was filed by the appellant and the respondent No.2, who asserted that the pleas taken by them in the written statements were such that the matter had to be taken to trial and only after the evidence was led, could the case be finally decided. It was also stated that the respondent No.1/plaintiff wanted to illegally grab the suit premises on the basis of some false and fabricated documents and that he had left the suit premises of his own.

5. In the impugned judgment dated 24.09.2014, the learned ADJ observed that except for denying the receipt of notice of termination, the appellant/defendant No.2 and the respondent No.2/defendant No.1 had not raised any substantial defence; that they could not be allowed to raise a defence of title, questioning the ownership of the respondent No.1/plaintiff as it was not their case that they were occupying the suit premises in their own right or through anyone else. Holding that vide legal notice dated 21.02.2014, the respondent No.1/plaintiff had terminated the license of the appellant and the respondent No.2 due to a strained relationship between the parties, the learned trial court allowed plaintiff/respondent No.1's application under Order XII Rule 6 CPC, and passed a decree of possession against the appellant and the respondent No.2.

6. It is pertinent to note that after passing the judgment on admission on 24.09.2014, the learned trial court had proceeded to frame issues in respect of the relief of damages claimed in the suit. Further, on 02.12.2014, when the respondent No.1/plaintiff and his son, respondent No.2/defendant No.1 had appeared in person before the trial court, the latter had requested for one

month's time to vacate the suit premises, to which the father had agreed. An undertaking of the respondent No.2/defendant No.1 in this regard was duly recorded by the trial court. At the time of recording his statement, the respondent No.2/defendant No.1 had categorically stated that he had given the said undertaking not only for himself, but also on behalf of his wife, the appellant herein and he had agreed to hand over the keys of the suit premises to the respondent No.1/plaintiff in the court itself, on the next date. In view of the aforesaid development, the case was adjourned to 03.01.2015.

7. However, on 03.01.2015, the respondent No.2/defendant No.1 failed to turn up in court. Instead, the appellant/defendant No.2 had appeared alongwith her counsel and stated before the trial court that she will not vacate the suit premises as her husband had unauthorizedly given an undertaking on her behalf, of which she was unaware. Taking note of the fact that on 08.05.2014, when all the parties were present before the court, a precaution was taken of recording the statements of the appellant and her husband/the respondent No.2 to the effect that they did not have any dispute with each other and their only dispute was with the respondent No.1/plaintiff, the learned ADJ disbelieved the said assertion and he reiterated on 03.1.2015, that the appellant had already given a statement on oath that she did not have any dispute with her husband and that she had admitted to the fact that she is living with him in the suit premises.

8. Fully conscious of the fact that the hands of the respondent No.2 were completely tied as he had appeared before the trial court on 02.12.2014, and undertaken to vacate the suit premises and was therefore not in a position to assail the impugned judgment on admission, the appellant/daughter-in-law has approached this court and filed the present appeal, impleading her

father-in-law as respondent No.1 and her husband as respondent No.2.

9. Mr. Sukhbir Singh, learned counsel for the appellant relied on a decision in the case of Vijay Gupta and Ors. vs. Ashok Kumar Gupta reported as **AIR 2007 Delhi 166** to urge that admissions on the basis of which the court proposes to pass a decree under Order XII Rule 6 CPC have to be unambiguous, clear and unconditional and that a judgment on admission is not a matter of right, but a matter of discretion of the court. He argued that since the defence taken by the defendants in the written statements goes to the root of the case, this was not a fit case where the trial court ought to have exercised its discretion to pronounce a judgment on admission and the said discretion has been exercised erroneously. He also referred to a decision of the Division Bench of this Court in the case of Smt. Preeti Satija vs. Smt. Raj Kumar and Anr. passed in **RFA(OS) 24/2012 dated 15.01.2014** to argue that just as in the aforesaid case, the suit premises herein is also the matrimonial home of the appellant/daughter-in-law, who is entitled to reside therein and in view of the fact that she has denied the ownership of the suit premises by the respondent No.1 and further, having regard to her plea that her father-in-law had colluded with her husband to dispossess her from the said premises, the case ought to have been taken to trial for the respondent No.1/plaintiff to prove his title to the suit premises and to establish service of notice of termination on the appellant.

