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

Date of decision: 8th December, 2021

+ **RSA 90/2021 & CM APPLs. 44124-26/2021**

GURBINDER SINGH DHILLON Appellant
Through: Mr. S.S.Jauhar and Mr. Amiet
Andlay, Advocates(M: 9811151686)
versus

GAGAN DASS Respondent
Through: Mr. Vipin Kumar Sain and Mr.
Pawan Kumar, Advocates(M:
9599553147)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPLs. 44125/2021 & 44126/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

RSA 90/2021 & CM APPL. 44124/2021 (for stay)

3. The present is a second appeal challenging the impugned order dated 2nd December, 2021, by which the Appellate Court in ***RCA DJ 47/2020*** titled ***Gurbinder Singh Dhillon v. Gagan Dass***, has upheld the judgment and decree dated 20th September, 2019, passed by the Trial Court in ***CS SCJ 83556/16*** titled ***Gagan Dass v. Gurbinder Singh Dhillon***.

4. The suit for possession, recovery for arrears, rent and damages and permanent injunction, was filed by the Plaintiff/Respondent/Sh. Gagan Dass, S/o Late Jai Karan Dass (*hereinafter "Plaintiff"*) in respect of property

bearing No. P-81, South Extension, Part-II, New Delhi-55 which is admeasuring 200 sq. yards (*hereinafter "suit property"*). The case of the Plaintiff was that the said property was leased out to the Defendant vide lease deed dated 5th August, 2009 w.e.f. 1st August, 2009, for a mutually agreed monthly rent of Rs.6,000/-. The said tenancy was for a period of three years and had expired due to efflux of time. The tenancy was terminated by the Plaintiff vide notice dated 22nd December, 2014, and thereafter the suit has been filed claiming the outstanding rent since 2013, along with possession. The reliefs claimed in the suit are as under:

"a. pass a decree of possession in favour of the plaintiff and against the defendant in respect of the property i.e. P-81, South Extension, Part-II, New Delhi admeasuring about 200 sq. yds. more particularly shown in the site plan attached herewith, and

b) pass a decree of sum of Rs. 1,50,000/- in favour of the plaintiff and against the defendant, being arrears of rent w.e.f 31/12/2012 to till date and till handing over the peaceful vacant possession of the suit property and

c. pass a decree in favour of the plaintiff and against the defendant for a sum of Rs.15,000/- per month (which is the prevalent market rent of the suit property) as mesne profits and damages for illegal use and occupation of the property w.e.f. 31/12/2012 till the date of handing over of possession by the defendant upon which the plaintiff undertake to pay the court fees on the amount so awarded in favour of the plaintiffs and

d. pass a decree of permanent injunction in favour of the plaintiff and against the defendant, its agents, representatives, employees workmen or any other person acting for, through and/or on behalf of the defendant from parting of the possession of the suit property to any third person.

d. award pendent elite, and future interest 18% per annum on the amount due to the plaintiff till the realization

of the aforesaid amount and
e. award cost of the suit in favour of the plaintiff and
against the defendant; and
f. any other order or orders which this Hon'ble Court
may deem fit and proper in the given fact and
circumstances of the case may also be passed."

5. Issues were framed in the suit on 15th December, 2015, as below:

"Issue no.1 Whether the plaintiff is entitled to relief of
possession of the premises as prayed for? OPP

Issue no.2 Whether the plaintiff is entitled to relief of
recovery of Rs.1,50,000/- as arrears of rent as prayed for, if
yes for which period? OPP

Issue no.3 Whether the plaintiff is entitled to mesne profits
prayed for, if yes at what rate and for which period? OPP

Issue no.4 Whether the plaintiff is entitled to interest upon
the arrears of rent and damages? OPP

Issue no.5 Whether the plaintiff is entitled to relief of
permanent injunction as prayed for? OPP

Issue no.6 Whether the present suit is not maintainable for
want of cause of action and suppression of material facts?
OPD

Issue No.7 Relief."

