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

% ***Date of Decision: 18.11.2022***

+ **RFA 345/2022 and C.M. No. 33583/2022 (stay)**

ANIMESH SINGH Appellant
Through: Mr. R.K. Saini and Mr. Shravan Kumar, Advocates.
versus
SUNITA JOLLY & ANR. Respondents
Through: Mr. Rakesh Agarwal and Mr. Pulkit Agarwal, Advocates.

+ **FAO 282/2022 and C.M. No. 48335/2022 (stay), 48336/2022 (exemption) & C.M. No. 48337/2022 (delay)**

ANIMESH SINGH Appellant
Through: Mr. R.K. Saini and Mr. Shravan Kumar, Advocates.
versus
SUNITA JOLLY Respondent
Through: Mr. Rakesh Agarwal and Mr. Pulkit Agarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

1. In RFA 345/2022, the Appellant is assailing the Judgment and Decree dated 25.05.2022 passed by the learned Additional District Judge-01, South East District, Saket Courts, New Delhi in CS No. 1417/2018 (“**Impugned Judgment**”), whereby the learned Trial Court was pleased to allow the application under Order XII Rule 6 CPC filed by the

respondent herein thereby granting a decree of possession of the property bearing No. M-27, (First Floor), Chitranjan Park, New Delhi - 110019 (“**Suit Property**”) in favour of the respondent.

2. In FAO 282/2022, the Appellant is assailing the Order dated 25.05.2022 passed by the learned Additional District Judge-01, South East District, Saket Courts, New Delhi in CS No. 1417/2018 (“**Impugned Order**”), whereby the learned Trial Court was pleased to allow the application under Order XXXIX Rule 10 CPC filed by the respondent herein thereby directing the Appellant to pay arrears of rent @ Rs.26,000/- per month with effect from August 2018 till July 2022 and continue to pay the same every month till the disposal of the said Suit.
3. RFA 345/2022 was listed before this Court on 01.08.2022. While issuing notice to the Respondent, this Court had stayed the operation of the Impugned Judgment. On 11.11.2022, FAO 282/2022 challenging the Impugned Order was listed before the Coordinate Bench of this Court. However, at the request of learned counsel for the Appellant, the said Appeal was transferred to this Court for being listed along with RFA 345/2022, which is arising out of the same suit being CS No. 1417/2018. Hence today, both the said Appeals i.e., RFA 345/2022 and FAO 282/2022 are listed together and with the consent of learned counsel for both the parties, these appeals are being heard and disposed by this common Judgment.

FACTS RELEVANT FOR THE DISPOSAL OF THE PRESENT APPEALS ARE AS FOLLOWS:

4. That the Respondent (Original plaintiff) is the owner/landlord of the suit property, which was let out to the Appellant (Original defendant) vide

Lease Agreement executed in May 2016 for a period of 11 (eleven) months commencing from 01.06.2016 and valid till 30.04.2017. The monthly lease rent of the Suit Property was fixed at Rs. 26,000/- exclusive of electricity and water consumption charges payable directly to BSES Rajdhani Power Ltd. and Delhi Jal Board respectively as per the bills raised by them. The lease rent was payable in advance on or before 5th day of each English Calendar month. As per the said Lease Agreement, the parties agreed to increase the rent by atleast 10% after expiry of the lease term of 11 months.

5. That it is the case of the Respondent that the Appellant was irregular in making the payment of lease rent during the period of original lease agreement. After expiry of the original lease term, the Appellant continued to occupy the Suit Property, however, the Appellant failed to enhance the rent by 10% and continued to pay lease rent @ Rs.26,000/- per month only. Accordingly, as on 31.07.2018, an amount of Rs.1,33,000/- became due and payable by the Appellant to the Respondent.
6. The Respondent got served a legal notice dated 31.07.2018 upon the Appellant calling upon him to clear all the arrears of rent and to vacate and handover vacant physical possession of the Suit Property to the Respondent within one month. It is the case of the Respondent that the Appellant instead of clearing the arrears of lease rent, replied to the aforesaid legal Notice vide reply dated 23.08.2018. In the said Reply, the Appellant offered to purchase the Suit Property.
7. That on failure of the Appellant to vacate the Suit Property, the Respondent, on 11.09.2018, filed a Suit for possession, recovery of

arrears of rent and mesne profits/damages before the Saket Courts, New Delhi, against the Appellant, *inter alia*, praying as under:

