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

+ RFA 274/2022, CM APPLs. 28660-61/2022, CM APPL. 28547/2022

AXIS NIRMAN INDUSTRIES LTD & ANR. Appellants

Through: Mr. Gaurav Panchnanda, Sr. Adv.
with Mr. Vikas Mehta, Mr. Adith
Nair, Mr. Siddharth Jain and Mr.
Shakil Ahmad, Advs.

versus

RAJENDRA KUMAR (HUF) THROUGH ITS KARTA. Respondent

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Rakesh Kumar Lakra, Ms.
Shivani Kher, Mr. Harsh Aditya Ojha
and and Ms. Heena Kochar, Advs.

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Date of Decision: 12th July, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present appeal has been filed under Section 96 read with Order XLI Rule 1 and 2 of the CPC, 1908 challenging the impugned judgment and decree dated 2nd June, 2022 passed by the learned ADJ (South District) Saket Court, New Delhi in CS/DJ No. 27 of 2022.

2. Vide the impugned order, the learned ADJ (South District) Saket Court, New Delhi, allowed the application under Order XII Rule 6 read with Section 151 CPC of the respondent/plaintiff (landlord) and inter alia passed



a preliminary decree in favour of the respondent/plaintiff and directed the petitioner/defendant to hand over the vacant and peaceful possession of the suit property bearing House No. F-25A, Hauz Khas Enclave, New Delhi, admeasuring about 500 sq.yds. comprising Ground Floor, First Floor and Second Floor consisting of seven bedrooms with attached bathroom, two drawing rooms, two kitchens, four servant quarters etc. within a period of two weeks from today.

3. Before this Court proceeds further, it is necessary to record certain undisputed facts. A lease deed was entered into between the parties on 20th January, 2010 which was duly registered for the lease of premises up to 30th October, 2019. An Addendum Agreement dated 4th February, 2017 was also executed between the parties whereby the tenancy was extended for another 9 years. It is an admitted fact that this Addendum Agreement was not registered.

4. The respondent/landlord served a legal notice dated 22nd December, 2021 upon the petitioner/defendant for termination of tenancy with regard to the property in dispute. The notice was duly served and was replied by the petitioner/tenant vide communication dated 5th January, 2022. Subsequently, the respondent/landlord filed a suit for possession bearing Suit No. 27/2022 in which the present application under Order XII Rule 6 CPC has been allowed. The petitioner/defendant herein also filed a Civil Suit No. 115 of 2022 seeking specific performance of the Addendum Agreement dated 4th February, 2017 and the Letter/Agreement dated 20th July, 2020. This suit was filed after the respondent/landlord had filed suit for possession.

5. Learned senior counsel for the petitioner has submitted that the learned Trial Court has fallen into grave error while passing the decree on



the basis of admission under Order XII Rule 6 CPC particularly when it was an admitted case of the parties that Addendum Agreement dated 4th February, 2017 was executed between the parties whereby the lease was executed for another 9 years.

6. Learned senior counsel submits that even if the Addendum Agreement dated 4th February, 2017 was unregistered, it could have been seen for the collateral purpose as provided under Section 41 of the Registration Act, 1908.

7. Learned senior counsel for the petitioner submits that even though the service of notice is not disputed, the petitioner/defendant has raised a substantial defence that by virtue of this notice, the tenancy is not terminated. Learned counsel has submitted that in the present facts and circumstances, a judgment/decree on the basis of admission could not have been passed.

8. Learned senior counsel has taken this Court through the pleadings in the Civil Suit being filed by the petitioner/defendant as well as the application under Order XII Rule 6 CPC to emphasize that the execution of the Addendum Agreement dated 4th February, 2017, is not disputed.

9. Learned senior counsel further submits that in the written statement at no point of time, the petitioner/ defendant has made any categorical and unambiguous admission on the basis of which, this discretion under Order XII Rule 6 CPC could have been exercised by the learned Trial Court.

10. Learned Senior counsel has submitted that the petitioner/defendant in his written statement has also taken a defence that Late Sh. Rajendera Kumar, the then Karta of HUF, had approached the petitioner/defendant for sale of share of one M/s Ram Prasad Enterprises Ltd. which was owned by



late Sh. Rajendra Kumar along with his brothers. The petitioner/defendant had bought the shares on enhanced/premium value and in fact the wholesome agreement whereby the shares were purchased was that it was agreed between the parties that the lease would be extended.