6. The evidence also commenced and some part of the cross-examination was recorded however, at that stage, there was a change in counsel and an application under Order XII Rule 6 CPC was filed on behalf of the Plaintiff, relying on the admissions in the written statement. The said application has been decided by the Trial Court vide order dated 20th September, 2019. The Trial Court has arrived at a finding that there are clear admissions made by the Defendant in this case in the written statement. Since the fresh lease agreement dated 5th August, 2009, (a typographical error led to the same being mentioned as 4th August, 2009 in the written statement) was entered into by the Defendant with the Plaintiff himself, and

the said fact is admitted in the written statement, there is no plausible defence and in fact it is a case for passing a decree on admissions. The Trial Court also records that in view of estoppel under Section 116 of the Indian Evidence Act, 1872, challenge to the ownership of the Plaintiff by the Defendant is also barred in law. The findings of the Trial Court are set out below:

“11. In view of this legal position, it is very clear that where there is a clear admission of certain facts by the opposite party and no other evidence is required for the decision on the said fact, judgment should be certainly passed on the basis of admission. In the present case, plaintiff has claimed himself to be the landlord of the defendant in the suit property on the basis of latest lease deed dated 05.08.09 and therefore, if the said relationship of landlord and tenant is admitted and the rate of rent at which arrears have been claimed are admitted and again the rate of damages sought by the plaintiff are admitted, plaintiff is certainly liable for judgment on the basis of admission.

12. Now in view of this legal position, let me advert to the adjudication of the present application. The plaintiff/applicant has relied upon the admission made by the defendant in the WS and therefore, the pleadings of both the parties are to be perused minutely. Now on perusal of WS, it comes to fore that in para no. 8 of the preliminary objections, defendant has stated that he had entered into a fresh lease agreement dated 07.05.08 with Late Jai Karan Dass. In para no. 9 of the preliminary objections, it is stated that Jai Karan Dass expired on 04.05.09 and thereafter, the plaintiff, son of Jai Karan Dass, represented himself as owner of suit property and he- entered into a fresh lease agreement dated 04.08.09, however, it is alleged that he mislead the defendant on the basis of false representations regarding his ownership.

Again, on perusal of WS, it is further clear that in the last sub-para of para no.1 of reply on merits, defendant has further admitted that he had entered into the lease deed dated 04.08.09 with the plaintiff. There is no lease deed dated 04.08.09 in picture but only the lease deed dated 05.08.09 filed by the plaintiff and therefore, it is certainly a typographical error in the WS and same has not been controverted on behalf of defendant in the reply to the application or during arguments at Bar. Accordingly, the relationship of landlord and tenant between the plaintiff and defendant is clearly admitted.

13. Now regarding the termination of tenancy, it is to observe that in response to para no. 8 to 10 of the plaint, as mentioned in para no. 3 of reply on merits on WS, the defendant has simply stated that plaintiff had no locus to serve the notice dated 22.12.14 terminating the lease agreement, however, has not denied the service of the notice of termination of tenancy and therefore, it is the clear admission of service of notice. Accordingly, by way of such notice, the tenancy of the defendant in the suit property is further proved being admitted.

14. Now regarding the defence taken on behalf of the defendant that plaintiff is not the owner of the suit property and has mislead the defendant at the time of entering into the lease agreement, it is to observe that law is well settled as provided u/S 116 of IEA that a tenant cannot challenge the title of the landlord in any manner. Moreover, it is nowhere the case of defendant that he not the tenant in the property. Accordingly, even if the plaintiff is not the real owner of the suit property, same does not entitle the defendant to retain the possession of the suit property though being a tenant, once he has admitted the landlordship of the plaintiff. In this regard reliance can be placed upon authority of **Atma Ram (Supra)**. Therefore, I come to the conclusion that plaintiff is certainly entitled for relief of possession from the defendant.

15. Now regarding the relief of arrears of rent, it IS to observe that in reply to para no. 5 of the plaint, wherein the plaintiff has alleged that defendant had not paid the rent since 31. 12. 12, the defendant in his WS in para no. 2 of reply on merits has simply denied without any specific averments and rather has stated about the agreement to sell between the parties. Undoubtedly, the agreement to sell, if any, does not cease the tenancy of the defendant in the suit property and defendant has separate remedy to enforce the agreement to sell, if any, as per law. However, by evasive denial, defendant has certainly admitted the non-payment of rent to the plaintiff. Same is further corroborated by the very fact that the appeal filed against the order dated 14.12.18 vide which the defendant was directed to deposit the rent @ Rs. 8800/- p.m. was dismissed as withdrawn. Accordingly, I am satisfied that plaintiff is further entitled for the arrears of rent @ Rs. 8800/- p.m. as per the lease agreement dated 05.08.08 till date of termination of tenancy i.e. 22.12.14, which is the date of notice of the termination.

