

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 23, 2021

+ RFA 176/2020 & CM APPL.9212/2020, CM APPL.162/2021

JITENDER KUMAR

..... Appellant

Through: Mr. Vijay K.Gupta and
Ms.Mehul Gupta, Advs.

versus

HEMANT KUMAR GUPTA

..... Respondent

Through: Mr. Bhaskar Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This appeal has been filed by the appellant under Section 96 of the CPC against the judgment dated December 20, 2019 ('impugned judgment', for short) passed in a Civil Suit being CS No. 616415/2016 ('Suit', for short). This Suit was filed by the respondent / plaintiff seeking a Decree of Possession, Recovery of Arrears of rent / damages and Permanent Injunction against the appellant / defendant in respect of premises being Room No. 29, Third Floor of property No. 1663-66, Didwani Motor Market, Kashmere Gate, Delhi, ad-measuring 180 Sq. Ft. ('Suit Property', for short), being the owner of the same.

2. The facts, in brief, as noted from the impugned judgment,

plaint, LCR, lease agreement are, that the respondent / plaintiff let out the Suit Property to the defendant / appellant since 2005 and lastly it was extended vide lease agreement dated June 02, 2014 as executed between the parties ('Lease Agreement', for short) for a monthly rent of Rs. 3744/- payable by the defendant. As per the Lease Agreement, *inter-alia*, (i) the tenancy was liable to be terminated by way of service of one month's notice by either of the parties; (ii) plaintiff had received a sum of Rs. 12000/- as security, liable to refunded after the expiry of tenancy period; and (iii) in the event of determination of tenancy, as aforesaid, or by afflux of time the defendant does not vacate the property (that is the room in question) he was saddled with a liability to pay a penalty of Rs. 1000 (Rupees one thousand only) per day from the date of determination of his tenancy till he hands over possession thereof to the plaintiff.

3. Owing to defaults in payment of rent with effect from May 2014 and the unruly behaviour of the appellant /defendant on demands made for payment of arrears of rent, the plaintiff served a legal notice on September 02, 2014 terminating the tenancy of the appellant/defendant with effect from October 03, 2014 and also calling upon the appellant/defendant to pay rent within a period of 15 days. Since the appellant/defendant failed to hand over the actual vacant and peaceful possession of the Suit Property, the respondent / plaintiff filed the Suit.

4. Even though the defendant had put in appearance in pursuance of the Trial Court's summons, he failed to file the written statement and finally defence was struck of vide order of

the Trial Court dated August 12, 2015. The relevant portion of the said order reads as under:

*“ As the stipulated period of 90 days has already been expired since the date of appearance of the defendant, caused on 08.12.2014 and the WS has not been filed on behalf of defendant, the right to file WS by the defendant is struck off. **The application under Order 8 Rule 10 CPC stands disposed of in view of the above orders.***

*Since morning, none has appeared for the defendant despite repeated calls, **the defendant is proceeded ex parte.***

The list of witnesses and the affidavit-in-evidence of PWs be filed by the plaintiff.

*Be put up for PE (ex-parte) for **18.02.2016.***

Be put up with connected matter bearing CS No. 319/2014. ”

5. Thereafter, appellant/defendant moved an application under Order IX Rule 7 read with Section 151 CPC and with the said application appellant/defendant also filed his written statement. Subsequently, the respondent/plaintiff moved two applications under Order XII Rule 6 and Order VIII Rule 10 of the CPC.

