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

+ **RFA(OS) 46/2019 & C.M. No.21578/2019**

Reserved on: 06.05.2019

Date of decision: 31.05.2019

IN THE MATTER OF:

ANUPAMA BANSAL

..... Appellant

Through: Dr. Amit George, Mr. Nitesh Mehra,
Ms. Hitaakshi Mehra, Mr. Amol Acharya and
Mr. Rishabh Dheer, Advocates with appellant's
husband in person.

versus

SURAJ BHAN BANSAL & ANR

..... Respondents

Through: Mr. Ashish Aggarwal and Ms. Isha
Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE VINOD GOEL

HIMA KOHLI, J.

1. The present appeal is directed against an order dated 12.3.2109, passed by the learned Single Judge allowing an application filed by the respondent No.1/plaintiff No.1 and respondent No.2/plaintiff No.2 under Order XII Rule 6 CPC, registered as I.A. No.23589/2015. By the impugned order, the suit for declaration, cancellation, possession, rendition of accounts and permanent and mandatory injunctions filed by the respondents in respect of agricultural land, measuring 21 Bighas, 16 Biswas comprising of Khasra No.50/23 Min (0-7), 21 (4-16), 22 (3-16), 58/3 (0-9), 1 (4-12), 2 (5-12), 10 (2-0), 26 (0-04) situated in the revenue estate of Village Bakoli, Tehsil

Alipur, District North, known as Suraj Vatika, G.T. Road, Delhi (in short, ‘**suit property**’) has been decreed in their favour under Order XII Rule 6 CPC, declaring respondent No.2/plaintiff No.2 (HUF) as the owner and further declaring the Sale Deed dated 24.7.2013, executed by Rakesh Bansal (husband of the appellant and son of the respondent No.1/defendant No.1) in favour of his wife, the appellant/defendant No.2, as null and void. A decree of permanent injunction has been granted against the appellant and her husband restraining them from alienating, letting out or using the suit property for any commercial or other purpose. A decree of possession has also been granted directing the appellant and her husband to handover vacant and peaceful possession of the suit property to the respondents within four weeks. Lastly, the appellant and her husband have been directed to credit 1/3rd of the amount earned by them from the suit property, to the tune of Rs.50,73,666.67, in the account of the respondent No.2 within a period of four weeks. Additionally, the amount of rent that was deposited by the appellant and her husband in Court in terms of an order dated 30.5.2014, has also been directed to be released in favour of the respondents alongwith the interest accrued thereon.

2. The facts and circumstances giving rise to the present case are that the respondent No.1/plaintiff No.1 (father-in-law of the appellant) and the respondent No.2/plaintiff No.2, a HUF of which respondent No.1 is the ‘*Karta*’, had filed CS(OS) No.1789/2014 on the Original Side of this Court against Rakesh Bansal (appellant’s husband and son of the respondent No.1), arrayed as defendant No.1, the appellant (Rakesh Bansal’s wife and daughter-in-law of the respondent No.1) arrayed as defendant No.2 and M/s R.G. Associates, the tenant in the suit premises, arrayed as defendant No.3

in the suit. We may note here that the appellant has not impleaded her husband (defendant No.1) and the tenant (defendant No.3) as respondents in the present appeal.

3. The averments made by the respondents in the plaint are that the respondent No.2(HUF), whose Karta is the respondent No.1, is the owner of the suit property. On 19.3.1998, respondent No.1 executed a General Power of Attorney (GPA) in favour of his son (defendant No.1) to enable him to carry out various acts and deeds on his behalf. By virtue of the said GPA, defendant No.1 started handling the bank accounts of the respondents.

4. In January, 2013, the respondents/plaintiffs came to know that defendant No.1 had sold some of the properties belonging to them, transferred the sale proceeds into his own accounts and utilized them for his personal benefit without rendering any account to them. This made respondent No.1 execute a Cancellation Deed dated 17.5.2013 whereunder he revoked the GPA dated 19.3.1998, executed by him in favour of his son. The said Cancellation Deed was duly registered in the office of the Sub-Registrar. Contemporaneously, respondent No.1 despatched a notice dated 17.5.2013 to his son by speed-post informing him about the revocation of the GPA and cautioning him not to do any acts or deeds in furtherance thereto. He also got issued a public notice in two national daily newspapers on 7.6.2013, informing the public at large that he had revoked the GPA dated 19.3.1998.