“i) pass a decree for possession in favour of the plaintiff and against the defendant thereby directing it to vacate and handover the vacant peaceful physical possession of the property bearing property bearing No. M-7 (First Floor), Chitranjan Park, New Delhi 110 019;

(ii) pass a decree in the sum of Rs.1,79,480 (Rupees One lakh seventy nine thousand four hundred eighty only) towards arrears of rent together with interest at the rate of 12% per annum with effect from 13.09.2018 till realisation, in favour of the plaintiff and against the defendant;

(iii) pass a decree for recovery of Rs.23,440.00 (Rupees Twenty Three Four Hundred Forty only) being the charges for use and occupation for the period from 01.09.2018 to 11.09.2018 together with interest at the rate of 12% per annum with effect from 13.9.2018 till realisation in favour of the plaintiff and against the defendant;

(iv) pass a decree for future mesne profits / damages at the rate of Rs.1,000/- (Rupees One thousand only) per day in addition to the monthly rent or at any other rate as may be determined by the Hon'ble Court with effect from 13.09.2018 till the defendant actually vacates and hands over the vacant peaceful physical possession of the said flat to the plaintiff;

(v) award costs of the present suit in favour of the plaintiff and against the defendant; and

(vi) pass any other or further orders as this Honble Court deems fit and proper in the facts and circumstances of the case, in favour of the plaintiff and against the defendant”.

8. The Appellant filed Written Statement in the said Suit stating that he was inducted in the Suit Property as a tenant in the year 2017, however, the Appellant persuaded the Respondent and her husband to sell the Suit Property to him, and Respondent had agreed to sell the Suit Property to the Appellant for a sale consideration of Rs.70 lakhs. It is the case of the Appellant that he had paid Rs. 45 lakhs in cash to the Respondent towards part sale consideration in respect of the Suit Property. Hence, the Appellant is staying in the Suit Property as an owner and not as a tenant.

9. That after filing of the Written Statement, the Respondent filed an application under Order XII Rule 6 read with Section 151 CPC, *inter alia*, praying for a decree of possession on the basis of alleged admissions made in the Written Statement filed by the Appellant. The Respondent also filed an application under Order XXXIX Rule 10 CPC for recovery of arrears of lease rent. The Appellant filed replies to both the aforesaid Applications stating that there is no clear or unequivocal admission in the Written Statement filed by him. It was further contended on behalf of the Appellant that he has raised triable issues and therefore, evidence is required to be led in order to prove the case of the Appellant.
10. The learned Trial Court, vide the Impugned Judgment, allowed the Application under Order XII Rule 6 read with Section 151 CPC filed by the Respondent and decreed the Suit for possession of the Suit Property in favour of the Respondent and against the Appellant. Further, vide the Impugned Order, the learned Trial Court was pleased to allow the Application under Order XXXIX Rule 10 CPC filed by the Respondent herein thereby directing the Appellant to pay arrears of rent @ Rs.26,000/- per month with effect from August 2018 till July 2022 and to continue to pay the same every month till the disposal of the Suit.
11. Being aggrieved by the Impugned Judgment and also by the Impugned Order, the Appellant preferred the present Appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Mr. R.K Saini, learned counsel for the Appellant argues that it is a well settled principle of law that in order to decree a Suit under Order XII Rule 6 CPC, the admissions made by the defendant in the Written

Statement must be clear, categorical and independent, and is not supposed to be inferred from the collective reply (on merits) in the Written Statement. He submitted that in the present case, there is no clear, categorical or independent admission(s) in the Written Statement. Rather, the Appellant specifically and categorically denied the averments and allegations made by the Respondent in the plaint.