6. The Trial Court vide order dated April 05, 2017, disposed of the application filed by the appellant/defendant under Order IX Rule 7, whereby, in the interest of justice, order dated August 12, 2015 to extent the appellant / defendant was proceeded *ex-parte* was set aside subject to payment of costs. The relevant portion of the order dated April 05, 2017 reads as under:

“By my separate order of the even date pronounced in the open court today, the application under Order IX Rule 7 read with section 151 of CPC made on behalf of the defendant is disposed of in terms that the plea of the

defendant to recall the order dated 12.8.2015 and thus, seeking setting aside of the order whereby his defence was struck off under Rule 10 of Order VIII of CPC is declined and his plea for condoning the delay in filing the written statement and taking on record the written statement is also declined. However, in the interest of justice and since, counsel for the defendant had sufficient cause for non-appearance on 12.8.2015, the order passed against the defendant under Rule 6 (a) of Order IX of CPC, whereby the defendant was ordered to be proceeded against ex-parte is set-aside subject to payment of cost of Rs. 1,000/- by the defendant to the plaintiff.

..... ”

7. Afterwards, pleadings were completed in the applications, and the application under Order XII Rule 6 filed by the respondent/plaintiff was disposed by the impugned judgment against the appellant/defendant.

8. It is noted from the impugned judgment that the ground raised by the respondent/plaintiff in his application under XII Rule 6 was that the defendant in his written statement filed along with the application under Order IX Rule 7 has admitted that (i) he has taken the premises on monthly rent of Rs. 3774/-; (ii) he has not paid or tendered the admitted rate; (iii) Lease Agreement was executed; (iv) unequivocally admitted the fact that the plaintiff *vide* legal notice dated September 09, 2014 has terminated the tenancy of the appellant/defendant. Reliance was also placed by the respondent/plaintiff on various receipts, Lease Agreement, plaint and reply filed by the defendant to the said application.

9. On the other hand, the appellant/defendant contested the application by raising the preliminary objection on maintainability and by stating that the plaintiff is not entitled for a

decree under Order XII Rule 6 as his plea for taking on record the written statement was not allowed and hence the plaintiff cannot take the plea of any admission mentioned in the written statement. Further, it was also the stand of the appellant/defendant that respondent/plaintiff had taken an advance loan amounting to Rs.1,00,000/- from the appellant/defendant in September of 2005 and a receipt to that effect was signed by the respondent/plaintiff, thereby allowing the appellant/defendant to use the premises and live there peacefully till the complete repayment of loan. It was also stated by the appellant/defendant that the application is not maintainable as the plaintiff has concealed the facts and has failed to repay the loan amount to the defendant along with interest at the rate of 24% per annum. Further, it was also stated by the defendant that on the defendant demanding repayment of the loan amount advanced, the plaintiff even proposed to sell his property against the loan amount but refused to sell or repay the loan amount. The appellant/defendant has however denied that the respondent/plaintiff terminated the tenancy vide notice dated September 02, 2014. It was stated in the reply to the application under Order XII Rule 6 that the plaintiff had let out the Suit Property to defendant at its own approach, from time to time against the loan amount and further it was increased for a consolidated period of five years with effect from April 01, 2014 upon monthly rental agreed to by the plaintiff subject to the condition that if the defendant fail to pay the rent, the same would be deducted from the loan amount taken by the

respondent/plaintiff.

10. The Trial Court after recording the stand and contentions of the parties held that although written statement was not taken on record, from the application under Order XII Rule 6, plaint, reply to the application under Order XII Rule 6, the position that emerges is that there existed a relationship of tenancy between the parties for a monthly rent of Rs. 3744/-. Since, the defendant has admitted in the reply (paragraph No.1 on merits) that the tenancy has expired, the defendant is under an obligation to handover the possession of the Suit Property. The relevant portion of the impugned judgment reads as under:

“

Although, the written statement sought to be filed on behalf of the defendant has not been taken on record, but from the contents of the reply to the application under Order XII rule 6 of CPC made on behalf of the defendant it has emerged that the defendant has admitted that there existed relationship of tenant and landlord between him and the plaintiff in respect of the suit property and the said tenancy has already expired. The contention of the defendant is that at the time of taking the suit property on rent he gave loan amount in the sum of Rs. 1,00,000/- to the plaintiff and after expiry of tenancy when he demanded the loan amount from the plaintiff, the plaintiff allowed him that he could live and legally use the premises till the repayment of the loan by the plaintiff to him. The defence set up by the defendant is virtually that having taken loan from the defendant the plaintiff mortgaged the suit property to him with right to keep possession. Such type of mortgage can be created only by a written instrument registered as per law. After expiry of tenancy, even if the possession of the defendant was permissive, the plaintiff has already withdrawn such permission.

