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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1126/2022 & CM APPL.45434/2022, CM
APPL.45435/2022

SH. ANIL KUMAR MEHTA Petitioner
Through: Mr. Amit Kumar, Adv.

versus

SH. JOGINDER KUMAR MEHTA & ORS..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
J U D G M E N T (O R A L)

% **19.10.2022**

1. This petition under Article 227 of the Constitution of India, assails order dated 1st September 2022 passed by the learned Additional District Judge in CS DJ 11679/16 (*Anil Kumar Mehta v. Joginder Kumar Mehta*) whereby the learned ADJ has dismissed an application filed by the petitioner under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC).

2. CS DJ 11679/16 was filed by the petitioner and Respondent 3 as joint plaintiffs against Respondents 1, 2 and one Mr. Surinder Kumar Mehta as defendants in the suit. After the filing of the suit, *vide* order dated 9th November 2012, Plaintiff 1 was allowed to be transposed as Defendant 4.

3. The subject matter of the suit was a property situated at G-66, Lajpat Nagar-II, New Delhi (“the suit property”). Undisputedly, Yashpal Mehta, the father of the parties to the present litigation, was the sole and absolute owner of the suit property. According to the recitals in the suit, Yashpal Mehta had executed a Will on 1st July 1983, subsequently registered on 25th October 1983 whereby and whereunder he had granted a limited right of use of the suit property to his wife Champa Mehta. The Will further stated, according to the recitals in the plaint, that, consequent on the demise of Champa Mehta, the suit property would devolve equally on the four sons of Yashpal Mehta, being Joginder Kumar Mehta (Defendant 1 in the suit and Respondent 1 herein), Surinder Kumar Mehta (Defendant 3 in the suit, who was subsequently deleted as he expired during the course of trial), Satish Kumar Mehta (Defendant 4 in the Suit and Respondent 3 herein) and the petitioner who was the plaintiff in the suit. The plaint therefore, asserted that, by operation of the Will dated 1st July 1983 of Yashpal Mehta, the suit property, consequent to the demise of Champa Mehta, would equally devolve on the afore-noted four sons of Yashpal Mehta, i.e. the petitioner, Respondents 1 and 3 and Surinder Kumar Mehta who died during the course of trial.

4. The suit property comprised four floors, including the ground floor. During her life time, Champa Mehta executed a rent agreement, renting out the first floor of the suit property to a tenant, who, however vacated the premises in April 2010.

5. Champa Mehta expired on 8th July 2009. Consequent thereon, the plaint asserted that the present petitioner and Respondents 1 and 3 were her only surviving legal heirs, each of whom was entitled to 1/4th share in the suit property.

6. Alleging that Respondent 1 Joginder Kumar Mehta and his son Tarun Kumar (Respondent 2) were asserting exclusive rights in respect of the suit property, the petitioner and Respondent 3 jointly filed the afore-noted CS DJ 11679/16, seeking partition of the suit property.

7. Inasmuch as Respondents 1 and 2 were claiming ownership of the suit property on the basis of a gift deed dated 25th May 2008, allegedly executed by Champa Mehta, gifting the suit property to them, the plaint also sought a declaration that the said gift deed was null and void. In so praying, the pliant relied on the fact that the Will dated 1st July 1983 of Yashpal Mehta merely gave a life interest to Champa Mehta to use the suit property, and did not confer her any titular rights in respect thereof, as could be conveyed by her by gift or otherwise.

8. Written statements were filed, in response to the plaint, by all the defendants. A joint written statement was filed by Defendants 1 and 2 whereas separate written statements were filed by Defendants 3 and 4.

9. Respondent 3 filed two written statements, one on behalf of Defendant 3 and one on his own behalf, after transposition as Defendant 4.

10. By order dated 5th December 2014, passed by the learned Joint Registrar (Judicial) in this Court, (when the suit was pending before this Court prior to enhancement of pecuniary jurisdiction of Trial Courts), it was directed that the written statement filed by Respondent 3 on behalf of Surinder Kumar Mehta would not be taken into account and that Surinder Kumar Mehta (Defendant 3) would be proceeded *ex parte*.