13. Learned counsel for the Appellant further argues that the concept of 'judgment on admission' under Order XII Rule 6 CPC is quite different and distinct from the concept of 'summary judgment' under Order XXXVII CPC. However, the learned Trial Court has mixed up the two concepts in a confused manner and applied the concept of 'Leave to Defend' under Order XXXVII CPC while deciding the application in question under Order XII Rule 6 CPC.
14. To buttress his argument, learned counsel for the Appellant relies on the decision of this Court in *Parivar Seva Sansthan Vs. Veena Kalra Ors.*, reported as **86 (2000) DLT 817** and also on decision of the Hon'ble Supreme Court in the case of *Karan Kapoor Vs. Madhuri Kumar* reported as **2022 SCC OnLine SC 791**.
15. Learned counsel for the Appellant further submits that the learned Trial Court erred in passing the Impugned Order under Order XXXIX Rule 10 CPC. It is the contention of the Appellant that whether the rent is to be paid or not itself is a triable issue. Hence, no order could have been passed at this stage for the payment of rent.
16. In view of his submissions, the learned counsel for the Appellant prays for setting aside of the Impugned Judgment as well as the Impugned Order.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Per contra, Mr. Rakesh Agarwal, learned counsel for the Respondent supported the Impugned Judgment and argued that the Appellant admits the landlord-tenant relationship between the parties. He further argues that the period of lease agreement has expired. It is further contended on behalf of the Respondent that the Appellant also admitted the receipt of legal notice dated 31.07.2018 vide which the tenancy of the Appellant was terminated. Therefore, in his submission, there is a clear and unequivocal admission on behalf of the Appellant and the Respondent is entitled for a decree of possession in respect of the Suit Property.
18. To substantiate his argument, learned counsel for the Respondent relies upon the judgments in the matters of *H.K. Sharma Vs Ram Lal*(2019(4) SCC 153), *Arun Kumar Tandon Vs Akash Telecom Private Limited* (ILR (2010) II Delhi 727), *M/s Jagadambey Builders Pvt Ltd Vs J.S Vohra* (2016 SCC Online Del 765), *Axis Nirman Industries Ltd Vs Rajendra Kumar (HUF)* (2022 SCC Online Del 2115), *Uma Hada Vs Sunil Gupta* (@021 SCC Online Del 3009), *Association of Voluntary Action Vs The Child Trust* (2013 SCC Online Del 3826), *Earthtech Enterprises Vs Kuljit Singh Butalla* (2013 SCC Online Del 491), *PPA Impex Pvt Ltd Vs Mangal Sain Metal* 2009 SCC Online Del 3866, *Arun Kumar Bagga Vs Rajvinder Kaur* (2021 SCC Online Del 2785), *DJB Vs Surendra P Malik* ILR (2003) I Delhi 269, *Asha Narang Spaak Vs Hafco Brass USA*(2013(137)DRJ 590), *Payal Vision Limited Vs Radhika Chaudhary* (2012(11) SCC 405).
19. In the light of his aforementioned submissions, the learned counsel for the Respondent prayed for dismissal of the present Appeal.

LEGAL ANALYSIS

20. This Court heard the arguments advanced on behalf of both the parties and has also perused the documents placed on record and the Judgments relied upon by the parties. For the purpose of convenience, this Court is dealing with both the Appeals separately.

RFA 345/2022

21. At the outset, it is important to examine the relevant law regarding ‘Judgment on admissions’. Order XII Rule 6 CPC reads, *inter alia*, as follows:

“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.

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. A bare perusal of Order XII Rule 6 CPC makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the defendants have tried to put their own interpretation to those facts with a view to defeat the claim of the plaintiff would not be a sufficient ground to decline relief under Order XII Rule 6 CPC. This provision can be invoked only in the case of a clear, unambiguous and unequivocal admission by the defendant in favour of the plaintiff. For the said purposes, the entire defence of the defendant is to be taken and read as a whole and a part of it cannot be read in isolation.