11. Learned senior counsel has submitted that since the execution of Addendum Agreement is an admitted position between the parties, therefore, in the present facts and circumstances, the learned Trial Court could not have exercised its jurisdiction under Order XII Rule 6 CPC.

12. Learned senior counsel has further submitted that in the written statement, it was specifically denied that Addendum Agreement dated 4th February, 2017 being unregistered document makes the petitioner to be lessee on month to month basis in terms of the applicable and prevailing laws.

13. Learned senior counsel has submitted that even in the reply to the application, the petitioner/defendant has controverted, the case set up by the respondent/plaintiff. Learned senior counsel has submitted that the learned Trial Court has actually not dealt with the pleas taken by the petitioner/defendant in the written statement and has proceeded on mere assumptions and has passed the order in haste.

14. Learned senior counsel has relied upon ***S.M. Asif v. Virender Kumar Bajaj*** (2015) 9 Supreme Court Cases 287 to buttress his point that relief under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. In this case *inter alia*, it was held that judgment on admission can be passed only to the extent of the claim admitted by one of the parties of his opponent's claim. It has been submitted that S.M. Asif's



case has been followed in **Karan Kapoor v. Madhuri Kumar** MANU/SC/0820/2022 by Supreme Court.

15. Learned senior counsel has further relied upon **Himani Alloys Limited v. Tata Steel Limited** (2011) 15 Supreme Court Cases 273). In this case also, the scope of jurisdiction and exercise of power under Order XII Rule 6 CPC was discussed. Learned senior counsel submits that it was specifically *inter alia* held that the admission should be categorical, conscious and deliberate act of the party making it, showing an intention to be bound by it.

16. Learned senior counsel has also relied upon **Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) and Another** (2010) 6 Supreme Court Cases 601. Learned counsel submits that in this case also, it was *inter alia* held that the jurisdiction under Order XII Rule 6 CPC can be exercised only wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.

17. Learned senior counsel also relied upon **Gulab Singh & Sons Pvt. Ltd v. New India Assurance Co. Ltd.** 164 (2009) Delhi Law Times 43. Learned senior counsel submits that in this case also, the second lease deed was unregistered. However, the relief of specific performance was denied, in that case as, the earlier lease deed was also unregistered. Learned senior counsel submits that in the present case, the earlier lease deed was duly registered and therefore, the facts are distinguishable. Learned senior counsel submits that he is relying upon this case for the proposition that if the earlier lease deed is registered then the discretion under Order XII Rule 6 CPC should not have been exercised. Learned senior counsel submits that in these circumstances, the impugned order is liable to be set aside.



18. Learned senior counsel for the respondent has submitted that the learned Trial Court has passed the impugned order on the basis of facts and settled law as laid down by this Court and the Hon'ble Supreme Court.

19. Learned senior counsel has invited the attention of this Court to Section 107 of the Transfer of the Property Act, 1882, which provides that a lease for more than a period of one year is to be compulsorily registered. Learned senior counsel also invited the attention of this Court to Section 23 of the Contract Act, 1872 which provides that a contract which is forbidden by law cannot be implemented. Learned senior counsel submits that unregistered lease deed for a period of more than one year is forbidden by law and therefore cannot be given effect to.

20. Learned senior counsel submits that it has been held in ***Burmah Shell Oil Distributing Petroleum Corporation Ltd. V. Khaja Midhat Noor and Ors.*** (1998) 3 Supreme Court Cases 44 that the lease of more than one year is to be compulsorily registered.

21. Learned senior counsel submits that in the written statement, there is a categorical admission regarding the execution of the lease deed dated 21st October, 2010 and the relationship of landlord and tenant. Learned senior counsel further submits that as the rent is beyond 3500/- the protection under Delhi Rent Control Act would not be applicable.

22. Learned senior counsel has further taken this Court through the written statement being filed by the petitioner to say that that the relationship of landlord and tenant is duly admitted. Learned senior counsel has further submitted that the receipt of the notice has not been denied. It has been further submitted that the suit for specific performance was filed after the suit for possession was filed. It has also been submitted that this suit was



filed in 2022 for the specific performance of the document executed in 2017. Hence it is barred by law of limitation.