11. Respondent 3, as Defendant 4, however, undisputedly filed his own written statement, which was taken on record and has also been taken into account by the learned ADJ while passing the impugned order.

12. Respondents 1 and 2, in their written statement, categorically asserted, in paras 7, 8 and 9 of the preliminary objections and paras 12, 13, 14, 15, 16, 17 and 20 of the reply on merits thus:

“7. That the suit has not been properly valued for the purposes of court fees and jurisdiction nor the plaintiff has paid proper court fee on the same and as such the plaint is liable to be dismissed on the sole ground alone.

8. That the plaintiff has no legal right whatsoever in the property in question and as such cannot claim any relief against the true owner. The plaint as such is liable to be

rejected/dismissed on the said ground alone.

9. That the suit filed by the plaintiff is bad for misjoinder and non-joinder of the parties and as such the same is liable to be dismissed.

12. That, the contents of Para 12 of the plaint are wrong and denied. It is denied that the on 1/7/2010, some persons along with the defendant no. 1 and 2 visited the property, and started throwing the belonging of the plaintiffs from the first floor after breaking open the lock of the plaintiffs. It is denied that the plaintiffs immediately informed to the local police and on the intervention of the local police the untoward incident of forcible dispossession and taking of the forcible possession of the first floor by the defendant No. 1 and 2 and other persons was avoided. It is denied that before the police the defendant No. 1 claimed that they had got gift deed with regard to first and third floor of the property the defendant no 1 and 2 had furnished the photocopy of the alleged gift deeds and the plaintiffs were shocked to know that the defendant No. 1 and 2 have committed fraud and got executed the gift deed by misrepresentation and fraudulent manner. It is submitted that It is submitted that Smt. Champa Mehta out of love and affection had executed a gift deed in respect of third floor, with structure standing therein, fittings and fixtures installed therein of the property bearing NO. G-II/66, Lajpat - Nagar, New Delhi measuring 100 sq yards along with proportionate undivided, indivisible and impartible share of ownership rights in the land underneath, unto the Donees i.e. defendant no.1 and 2 vide registered gift deed dated 30-06-2008. It is submitted that defendant no.1 is in exclusive, possession of the first floor of the property.

13. That, the contents of Para 12 of the plaint as far as it relates to the claim before the police are matter of record and needs no reply. The plaintiff be put to strict proof of the same. It is submitted that Smt. Champa Mehta had executed a Gift Deed dated 30/6/2003, whereby Smt Champa Mehta had executed the gift deed in favour of the Defendant no 2 and 3 with regard to third floor with terrace right to the defendant no 1 and 2 and also claimed that the deceased Smt. Champa

Mehta had executed a GIFT deed in favour of the defendant no. 1 and 2 thereby giving the entire first floor of the property to the defendant no. 1.

14. That, the contents of Para 14 of the plaint are wrong and denied. It is denied that that Smt Champa Mehta the mother, was having was love and affection for all her sons and she never had intention execute any gift deed in favour of any person. It is denied that deceased Smt. Champa Mehta, the mother had no valid and legal right title and interest in the property and therefore she could not have executed the alleged Gift Deed with regard to first floor and third floor of the property in question. It is further denied that She was given only limited right to use the property automatically devolved upon four sons. It is further denied that since the deceased mother had no absolute right title and interest in the property the alleged Gift Deeds executed in favour of the defendant no. 1, 2 and 3 illegal and has no legal sanctity and are liable to be declared as null and void. It is submitted that Smt. Champa Mehta out of love and affection had executed a gift deed in respect of third floor, with structure standing therein, fittings and fixtures installed therein of the property bearing NO. G-II/66, Lajpat Nagar, New Delhi measuring 100 sq yards along with proportionate undivided, indivisible and impartible share of ownership rights in the land underneath, unto the Donees i.e. defendant no.1 and 2 vide registered gift deed dated 30-06-2008. It is further submitted that the gift deed are genuine and authentic.