16. Now regarding the relief of damages claimed @ Rs. 300/- per day, it is to observe that in response to the averment in para no. 5 of the plaint that it was agreed between the parties in the lease agreement that in the event of failure to handover the peaceful possession of the premises by the defendant, he shall be liable to pay Rs. 300/- per day as over staying charges till date of handing over the possession, the defendant has not stated even a single word to deny the same. Therefore, the said evasion on part of defendant to the said averment is again in nature of admission. It is nowhere stated in the WS on behalf of defendant that the said lease agreement dated 05.08.09 was signed by him under any coercion or undue influence. Accordingly, the defendant has further admitted the entitlement of plaintiff for damages @ Rs. 300/- per day as per the lease agreement dated 05.08.08.

17. Now regarding relief of permanent injunction, it is to observe that when it is admitted that defendant is the tenant of the plaintiff, the defendant certainly has no right to part with the possession of the suit property to any third person.

18. Lastly, regarding relief of interest claimed by the plaintiff, it is to observe that it is the discretionary relief to be granted by the court as there was no agreement regarding any interest on the delayed payment of rent or damages, however, I do not find any ground to award any interest.

*19. It is to further observe that as laid down in the authority of **Uttam Singh (Supra)**, the facts of the present case are that even if the suit is continued and decided on merits after appreciation of evidence, the defendant cannot succeed in any manner as the defence taken by the defendant is not tenable in law and suit of the plaintiff is to be certainly decreed. Accordingly, in view of aforesaid discussion, **application u/o XII Rule 6 CPC is hereby allowed and suit is hereby decreed with costs** to the effect that defendant is directed to hand over the vacant possession of the suit property to the plaintiff within two months from today and to pay the arrears of rent @ Rs. 8800/-, as per the lease agreement dated 05.08.08 from 01.01.2013 to 22.12.2014 and again the damages @ Rs. 300/- per day from 23.12.2014 till date of delivery of possession. In case of failure, plaintiff is at liberty to approach the court by filing appropriate petition. Plaintiff is further directed to pay the court fee on the amount of damages calculated till date of judgment and decree sheet be prepared only thereafter.”*

7. This order was challenged by the Defendant and in the appeal, the Appellate Court has also come to the conclusion that the findings of the Trial Court are liable to be upheld. The Appellate Court holds that the title to

the suit property need not to be proved by the Plaintiff so long as the lease deed in this case is admitted. The appeal was accordingly dismissed.

8. Mr. Amit Andlay, Id. counsel appearing for the Defendant, primarily raises the question of law that once issues were framed and trial had commenced, the application under Order XII Rule 6 CPC ought not to be entertained and a decree on admission ought not to have been passed inasmuch as there is an FIR which has been lodged by the original owners' children i.e. Late Banarasi Dass' children against the Plaintiff. He submits that considering the allegations raised in the said FIR, there is a serious dispute to the title of the Plaintiff and whether the Plaintiff in fact inherited the suit property or not. He relies upon the following two judgments:

- (i) ***Balraj Taneja & another vs. Sunil Madan & Anr., AIR 1999 SC 3381***: to contend that even in cases where judgment is passed under Order VIII Rule 10 CPC, while facts in the plaint are considered to be admitted in absence of a written statement, the Court may require the plaintiff to prove such facts. Similarly, under Order XII Rule 6 CPC, admitted facts may be required to be proven. He therefore submits, that notwithstanding the admission in the written statement, the Trial Court herein could have required proof of the ownership of the Plaintiff; and
- (ii) ***Hari Steel and General Industries Ltd. & Ors. v. Daljeet Singh & Ors, AIR 2019 SC 4796***: to state that in a judgment on admissions, the discretion is to be exercised judiciously, since a judgment without trial permanently denies any remedy to the Defendant and such a judgment should not be passed once the trial has commenced in view of serious factual disputes in that matter;

9. He submits that this is a substantial question of law that has been raised, i.e., the trial having commenced, the judgment on admissions ought not to have been passed.

10. On the other hand, counsel for the Plaintiff places reliance upon the contents of the written statement as also the lease agreement dated 5th August, 2009. He submits that the lease deed is a registered lease deed and it is an admitted document. Further, there is also an agreement to sell which was entered into on 24th May, 2010, though that transaction ultimately did not fructify. However, the acknowledgement exists in both documents that the Plaintiff is the owner of the suit property. He submits that on the basis of admissions and due to non-payment of rent since 2013 by the Defendant, who is enjoying a prime South Delhi property, without use and occupation charges, the present second appeal is liable to be dismissed.

