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

+ CM(M) 714/2022 & CM APPL. 32306/2022

SH VIJAY KUMAR JAIN (SINCE DESEASED THROUGH  
LRS)MADHU JAIN & ORS. .... Petitioners

Through: Mr. Rishi Bharadwaj and Mr.  
Abhiesumat Gupta, Advs.

versus

SURESH KUMAR JAIN ..... Respondent

Through:

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**J U D G M E N T (O R A L)**

% **25.07.2022**

1. This petition, under Article 227 of the Constitution of India, challenges an order dated 29<sup>th</sup> October 2021, passed by the learned Civil Judge in CS 2020/2018 (*Vijay Kumar Jain v. Suresh Kumar Jain*), whereby an application, by the petitioner as the plaintiff in the suit, under Order XII Rule 6 of the CPC, has been dismissed.

2. According to the case set up by the petitioner in the plaint, the property at 4754, Ahata Kidara, Pahari Dhiraj, Delhi 110006 (“the tenanted premises”) owned by the petitioner, was let out to the respondent, under a tenancy agreement dated 31<sup>st</sup> August 2017 for a period of 11 months w.e.f 1<sup>st</sup> September 2017 at a rent of ₹ 7,500/- per month excluding electricity and water charges.



3. Alleging that the respondent had defaulted in payment of rent to the petitioner since October 2017, which resulted in the petitioner terminating the tenancy vide a legal notice dated 10<sup>th</sup> May 2018, and further alleging that, despite having been called upon in that regard, the respondent did not vacate the tenanted premises, the petitioner filed CS 202/2018, seeking a decree of possession in favour of the petitioner and against the respondent as well as a decree for arrears of rent and damages, apart from costs.

4. The defendant, in his written statement, filed by way of response to the suit, disputed the assertion of the petitioner that the suit property had been let out to the respondent at the rate of ₹ 7,500/- per month. The respondent contended, *per contra*, that the rate of rent was only ₹ 200/- per month and that, therefore, the matter was within the purview of the Delhi Rent Control Act, 1958 by virtue of Sections 50<sup>1</sup> read with Section 3(c)<sup>2</sup> thereof.

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<sup>1</sup> 50. (1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (2) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises



5. During the course of proceedings in the suit, the petitioners moved an application under Order XII Rule 6 of the CPC, seeking a decree on admissions. It was sought to be contended in the said application that, as the respondent had admitted the factum of tenancy as well as execution of the tenancy agreement, nothing further survived for adjudication and that, therefore, the petitioner was entitled to a decree on admissions.

6. Apropos the tenancy agreement dated 31<sup>st</sup> August, 2017, on which the petitioner sought to rely, the written statement of the respondent stated, *inter alia*, thus:

“B. That the defendant is doing his lawful business at the said tenanted premises, but in the year, 2016, the defendant being a illiterate person and have no knowledge about the English language, the plaintiff Vijay Kumar Jain asked the plaintiff to come to sign some papers for applying the commercial electricity meter and for the said purpose, there is requirement of signatures of the defendant on the documents for his personal use and to produced the same before the authorities and requested the defendant to sign some documents. The defendant under the good faith and belief, signed some papers, as the said documents were in English language and when the defendant requested the plaintiff to read over the contents of the said document, but the plaintiff asked the defendant that the said documents were formality of the govt. authority, then the defendant under his impression signed some documents.

C. That the plaintiff after few days shown the defendant a copy of the rent agreement and supply the copy of the same to the defendant, which is forged and fabricated, it came to the knowledge of the defendant when the defendant saw the said

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3. [(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five/ hundred rupees; or



agreement to the person, who has well known about the English language, the defendant was shocked and surprised after hearing the contents of the said rent agreement that the said rent agreement was executed by the plaintiff thereby giving false facts i.e. the rent of the rented premises is Rs.7000/- and the said rent agreement is for the period of 01.06.2016 to 01.05.2017 i.e. 11 months and the security amount which was paid by the defendant is Rs.10,000/-”

7. In view of the afore-extracted contention of the respondent that, as the rate of rent was only ₹ 200 per month, the suit was not maintainable as the premises was within the ambit of the DRC Act, the learned Civil Judge has, relying on the judgment of the Supreme Court in *Uttam Singh Duggal v. UOI*<sup>3</sup> and *Payal Vision Ltd. v. Radhika Chaudhary*<sup>4</sup>, held that there was no clear and unequivocal admission of liability, by the respondent, as would justify a decree on admissions under Order XII Rule 6 of the CPC.

8. The said application stands dismissed by the learned Civil Judge *vide* the impugned order dated 29<sup>th</sup> October, 2021.

9. The following passage, from the decision in *Payal Vision*<sup>4</sup>, on which the learned Civil Judge relies, is significant:

“6. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC .....”