15. That, the contents of Para 15 of the plaint are wrong and denied. It is denied that that the said Gift Deeds are the outcome of mala fide acts deeds and things on the part of the defendant no. 1 and 2, in order to deprive the plaintiffs and the defendant no. 3 from their legitimate rights. It is denied that the alleged Gift deeds were executed on 28/5/ 2008 and 1/7/2008. That, the contents of Para 15 of the plaint are wrong and denied. It is denied that that at that time Smt Champa Mehta was not in sound disposing mind. It is further denied that that she was under going treatment of neurological disease from Central Government Health Service. It is denied that that some times she had also got treatment from Vimhans for her mental disorder. The contents of the rest of the Para is

denied for want of knowledge and the plaintiffs be put to strict proof of the same. The doctor of vimhans had given a certificate dated 20/1/2010 by which it was certified that Smt Champa Mehta and visited the hospital on 16/ 1/ 2009 and she was consulted with Sr. neurological doctor. The medicines prescribed by CGHS clearly indicate she was not in sound disposing mind and she was undergoing treatment. It is denied that the defendant no. 1 and 2 with malafide intentions and ulterior motive got executed the Gift Deed by misrepresentation and the time when the mother lost memory and identify any person. It is denied that the said gifts are also illegal. It is submitted that Smt. Champa Mehta out of love and affection had executed a gift deed in respect of third floor, with structure standing therein, fittings and fixtures installed therein of the property bearing NO. GII/66, Lajpat Nagar, New Delhi measuring 100 sq yards along with proportionate undivided/ indivisible and impartible share of ownership rights in the land underneath, unto the Donees i.e. defendant no.1 and 2 vide registered gift deed dated 30-06-2008. It is further submitted that the gift deed are genuine, authentic and legal.

16. That, the contents of Para 16 of the plaint are wrong and denied. It is denied that that the plaintiffs and family members used to take the deceased Smt Champa Mehta to the hospital for the treatment. It is further denied that that the occasionally the defendant No. 1 and 2 also used to take her to hospital for treatment. It is denied that the defendant No 1 and 2, by taking the advantage of mental condition of the deceased Champa Mehta and the defendant No, 3 fraudulently got signed and executed the gift deeds by misrepresentation. It is submitted that Smt. Champa Mehta out of love and affection had executed a gift deed in respect of third floor, with structure standing therein, fittings and fixtures installed therein of the property bearing NO. G-II/661 Lajpat Nagar/ New Delhi measuring 100 sq yards along with proportionate undivided, indivisible and impartible share of ownership rights in the land underneath, unto the Donees i.e. defendant no.1 and 2 vide registered gift deed dated 30-06-2008. It is further submitted that the gift deed are genuine, authentic and legal.

17. That, the contents of Para 17 of the plaint are wrong and denied. It is denied that that the said Gift Deeds were got executed by the defendant no.1 and 2 at the back of the plaintiffs, the gift Deeds, executed in favour of defendant no. 1 was witnesses by the defendant no .2 and one of the friend of the defendant no. 1 and 2. It is submitted that Smt. Champa Mehta out of love and affection had executed a gift deed in respect of third floor, with structure standing therein, fittings and fixtures installed therein of the property bearing NO. GII/66, Lajpat Nagar, New Delhi measuring 100 sq yards along with proportionate undivided, indivisible and impartible share of ownership rights in the land underneath, unto the Donees i.e. defendant no.1 and 2 vide registered gift deed dated 30-06-2008. It is further submitted that the gift deed are genuine, authentic and legal.

20. That the contents Para no.20 of the plaint are denied for want of knowledge and the plaintiffs be put to strict proof of the same. It is denied that the deceased mother was having another property i.e DDA Janata Flat, Opposite Police Colony, Narela, New Delhi. It is further denied that the address of the said property is in power and possession of the defendant No. 1 and he may be directed to disclose the same. The contents of the rest of the para are wrong and denied. The defendant reserves the right to file reply as and when the plaintiffs disclose the details of the said property if any.”

