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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 8002 OF 2015**

RUPAL BUILDERS AND ORS.

....PETITIONERS

V/s.

RATNA RUPAL C.H.S. LTD.

.....RESPONDENT

Mr. Zubin Behram Kamdin a/w Nikita Ghungarde i/b Vimla and Co.
Advocate for the Petitioners

Mr. Jaideep Raut a/w Prakash Kadam Advocate for the Respondent

CORAM : NTIN W. SAMBRE, J.

DATE: MARCH 9, 2022.

P.C.:

- 1) This Petition is by Defendants to Suit No. 3323/2006 (Suit No. 8727 of 2000) pending on the file of this Court. Said Suit is for specific performance and injunction.
- 2) In the backdrop of rival pleadings, following issues were framed:

“ISSUES

1. Whether the Plaintiffs are entitled to seek enforcement of their rights under the agreements for sale which are unregistered and unstamped.
2. Whether the suit is bad for non-joinder of necessary parties because the partners of the first Defendants have not

been joined as party Defendants.

3. Whether the Defendants are entitled to carry out additional construction on the suit plot of land without the Plaintiff's consent.

4. Whether the Plaintiffs are entitled to object to Defendants 2 to 4 using the balance portion of the suit property for constructing additional structures on the suit plot of land.

5. Whether the Defendants are bound to convey the entire suit plot of land to the Plaintiff.

6. What relief, if any, are the Plaintiffs entitled to?"

Defendants to the said Suit have taken out Notice of Motion No. 1038/2015 claiming relief under the provisions of Order XII Rule 6 of Code of Civil Procedure, 1908 for Judgment on admissions. Said prayer is rejected vide impugned order dated 07/07/2015. As such, this Petition under Article 227 of Constitution of India.

3) Counsel for the Petitioner would invite attention of this Court to the Agenda of the meeting held on 07/06/1990 of the members of the Respondent-Plaintiff Society. According to him, minutes of the said meeting contemplates acceptance of draft conveyance. He would urge that even if said deed of conveyance is not registered under the

Registration Act, intention of the Plaintiff to act on the said Conveyance Deed can be inferred from the minutes of meeting. It is claimed that aforesaid conduct of the Plaintiff prompted the Petitioner-Defendant to take out aforesaid Notice of Motion based on the above alleged undisputed position. Hence the Defendant-Petitioner sought mandate from the Court below for Judgment on above admission for getting lease Deed executed. He would urge that once an admission is given by Petitioner-Defendants, Court below is left with no other choice to grant Judgment on admission in view of provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity)

4) Claim of Respondent-Plaintiff is in support of the order impugned. According to Respondent-Plaintiff, issues which are framed warrant adjudication on merits. It is further urged that even otherwise, provisions of Order XII Rule 6 of the CPC are not mandatory.

5) Perused the order impugned so also reliefs claimed in the Suit.

6) Powers under Order XII Rule 6 of the CPC can be exercised provided admissions are unambiguous, unconditional and

unequivocal. Provisions do not contemplate that in case if a prayer is made under Order XII Rule 6 of CPC based on admission given by a party, it is obligatory to the Court below to grant Judgment on admission. Rather, it is within the discretion of the Court below to grant or refuse such prayer.

7) In the case in hand, what can be noticed is, in absence of any counterclaim, Petitioner-Defendants have invoked provisions of Order XII Rule 6 of the CPC seeking Judgment on admission. Such prayer moved under Order XII Rule 6 of the CPC is strongly objected by Respondent-Plaintiff as can be noticed from the rival pleadings in support of the Notice of Motion. Perusal of pleadings in reply to the Notice of Motion apparently demonstrates that objection raised therein goes to the root of the matter.

8) Of course, Trial Court is required to exercise the discretion vested in it judiciously and while doing so, Court is required to be sensitive to the provisions of Statute and also rival pleadings.

9) If the nature of issues which are framed in the case in hand are perused, what can be noticed is, Respondent-Plaintiff was justified in raising the objection to the prayer for Judgment on admission sought

under Order XII Rule 6 of the CPC. Position of law to which this Court is required to be sensitive to is, based on an unregistered Deed of Sale, a party cannot claim Decree as of right even if contesting party admits to the execution of the such Deed. Execution of an ineffective document, even if is proved by way of admissions will not cure the defect of the title arising under a specific law. By consent of the parties, statutory provisions cannot be overridden.

10) In the aforesaid background and position of law if appreciated, the claim put forth by the Petitioner-Defendant for grant of Judgment on admission was rightly so rejected by the Trial Court.

11) In the wake of observations made herein above, I hardly see any illegality which warrants exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. That being so, no case for interference is made out. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]