5. After that, the respondents came to know that the defendant No.1 had executed a sale deed dated 24.7.2013, transferring the suit property in favour of his wife, the appellant/defendant No.2 which was registered. Based on the said Sale Deed, the suit property was also got mutated in favour of the

appellant.

6. The sale consideration mentioned in the Sale Deed is to the tune of Rs.2,40,71,000/-. The respondents have averred in the plaint that on examining the bank accounts, it transpired that a sum of Rs.2,00,00,000/- was returned by the defendant No.1 to his wife, the appellant herein and the balance amount of Rs.40,71,000/-, was transferred from the account of the respondent No.2 to a Private Ltd. Company. Further, the respondents have stated that they came to know that acting on behalf of the respondent No.2, defendant No.1 (husband of the appellant) had let out the suit property to the defendant No.3. Till 23.7.2013, some rent was being transferred into the account of the respondent No.2, but thereafter, defendant No.3 started paying the rent directly to the appellant. When the respondents confronted their son and daughter-in-law with the above and called upon them to render accounts, they flatly refused, thus compelling them to institute the suit.

7. After summons were served on them, a joint written statement was filled by the appellant (D-2) and her husband (D-1) stating *inter alia* that since respondent No.1(P-1) had taken *Sanyas* in the year 1998 and had executed a GPA in favour of the defendant No.1, for all intent and purposes the latter had become the '*Karta*' and manager of the respondent No.2; that respondent No.1 had never informed them about the cancellation of the GPA dated 17.5.2013 and therefore, the bar contemplated under Section 208 of the Indian Contract Act would come into play; that the cancellation letter dated 17.5.2013, issued by the respondent No.1 as also the postal receipts in support of proof of dispatch are fabricated; that the relief of a decree of possession is not maintainable without first seeking dissolution of the HUF, of which the defendant No.1 is a member. On merits, the appellant and her

husband denied the averments made in the plaint and stated that the farmhouse had been sold for the benefit of the HUF and the sale consideration was transferred to the account of the respondent No.2(HUF), of which the defendant No.1 and his mother are Directors.

8. In their replication, the respondents reiterated the averments made in the plaint and stated that the Sale Deed dated 24.7.2013 was executed by the defendant No.1 in favour of his wife, the appellant herein after the respondent No.1 had cancelled the said GPA, which fact was duly notified to the defendants No.1 and the appellant by virtue of the notice dated 17.5.2013 and the public notices dated 7.6.2013. It was further submitted that the GPA had been executed by the respondent No.1 in his personal capacity, in favour of his son (defendant No.1) but the same did not authorise him to act as the ‘Karta’ of the respondent No.2(HUF).

9. It is noteworthy that by an interim order dated 30.5.2014, the learned Single Judge had restrained the appellant (D-2) from selling, alienating, transferring or parting with possession of the suit premises. She was also directed to deposit the rent received from the suit property in court within two weeks, maintain a record in the event the suit property was given on rent or leased for a short period and file details of persons to whom the said property was leased and the amounts received. Further, the appellant’s husband (D-1) was restrained from acting in any manner on the basis of the GPA dated 19.3.1998.

10. During admission/denial of the documents, the appellant and her husband admitted the Sale Deed dated 24.7.2013. The respondents moved an application under Order XII Rule 6 CPC (I.A. No.23589/2015) stating *inter alia* that by admitting the said Sale Deed, the appellant and her husband had