13. Mr. Amit Kumar, learned Counsel for the petitioner emphasises the fact that paras 3 and 4 of the plaint jointly filed by the petitioner and Respondent 3 specifically asserted the execution, by Yashpal Mehta of Will dated 1st July 1983, whereunder he had given a limited right of use, of the suit property, to his wife Champa Mehta with a further stipulation that, consequent on the demise of Champa Mehta, the suit property would devolve equally on their four sons. In the written statement filed by Defendants 1 and 2, it is pointed out that there is no specific rebuttal to the said paragraphs in the plaint, and

that para 3 of the written statement merely states that the contents of para 3 of the plaint were a matter of record which needed no reply.

14. Respondent 3, in the written statement filed by him, denied, in no uncertain terms, the Will dated 1st July 1983 as a forged and fabricated document, which was neither executed by Yashpal Mehta nor bore his signature. Para 1 of the preliminary objections in the said written statement, and paras 3 and 7 of the written statement, which make this position clear, may be reproduced thus:

“1. That the plaintiff has no right, title or interest whatsoever in the suit property and no locus standi to file and maintain the present suit, as the alleged Will dated 1.7.1983 is the forged and fabricated document, which was not executed by late Yashpal Mehta and the same does not bear his signature. It is submitted that when the plaintiff got filed the present suit, along with the answering defendant, it was told by the plaintiff that their father late Yashpal Mehta executed a Will dated 1.7.1983 which was got registered by the plaintiff on 24.10.1983 under Section 41 of the Indian Registration Act thereby claiming that the said Will is the last Will of their father, however, the answering defendant did not understand the malafide of the plaintiff and has come under his allurements believing upon his version that the said Will is the last Will of late Yashpal father of the plaintiff, defendant No.1, 3 and 4. However after filing of the said suit, it has come to the knowledge of the answering defendant that the plaintiff has filed a complaint before Land & Development Office, New Delhi thereby seeking cancellation of the conveyance deed which was executed in the name of their mother, however, the reply was also sought from the answering defendant by L&DO vide its letter dated 19.1.2012 and accordingly the answering defendant submitted his reply dated 31.1.2012 thereby clearly stated that their mother was having life time interest only as per said Will dated 1. 7.1983 and he has not given any NOC/affidavit dated

20.8.1983 and the same does not bear his signature as the answering defendant never signed in Hindi and it seems that the signatures of their mother as well as of the answering defendant are forged. After receiving of the said letter from the L&DO regarding reverting the title of the suit property, the answering defendant became suspicious towards the conduct of the plaintiff and thereafter minutely examined the Will dated 1.7.1983 registered on 25.10.1983 by the plaintiff and then only it has come to the knowledge of the answering defendant that the said Will does not bear the signatures of his father and it appears that the plaintiff has forged the said Will with an intention to take a share in the suit property left behind by their father. It is further submitted that the plaintiff got manufactured the Will dated 1.7.1983 knowingly well that late Shri Yashpal Mehta, during his life time executed a Will dated 4.8.1982 which is duly registered as Document No.1897, Addl.Book No.3, Vol.No.220 Page 116 registered on 5.8.1982 and as per said Will, Shri Yashpal Mehta had bequeathed all his movable and immovable properties in favour of his wife, defendant Nos .1, 3 and 4. Late Yashpal Mehta had not given any share to the plaintiff but the plaintiff, being a clever person has manufactured/forged alleged Will dated 1.7.1983 and got it registered on 24.10.1983 after the death of late Yashpal, with a view to take share in the movable and immovable properties of late Yashpal. It is also submitted that late Yashpal has already debarred the plaintiff from his movable and immovable properties. Hence, the present suit is liable to be dismissed with heavy costs.

3. That no cause of action ever arose in favour of the plaintiff and against the defendants for filing the present suit, hence, the same is liable to be rejected under Order 7 Rule 11 CPC.

