

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 172 OF 2019

Tushar Himatlal Jani

... Applicant

V/s.

M/s. Kerala Auto Repairs & Anr.

... Respondents

Mr. Y. S. Jahagirdar, Sr. Advocate a/w. Ms. Meena Shah i/b. Pandya
& Co. for Applicant.

Mr. Ramson S. Dias for Respondent Nos. 1 & 2.

CORAM : NITIN W. SAMBRE, J.

DATED : 10th AUGUST, 2022

P.C.:

1. This revision is by the applicant/plaintiff in T.E. Suit No. 188 of 2016. The applicant/plaintiff has taken out the aforesaid suit based on a notice issued u/s 106 of the Transfer of Property Act. By way of Application Exhibit-17 the applicant has sought judgment on admission pursuant to provisions of Order XII Rule 6 of the CPC. Such prayer of the applicant came to be rejected vide impugned order dated 19/10/2018.

2. Heard Mr. Jahagirdar, learned senior counsel appearing for the applicant/original plaintiff and Mr. Ramson, learned counsel appearing for the non-applicants/original defendant nos. 1 & 2.

3. Learned senior counsel for the applicant would invite my

attention to the notice issued under section 106 of the Transfer of Property act on 27/10/2015, the reply to the said notice issued by non-applicant on 12/12/2015, the plaint in the aforesaid suit being T.E. Suit No. 188 of 2016 and also the written statement.

4. According Mr. Jahagirdar, the present non-applicants in paragraph no. 5 of the written statement has admitted the contentions of the plaintiff in paragraph no. 2 of the plaint in regard to relationship between the plaintiff and the defendant as landlord and tenant since 1966. He would also urge that the admission about receipt of the termination notice dated 22/10/2012 is also admitted.

5. As such, according to him in the suit in question which is under the provisions of Transfer of Property Act for eviction i.e. one issued u/s 41 of the Presidency Small Causes Courts Act, 1982 for judgment on admission ought to have been ordered.

6. The counsel for the respondents Mr. Ramson would support the order impugned. According to him, the Trial Court was justified in passing the order thereby rejecting the prayer moved under order XII rule 6 for judgment of admission.

7. I have appreciated the said submissions.

8. The fact remains that the applicant has issued notice on

27/10/2015 which was duly replied on 12/12/2015 by the non-applicants.

9. The applicant has come out with the specific case of tenancy in regard to the open land and as such exempted from the provisions of Maharashtra Rent Control Act.

10. It is also claimed that the suit premises were sublet. The claim was resisted on the ground that even if the tenancy is in relation to open plot, there is a protection under the provisions of Maharashtra Rent Control Act. It is also claimed by the respondents that the property was never sublet.

11. The fact remains that the provisions of order XII rule 6 can be invoked seeking judgment on admission provided there is an admission of fact made either in the pleadings or otherwise, orally or in writing, may grant judgment having regard to the such admission.

12. The powers under order XII rule 6 are discretionary in nature and can be exercised in case of specific, clear and categorical admission of facts and documents which are part of the record. As such the foremost requirement under the said provision is the satisfaction of the Court about the admission of fact in the pleadings or otherwise.

13. The fact remains that the perusal of the pleadings does not reflect clear admission of facts. The perusal of the written submissions at Exhibits-15 & 31 categorically reflects about the existence of dispute as there is a denial as regards the pleadings in relation to the unlawful sublet, so also of illegal profiteering.

14. Apart from above, the rival pleadings depict the triable issues in the suit.

15. In that view of the matter, non-applicants were justified in drawing the support from the judgment of the Apex court in matter of *Karan Kapur vs. Madhuri Kumar delivered in Civil Appeal No. 4545 of 2022 arising out of SLP (Civil) No. 13800 of 2021*. The Apex Court in the said matter has observed that mere admission in regard to relationship of landlord and tenant cannot be said to be univocally admission to claim judgment on admission.

16. In that view of the matter, no case for interference is made out in absence of any error of jurisdiction or failure to exercise jurisdiction

17. The revision as such fails and stands dismissed.

(NITIN W. SAMBRE, J.)