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<sup>3</sup> AIR 2000 SC 2740

<sup>4</sup> (2012) 11 SCC 4



(Emphasis Supplied)

10. A reading of the afore-extracted passage from *Payal Vision*<sup>4</sup> clearly indicates that, the twin considerations of the existence of jural relationship of landlord and tenant between the parties and termination of the tenancy could be treated as sufficient to justify a judgment on admissions under Order XII Rule 6 of CPC *where the tenancy is not protected under provisions of the DRC Act*. Per corollary, where the tenancy is protected under the DRC Act, these twin considerations, even if admitted, would not suffice for a decree on admission under Order XII Rule 6.

11. The learned Civil Judge has held that, as the respondent did not make any admission to the effect that the tenancy of the rented premises was more than ₹ 3,500/- and that it was not protected under the DRC Act, no clear and unambiguous admission, as would justify passing of a decree on admissions could be said to exist.

12. On the issue of when a decree on admissions could be passed under Order XII Rule 6 of the CPC, authorities are legion. One may refer, profitably, to the recent judgment of the Supreme Court in *Hari Steel and General Industries Limited. v. Daljit Singh*<sup>5</sup> as well as a decision delivered earlier this month, in *Karan Kapur v. Madhuri Kumar*<sup>6</sup>. Paras 25 to 28 of *Hari Steel and General Industries Limited*<sup>5</sup> and paras 19 and 21 of *Karan Kapur*<sup>6</sup> merit reproduction thus:

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<sup>5</sup> 2019 (20) SCC 425



**Hari Steel and Gen. Industries v. Daljit Singh**

“25. In the judgment in *Himani Alloys Ltd. v. Tata Steel Ltd.*<sup>7</sup>, nature and scope of Order 12 Rule 6 has been considered by this Court. In the aforesaid judgment this Court has held that the discretion conferred under Order 12 Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of the judgment read as under: (SCC pp. 276-77)

“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. (See also *Uttam Singh Duggal & Co. Ltd. v. United Bank of India*<sup>8</sup>, *Karam Kapahi v. Lal Chand Public Charitable Trust*<sup>9</sup> and *Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha*<sup>10</sup>). There is no such admission in this case.”

26. In the judgment in *S.M. Asif v. Virender Kumar Bajaj*<sup>11</sup>, this Court has held that the power under Order 12

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<sup>6</sup> 2022 SCC OnLine SC 791

<sup>7</sup> (2011) 15 SCC 273

<sup>8</sup> (2000) 7 SCC 120

<sup>9</sup> 2010) 4 SCC 753

<sup>10</sup> (2010) 6 SCC 601

<sup>11</sup> (2015) 9 SCC 287



Rule 6 CPC is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order 12 Rule 6 CPC. Para 8 of the judgment read as under: (SCC p. 291)

“8. The words in Order 12 Rule 6 CPC “may” and “make such order ...” show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

27. In the judgment in *Balraj Taneja v. Sunil Madan*<sup>12</sup>, while considering the scope of Order 8 Rule 10 and Order 12 Rule 6 CPC, this Court has held that the court is not to act blindly upon the admission of a fact made by the defendant in the written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court.

28. In the aforesaid judgment, while considering the scope of Order 12 Rule 6 CPC, post amendment by amending Act, 1976 this Court has held as under: (*Balraj Taneja v. Sunil Madan*<sup>12</sup>, SCC p. 408, paras 21-23)

“21. There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides 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

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<sup>12</sup> (1999) 8 SCC 396



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 judgment 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.'

22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this amendment are given below:

'Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule.'

23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit."

**Karan Kapoor v. Madhuri Kumar**

"19. On the issue of discretion of Court to pass judgment on admission, a three-Judge Bench of this Court in the case of *S.M. Asif v. Virendar Kumar Bajaj*<sup>11</sup>, made the legislative intent clear to use the word 'may' which clearly stipulates that



the power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right. In the said case, the suit for eviction was filed by the Respondent-Landlord against the Appellant-Tenant. The relationship of tenancy was admitted including the period of Lease Agreement. The Plaintiffs' claim was resisted by the Defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs.82,50,000/- was paid. The Defendant in course of taking the defense stoutly denied that Respondent/Plaintiff has continued to be the landlord after entering into Agreement to Sell. The suit for specific performance was also filed which of course was contested by the Plaintiff. In the said case, this Court was of the view that deciding such issues requires appreciation of evidence. Mere relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 of CPC. Resultantly, this Court by setting aside the judgment passed by the High Court remitted the matter back to the Trial Court subject to deposit of the arrears of the rent and the compensation for use of occupation of the suit premises. Such deposit was subject to final outcome of the eviction as well as suit for specific performance.