7. That the contents of para 7 of the plaint are wrong and denied. It is specifically denied that after the demise of Smt. Champa Mehta, the plaintiff, defendant No.1, 3 and 4 became the joint owner of the property having 1/4th share each, by virtue of registered Will executed by deceased father dated 25.10.1983 as alleged. All allegations are false, frivolous,

vexatious, misconceived and after thought. The detailed submissions made hereinabove may be read as part and parcel of reply to this para as the same are not being repeated herein for the sake of brevity. ”

15. In view of the fact that Respondents 1 and 2, as well as Respondent 3 had, in their separate written statements, denied the execution of the Will dated 1st July 1983, and had, on the other hand, asserted their title in respect of the suit property on the basis of the gift deed dated 25th May 2008 executed by Champa Mehta, the learned ADJ, *vide* the impugned order dated 1st September 2022, observed that there were no unambiguous and unconditional admissions in the written statements filed by the respondents, as would justify passing of a decree on admissions under Order XII Rule 6 of the CPC.

16. Aggrieved by the said decision, the petitioner has approached this Court under Article 227 of the Constitution of India.

17. The law regarding Order XII Rule 6, is, by now, trite and well settled.

18. 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 judgment of the Supreme Court in *Hari Steel & General Industries Limited v. Daljit Singh*¹ as well as the more recent decision in *Karan Kapur v. Madhuri Kumar*². Paras 25 to 28

¹ (2019) 20 SCC 425

² 2022 SCC OnLine SC 791

of *Hari Steel & General Industries Limited*¹ and paras 19 and 21 of *Karan Kapur*² merit reproduction thus:

***Hari Steel & General Industries*¹**

“25. In the judgment in *Himani Alloys Ltd. v. Tata Steel Ltd.*³, 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*⁴, *Karam Kapahi v. Lal Chand Public Charitable Trust*⁵ and *Jeevan Diesels &*

³ (2011) 15 SCC 273

⁴ (2000) 7 SCC 120

⁵ (2010) 4 SCC 753

*Electricals Ltd. v. Jasbir Singh Chadha*⁶). There is no such admission in this case.”

26. In the judgment in *S.M. Asif v. Virender Kumar Bajaj*⁷, this Court has held that the power under Order 12 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*⁸, 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*⁸, SCC p. 408, paras 21-23)

⁶ (2010) 6 SCC 601

⁷ (2015) 9 SCC 287

⁸ (1999) 3 SCC 396

“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 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*²**

“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*⁷, 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.

21. Learned counsel for the Appellant has placed heavy reliance on a judgment of *R. Kanthimathi v. Beatrice Xavier*⁹. In the said case, this Court has specified that any jural

⁹ (2000) 9 SCC 339

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**³ 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**¹ 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 Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi**¹⁰, 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.”

19. One may, equally profitably, refer to the following passages, from the judgment of the Supreme Court in **Himani Alloys Limited**³, **Payal Vision Ltd. v. Radhika Choudhary**¹¹ and **S.M. Asif**⁷, in this regard:

Himani Alloys Limited³

“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*

¹⁰ (2002) 3 SCC 676

¹¹ (2012) 11 SCC 405

*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.**⁴, **Karam Kapahi**⁵ and **Jeevan Diesels and Electricals Ltd.**⁶. There is no such admission in this case.”*

(Emphasis Supplied)

Payal Vision Ltd.¹¹

“8. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. *Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation.* That precisely is the view taken by this Court in **Jeevan Diesels & Electricals Ltd.**⁶. relied upon by the High Court where this Court has observed:

“10.....Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question,

namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in ***Karam Kapahi***⁵ may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”

(Emphasis Supplied)

S.M. Asif⁷

“8. *The words in Order XII Rule 6 CPC “may” and “make such order...” show that the power under Order XII 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 XII 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.

9. In the suit for eviction filed by the respondent-landlord, appellant-tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted respondent-plaintiff's claim by setting up a defence plea of agreement to sale and that he paid an advance of Rs. 82.50 lakhs, which of course is stoutly denied by the respondent-landlord. The appellant-defendant also filed the Suit for Specific Performance, which of course is contested by the respondent-landlord. *When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC.”*

(Emphasis Supplied)

20. Clear, unequivocal and unambiguous admissions, are therefore, the indispensable *sine qua non* for a decree on admissions. Any prevarication or traversal, by the defendants to the assertions in the plaint, would negate the possibility of any such decree being passed.