admitted that the respondent No.1 is the '*Karta*' of the respondent No.2(HUF) and apart from the GPA dated 19.3.1998, no other document was executed by the respondents. Referring to the recital in the Sale Deed dated 24.7.2013, executed by the defendant No.1 in favour of his wife, the respondents asserted that the same is based on the GPA dated 19.3.1998, executed by the respondent No.1 in his personal capacity and since the suit property was owned by the respondent No.2 in respect whereof defendant No.1 had neither been appointed or nominated as the '*Karta*' of the HUF, nor had the respondent No.1 in his capacity as the '*Karta*' of the respondent No.2(HUF) authorized him to deal with the suit property, the entire transaction was a sham. The said application elaborated upon the three circumstances in which a property owned and controlled by the HUF could be sold/rented by a '*Karta*', namely, in times of distress, for the sake or benefit of the family or for pious purposes and stated that none of the said circumstances existed in the instant case. By the impugned order, the learned Single Judge invoked Order XII Rule 6 CPC for decreeing the suit on the basis of the unambiguous admissions made by the appellant and her husband.

11. A brief joint reply in opposition to the aforesaid application was filed by the appellant and her husband wherein, they stated that since cancellation of the GPA dated 19.3.1998 was never notified to them by the respondents, the said document was valid and all acts done thereunder, are deemed to have been done lawfully. They also contended that since the respondent No.1 had failed to perform his duties as a '*Karta*' of the respondent No.2(HUF) and it was the defendant No.1, who was managing all the affairs of the HUF, therefore, he is deemed to have assumed the role of a '*Karta*'

and Manager of the respondent No.2(HUF).

12. Besides the application filed by the respondents under Order XII Rule 6 CPC, they had also moved an application under Order XI Rules 12 to 14 CPC, on which an order was passed on 8.8.2016, directing the appellant and her husband to produce the original rent deed executed with the defendant No.3/tenant. By a subsequent order, all the defendants were directed to present themselves in Court on 10.12.2018, which they did. The statement of the defendant No.3/tenant was recorded to the effect that they were tenants in the suit premises till December, 2014 and had vacated the same thereafter but failed to inform the Court and that they had deposited the rent in court for a period of six months, from June, 2014 to December, 2014.

13. On the very same date, the statement of the defendant No.1 was also recorded wherein he confirmed having given the suit property on rent to the defendant No.3 and stated that they had vacated the same on 1.1.2015 and handed back the possession to him and his wife; thereafter he and his wife started using the suit property for commercial purposes by permitting hosting of 40 odd events (parties/functions etc.) on an annual basis. Defendant No.1 also admitted to the fact that though he was aware of the interim order passed in the suit proceedings, directing that the rent in respect of the suit property be deposited in court, they had neither deposited the rent, nor informed the court that the defendant No.3/tenant had vacated the suit property.

14. The learned Single Judge observed that since the Cancellation Deed dated 17.5.2013 was a registered document and a certified copy thereof had been placed on record, it was permissible to read it in evidence without requiring any oral evidence in view of the provisions of the Sections 74 and

78 of the Indian Evidence Act. Similarly, an assumption was drawn that once the respondent No.1 had sent a notice dated 17.5.2013 to the defendant No.1 informing him about cancellation of the GPA and the same was despatched through speed post and the original was placed on record, irrespective of the bald denial of the appellant and her husband, it was deemed to have been served on the addressee, in terms of Section 27 of the General Clauses Act, 1897. The learned Single Judge went on to hold that the defendant No.1 having admitted in the Sale Deed dated 24.7.2013 executed by him in favour of his wife, that his father (respondent No.1) is the '*Karta*' of the respondent No.2(HUF), nothing further would be required to be seen since it is an undisputed position that the ownership of the suit property is in the name of respondent No.2(HUF).

15. Concluding that the appellant and her husband had usurped the suit property belonging to the respondent No.2(HUF) of which the respondent No.1 is the '*Karta*', the learned Single Judge held that during the life time of his father, the defendant No.1 could not assume the role of a '*Karta*' of the HUF. It was further held that as the suit property is owned by a HUF, it could only be sold for the benefit of the family or to discharge a pious obligation or in distress and in the absence of any of the said circumstances, there was no question of the defendant No.1 selling the same in favour of his own wife. Aggrieved by the aforesaid order, the appellant has preferred the present appeal.