10. *Per contra*, Ms. Siddiqui learned counsel for the respondent No.1/plaintiff supported the impugned judgment on admission and pointed out that not only the trial court, even the High Court had made several efforts for the parties to arrive at an amicable resolution by referring them to mediation, but every such effort was thwarted by the appellant and her

husband. She asserted that there is no illegality or perversity in the impugned judgment, for interference, particularly, when it has not been denied by the appellant that she and her husband are not the owners of the suit premises and their conduct demonstrates that their occupation of the suit premises is on the basis of permissive user by the respondent No.1/plaintiff, who is the lawful owner. She asserted that no triable issue was raised by the appellant in the written statement in respect of the relief of recovery of possession, for any evidence to be led by the parties.

11. The Court has heard the rival submissions made by learned counsels for the parties and carefully perused the pleadings in the suit and the application filed by the respondent No.1/plaintiff under Order XII Rule 6 CPC, in the light of the findings returned in the impugned judgment on admissions.

12. Before proceeding any further, it is considered imperative to highlight the object of including Rule 6 to the provision of Order XII in the CPC by way of an amendment inserted by Act 104 of 1976. The object of Order XII Rule 6 is to enable the parties to obtain speedy justice and the courts are not expected to narrow down the scope and meaning of the said Rule in any manner. In the case of Shikharchand and Ors. vs. Mst. Bari Bai and Ors. reported as **AIR 1974 MP 75**, it was held that a judgment under Order XII Rule 6 CPC can be based on a statement made by the parties *de hors* the pleadings and such an admission could be either express or constructive. In the case of K.N. Construction vs. JVG Finance Ltd. reported as **(2004) 111 DLT 437**, a Single Judge of this Court had concurred with the view taken in Shikharchand (supra).

13. The scope and ambit of Order XII Rule 6 CPC was examined by the Supreme Court in the case of Uttam Singh Duggal and Co. Ltd. vs. Union Bank of India reported as **AIR 2000 SC 2740**, where the following observations were made :-

*“Para 12: As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, 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.**' We should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”* (emphasis added)

14. In the case of Delhi Jal Board vs. Surendra P. Malik reported as **104 (2003) DLT 151**, a Division Bench of this Court had laid down the tests for pronouncing a judgment on admission in the following words:-

“9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.” (emphasis added)

15. Coming to the case in hand, no doubt a judgment on admissions is a matter of discretion vested in the courts and not a matter of right, but the moot point is whether given the facts of the case, the learned trial court ought to have exercised its discretion in favour of the respondent No.1/plaintiff. This Court is of the opinion that all the tests laid down in the case of Surendra P. Malik (supra), stand satisfied here. The appellant has miserably failed to set up any defence in her written statement that requires evidence for determination of issues; nor has she taken any objection that goes to the root of the matter. In fact, the appellant has admitted that she, being the daughter-in-law and her husband being the son of the respondent No.1/plaintiff, were residing with him in the suit premises. So permissive user of the suit premises has not been disputed by the appellant. Furthermore, though the respondent No.1/plaintiff has categorically stated in para 1 of the plaint that he is the exclusive owner of the suit premises, only a bald averment has been made by the appellant in the corresponding para of the written statement to the effect that “*the contents of para 1 are denied for want of knowledge and the plaintiff be put to strict proof thereof.*” In the absence of any specific plea on this aspect, an adverse inference has been rightly drawn by the learned trial court against the appellant.

16. Further, in para 4 of the plaint, the respondent No.1/plaintiff has averred that the defendants had lost their right to reside in his premises without his permission due to their misbehaviour. In the corresponding para of the written statement, the appellant has admitted that she is the daughter-

in-law of the respondent No.1/plaintiff and that the suit premises is her matrimonial home, where she has been residing from the beginning. This must again be treated as an admission on the part of the appellant who has elected not to traverse the averments of the respondent No.1/plaintiff.