From the contents of the plaint and the application

under Order XII rule 6 of CPC and the reply to the said application filed by the defendant the position which emerges is that the defendant has not denied the relationship of landlord and tenant between him and the plaintiff at the monthly rent of Rs.3,744/-. The defendant has also not denied, rather he has admitted in paragraph no. 1 of reply on merits that the tenancy has expired and he is not staying in the suit property under a valid tenancy. Since, the tenancy of the defendant has already expired, therefore, he is under an obligation to handover possession of the suit property to the plaintiff.

In view of above discussion the application under Order XII rule 6 of CPC made on behalf of the plaintiff is allowed to the extent that a decree is ordered to be passed against the defendant and in favour of the plaintiff to handover the suit property, that is room no. 29 (having an area of approximately 180 square feet), on third floor of property no. 1663-66, Didwania Motor Market, Kashmiri Gate, Delhi as shown in red colour in the site plan filed alongwith the plaint on 17.11.2014. Decree sheet be prepared accordingly.....”

11. It is the appellant's case that the Trial Court, while invoking jurisdiction under Order XII Rule 6 CPC, decreed the Suit for the relief of possession vide the impugned Judgment and the said Suit is pending trial for other reliefs of recovery of arrears of rent / damages.

12. It is stated by the appellant that his right to file written statement was struck off vide order dated August 12, 2015 under an application filed by the respondent / plaintiff under Order VIII Rule 10 CPC on account of non-filing of written statement with the stipulated time. Even though the application moved by the appellant / defendant under Order IX Rule 7 CPC to set aside the said order was not allowed, the order of the Trial Court to

proceed *ex-parte* against the defendant was set aside vide order dated April 5, 2017.

13. It is stated by the appellant that it is a matter of record as well as an admitted case of both the parties herein that the written statement of the appellant was not taken on record by the Trial Court and his defence was struck off. It is also stated that the Trial Court did not proceed in the matter under Order VIII Rule 10 CPC or pass a Judgment forthwith on merit on the basis of material available on record nor proceeded to hold trial.

14. It is subsequent thereto that the Trial Court passed the impugned Judgment on an application under Order XII Rule 6 CPC.

15. It is stated by the appellant that in the absence of defence or defence being struck off by the Trial Court, the jurisdiction under Order XII Rule 6 CPC cannot be invoked as there is no pleadings from the side of the appellant/defendant and further such pleadings cannot be considered.

16. It is also stated that since there is no admission / denial of documents of the respondent / plaintiff nor any statement under Order X has been recorded which could tantamount to clear unambiguous, unequivocal admission, Order XII Rule 6 CPC could not have been invoked.

17. It is also the case of the appellant that in fact, there was no pleading or material available on record which could contain admissions on his behalf for the Trial Court to take recourse under XII Rule 6 CPC. In other words, if no material is available to pass Judgment under Order VIII Rule 10 CPC, no jurisdiction

is vested with the Trial Court to invoke order XII Rule 6 CPC.

18. It is stated by the respondent that recourse of the Trial Court to the reply filed by the appellant / defendant to the application under Order XII Rule 6 CPC is contrary to law as once defence is struck off, the said reply is non-est and meaningless. Further, even the filing of the reply to application under Order XII Rule 6 CPC itself is contrary to law as defence was already struck off and defendant is not entitled to inject defence under the garb of reply or any other method under provisions of CPC. Therefore, the Trial Court in the prevailing facts and circumstances has no jurisdiction whatsoever to invoke Order XII Rule 6 CPC.