16. Dr. Amit George, learned counsel for the appellant argued that the impugned order is patently flawed for the reason that the appellant having denied all the averments made in the plaint, there are no admissions that can be held against her for invoking the provisions of Order XII Rule 6 CPC. He

submitted that for a decree to be passed under the said provision, the admissions must be clear and unambiguous, but the impugned order has failed to record any such admission made by the appellant; that though a triable issue has been raised by the appellant in the written statement regarding proof of receipt of the cancellation letter dated 17.5.2013, allegedly dispatched through speed post by the respondent No.1, the learned Single Judge passed a decree on admission; that while calculating the revenue generated from the suit property at Rs.1,52,21,000/-, the impugned judgment has failed to factor in the expenditure incurred, as is reflected in the Income Tax Returns of the appellant, which amount if deducted, would drastically reduce the figure of profit for the relevant years. In support of his submission on the scope of Section 208 of the Indian Contract Act, learned counsel cited Kashi Ram and Anr. Vs. Raj Kumar and Ors. reported as **AIR 2000 Rajasthan 405.**

17. *Per contra*, Mr. Aggarwal, learned counsel for the respondents, who appeared on a caveat, supported the impugned judgment and raised an objection as to the maintainability of the present appeal on the ground that the appellant had failed to implead her husband, who was arrayed as defendant No.1 in the suit as also the tenant, arrayed as defendant No.3 in the suit. He stated that the said act is not an omission, but done deliberately for the reason that immediately after the impugned judgment came to be passed, the appellant's husband, defendant No.1 went ahead and instituted a suit for partition in respect of the suit property on the Original Side of this Court, registered as CS(OS) No.19/2019 and vide order dated 03.04.2019, summons were issued in the said suit to the defendants/respondents, returnable on 13.8.2019. In support of the said submission, he handed over

a copy of the order dated 3.4.2019, passed in the captioned suit which reveals that one of the interim reliefs prayed for by the defendant No.1 in his suit was for restraining the respondents herein from dispossessing him from the suit property, but it was declined in the light of the order impugned in the present appeal.

18. We have heard the arguments advanced by the learned counsel for the parties, carefully scanned the pleadings in the suit and the application filed by the respondents under Order XII Rule 6 CPC as also the documents placed on record.

19. We may first examine the provision of Order XII Rule 6 of the CPC that is reproduced hereinbelow for ready reference:-

“Order XII - Admissions

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Rule 6:- (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 any 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 of which the said judgment was pronounced.”*

20. The law on the aspect as to what should constitute “*pleadings or otherwise*”, the words used under Order XII Rule 6 CPC, for passing a judgment on admission, is well settled. There are a line of decisions rendered by the Supreme Court and the High Courts that if there is sufficient material on record including express/implied admissions, that can validate

passing of a decree on the basis of such admissions, there is no impediment for the Court to accelerate the suit proceedings to a closure by passing a decree on admitted claims.

21. The scope and ambit of Order XII Rule 6 CPC was discussed by the Supreme Court in the landmark case of Uttam Singh Duggal and Co. Ltd. Vs. Union Bank of India reported as **AIR 2000 SC 2740**, where it was observed as under:-

“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)

22. In ITDC Ltd. Vs. M/s. Chander Pal Sood and Son reported in **84 (2000) DLT 337 DB**, a Division Bench of this Court interpreted the provisions of Order XII Rule 6 CPC in the following words:-

“17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing....”

23. Another Division Bench of this Court had the occasion to interpret the expression, 'otherwise' used in Order XII Rule 6 CPC in Rajiv Srivastava vs. Sanjiv Tuli and Anr. reported as **119 (2005) DLT 202 (DB)** and observed as below:-

“10. The use of the expression ‘otherwise’ in the aforesaid context came to be interpreted by the Court. Considering the expression the Court had interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also de hors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties’ statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein. ”

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

“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)

25. As can be seen from the above discussion, the aim and object of enacting Order XII Rule 6 CPC is to empower the court to pronounce a judgment on admission, when such admissions are considered sufficient to entitle the plaintiff in a suit, to a decree. The underlying object of enacting the said provision is to ensure speedy justice and save the parties from undergoing the travails of a protracted trial. Such admissions can be in the form of pleadings or otherwise, i.e., in the documents, correspondence etc. placed on record. Admissions can be oral or in writing. They can be constructive admissions without being specific or expressive, which fact can be inferred from vague and evasive denials in the written statement, while responding to specific pleas taken in the plaint.

