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

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Date of decision: 12 May, 2022+ **C.R.P. 78/2021****MEENAKSHI MANNA**

..... Petitioner

Through: Mr. N.K. Kantawala and
Mr.Satyender Chahar, Advs.

versus

SMT SURITI MANNA & ANR.

..... Respondents

Through: Mr.Pranaynath Jha, Adv.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)**

1. This revision is directed against an order dated 31 July 2019 passed by the Trial Judge rejecting an application purporting to be under Order XV Rule 1 of the Civil Procedure Code, 1908 [the Code]. The order emanates from a suit for possession, recovery of *mesne profit* for use and occupation as instituted by the plaintiff petitioner against the respondents. From the record, it transpires that after the filing of a written statement, the petitioners filed an application under Order XII Rule 6 of the Code. That application came to be dismissed by the Trial Judge by an order of 04 July 2019. Although the aforesaid order was initially assailed by filing a revision petition before this Court, the same was ultimately dismissed as withdrawn.
2. It becomes pertinent to note that while dismissing the application under Order XII Rule 6 of the Code, the Trial Judge found that the execution



of the relinquishment deed was questioned by the defendants. It was further noted that the validity of the Will dated 26 October 1994 which was an unregistered instrument was also assailed. Based on the aforesaid facts, the Trial Judge came to conclude that a reading of the written statement failed to establish an unambiguous or clear admission having been made by the defendant respondent warranting a judgment on admission being rendered. Post the dismissal of the aforesaid application, the petitioner filed yet another application, this time styling it to be under Order XV Rule 1 of the Code.

3. The Trial Judge while dismissing the aforesaid application has made the following observations:-

“9. For the sake of convenience I am quoting Order 12 Rule 6 CPC and Order 15 Rule 1 CPC:

Order 12 Rule 6 CPC –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.

Order 12 Rule 6 CPC - Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court at once pronounce judgment.

9.1 Order 12 Rule 6 CPC necessarily pre suppose a Judgment on the basis of admission however the Court for the said purposes can decipher/decode the pleading and can thrash out the Contents of the defence to consider the case made out by the defendants particularly the legal validity of the defence raised and thereafter conclude whether any admission has been made or not.

The powers U/o 12 Rule 6 CPC are not merely confined to the bare pleadings itself but the Court is duly empowered to scan the pleadings and thereafter come to a definite conclusion as to the need for setting the case for trial. In this regard the observations made in paragraph no. 10 in the case of *A.N.Kaul v/s Neerja kaul & Anr.* (supra) relied upon by the plaintiff are



material. Same reads as under:

“10. The reasoning given in the impugned order, of the petitioner/plaintiff, in the absence of express admission, being not entitled to a decree on admissions is indeed faulty and without considering a series of judgments of this Court, In **Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders P. Ltd.** 159 (2009) DLT 233, reiterated in judgment dated 14th September 2017 in CRP No. 190 of 2015 titled **Vireet Investments P. Ltd. Vs. Vikramjit Singh Puri** and again reiterated in **Bhupinder Jit Singh Vs. Sonu Kumar** 2017 SCC Online 11061, it was held (i) that the plaintiff, if otherwise found entitled to a decree on admission, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon; (ii) the Court is to read the pleadings of the parties meaningfully; (iii) issues are to be framed on 'material and not on all propositions of law and fact; (iv) a plea, which on the face of it is found by the Court to be untenable, does not require the framing of any issue. In **Adarsh Kumar Puniyani Vs. Lajwanti Piplani** 2015 SCC Online Del 14022 it was held that material propositions of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved; if a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reliance was inter alia place on **Abbot India Ltd. Vs. Rajinder Mohindra** (2014) 208 DLT 201 holding that once it is found that there was no defence, merely because a bogey therefore is raised at the stage of framing of issues or upon the respondent/plaintiffs filing an application U/o 12 Rule 6 CPC, would not call for framing of an issue. It was further held in **Bhupinder Jit Singh** supra that issues are to be framed only on material propositions of law or fact requiring trial and not on all propositions of fact or law which may be contained in the pleadings and which are not material i.e. on the outcome whereof the outcome of the suit does not depend. The Court is not obliged to, on finding pleas to have been raised in the written statement, mechanically frame issues thereon. The issues were to be framed in such manner, the same would be in disregard the word 'material' in Order 15 Rule 1 CPC. The enquiry thus to be made at the time of framing of issues is, whether the pleas raised in the written statement, purportedly in defence to the claim in the plaint, have any material bearing to the outcome of the suit and if it is found that irrespective of the findings thereon, the plaintiff would be entitled to the relief, the parties are not to be put to trial in the suit. Similarly in **Zulfiqar Ali Khan Vs. Straw Products Ltd.** 87 (2000) DLT 76, it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to