19. Even otherwise, for the purpose of Order XII Rule 6 CPC admissions cannot be presumed or otherwise inferred indirectly unless such admissions are made out in an unequivocal and unambiguous manner in the written statement filed by the defendant nor otherwise from the documents filed in support of the written statement. In the eventuality as in the present case where defence is struck off, no assessment or enquiry by the Trial Court could formulate admissions out of the pleadings of the plaintiff / respondent.

20. It is also stated that the veracity of the averments made by the plaintiff in the plaint need to be ascertained by holding trial or other cogent evidence in the shape of judicial record or otherwise proven on record. Hence, in the present case the Trial Court has proceeded without jurisdiction under Order XII Rule 6 CPC and ought to have proceeded to hold trial to ascertain the veracity of

the plaintiff's averments. Thus, according to the appellant the impugned Judgment is a nullity both on the point of jurisdiction and on merits.

21. Mr. Vijay Gupta, learned Counsel appearing for the appellant, has reiterated the grounds taken in the appeal in his oral submissions to contend that the impugned judgment is therefore liable to set-aside cumulatively for the following reasons:

(i) No defence of appellant is taken on record (Written Statement). Thus, reply to application under Order XII Rule 6 of CPC is also automatically struck off in terms of order dated August 12, 2015. Calling upon appellant to file reply to the said application becomes redundant and meaningless as appellant has been debarred from raising any defence in the matter.

(ii) Respondent's case has to stand on his own legs to get a decree either on merits or otherwise on the basis of admission. The possibility of admission on part of appellant is ruled out vide order dated August 12, 2015. Thus, reply of appellant does not constitute a defence nor decree could be passed in law on such basis.

(iii) Jurisdiction under Order XII Rule 6 of CPC is a *suo-moto* jurisdiction. No application or reply is required. Moreover, having struck off defence, it was not available to the Trial Court to ask for reply of appellant or accept such reply on record.

(iv) The Trial Court ought to have proceeded against appellant under Order VIII Rule 10 of CPC on merits, out of existing material on record or by recording evidence and therefore

invoking jurisdiction under Order XII Rule 6 of CPC is completely perverse.

(v) Without prejudice to said legal objections, even the reply is not considered as a whole to pass impugned judgment. It is self-evident from impugned judgment that admissions are inferred by selective reading of some parts of the reply and leaving other parts of the reply. In fact, it is the case of the appellant/defendant that respondent took a loan of Rs. 1,00,000/- in September 2005 and by way of security the possession of suit property was handed over to appellant to use and enjoy the same till the repayment of loan dues. Thus, a plea of mortgage with delivery of possession is made out. This plea cannot be ignored on the pretext of non-registration of mortgage as has been held in impugned judgment

(vi) Without prejudice to above legal objections, reply ought to have been considered as a whole and not in bits and part to infer admission and pass judgment under Order XII Rule 6 of CPC. Inferred admissions are to be clean, clear, unambiguous, unequivocal to pass judgment on admissions and not otherwise; which is a well settled law without any exception.

(vii) Application under Order XII Rule 6 of CPC and its reply are not to be analysed without their being pleadings of the party on record or the same being contrary to such pleading;

(viii) No doubt, Trial Court has discretionary powers under Order XII Rule 6 of CPC provided there are clean, clear, unequivocal admissions on the part of defendant. In the absence of such admissions, Order XII Rule 6 of CPC and cannot be

invoked and discretion shall become inconsequential.

22. Mr. Gupta, in support of his contention that the admission has to be unambiguous, clear and unconditional and the law would not permit admission by inference as it is a matter of fact, has placed reliance on the Apex Court judgment in *Himani Alloys Ltd. v. Tata Steel Ltd., 2011 (15) SCC 273*, as well on a judgment of this Court in *Raj Kumar Chawla vs. Lucas Indian Services, AIR 2006 Delhi 266*.

23. He has also relied upon the Supreme Court judgment in *S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287*, wherein it was *inter-alia* held that the words in Order XII Rule 6 CPC 'may' and 'make such order...' show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right and that judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where defendants have raised objections, which go to the root, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC.