26. For the sake of considering the arguments advanced by learned counsel for the appellant that his client did not make any admissions in the written statement, it is considered necessary to examine the said written statement jointly filed by the appellant and her husband and their joint reply to the application moved by the respondents under Order XII Rule 6 CPC.

27. Broadly speaking, the pleas taken by the appellant and her husband in their joint written statement were that the plaintiff No.2/HUF comprised of the plaintiff No.1 and his son, the defendant No.1 as its members and when the former had taken *Sanyas* in the year 1998, he had executed a Power of Attorney in favour of his son, authorizing him to manage all his affairs; that for all effects and purposes, defendant No.1 had become the *Karta* and Manager of the plaintiff No.2/HUF; that cancellation of the GPA dated 17.05.2013 by the plaintiff No.1 is hit by Section 208 of the Indian Contract

Act because he failed to inform the appellant and her husband about the said cancellation and also that the cancellation letter dated 17.05.2013 and the postal receipt annexed thereto are fabricated documents. In para 6 of the written statement, defendants No.1 and 2 admitted that the plaintiff No.2/HUF was the owner of the suit property. They did not deny the averments made by the plaintiffs in para 21 of the plaint that the suit property was sold by the defendant No.1 in favour of the appellant for a consideration of Rs.2,40,71,000/- and immediately on crediting the sale amount into the account of the defendant No.2/HUF, defendant No.1, who was actually operating the said account, had returned a sum of Rs.2 crores to the appellant. The appellant and her husband have only tried to justify the transaction by projecting that the sale consideration was transferred to the plaintiff No.2/HUF for the benefit of the HUF, a family concern in which the defendant No.1 and his mother are Directors.

28. Neither the appellant, nor defendant No.1 have denied the fact that it was the plaintiff No.1 alone, who had executed the GPA dated 19.03.1998 in favour of his son and that no Power of Attorney had ever been executed by the plaintiff No.2/HUF in his favour. They also admitted to the fact that the defendant No.1 was not the *Karta* of the plaintiff No.2/HUF. Instead, the plea taken is that though he ought to have assumed the role of a *Karta* and Manager of the plaintiff No.2/HUF, but in sheer respect for his father, he had got a Power of Attorney executed by him in his favour.

29. In the application moved by the respondents under Order XII Rule 6 CPC, they have averred in paras 7 to 9 and 11, as follows:-

“7. That in the recitals of sale deed dated 24.07.2013, Ex.P-1, it has not been mentioned and/or stated that the defendant No.1

has executed the sale deed dated 24.07.2013 as Karta of Plaintiff No.2.

8. That by admitting sale deed dated 24.07.2013, Ex.P-1, the defendants No.1 and 2 have admitted

(i) Plaintiff No.1 is Karta of Plaintiff No.2, HUF; and

(b) apart from General Power of attorney dated 19.03.1998, there does not exist any other document/attorney executed by Plaintiff No.1 or Plaintiff No.2 in favour of the defendants.

9. The as stated hereinabove, the sale deed dated 24.07.2013 (Ex.P-1) has been executed by the defendant No.1 to and in favour of defendant No.2 on the basis of general power of attorney dated 19.03.1998 whereas the fact remains that:

(a) the suit property is owned by Plaintiff No.2 which is an HUF and defendant No.1 was never appointed or nominated as Karta of HUF nor did Plaintiff No.1 authorised or empowered defendant No.1 to deal with the suit property;

(b) before execution of the said sale deed dated 24.07.2013, the general power of attorney dated 19.03.1998 already stood cancelled by means of cancellation of general power of attorney dated 17.05.2013; and

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11. That the suit property has been alleged to be sold for a total sale consideration of Rs.2,40,71,000.00 (Rupees Two Crores Forty Lac Seventy One Thousand only) which is alleged to be paid by defendant No.2 to defendant No.1 in the following manner:

(i) Rs.1,00,00,000.00 vide cheque No.290961 dated 22.04.2013;

(ii) Rs.1,00,00,000.00 vide cheque No.290962 dated 22.07.2013; and

(iii) Rs.40,71,000.00 vide cheque No.290963 dated 22.07.2013.