Where the defendants dispute the assertions of the plaintiff, trial is a foregone conclusion. There can be no short-circuiting of the proceedings in such cases, by resorting to Order XII Rule 6 of the CPC.

21. In the present case, the passages from the written statements of Respondents 1 and 2 on the one hand and Respondent 3 on the other which stand reproduced hereinabove, clearly indicate that all the respondents were disputing the execution of the Will dated 1st July 1983 and were asserting the titular rights of Respondents 1 and 2 in respect of the suit property under the gift deed executed by Champa Mehta.

22. Learned Counsel for the petitioner had, as already noted, sought to emphasise the fact that, in the written statement filed by Respondents 1 and 2, to the para-wise rebuttal on merits to the plaint, Respondents 1 and 2 had not specifically traversed the assertions in para 3 of the plaint and had merely stated that the contents of the said paragraphs were matters of record.

23. That, in my considered opinion, cannot amount to an admission, for the purposes of Order XII Rule 6. “Matter of Record” stands defined, in P. Ramanatha Aiyar’s Advanced Law Lexicon as the “facts the truth of which can be established by reference to a record”. Any statement, in a written statement, to the effect that the contents of a corresponding paragraphs in the plaint or a petition are a “matter of

record”, cannot, therefore, amount to an admission, in law, of the correctness of the corresponding paragraph in the plaint or petition. In any event, it cannot constitute an “admission” as would justify passing of a decree on admissions under Order XII Rule 6, in view of the line of judicial authorities on the subject to which reference has already been made hereinabove.

24. Mr Amit Kumar, learned Counsel for the petitioner also placed reliance on the judgment of the Supreme Court in *Suziki Parasrampuriah Suitings Pvt. Ltd. v. The Official Liquidator of Mahendra Petrochemicals Ltd. (In Liqn.)*¹², specifically on para 12 whereof, which hold that a litigant may take different stands at different times but cannot take contradictory stands in the same case as that would amount to approbation and reprobation which is impermissible in law.

25. That issue is, in my view, really tangential to the controversy before me. The decision in *Suziki Parasrampuriah Suitings Pvt. Ltd.*¹² did not deal with a dispute even remotely akin to Order VI Rule 17 of the CPC. The aforesaid submission has been made by Mr. Amit Kumar apparently in order to discountenance the stand taken by Respondent 3 in the written statement filed by him. Mr. Amit Kumar seeks to contend that, having gone along with the petitioner in the plaint, prior to his transposition as Defendant 4, Respondent 3 could not, in the written statement filed by him consequent on transposition,

¹² (2018) 10 SCC 707

take a contrary stand. That is a submission on which no finding is called in the present proceedings, which are restricted to examining whether there was any unequivocal admission as would justify passing of a decree of admissions under Order XII Rule 6. I may note, in this regard, that Respondent 3 has sought to justify the stand taken in the written statement on the ground that, during the course of trial in the suit, he came to know that the Will dated 1st July 1983 was forged and fabricated. Whether that stand is right or wrong would be decided by the learned ADJ during the course of trial. Equally, the value to be accorded to the written statement filed by Respondent 3, as Defendant 4 in the suit, would also be a matter to which the learned ADJ would apply his mind during the course of trial.

26. In view of the aforesaid, this petition is devoid of merit. In that view of the matter, I find no reason to interfere with the decision of the learned Civil Judge, in the impugned order dated 1st September 2022, to reject the application of the petitioner under Order XII Rule 6 of the CPC. The order is therefore upheld. The present petition is accordingly dismissed *in limine* without any orders as to costs.

27. However, it is clarified that observations contained in the present judgment are restricted to examining the merits of the challenge, by the petitioner, to the rejection, by the learned ADJ, of the petitioner's application under Order XII Rule 6 of the CPC. They would not be regarded as binding on the learned ADJ during the course of trial and would not influence the final decision that the

learned ADJ may be inclined to arrive at.

C. HARI SHANKAR, J.

OCTOBER 19, 2022/kr