23. In this regard, it would be relevant to reiterate the latest Judgment of Hon'ble Supreme Court in the case of **Karan Kapoor (Supra)**. In this case, the Appellant tenant continued to stay in the suit property after the expiry of the lease agreement without paying any rent. The defence taken by the Appellant was that after the expiry of the lease period, agreement to sell was executed between the parties and the Appellant made part payment in pursuance of the said agreement to sell. The suit filed by the landlord was decreed by the learned Trial Court in an Application filed by the landlord under Order XII Rule 6 CPC. The Appeal filed against the said judgment and decree was dismissed by this Court. The Hon'ble Supreme Court, while setting aside the concurrent findings of the learned Trial Court and this Court, *inter alia*, held as follows:

“Be that as it may, the arguments advanced by both the sides in our view can be appreciated by the Trial Court by affording opportunity to them to lead evidence. As per the pleadings, there may be admission to the extent of execution of the Lease Agreement, rate of rent and monthly payment but simultaneously the defense taken by the Defendant is also based on ATS-I, II and III. In view of the contents of those agreements and terms specified therein, the defense as taken by the Appellant/Defendant is plausible or not, is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked into by the Court and there is need to decide justiciability of defense by the full-fledged trial. In our view, for the purpose of Order XII Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by Defendant.”

24. In **S.M. Asif v. Virendar Kumar Bajaj** reported as (2015) 9 SCC 287, 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 Plaintiff's claim was resisted by the defendant by setting up a plea that the property in question was agreed to be sold by an agreement and advance amount of Rs. 82,50,000/- was paid. In the said case, the Hon'ble Supreme Court was of the view that deciding such issues requires appreciation of evidence. The relevant portion of the said judgment, *inter alia*, reads as follows:

"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. 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."

25. In view of the law laid down by the Hon'ble Supreme Court in the above cited Judgments, it is important to examine the facts of the present case.

The Appellant, in his Written Statement, in Para 3, stated as follows:

"I. That the wife of plaintiff Tanya Singh has taken the house of plaintiff at M-27, C.R. Park, New Delhi on rent in 2016 at the rent of Rs. 26,000/- per month. That in this regard defendant had no dealing with the plaintiff.

II. That the defendant had paid the above-mentioned rent to plaintiff till July 2018 regularly. That on May 2017 the defendant

had offered plaintiff and her husband Dr. S. C. Jolly to sell her said house to defendant for Rs. 70 lacs. That, as the defendant was expecting some funds from the sale of his another property, it was also decided between plaintiff and defendant that the, above said amount of Rs. 70 lacs will be paid by defendant in instalments i.e. as and when defendant will receive the money he will pay to plaintiff and the plaintiff had agreed to the same.

III. That in May 2017 the defendant has sold his property at Takipur farm at Uttar Pradesh for Rs. 50 lacs. The defendant has also sold his land measuring (26 bigah approx.) and received Rs. 8 lacs in cash.

IV. That after receiving the said- funds the defendant had paid Rs.10 lacs cash to the husband of the plaintiff in May 2017 as advance money to the purchase of above-mentioned house. That after that from December 2017 to April 2018 the plaintiff again paid Rs. 35 lacs in cash in different instalments to the husband of plaintiff as the plaintiff was unable to visit Delhi.

V. That plaintiff has also put the condition that till the registry, the defendant will continue paying the rent of Rs. 26,000/- to the plaintiff every month.

VI. That the defendant was paying the rent of Rs. 26, 000/- to the plaintiff every month till July 2018 but despite that the plaintiff has send the legal demand notice to the defendant, therefore defendant has stopped the payment of rent amount from July 2018 onwards.

VII. That the defendant has to pay the balance amount of Rs. 25 lacs to the plaintiff till March 2019 and after that the plaintiff will do the registry of said house in the name of defendant.”

26.From the pleadings, it is clear that even though the Appellant admitted the tenancy, he has taken a defence which itself is a triable issue in view of the law laid down by the Hon’ble Supreme Court in **Karan Kapoor (supra) and S.M Arif (supra)**. Therefore, this Court is of the considered view that the Appellant should be given an opportunity to defend his case by leading evidence subject to the condition that the Appellant should clear all the arrears of rent within 3 (three) weeks from today and continue to pay the monthly lease rent @ Rs.26,000/- per month till the disposal of the Suit.