However, the statement of account of Plaintiff No.2, which was being operated by defendant No.1, goes to show that defendant No.2 has not paid any such amount to the Plaintiff No.2. it is submitted that on 25.07.2013, an amount of Rs.2,40,71,000.00

is transferred from account of defendant No.2 to account of Plaintiff No.2 and thereafter the said amount has been returned to defendant No.2 from the account of Plaintiff No.2 and therefore, no sale consideration of the aforesaid suit property has been paid by defendant No.2 to Plaintiff No.2 at all.”

30. In the corresponding paras of the joint reply filed in opposition to the aforesaid application, the appellant and her husband have simply stated that the averments made in paras 7, 8, 9 and 11 are a matter of record and need no reply. The deduction is that they have admitted that the plaintiff No.1 is the *Karta* of the plaintiff No.2/HUF and besides the GPA dated 19.03.1998 executed by the plaintiff No.1 in favour of his son, no other document was executed by either of the plaintiffs in favour of the appellant and her husband (defendants No.1 and 2), in respect of the suit property owned exclusively by the plaintiff No.2 (HUF).

31. Another significant admission on the part of the appellant and her husband emerges from the opening para of the recital of the Sale Deed dated 24.07.2013 (Ex.P-1) that mentions that the same was being executed by the defendant No.1 as the “*authorized person*” of the plaintiff No.2/HUF. However, while describing the plaintiff No.1 as the *Karta* of the plaintiff No.2/HUF, the Sale Deed is dead silent about any power of attorney executed by the plaintiff No.2/HUF in favour of the defendant No.1 thereby authorizing him to act for and on behalf of the HUF. For purposes of ready reference, the opening para of the captioned Sale Deed, is reproduced hereinbelow:-

“THIS SALE DEED is made and executed in Delhi on this 24th day of July, 2013 by RAKESH TRADING COMPANY HUF, through its Authorised person SHRI RAKESH BANSAL SON OF SHRI SURGAJ BHAN BANSAL authorized by its Karta

SHRI SURAJ BHAN BANSAL SON OF SHRI KEDAR NATH, resident of C-25, Cottage Road, Adarsh Nagar, Delhi vide regd. GPA as document No.7606, in Addl. Book No.IV, Volume No.4752, on pages 47 to 50, dt. 19/03/1998 duly regd. in the Office of Sub-Registrar No.I, Delhi (hereinafter called the VENDOR)”

32. It is also noteworthy that on the last page of the Sale Deed that bears the photographs of the vendor and the vendee, i.e., defendant No.2 and defendant No.1 (husband and wife respectively) defendant No.1 has conveniently described himself as the ‘Karta’ of the plaintiff No.2(HUF) knowing very well that he did not hold that status. Keeping in mind the aforesaid documents and in particular, the recitals contained in the Sale Deed executed by the defendant No.1 in favour of his wife, the appellant herein that makes a reference to the GPA dated 19.03.1998, executed by his father in his favour, the learned Single Judge has summarized the following admissions made by the appellant and her husband in para 11 of the impugned judgment:-

“11. a) The ownership of the property in the HUF, Plaintiff No.2 stands admitted.

b) Execution of GPA dated 19th March, 1998 by the father Plaintiff no.1 in favour of his son Defendant no.1 stands admitted.

c) The Sale deed dated 24th July 2013 was executed by Defendant no.1, in favour of his wife Defendant no.2, on the basis of the said GPA.

d) The sale has been made by Defendant No.1, acting in the name of HUF - Plaintiff No.2, to his own wife.

e) Plaintiff No.1 is karta of Plaintiff No.2 HUF”