be misused by such persons and only such defence as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas, to delay the suit. It was yet further held that the Court is not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reference in this regard may also be made to **Kanwal Sachdeva Vs. Madhu Bala Rana** 2013 SCC Online 1479 and to **P.S. Jain Co. Ltd. Vs. Atma Ram Properties (P) Ltd.** (2013) 205 DLT 302"

10. Viewing from the said prism the observation made by the Ld. Predecessor that the defendants have raised some triable issues which goes to the root of the order [in terms of the order dated 04.07.2019] coupled with the order dated 19.08.2019 wherein the defendants themselves admitted that they are not pressing on their application U/o 7 Rule 11 CPC and appropriate issues with regard to cause of action and period of limitation be framed itself points out to the need for settlement of issues and this case cannot be outrightly adjudicated U/o 12 Rule 6 CPC as well as U/o 15 Rule 1 CPC."

4. As is evident from the reasons recorded and assigned in the impugned order, the Trial Judge appears to have been swayed essentially by the fact that on 04 July 2019 the application under Order XII Rule 6 of the Code had been rejected. It is that order and the reasons recorded therein which manifestly appears to have weighed upon the Trial Judge while refusing the subsequent application which was made.

5. It becomes pertinent to note that Order XV Rule 1 of the Code is a power conferred upon a court to pronounce judgement where it finds on the first hearing of the suit that parties do not appear to be at issue on any question of law or a fact. Order XII Rule 6 of the Code, on the other hand, contemplates the rendering of a judgement on admission. Insofar as the power conferred under Order XII Rule 6 is concerned, it is by now well-settled that a judgement of admission can be rendered only in case the Court discerns from the pleadings that a material fact which would warrant the suit



being decreed has been unequivocally admitted. Order XV, on the other hand, places an obligation upon the Court to sift through the pleadings of parties and to consider whether a triable issue arises or whether the parties can be said to be at variance on a material question of law or fact which would warrant the suit being tried on merits. If the Trial Judge finds to the contrary, it may proceed to pronounce judgement forthwith.

6. The two provisions though seemingly overlapping, are envisaged to operate in distinct circumstances. While Order XII of the Code proceeds on the assertion of the plaintiff that a judgment on admission is liable to be rendered in light of an unequivocal or clear admission, Order XV places an obligation on the Court itself to decipher whether a triable issue stands raised from the pleadings of parties and which may warrant the suit being put down for trial on merits. The distinction between Orders XII and XV was succinctly explained by the Allahabad High Court in **Hindustan Petroleum Corporation vs. Satish Chandra Jain and Ors.**¹ as follows:-

"27. Order 15 Rule 1 CPC and Order 12 Rule 6 CPC operate in distinguishable areas, borders of which may overlap. While proceeding to pass judgement on an admission under Order 12 Rule 6 CPC, the Court is guided by the provisions of Section 17 and onwards of the Indian Evidence Act. A combined reading of Section 31 and Section 58 of the Evidence Act cast a duty on the Courts to exercise discretion, in appropriate cases, in the matter of passing judgements on such admissions of fact to be proved otherwise than by such admissions.