FAO 282/2022

27. At the outset, it is important to examine the law regarding Order XXXIX Rule 10 CPC. Order XXXIX Rule 10, *inter alia*, reads as follows:

“10. Deposit of money, etc., in court.- Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other things as a trustee for another party, or that it belongs or is due to another party, the court may Order the same to be deposited in court or delivered to such last named party, with or without security, subject to the further direction of the court.”

28. This Court in ***Harish Ramchandani Vs Manu Ramchandani*** reported as ***91 (2001) DLT 480*** examined the requirements to be satisfied while passing an order under Order XXXIX Rule 10 CPC. The relevant portion, *inter alia*, reads as follows:

“6. Before dealing with the respective contentions, it would be appropriate to refer to the provisions of Order XXXIX Rule 10 CPC. This would enable us to ascertain as to what are the requirements to be satisfied before the plaintiff becomes entitled to an order for deposit by way of interim measure as per this provisions. Order XXXIX Rule 10 CPC reads as under:

"Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."

7. This rule would be applicable only when there is admission on the part of the defendants of the nature which would constitute sufficient admission under Order XII Rule 6 CPC. Rule 10 of Order XXXIX does not apply unless-

(A) The admission of the party is an admission sufficient under 0.12 R.6 AIR 1927 Sind 25.

(B) The party making the admission "holds" the property or other things capable of deliver (1903) 27 Mad 168.”

29. It is settled position of law that an order under Order XXXIX Rule 10 CPC directing payment of rent can be passed only if there exists ingredients of Order XXI Rule 6 CPC. Further, there have to be admissions with respect to the rate of rent. Based on this legal principle, this Court deems it appropriate to examine the facts of the present case.
30. From the perusal of the Written Statement, it can be deduced that even as per the version of the Appellant, the Appellant will continue to pay the rent @ Rs.26,000/- per month to the Respondent till the sale deed qua the Suit Property is executed between the parties. Further, as per the Appellant, the said sale deed will be executed only after the payment of balance sale consideration of Rs.25,00,000/-. It is an admitted position that neither the sale deed has been executed nor balance sale consideration has been paid by the Appellant to the Respondent. Therefore, even as per the version of the Appellant, the Respondent is entitled for a monthly lease rent @ Rs.26,000/- in respect of the Suit Property.
31. The Appellant further admitted in the Written Statement that the rent was paid only upto July 2018. Therefore, the Appellant is under an obligation to pay rent in respect of the Suit Property from August 2018 onwards.
32. It is clear from the pleadings that the Appellant admitted the rate of rent as well as his liability to pay rent with regard to the Suit Property to the Respondent. Hence, in view of the clear admission made by the Appellant in his Written Statement, this Court is of the considered view that the learned Trial Court rightly passed the Impugned Order directing the Appellant to clear the arrears of rent and continue to make payment

of rent @ Rs.26,000/- per month in respect of the Suit Property to the Respondent.

33. In view of the detailed discussion herein above, the Regular First Appeal (RFA 345/2022) is allowed, and the Impugned Judgement and Decree dated 25.05.2022 is hereby set aside. The suit is remanded back to the learned Trial Court for deciding the matter after conducting the trial. Whereas, the First Appeal from Order, FAO No. 282/2022 is hereby dismissed. The Appellant is directed to pay arrears of rent to the Respondent within 3 (three) weeks from today. The Appellant is further directed to continue to pay Rs.26,000/- per month towards the monthly lease rent by the 5th of every month in addition to the water and electricity charges as per the bills received. The parties are free to seek the help of a local commissioner for recording of the evidence. Learned Trial Court is requested to dispose of the present matter as expeditiously as possible.
34. All pending applications are also disposed off accordingly.
35. No order as to cost.

GAURANG KANTH, J

NOVEMBER 18, 2022