33. As for the objection taken by the appellant and her husband that cancellation of the GPA by the respondent No.1 (P-1) by virtue of a registered Cancellation Deed dated 17.05.2013, had not been notified to them, we find force in the findings returned in the impugned judgment that a duly registered Cancellation Deed is a public document and once a certified copy thereof was placed on record, it can be read in evidence, in terms of Section 74 of the Indian Evidence Act. We are also not inclined to accept the submission made by learned counsel for the appellant that the Court ought to have called upon the respondents to lead evidence to prove despatch of the cancellation letter dated 17.05.2013 addressed to the defendant No.1 for three reasons. Firstly, the defence taken by the appellant and her husband was that the cancellation letter and the speed post receipt were “*forged*”. No plea was taken by them that the cancellation letter was not despatched by the plaintiff No.1 to the defendant No.1 by speed post. Secondly, the said cancellation letter was addressed by the plaintiff No.1 to the defendant No.1 and not to the appellant. When the addressee of the cancellation letter dated 17.05.2013 has himself elected not to question the findings returned in the impugned judgment in respect of service of the said letter on him by speed post, it does not lie in the mouth of the appellant to question the said service in this appeal. The appellant has also not indicated the basis on which she claimed the postal receipt a forged one. She did not plead having visited the concerned post office and obtained the report of falsity of receipt. Therefore the bald averments made in the written statement to the effect that the cancellation letter dated 17.05.2013 is a fabricated document and so are the postal receipts annexed thereto, has been rightly rejected by learned Single Judge. We are in agreement with the learned Single Judge that once a

document has been sent by speed post and the original speed post receipt placed on record, the said document is deemed to have been served on the addressee in terms of Section 27 of the General Clauses Act.

34. Lastly, we find that the appellant has deliberately failed to implead her husband as a party in the present appeal. Despite that, he was present in Court when arguments were being addressed in the appeal. This only goes to show that the appellant is acting as a mouth piece for her husband, who is actually pulling the strings. It is noteworthy that after the impugned judgment came to be passed, the appellant's husband has proceeded to institute a suit for partition in respect of the suit property against the respondents herein [CS(OS) 191/2019]. We are informed that the said suit has been registered and summons were issued by the learned Single Judge on 03.04.2019.

35. In para 3 of the preliminary objections taken in the joint written statement filed by the appellant and her husband, a plea has been taken that the plaintiff No.1 did not inform them about the said cancellation and since the cancellation was not known to the power of attorney holder personally, the Power of Attorney would remain valid. In our opinion, this plea is also not available to the appellant herein, who claims to have purchased suit property from her husband on the strength of a Power of Attorney, which was admittedly never executed in his favour by the plaintiff No.2/HUF, the lawful owner of the suit property.

36. In the instant case, not only did the respondent No.1/plaintiff No.1 cancel the GPA dated 19.03.1998 by executing a registered document, he took the precaution of informing his son (defendant No.1) about the said cancellation and issued public notices in the newspapers informing the

public at large about the said cancellation. In view of the above position, Section 208 of the Indian Contract Act would not be of any avail to the appellant. Nor does the decision in the case of Kashi Ram (supra) apply to the facts of this case for the reason that the appellant herein is not a third party, as was the position in the above case. She happens to be the wife of the defendant No.1. Once the plaintiff No.1 had terminated the Power of Attorney executed by him in favour of his son (D-1) and had duly intimated him of the same vide letter dated 17.05.2013, the appellant/wife cannot be heard to state that she was blissfully unaware of the said development thereby claiming the benefit of Section 208 of the Indian Contract Act. Being the wife of the defendant No.1, who had executed the Sale Deed in respect of the suit property, in her favour, she cannot feign ignorance of the fact that her father-in-law (plaintiff No.1) had terminated the Power of Attorney executed by him in favour of her husband. There is no manner of doubt that the appellant was well aware of the said termination.

37. In view of the clear and unambiguous admissions on the part of the appellant springing from the joint written statement and the joint reply to the application under Order XII Rule 6 CPC and the undisputed documents placed on record, i.e., GPA dated 19.03.1998, Sale Deed dated 24.07.2013 read along with the Cancellation Deed dated 17.5.2013 and cancellation letter dated 17.5.2013 executed by the respondent No.1, there was every reason for the learned Single Judge to have passed a judgment on admission. The submission made by learned counsel for the appellant that evidence ought to have been led in the suit as certain triable issues were raised in the written statement, is rejected as being devoid of merit.