28. The word 'admission' is defined under Section 17 of the Indian Evidence Act, 1972 which is as follows:—

"17. An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned".

¹ 2019 SCC OnLine All 4113



Sections 31 and 58 of the Indian Evidence Act read as follows:

“31. Admissions not conclusive proof, but may estop.- Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.”

“58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

29. Thus, the first requirement of admission is a statement whether oral or documentary which is made by any of the person and under the circumstances provided in sections subsequent to Section 17 of the Indian Evidence Act. In the present case, the statement of admission of the defendant-appellant is stated to be in its written statement. Rule 6 of Order 12 of CPC reads as under:—

“6. Judgment on admissions-

(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 judgement is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced”.

30. Rule 6 of Order 12 CPC, therefore, is referable to any admission of fact made either in pleading or otherwise whether oral or in writing. It also vests a discretion in the Court, by usage of the word ‘may’, to make or not to make such order or give such judgement, having regard to such admissions.

31. Rule 1 of Order 15 CPC reads as follows:

“1. Parties not at issue.- Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact,



the Court may at once pronounce judgement.”

32. Parties may not be at issue for want of denial or in view of clear, categorical and unequivocal admissions. Where there is want of specific denial or an allegation of fact in the plaint is stated to be not admitted in the written statement, it shall be taken to be admitted, but even in such a case, the court has discretion to require any fact so admitted to be proved otherwise than by such admission (Order 8 Rule 5 CPC). Order 15 Rule 1 CPC vests in the Court the discretion to pronounce judgement forthwith at the first hearing of the suit where it appears that the parties are not at issue on any question of law or of fact.”

7. As was noticed by the Court in **Hindustan Petroleum**, while Order XII Rule 6 of the Code rests essentially on an admission, Order XV Rule 1 of the Code on the other hand is based upon the Court ascertaining whether parties are at issue on a material fact or issue and if found in the negative would warrant the suit itself being decreed.

8. While it may be true that the application under Order XV Rule 5 of the Code moved by the plaintiff petitioner here rested on facts and allegations identical to those which formed the basis of the application under Order XII Rule 6, that clearly did not relieve the Trial Judge from independently considering whether the powers conferred by Order XV were liable to be invoked. In any case, the application purporting to be under Order XV could not have been justifiably dismissed based solely upon the fact that the application Under Order XII Rule 6 had been rejected or for reasons which stood recorded by the court while rejecting that application. This Court on a perusal of the impugned order finds that the Trial Judge has failed to record any independent reasons for rejecting the application under Order XV apart from the fact that the application for a judgement on admission being rendered had been previously dismissed. The Trial Judge has thus failed to appreciate the subtle yet statutorily ordained distinction in

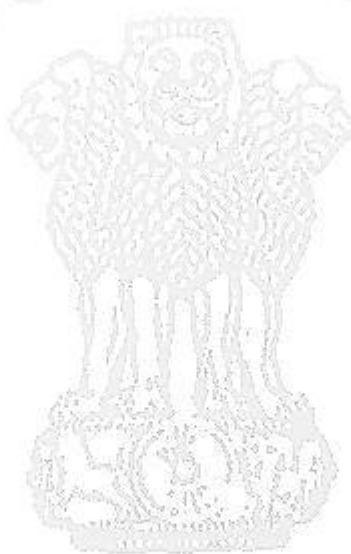


the scope and extent of the two provisions of the Code. It is on this score alone that the Court finds itself unable to sustain the impugned order.

9. Accordingly, the instant revision petition is allowed. The impugned order dated 31 July 2019 is set aside. The matter shall in consequence stand remitted to the Trial Judge for considering the application under Order XV afresh bearing in mind the observations made hereinabove. All rights and contentions of parties on merits are kept open.

YASHWANT VARMA, J.

MAY 12, 2022/*neha*



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