24. It is the case of the respondent/plaintiff and as contended by Mr. Bhaskar Tiwari, learned counsel appearing for the respondent that the appellant has not denied the relationship of landlord and tenant and in fact, the appellant has filed the present appeal on the premise that the appellant is a tenant. It is also stated by Mr. Tiwari that the appellant has nowhere averred that the tenancy is protected by the provisions of Rent Control Act.

25. It is submitted by Mr. Tiwari that it is evident that notice dated September 02, 2014 whereby the respondent/plaintiff

terminated the lease was received by the appellant as he gave a reply to the same vide letter/reply dated September 15, 2020.

26. On the pleas taken by the appellant/defendant that (i) the respondent/plaintiff's case has to stand on its own legs to get a decree either on merits or otherwise on the basis of admission; (ii) the possibility of admission on part of appellant is ruled out vide order dated August 12, 2015 as there was no pleading and; (iii) application under Order XII Rule 6 of CPC and its reply are not to be analyzed without their being pleadings of the party on record or contrary to such pleading; it is submitted by Mr. Tiwari that admissions can be in the form of pleadings or otherwise, i.e., in the documents, correspondence etc. placed on record in view of the expression 'or otherwise' in Order XII Rule 6. He also stated that admissions can be oral or in writing. In support of his submission, he has relied upon the following judgments:

1. ***Anupama Bansal v. Suraj Bhan Bansal & Anr., 2019 (260) DLT 465;***
2. ***Prem Narain Misra v. Faire Brothers Export and Import Ltd., MANU/DE/8255/2007;***
3. ***National Textile Corporation Ltd. and Ors. Vs Ashval Vadera, 2010 (167) DLT 602;***

27. Further, it is submitted by Mr. Tiwari that this Court has, in the case of ***Madhu Sehgal v. Rajesh Sharma, (2011) 126 DRJ 276***, passed judgment under the provisions of Order XII Rule 6 after striking off the defence of the defendant therein on the basis of documents placed on record.

28. That apart, Mr. Tiwari submitted that even on the basis of

admission made by a party in another proceeding or even in reply to application under Order XII Rule 6 CPC, Order XII Rule 6 application can be allowed, by anchoring his submission on the judgment of this Court in ***Praveen Saini v. Reetu Kapur and Ors., 246 (2018) DLT 709***. In this regard he has pointed out that the appellant herein, in a separate suit filed by the respondent for Damages for actionable wrong titled ***Hemant Gupta v. Jitender Kumar*** being ***CS No.319/2014 (new number CS/614813/2016)***, being the defendant therein admitted vide his written statement the contentions raised by the respondent, plaintiff therein, in the plaint regarding renewal of tenancy and execution of Lease Agreement dated June 02, 2014 and the rate of rent.

29. On the plea raised by the appellant that a mortgage with delivery of possession was created in favour of the appellant as the appellant had advanced a loan of Rs. 1,00,000/- in September, 2005 to the respondent/plaintiff and by way of security, possession of the Suit Property was handed over to appellant to use and enjoy the same till the repayment of the loan dues, was concerned, it is submitted by Mr. Tiwari that the Appellant has not placed any document either before the Trial Court or before this Court in support of the aforesaid fact and that Even the Lease Agreement dated June 02, 2014 (the execution thereof is admitted by the Appellant) is conspicuously silent on this aspect. It is also submitted that any rights in immovable property of the value of one hundred rupees and upward can be created only by registered instrument and the Trial Court in the impugned judgment has rightly held that the such type of mortgage can be created only by

a written instrument registered as per law. On the unsustainability of the plea of the appellant, Mr. Tiwari has relied upon a judgment of this Court in *Sanjeev Kumar v. Amarjeet, MANU/DE/1649/2020*, wherein in a petition filed under Article 227 of the Constitution, a similar plea was taken by the petitioner therein and the Court *inter-alia* upheld the judgment passed by the Trial Court on the observation that no suit or counter claim for recovery of amount has been filed by the petitioner therein and even the case that the rate of interest of the loan claimed to be advanced was far in excess, in lieu of rent.