11. The Court has heard the counsel for the parties and has perused the pleadings as also the relevant documents.

12. The Defendant and his family have been tenants in this property since 1984. It is the admitted position that Late Sh. Banarasi Dass was the original owner of the suit property, who had given the suit property on rent to the Defendant/his predecessor. The original owner, Sh. Banarasi Dass, had four sons and two daughters and the Plaintiff in this case i.e. Sh. Gagan Dass is the son of Sh. Jai Karan Dass, one of the sons of Sh. Banarasi Dass. There may be disputes between the other legal heirs of Banarasi Dass and the Plaintiff. However, this Court is not concerned with the said title disputes.

13. In the present case, this Court is to merely see the validity of the decree which has been passed by the Trial Court. Admittedly, in the written statement, the Defendant accepts that the lease agreement dated 5th August,

2009 had been entered into by the Defendant. The defence which is now raised is that the same was entered into on the basis of the fraudulent representation made by the Plaintiff. The Defendant is not a new person in the suit property. He has always been residing in this suit property for several years. He has entered into a lease deed as also, tried to have a sale transaction in respect of this suit property with the Plaintiff. Both these documents are admitted documents. Once the lease agreement dated 5th August, 2009 is admitted and the warranties and the conditions therein are also admitted, the Defendant's status in this case can only at best be that of a lessee/tenant. The tenancy having expired and the tenancy having now been terminated, the Defendant is estopped in law from challenging the ownership/title of the Plaintiff. The Defendant cannot seek to take advantage of an *inter-se* dispute between the legal heirs of late Sh. Banarasi Dass and the Plaintiff in order to continue to remain in occupation of the suit property.

14. A perusal of the judgment cited by Mr. Andlay, Id. counsel, in ***Balraj Taneja (supra)*** clearly shows that even the invocation of Order XII Rule 6 CPC, is purely within the discretion of the Court. Though there is no doubt that it can be read with Order VIII Rule 5 CPC, it is only if the Courts feels that there is a necessity to prove the facts in the plaint that the trial ought to be ordered. It is not in every case that trial would be required, as also held by the Rajasthan High Court in ***Ramswaroop v. Manna Lal, 2016 (2) CCC 368:***

The case of Balraj Taneja & Anr. (supra) relied upon by Ms. Joshi- counsel for the defendant is of no succour. All that the said Judgment even otherwise enunciated, in a wholly different context of a suit for specific performance being

decreed without a written statement being filed and its consequence under Order 8 Rule 5, 9 and 10 CPC, is that even in the event of an admission by the defendant in the written statement, the Court is to be cautious before decreeing the suit based thereon. Before passing a Judgment on the defendant's admissions it must be seen whether a Judgment must necessarily follow without the plaintiff being required to prove any additional fact mentioned in the plaint. The Apex Court held "It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission (underlining mine), the Court can conveniently pass a Judgment against the defendant who has not filed the written statement." The law as stated does not support the sweeping contention of the counsel for the defendant that admissions of the defendant apart, the plaintiff has yet to prove what has been admitted. It all depends on the nature of the suit and the admission in context thereto."

15. Even in **Raj Kumar Chawla v. Lucas India Services, (2006) 129 DLT 755**, a Division Bench of the Delhi High Court held:

"6. The powers under Order XII rule 6 of the Code has to be exercised judicially on the facts and circumstances of each case. The admission on the basis of which the Court wishes to pass a decree has to be unambiguous, clear and unconditional. There is no doubt that in a suit there can be more than one decree passed at different stages and each decree being separate and independent is enforceable in accordance with law, was the principle stated by MANU/SC/0505/1970 : AIR 1971 SC 1081C hanchal v. Jalaluddin. Admission understood in its common parlance still must be a specific admission. There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases

of first category and normally should decline in the cases of the later category.

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8. 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 this discretion. The use of the words 'May' and 'make such orders' or 'give such judgment' spells out that power under these rules are discretionary and use of discretion would have to be controlled in accordance with the known judicial canons. The cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions."