38. On going through the joint written statement, we are of the opinion that the appellant and her husband have tried to take evasive pleas and made vague denials. In such circumstances, the provisions 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, would come into play. The inevitable inference is that the appellant has not denied the fact that the ownership of the suit property vests in the respondent No.2/HUF and not in the respondent No.1; that the respondent No.2/HUF did not execute any Power of Attorney or letter of authority in favour of the defendant No.1, authorising him to deal with the suit property on behalf of the HUF; that the appellant's husband (D-1) had executed the Sale Deed dated 24.07.2013 in favour of his wife on the strength of a cancelled Power of Attorney executed by the respondent No.1 and not by the respondent No.2/HUF, the actual owner of the suit property; that from out of a total sum of Rs.2,40,71,000/-, purportedly paid by the appellant/wife towards the sale consideration of the suit property, a sum of Rs.2 crores was routed back to her through her husband, who was in complete control of the affairs of the respondent No.2/HUF.

39. Not only this, the appellant is in flagrant violation of the restraint order dated 30.05.2014 passed in the suit proceedings, whereby she was directed to deposit the rents being received from the suit property in court, maintain a record in the event the said property is given on rent/lease or licence for a short period and file details of the persons to whom it had been leased and the amounts received. Admittedly, defendant No.3/tenant had vacated the suit property in December, 2014, which fact was kept away from

the Court. Thereafter, the appellant and her husband continued using the suit property for commercial gains by organising parties and events for individuals and generated huge revenue therefrom, details whereof were not revealed to the Court till as late as on 10.12.2018, when an order was passed calling upon them to file their affidavits disclosing the revenue earned by them from the suit property. When they filed their affidavits alongwith their Income Tax Returns for the years 2016-17, 2017-18 and 2018-19, they admitted that the appellant had earned rental income from the suit property to the tune of Rs.1,52,21,000/-, which amount in all fairness, ought to have been enured exclusively to the benefit of the respondent No.2/HUF, owner of the suit property. However, through the aforesaid clandestine sale transaction entered into by the defendant No.1 with his wife, the appellant herein, they contrived to route the said funds into the account of the appellant, thereby depriving the respondent No.2/HUF of the said amount since 24.07.2013, the date on which the invalid Sale Deed was executed by the defendant No.1 in favour of the appellant.

40. Coming lastly to the contention of the learned counsel for the appellant that while calculating the revenue generated from the suit property, the impugned judgment failed to factor in the expenditure incurred by the appellant that ought to have been deducted while awarding 1/3rd of the total revenue earned, in favour of the respondents, we are of the opinion that once the suit instituted by the respondents has been decreed in their favour and the Sale Deed dated 24.7.2013 executed in favour of the appellant, declared as null and void, then the entire revenue generated from the suit property ought to be disgorged and paid over by the appellant to the respondent No.2, the rightful owner of the suit property.

41. In view of the above, the direction passed in the impugned judgment, calling upon the appellant and her husband to pay back to the respondent No.2, only 1/3rd of the amount earned from out of a total sum of Rs.1,52,21,000/-, i.e., a sum of Rs.50,73,666.67, is unsustainable and is accordingly quashed and set aside, not for the reasons canvassed by the learned counsel for the appellant, but for the reasons noted above. The appellant is directed to credit the entire profit earned from the suit property w.e.f. 24.07.2013, in the account of the respondent No.2, within six weeks from today failing which the said amount shall carry interest @ 9% per annum, till realization.

42. The impugned judgment is upheld with a modification in respect of the relief of rendition of accounts, in terms of the directions issued above. The present appeal is dismissed alongwith the interim application, with costs quantified at Rs.50,000/-, payable to the respondents within six weeks.

(HIMA KOHLI)
JUDGE

(VINOD GOEL)
JUDGE

MAY 31, 2019
NA/rkb/ap