

\$~48

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

+ CM(M) 471/2017

SARANJIT SINGH AHLUWALIA Petitioner
Through: Mr.Prince Sahni, Advocate.

versus

SDMC & ANR Respondents
Through: Ms.Reema, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **28.04.2017**

CM Nos.16126/2017 & 16127/2017

1. Exemption allowed subject to all just exceptions,
2. Applications are disposed of.

CM(M) 471/2017

1. By invoking the jurisdiction of this Court under Article 227 of Constitution of India, the petitioner is assailing the order dated 23rd March, 2017 whereby the application moved by the petitioner under Order XII Rule 6 CPC has been dismissed by the learned Trial Court.
2. Learned counsel for respondent No.1/SDMC appeared on advance copy of the petition being served.
3. Though CAV No.424/2017 has been filed by the caveator/respondent No.2, none appeared on his behalf.
4. Vide impugned order dated 23rd March, 2017 the learned Trial Court dismissed the application filed by the petitioner under Order XII Rule 6 CPC

for the following reasons:

“3. The plaintiff has filed the present suit for demolition of unauthorized construction carried out by defendant no.4 over the roof of the second floor of the property where the plaintiff is residing i.e. property bearing plot no.127, Fateh Nagar, New Delhi-110018. However, no decree can be passed against defendant no.4 on the basis of any admission made by defendant no.1 & 2. Under Order 12 Rule 6 CPC the plaintiff is entitled to a decree when on the basis of admissions made by the defendant which are clear and conclusive, it can be held that the right of the plaintiff and its violation by the defendant is proved. However, in the present case, no admission has been made by the defendant no.4. Defendant no.1 & 2 are not having the same interest as defendant no.4 and therefore, any admissions on their part cannot be read against defendant no.4.”

5. A decree under Order XII Rule 6 CPC can be passed on admissions. Admission cannot be imposed on the parties to the suit and it is to be made without any room for misinterpretation. It must be clear, unambiguous, unconditional and unequivocal.

6. Here, in the instant case there was no admission by the defendant No.4. The suit for demolition of unauthorised construction filed by the petitioner/plaintiff against his brother and impleading South Delhi Municipal Corporation as party could not have been decreed on the basis of the status report/written statement filed by MCD.

7. I am of the considered opinion that the order passed by the learned Trial Court while dismissing the application under Order XII Rule 6 CPC to which the petitioner herein has taken the exception is based on the correct appreciation of material on record.

8. The impugned order does not require any interference by this Court in exercise of power vested under Article 227 of the Constitution of India.

9. The petition is dismissed.

10. No costs.

CM No.16125/2017 (Stay)

Dismissed as infructuous.

APRIL 28, 2017

'hkaur'

PRATIBHA RANI, J.