17. Applying the provision of Order VIII, Rule 5 CPC, which prescribes that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted, the inevitable inference is that the appellant has not denied that the ownership of the suit premises vests in the respondent No.1/plaintiff. In any case, she has not asserted any ownership rights in the suit premises and nor has she named any other person who has staked ownership rights therein. The vague denials coupled with the implied admissions made by the appellant in her written statement are considered sufficient for passing a judgment on admission. The nature of pleadings of the appellant in the written statement when read in the context of Rules (3), (4) and (5) of Order VIII CPC would lead to a conclusion that a decree ought to have been passed in favour of the respondent No.1/plaintiff, which the learned trial court had justifiably proceeded to do.

18. As noted hereinbefore, the Supreme Court had observed in the case of Uttam Singh Duggal (supra), that evasive and unspecific denials would amount to unequivocal admission of the contents of documents relied upon by the plaintiff and the said principle shall apply with equal force to pleadings as well. There are a catena of decisions on the above lines where the consistent view taken is that courts are required to ignore vague, evasive and unspecific denials and inconsistent pleas in the written statements and

replies (Ref: Rajiv Saluja vs. Bhartia Industires Ltd. and Anr. reported as **AIR 2003 Delhi 142**; and Rajiv Sharma and Anr. vs. Rajiv Gupta reported as **AIR 2004 Delhi 248**).

19. Having perused the averments made by the respondent No.1/plaintiff in the plaint when juxtaposed against the corresponding paras of the written statement filed by the appellant, it is crystal clear that except for bald and vague denials, the appellant has not taken any defence, which goes to the root of the matter. As for the reliance placed by learned counsel for the appellant on the decision in the case of Vijay Gupta (supra), there is no doubt about the principles of law set out in the aforesaid decision. However, in the present case, the respondent No.1/plaintiff has succeeded in making out a case for inviting a judgment on admissions.

20. Coming to the plea of non-receipt of the legal notice dispatched to the appellant and respondent No.2 by the respondent No.1/plaintiff by registered post, even if it is assumed for a moment that the notice terminating their license and calling upon them to vacate the suit premises was not served on them as alleged, the assumption is that on filing the suit for possession by the respondent No.1/plaintiff, the said license stood automatically terminated. The appellant was admittedly served with the summons in the suit on 22.03.2014 and later on, they had entered appearance through a counsel. The appellant was present in person before the trial court alongwith her advocate on 24.03.2014 and she had sought time to file the written statement. Upon the summons in the suit alongwith the documents being served on her, it has to be assumed in law that the appellant had received the eviction notice, which formed a part of the set of documents filed by the respondent No.1/plaintiff along with the plaint.

21. Further, this Court is of the opinion that reliance on the case of Preeti Satija (supra) can be of no assistance to the appellant herein for the reason that the facts of the aforesaid case are entirely different. In the said case, the focus of the Division Bench was on a shared household in a fact situation where the mother-in-law had instituted a suit for possession against her son and the daughter-in-law, who had been disowned and records revealed that the relationship between the son and the daughter-in-law had become estranged. Alleging collusion between the plaintiff and her son, the daughter-in-law had challenged a judgment on admission passed by the trial court under Order XII Rule 6 CPC, in a suit instituted by the mother-in-law. In the captioned case, observing that when there is discord between the husband and wife, the parents of the husband often use the tactic of disowning them and this is followed by the son moving out from the joint premises to leave his wife in the lurch, the Division Bench had set aside the impugned judgment on admission.

22. In the present case, the fact situation is entirely different. As noted hereinabove, the trial court has taken all the precautions to establish the cordial relationship between the appellant and her husband by recording their separate statements as long back as on 08.05.2014, wherein they had stated that they did not have any *inter se* dispute or marital discord and the only dispute was with their father-in-law, i.e., the respondent No.1 herein. Quite apparently, the appellant has now tried to portray an entirely different picture by alleging a collusion between the respondent No.1/plaintiff and her husband which is not borne out from the record. The appellant cannot be permitted to wriggle out of her own admissions or take advantage of the

decision in the case of Preeti Satija (supra), because there is no parity on facts in the instant case, with the fact situation of the said case. The reasons spelt out above are over and above the reasons furnished by the learned ADJ while passing the impugned judgment on admission pronounced against the appellant and her husband, the respondent No.2.

23. This appeal is therefore held to be devoid of merits and is accordingly dismissed with costs quantified at Rs.30,000/-.

JANUARY 9 , 2017
rkb/ap

HIMA KOHLI, J