16. The title dispute in question being completely alien to the present suit, the proving of title beyond any doubt would not be required in the present case. In so far as the judgment in ***Hari Steel (supra)*** is concerned, the Supreme Court has observed therein as under:

"37. In this case it is to be noted that the suit was filed on 1.11.2006 and written statement was filed on 25.01.2007 and the application Under Order XII Rule 6 was filed on 9.2.2007. In year 2010 issues and additional issues were framed and trial is also commenced. In that view of the matter, there is no reason to pass the impugned order now for decreeing the suit on claimed admissions, in exercise of power Under Order XII Rule 6 of Code of Civil Procedure at this stage. In view of the serious factual disputes and the defence of the Appellants in the suit, it is not permissible for making roving inquiry for disposal of the application filed Under Order XII Rule 6 of Code of Civil Procedure. When the trial is already commenced, it is desirable to record findings on various contentious issues and disputes in the suit

on merits by appreciating evidence but at the same time there is no reason or justification to decree the suit at this stage. For the aforesaid reasons, we are of the view that the impugned judgment of the High Court cannot be sustained and is liable to be set aside on this ground alone.”

17. Therefore, the decision in ***Hari Steel (supra)*** was peculiar to the facts the case where there were serious factual disputes and it was held to be desirable to record findings on such contentious issues. On the contrary, in this case the documents such as the lease deed and agreement to sell are admitted clearly. While the trial was on, the moving of an application under Order XII Rule 6 CPC placed upon the admissions in the written statement cannot be held to be incorrect procedure in this case. The Court has to merely see if there were admissions or not in the written statement. There is no doubt that in the present written statement filed by the Defendant, there was a clear admission of the lease deed dated 5th August, 2009. In the lease deed, there is also a clear admission that the lessor has given out the property on lease to the lessee and the Defendant.

18. The relevant portions of the written statement are set out below:

“8. That in the year 2007 Late Sh. Jai Karan Dass, father of the plaintiff approached defendant and demanded the rent whatever was unpaid till 2006. He claimed that he has been authorized by the family to collect the rent of the premises and showed the defendant some document with respect to the same. A copy of the document was not provided to the defendant. After some negotiations with Mr. Jai Karan Dass, it was agreed that the defendant should pay the rent of three years for the unpaid period and this was duly paid to Late Sh. Jaikaran Dass. Thereafter a fresh lease was entered into for a period of four years between Late Sh. Jai Karan Dass and the defendant starting from 7/05/2008. Copy of lease deed dated 07/05/2008 marked and annexed as ANNEXURE-8.

9. *That Sh. Karan Dass expired on 04/05/2009. Thereafter the plaintiff, son of Sh. Jai Karan Dass approached the defendant and falsely represented himself to be true and absolute owner of the suit property. Plaintiff told defendant that Late Sh. Banarasi Dass had sold the suit property to one Mr. Shyam Lal who in turn sold the suit property to him. Defendant was unaware of true state of family affairs of plaintiff's family and did not know that plaintiff was making false representations and claims. Defendant didn't know that Late Sh. Banarasi Dass Santosh Nath had executed a will dated 24/01/1990 and as per it plaintiff had only 1/4th share in 1/3rd share of the suit property which had fallen into plaintiff's fathers share as per the will. Plaintiff misled defendant on basis of his false representation and forged documents to enter into fresh lease agreement dated 04/08/2009."*

19. In view of the clear stand of the Defendant that a fresh lease agreement dated 5th August 2009 was entered into, though the same is alleged to be based on a false representation, the status of the Defendant would not change from a lessee/tenant to one who has title to the suit property. The lease deed having been entered into on 5th August, 2009 and and no relief having been sought of cancellation of the said lease deed or the Defendant showing any better title or ownership in respect of the property, the Defendant being only an admitted lessee/tenant, he cannot take advantage to continue to remain in the suit property. Accordingly, this Court does not find any ground to interfere in the Trial Court's order or in the Appellate Court's order.

20. The decree passed by the Trial Court to pay the arrears of rent at Rs. 8,800/- as per the lease agreement dated 5th August, 2008 from 1st January, 2013 to 22nd December, 2014 and again the damages @ Rs. 300/- per day from 23rd December, 2014, till date of delivery of possession, is upheld.

21. There is no substantial question of law that arises. The present appeal is dismissed. All pending applications are disposed of. The decision in the present appeal or in the impugned orders would not however have any bearing on any title dispute/s between the legal heirs of Late Sh. Banarsi Dass, if any, in respect of the title to the suit property, which would be adjudicated on their own merits.

PRATHIBA M. SINGH
JUDGE

DECEMBER 8, 2021

R/mw/MS