23. In the rejoinder, learned senior counsel has submitted that, alongwith the Addendum Agreement dated 4th September, 2017, the petitioner has also prayed in the suit for specific performance for implementing the Letter/agreement dated 20th July, 2020. Learned senior counsel also submitted that in fact, the situation changed as Sh. Rajendra Kumar, the then karta who had signed the agreements died on 6th May, 2021.

24. I have heard the learned senior counsel for the parties and perused the record carefully.

25. The law under Order XII Rule 6 CPC has been crystallized by a catena of judgments of the Hon'ble Supreme Court from time to time. It is settled position that the object of order XII Rule 6 CPC is that once there are categorical admissions made by a party, then the plaintiff may not be made to wait or the litigation to linger on unnecessary pleas. The legislative intention behind inserting Order XII Rule 6 CPC is to ensure that the judicial process is not abused and a person entitled to relief is granted such relief without delaying the passing of a decree in his/her favour.

26. In **Charanjit Lal Mehra v. Smt. Kamal Saroj Mahajan** [2005 11 SCC 279], it was *inter alia* held by the Supreme Court that an admission under Order XII Rule 6 CPC can be inferred from the facts and circumstances of the case and that Order XII Rule 6 CPC has been enacted to expedite trial and where the courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so.

27. In **Vijaya Myne v. Satya Bhushan Kaura** [(2007) 142 DLT 483 (DB)], it was *inter alia* held that objective in enacting the provision like



Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.

28. In ***Shri Vimal Khanna v. Shri Kishan Chand Khanna*** DRJ 116 (2010) 251, the Division Bench of this Court, it was *inter alia* held that if otherwise found entitled to a decree on admissions, the plaintiff cannot be deprived thereof by astute drafting of the written statement or by taking pleas therein which have no legs to stand upon.

29. Similarly, in ***P.P.A. Impex Pvt. Ltd. v. Mangal Sain Mittal***, [166 (2010) DLT 54] the principle laid down by the Supreme Court in the case of ***T. Arivandanda v. T. V. Satyapal*** [(1977) 4 SCC 467] was extended and it was *inter alia* held that a defence which is implausible and on a meaningful, but not formal reading, is manifestly vexatious and meritless, clever drafting



should not be allowed to create an illusion and such defences should not be needlessly permitted to go to trial.

30. In ***Tirath Ram Shah Charitable Trust and Ors. v. Mrs. Sughra Bi @ Sughra Begum (deceased)*** [2015 SCC OnLine Del 13655, it was *inter alia* held that

“14. The law on the aspect as to what would constitute “pleadings or otherwise”, the words used under Order XII Rule 6 CPC, for passing a judgment on admissions is well settled. It has been decided in several cases by the Supreme Court and the High Courts that at the time of passing of a decree, if the court has sufficient material before it that can prima facie satisfy it about the existence of the ground for eviction which include express/implied admissions, they can validate passing of a decree under Order XII Rule 6 CPC on the basis of such admissions.”

31. It is also relevant to rely upon ***Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd.*** 1997 SCC OnLine Del 129, wherein it was *inter alia* held as under:

“(17) The question now is that whether there is any admission or not so as to entitle the plaintiff to have a decree for possession. The factors which deserve to be taken into consideration in order to enable the Court to pass a decree in plaintiff's favour as regards possession in such like suit. are: (a) existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiff's favour.”



32. In the matter between the landlord and the tenant the learned ADJ (South District) Saket Court, New Delhi in CS/DJ No. 27 of 2022 passed the decree which read as follows:

“Hence, Preliminary Decree is passed in favour of the plaintiff and against the defendants and defendants shall hand over to the plaintiff the vacant and peaceful possession of the suit property bearing No. H.No. F-25A, Hauz Khas Enclave, New Delhi admeasuring about 500 sq.yds. comprising Ground Floor, first Floor and Second Floor consisting of seven bedrooms with attached bathrooms, two drawing rooms, two kitchens, four servant quarters etc., within 1 period of two weeks from today.”