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21. Learned counsel for the Appellant has placed heavy reliance on a judgment of *R. Kanthimathi* (supra). In the said case, this Court has specified that any jural relationship between two persons could be created through an agreement and similarly could be changed through an agreement subject to the limitations under the law. However, it is urged that the relationship of the Appellant has now been changed to purchaser on signing the ATS-I by landlord subsequent to lease agreement, therefore the relationship of landlord and tenant extinguishes. Reliance has also been placed on the judgment of *Himani Alloys Limited*<sup>7</sup> (supra) and it has been urged by Appellant that in case the admission is not of the amount as alleged and not categorical and clear, the decree under Order XII Rule 6 cannot be directed. The case of *Hari Steel* (supra) has also been relied upon to contend that the relief under Order XII Rule 6 is discretionary and the Court should not deny the valuable right of the Defendant to contest the suit, meaning thereby, the discretion should be used only when there is a clear, categorical and unconditional admission and such right should not be exercised to deny valuable right



of a Defendant to contest the claim based on defense taken. Further, relying upon the judgment of *Shrimant Shanrao Suryavanshi* (supra), it has been contended that when a possession is with the Appellant by virtue of a part performance of agreement to sell as prescribed under Section 53 of the Transfer of Property Act, 1882, he has right to defend or protect his possession.”

13. From a reading of the afore-extracted passages from *Hari Steel and General Industries*<sup>5</sup> and *Karan Kapur*<sup>6</sup>, it is clear that the learned Civil Judge cannot be said to have erred in applying Order XII Rule 6 of the CPC to the facts of the case before him, as there was no clear and unequivocal admission of liability as would justify a decree on admissions. The respondent had raised a categorical defence, questioning the validity and the genuineness of the tenancy agreement dated 31<sup>st</sup> August 2017, on which the petitioner sought to place reliance.

14. For better of a worse, the respondent alleged that the agreement had been got executed by practicing deceit and as being a false and fabricated document, executed after obtaining his signature on blank papers, taking advantage of the fact that he was illiterate.

15. Further, and as a sequitur to the dispute raised by him to the validity of the tenancy agreement dated 31<sup>st</sup> August, 2017, respondent has questioned the very maintainability of the suit, in view of Section 50 of the DRC Act, taking a stand that the rent was only ₹ 200/- per month.



16. These assertions, as contained in written statement, may be right or maybe wrong. The respondent may or may not have a defence. One of the considerations which govern the approach of the Court while dealing with applications under Order XII Rule 6, as is manifested from the law enunciated in the aforesaid two decisions in *Hari Steel and General Industries Limited*<sup>5</sup> and *Karan Kapur*<sup>6</sup> is, however, that a decree on admission is not to be likely passed and that, while doing so, the Court is required to be mindful of the fact that the suit is being decreed without a trial. Where the defendant has raised an issue, which requires a trial, the Court is to refrain from passing any decree on admission as it would amount to depriving the defendant the right of a trial on the issue raised by him.

17. Allowing the petitioner's application seeking a decree of admission would effectively deprive the respondent of an opportunity to have these issues, raised by his in the written statement, tried. That sole consideration, even by itself, would justify rejection of the petitioner's application under Order XII Rule 6 of the CPC.

18. Moreover, as is apparent from the decisions cited supra, the power exercised by the Court under Order XII Rule 6 is discretionary. Order XII Rule 6 uses the word "may" and not "shall". Emphasising this fact, the Supreme Court has held that no plaintiff has a right to a decree on admissions even where there are unequivocal admissions by the defendant. Discretion always vests in the Court to decide whether to grant, or not to grant, a decree on admissions.



19. Where the Court exercises discretionary jurisdiction, unless the exercise of discretion is perverse, no occasion arises, to invoke Article 227 of the Constitution of India. On the aspect of interference with discretionary orders, even in appellate jurisdiction, the Supreme Court has this to say, in *Wander Ltd. v. Antox India P. Ltd*<sup>13</sup>

“13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox’s alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have”

20. Where, even in appellate jurisdiction, the scope of interference, with discretionary orders of the Court below is thus circumscribed, the scope of interference is reduced further, where the exercise of

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<sup>13</sup> 1990 Supp SCC 727



jurisdiction is being sought to be invoked is that which has been conferred by Article 227 of the Constitution of India.

21. Order XII Rule 6 of the CPC confers discretionary jurisdiction on the Court. Unless the exercise of discretion is perverse, the Court would not interfere, under Article 227 of the Constitution of India.

22. It cannot be said that the manner in which the learned Civil Judge has exercised jurisdiction under Order XII Rule 6 of the CPC in the present case is perverse.

23. For all the aforesaid reasons, no case for interference with the impugned order, under Article 227 of the Constitution of India, is made out.

24. The petition is accordingly dismissed in *limine*, with no orders as to costs.

**JULY 25, 2022**

*dsn*

**C. HARI SHANKAR, J.**