30. On the stand taken by the appellant/defendant that there is no unequivocal, unambiguous admission, it is submitted by Mr. Tiwari that to establish the relationship of landlord and tenant, termination of tenancy and rate of rent are sufficient. The plea is contested by Mr. Tiwari by relying upon the following documents/admissions:

- i. Lease Agreement dated June 02, 2014: the execution of which has been admitted by the appellant in (a) written statement filed in suit No. 319/2014 (New No. 614913/2016) titled *Hemant Kumar Gupta v. Jitender Kumar* and; (b) In the Reply to the application under Order XII Rule 6 CPC.
- ii. Notice dated September 02, 2014: the service of the Termination Notice dated September 02, 2014 is specifically admitted in view of the reply, to the same by the appellant, dated September 15, 2014.
- iii. Admission of rent as Rs.3,744/-: in (a) written statement filed in suit No. 319/2014 (New No. 614913/2016) titled

Hemant Kumar Gupta Vs Jitender Kumar and; (b) reply dated September 15, 2014 to the Termination Notice dated September 02, 2014.

31. In fact, it is submitted by Mr. Tiwari that the Trial Court has rightly passed the impugned order as the appellant/defendant in the written statement filed in another suit as well as in the reply to the termination notice has, unambiguously and unequivocally, admitted the relationship of landlord and tenant, termination of the tenancy and the rate of rent.

32. Having heard the learned counsel for the parties, before I deal with the submissions made by them, it is important to examine the provisions of Order XII Rule 6 of the CPC. The said provision reads as under:

“Order XII - Admissions

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XXX

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.”

33. On the perusal of Order XII Rule 6, a question would arise as to what would constitute ‘*pleading or otherwise*’ and the law in that respect is well settled in terms of the judgment of the Division Bench of this Court in *Anupama Bansal (supra)* wherein paras 20 to 24 held as under:

“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 supplied)

34. It is a settled law that Order XII Rule 6 is an enabling provision which confers discretion on the Court in ensuring speedy justice on an admission(s) to the extent of the claim admitted by one of the parties of his opponent's claim. As noted from the above, such admissions can be in the form of *pleading or otherwise*, i.e., in the documents, correspondence etc., placed on record, it can be oral or in writing. The admission(s) can be constructive admissions as well without it being specific or expressive, which can be inferred from vague and evasive denials in the written statement while responding to specific pleas taken in the plaint.

35. In the case in hand, however, it is a conceded position that the right of the appellant / defendant to file written statement/defence was struck off. Though the appellant /

defendant was proceeded *ex-parte*, the order of *ex-parte* was set aside by the Trial Court on an application filed by the appellant under Order 9 Rule 7 CPC vide order dated April 05, 2017. Be that as it may, on the application filed by the respondent / plaintiff under Order XII Rule 6, a reply was filed to the same by the appellant / defendant and it was considered by the Trial Court while deciding the said application. In the application under Order XII Rule 6 CPC, the respondent/plaintiff has in para 4 primarily stated that the appellant/defendant has made an unequivocal and unambiguous admission of the fact that he is the tenant of the Suit Property and Lease Agreement was executed on June 02, 2014 and as per agreed terms of the Lease Agreement, the defendant is liable to pay the rent @ Rs.3,744/- per month. The appellant/defendant has unequivocally admitted that the respondent/plaintiff vide legal notice dated September 02, 2014 terminated the tenancy of the appellant/defendant and demanded the arrears of the rent. As stated above, in the reply to the application under Order XII Rule 6, the appellant/defendant has in reply to para 4 has stated as under:

“4. That the content of para no. 4 under reply is wrong and denied to the extent of matter of record. It is submitted that after passing the order dated 05.04.2017 the Hon’ble Court declined the taking the written statement on record therefore the plaintiff be put to strict proof the admission and existence of relationship of landlord and tenant.”

