

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 80/2017**

SADHNA CHATHLI

..... Petitioner

Through: Mr. Anubhav Agrawal, Proxy counsel
(M-8287577405)

versus

POONAM GAUR AND ANR

..... Respondents

Through: Mr. Deepak Tyagi, Advocate (M-9811120780)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

14.02.2020

1. Proxy counsel for the Petitioner/Plaintiff (*hereinafter*, “*Plaintiff*”) submits that the Main Counsel is not available.
2. Ld. counsel for the Respondents/Defendants (*hereinafter*, “*Defendants*”) submits that this petition was filed in 2016 and since then, no proceedings are going on before the Trial Court and the adjudication of the suit is being delayed.
3. The suit is one for possession, permanent and mandatory injunction in respect of a shop on the Ground Floor of property bearing no. A-7/28, Krishna Nagar, Delhi-110051 (*hereinafter*, “*suit property*”) which is stated to be in the possession of the Defendants.
4. The Plaintiff moved an application under Order XII Rule 6 CPC seeking a decree on admissions. The application under Order XII Rule 6 CPC is based upon a sale deed dated 15th October, 2014, which, according to the Defendants is a sham document as there was another transaction in respect of a flat in Noida. The same has been captured by the Trial Court in

paragraph 3 of the impugned order dated 15th November, 2016. The Trial Court has come to the conclusion that the admission is not of such a nature so as to result in a decree being passed as there are contested facts in the matter. Paragraphs 8 to 11 of the impugned order reads as under:

“8. From the pleadings of the parties available on record, it is apparent that there are disputed questions of fact by the defendants. The submissions so made by the defendants by no stretch of imagination can said to be unequivocal and unambiguous, the same requires trial which cannot be decided without putting the matter to the trial and cannot be decided under the present application for consideration.

*9. The **Division Bench of Hon'ble Delhi High Court in a case reported as 129 (2006) Delhi Law Times 755 (DB)** has held that the essential feature of admission is that it should be concise and deliberate act. The legislative intent is clear from the provisions of the code that the admission has to be unambiguous and clear. But, in the present case the defendant has not admitted the claim of the plaintiff.*

10. It was further held in 129 (2006) Delhi Law Times 755 (DB) (Supra) that:-

"It is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather is a matter of discretion of a Court. Where the defendant has raised objection which will go to the very root of the case, it would not be appropriate to exercise discretion. The use of the words 'may' and 'make such orders' or 'give' such judgment' spells out that power under those rules are discretionary and use of discretion would have to be controlled in accordance with the known judicial cannons. The case which involves questions to be decided upon regular trial and alleged admissions are not

clear and specific, it may not be appropriate to take recourse to these provisions ".

11. In view of the facts and circumstances of the case and in view of the aforesaid judgment, I do not see any ground to allow the application under Order 12 Rule 6 CPC. The application under Order 12 Rule 6 CPC is accordingly dismissed. Application stands disposed off accordingly."

5. Since the suit itself is of 2015 and the filing of the present petition has brought the suit proceedings to a standstill, as also the fact that repeated adjournments are being sought on behalf of the parties, this Court is not inclined to adjourn the matter any further. A perusal of the impugned order and the stand of the respective parties shows that that the present is not a case for a decree on admission under Order XII Rule 6 CPC.

6. Accordingly, the petition is dismissed. All pending applications are also disposed of. The adjudication of the suit shall continue in accordance with law. The observations in the impugned order shall not affect the final adjudication of the suit.

PRATHIBA M. SINGH, J.

FEBRUARY 14, 2020

Rahul