33. In the present case, it is an undisputed fact that the Addendum Agreement dated 4th September, 2017 is an unregistered document. The question is that whether on the basis of this unregistered document, this Court can allow to take the suit for trial. The plea of the petitioner is that the tenancy does not stand terminated in view of Addendum Agreement dated 4th September, 2017. However, since the Addendum Agreement dated 4th September, 2017 is unregistered in violation of the provisions of the Registration Act can it be given effect to in view of the lease provisions as contained in Section 107 of Transfer of Property Act, Section 17 of Registration Act and Section 23 of the Contract Act, the answer should be in negative only. This Court is of the view that the unregistered Addendum dated 4th September, 2017 cannot be given effect to. It is also pertinent to mention that suit for specific performance has been filed in the year 2022 for the registration of document executed on 4th September, 2017. This Court considers that the letter dated 20th July, 2020 cannot extend the limitation.



34. It is also pertinent to refer to ***Sunil Kumar Roy v. M/s. Bhowra Kankanee Collieries Ltd and others***, AIR 1971 Supreme Court 751, wherein it was *inter alia* held as under:

“Mr. B.Sen for the appellant sought to raise the question about the admissibility of Exh. A-4, for want of registration. In the first place this contention cannot be entertained so long as the finding of the High Court on the only point which was canvassed before it about the reduction of the rate of royalty is not set aside. The High Court had held after an examination of the evidence that it had not been proved that there was any change in the market condition in July or in December 1952 to call for a reduction in the rate of royalty or that there was any mutual arrangement or agreement between the lessor or the lessee for such a reduction which was to become effective from July 1952. No attempt was made by Mr. Sen to persuade us to reverse this conclusion. Even on the assumption that a mutual arrangement or agreement as evidenced by Exh. A-4 was arrived at between the appellant and the Eastern Coal Co. Ltd., we are unable to agree that any reduction in the rate of royalty could have been effected by means of Exh. A-4 which had not been registered under the provisions of the Indian Registration Act. It is well settled by now that a document which varies the essential terms of the existing registered lease, such as the amount of rent, must be registered: See Durga Prasad Singh V. Rajendra Narain Bagchi, (1910)ILR 37 Cal 293 which was approved by the Full Bench in Lalit Mohan Gosh V. Gopal Chuk Coal Company Ltd., (1912)ILR 39 284 (FB). The decision of the Madras High Court in Obai Goudan v. Ramalinga Ayyar, (1899) ILR 22 Nad 217, taking a contrary view that has been taken is that registration of an agreement is necessary which reduces the rent of an existing registered lease.”

35. In ***Burmah Shell Oil Distributing Petroleum Corporation Ltd.*** (supra) case also, it was *inter alia* held as under:

“In view of the paragraph 1 of section 107 of the Act, since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor



and the lessee. In the absence of registered instrument, the lease shall be deemed to be "lease from month to month". It is clear from the very language of section 107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease. The lessee and the sub-lessee in the facts of this case continued to remain in possession of the property on payment of rent as a tenant from month to month. The High Court so found. We are of the opinion that the High Court was right."

36. It is a settled proposition that the terms of lease cannot be held to be as the collateral purpose. In ***Gulab Singh & Sons Pvt. Ltd*** (Supra) relied upon by the learned counsel for the petitioner. It was inter alia held that the proviso to Section 49 of Registration Act will not be applicable in as much as terms of lease are not "collateral purpose" within its meaning.

37. The petitioner has not disputed the relationship of landlord and tenant between the parties. The service of notice vide which the tenancy was terminated has also not been disputed. Learned counsel for the petitioner has submitted that though service of notice is admitted, but it has no effect as in view of Addendum dated 4th September, 2017, the tenancy stood extended. The plea of the petitioner that, therefore, it cannot be taken as unequivocal admission has to be noted for to be rejected only. The admission may not be expressly, but may be taken as constructive also. The tenant cannot be allowed to prolonged the proceedings on the plea which are contrary to law.

38. I consider that in the present case, the learned Trial Court has exercised its jurisdiction in accordance with law and there is nothing left for this Court to interfere in this case.



NEUTRAL CITATION NO: 2022/DHC/002664

39. With these observations, the present appeal along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

JULY 12, 2022

Pallavi..