36. No doubt, in para 2 to the preliminary objections, a stand has been taken by the appellant/defendant that the plaintiff had taken a loan of Rs. 1,00,000/- from the appellant/ defendant in the

year 2005 and a receipt thereof was also signed by the respondent/plaintiff with an understanding that the respondent / plaintiff allowed the appellant / defendant to live peacefully and legally use the Suit Property till the repayment of the loan by the respondent / plaintiff to the appellant / defendant which stand is similar to stand taken by the appellant/defendant in his reply dated September 15, 2014 to the legal notice dated September 02, 2014 issued by the respondent/ plaintiff. However, no receipt of the loan advanced by the appellant/defendant of which a reference has been made in the reply was ever been produced by the appellant/defendant before the Trial Court or even before this Court. This is primarily because the defence of the appellant/defendant was struck off and the written statement filed by the appellant/defendant was not taken on record.

37. Even if such a stand of the appellant/defendant is accepted, the same does not further the case of the appellant/defendant, as it is not the case of the appellant/defendant that along with the written statement, a counter-claim for recovery of alleged loan amount advanced was filed. According to the stand of the appellant/defendant in the reply to the application under Order XII Rule 6, he has admitted that he was under month-to-month tenancy, reserved a right of monthly rent of Rs.3,744/- and the respondent/ plaintiff has terminated the tenancy vide legal notice dated September 02, 2014 in respect of the Suit Property w.e.f. October 03, 2014 (paragraphs 1 and 2 (parawise reply) of the reply filed to application under Order XII Rule 6).

38. It is a settled law that a landlord in a suit for ejectment

(Ref: CM(M) 433/2020, Sanjeev Kumar v. Amarjeet, decided on August 31, 2020) has to establish; (i) existence of a relationship of landlord and tenant; (ii) that the monthly rent is more than Rs.3,500/- (to be outside the Delhi Rent Control Act, 1958); (iii) that there is no subsisting term of lease under any registered agreement; and (iv) the month to month tenancy has been terminated by the service of a legal notice.

39. In view of the above position, it must be held that on the basis of a categorical admission made in the reply to the application under Order XII Rule 6 and in the absence of the appellant / defendant producing any document(s) with regard to loan, as allegedly advanced, the requirement for passing a decree under Order XII Rule 6 CPC is satisfied. Further, the advancement of loan cannot be a bar for the respondent/plaintiff to seek ejectment of the appellant/defendant and in such eventuality the appellant/defendant could have sought recovery of the loan amount, for which, remedy available has been lost by the appellant/defendant by not filing the written statement and a counter-claim claiming the amount.

40. That apart, without any written statement/counter-claim on record, the appellant/defendant, before the Trial Court, had a limited right of cross-examination (without putting forward his defence) that the respondent/plaintiff has not made out any *prima facie* case for grant of relief as prayed for in the Suit, which according to this Court, in the facts, the appellant/defendant could not have succeeded.

41. Learned counsel for the appellant / defendant had relied

upon the judgments in the case of *Raj Kumar Chawla (supra)*, *Himani Alloys Ltd. (supra)* and *S.M. Asif (supra)* to contend that (i) it is only when an admission is unambiguous, clear and unconditional Order XII Rule 6 CPC can be invoked; (ii) the power under Order XII Rule 6 being discretionary, cannot be claimed as a matter of right; and (iii) in the facts when the appellant/defendant has raised an objection of advancing a loan to the respondent/ plaintiff makes triable issue, hence the impugned judgment could not have been passed are concerned, in view of my discussion above, the judgments have no applicability in the facts of this case.

42. I do not see any infirmity in the order of the Trial Court, the appeal is without merit. The same is dismissed.

CM APPL.9212/2020 & CM APPL.162/2021

In view of the order passed in the appeal, these applications are also dismissed.

V. KAMESWAR RAO, J

FEBRUARY 23, 2021/aky