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

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Date of Decision: 14.11.2022

+ **RFA 559/2022**

SURJEET KAUR KHURANA Appellant
Through: Mr. Praveen Suri, Advocate.

versus

SUMITRA DEVI AND ORS Respondents
Through: Mr. Gurjesh Kumar Mall, Advocate
for respondent Nos. 1 & 2.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH J. (ORAL)

C.M. No. 48619/2022 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RFA 559/2022 and C.M. No. 48620/2022 (Stay)

3. The Appellant (Original Defendant) has preferred the present Appeal against the Judgment and Decree dated 30.08.2022 (“**impugned judgment**”) passed by the ADJ-07, West District, Tis Hazari Courts, New Delhi in Suit No. 473/2021 titled as *Sumitra Devi & Anr Vs Surjeet Kumar Khurana & Anr*. Vide the Impugned Judgment & Decree dated 30.08.2022, the learned Trial Court was pleased to allow the application filed by Respondent Nos.1&2 (Original Plaintiffs) under Order XII Rule 6 of Civil Procedure Code,1908 and partly decreed the suit and granted the possession of the suit property in favour of Respondent Nos.1&2.

Facts relevant for the consideration of the present Appeal are as follows:

4. Ms. Sumitra Devi, Respondent No. 1 herein is a senior citizen and a widow. Respondent No.2 is the daughter-in-law of Respondent No.1. The Appellant was the owner of the residential property located at Khasra No. 28, situated in abadi known as Ranjit Nagar, Gali No.6 in the area of Village Shadipur, New Delhi vide a registered sale deed dated 16.03.2011 (“**Suit Property**”). The Appellant was constructing a new building at the Residential Property.

5. The dispute pertains to the entire flat on the second floor ad-measuring 125 sq. yards along with one car parking and a single two wheeler parking located at the stilt level of the residential building constructed by the Appellant at the Residential Property.

6. That in the month of March 2011, Respondent Nos.1 & 2, through their Special Power of Attorney holder Mr. Rajesh Santani approached Mr. Inder Singh Khurana, son and attorney of the Appellant, for the purchase of Suit Property which formed a part of the under construction building. The total consideration to be payable by the Respondents to the Appellant for the Suit Property was agreed at Rs.47,00,000/-.

7. To materialise their understanding, Respondent No.1 and the Appellant entered into a Property Development Agreement dated 25.12.2011 (the “**PDA**”) with respect to the Suit Property. In accordance with the said PDA, the Suit Property i.e., the flat was required to be ready for possession by January 2012. The completely constructed Suit Property in a ready to move condition was required to be handed over to Respondent No.1 latest by 31.5.2012 failing which the Appellant was

under an obligation to pay interest @ 18% p.a for the delayed period on the total amount paid by Respondent No.1. The said PDA further stated that out of the total sale consideration of Rs. 47,00,000/-, Respondent No.1 had paid an advance of Rs. 25,50,000/- (Rs.17,45,000/- was paid through cheques/ bank transfer and Rs.8,05,000/- was paid in cash) to the Appellant. The balance sale consideration of Rs. 21,50,000/- was required to be paid according to the progress of the construction of the Suit Property. The said PDA further records that the Appellant will inform Respondent No.1 through email regarding the progress of construction and accordingly raise demand on Respondent No. 1 for the payment of instalments. Respondent No.1 is required to honour the said demand note within 5 days failing which interest @ 18% p.a. for the delayed period is required to be paid by Respondent No.1 on such due amount.

8. Subsequently, the Appellant executed a registered sale deed dated 23.10.2012 with respect to the Suit Property in favour of Respondent Nos.1&2 for a total sale consideration of Rs. 20,00,000/-. The said registered sale deed records that the Appellant received the total sale consideration of Rs. 20,00,000/- as per the details mentioned therein. The sale deed further records that the Appellant handed over the vacant possession of the Suit Property to Respondent Nos.1&2.

9. It is the case of Respondent Nos.1&2 that some construction work was still continuing at the Suit Property. Hence, the Appellant agreed to complete the construction work in all respects by 31.10.2012. After completing the construction work, Respondent Nos.1&2 was required to pay a sum of Rs. 2,00,000/- on 01.11.2012 towards the finishing and fixtures.

10. The Appellant failed to complete the construction on time and stated that due to shortage of money, he will be able to complete the construction work once Respondent Nos.1&2 pay the balance Rs.2,00,000/-. In view of the same, Mr. Rajesh Santani paid the balance of Rs. 2,00,000/- to the Appellant in the month of November 2012 (Rs. 1,75,000/- was paid through credit card of one of his friend namely Mr. Hariom Goud and Rs.25,000/- as cash deposit in the account of Star Fabrics, a company owned by the son of the Appellant) towards the cost of finishing and fixtures of the Suit Property.

11. It is the case of the Respondent Nos.1&2 that even after the receipt of the complete sale consideration of Rs. 47,00,000/-, the Appellant failed to complete the construction. Respondent Nos.1&2 were staying with their family in a rented accommodation and were badly in need of the Suit Property. Therefore, Mr. Rajesh Santani on 03.04.2013 paid Rs. 28,900/- towards the bathroom fittings, tiles, granite for kitchen top and other sanitary items, Rs.1,300/- for lal dana and Rs.10,000/- in cash to Mr.Rajender Kumar, an employee of Mr. Inder Singh Khurana (Rs. 40,200/- in total).

12. The Appellant failed to complete the construction of the Suit Property and hence Respondent Nos.1&2 were constrained to send a legal notice dated 27.08.2013 to the Appellant. Even after the receipt of the legal notice, the Appellant failed to hand over the lock and key of the Suit Property to Respondent Nos.1&2.

13. The failure by the Appellant in handing over of the Suit Property to Respondent Nos.1&2 led to various criminal and consumer litigations between the Special Power of Attorney holder of Respondent Nos.1&2

and the son of the Appellant. Meanwhile, the Appellant inducted Respondent No.3 as a tenant in the Suit Property. Finally, in the year 2021 Respondent Nos.1&2 filed the present suit for possession, recovery of damages, mesne profits and permanent injunction against the Appellant with the following prayers:

- i) *Pass a decree for possession in respect of the said premises i.e. entire 2nd floor flat admeasuring 125 sq. yds along with one car parking and one two wheeler parking space on stilt area (below Ground Floor) out of freehold property/the residential property measuring 125 sq. yds/104.512 Sq. Mts forming part of Khasra No.28, situated in abadi known as Ranjit Nagar, Gali No.16 in the area of village Shadipur, New Delhi as per site plan in favour of the plaintiffs and against the defendants.*
- ii) *Pass a decree for Permanent Injunction in favour of the plaintiffs thereby restraining the defendants, their agents, assignees, attorneys, successors, heirs etc. from selling and/or alienating and/or parting with possession and /or in any manner interfering over the property and/or creating third party interest in the suit property being i.e. entire 2nd floor Flat admeasuring 125 sq. yds along with one car parking and one two wheeler parking space on stilt area (below Ground Floor) out of freehold property/the residential property measuring 125 Sq. Yrds/104.512.Sq. Mts forming part of Khasra No. 28, situated in abadi known as Ranjit Nagar, Gali No. 6 in the area of village Madipur, New Delhi.*
- iii) *Pass a Decree of Interest of Rs.24,67,500/- on the total paid amount of Rs.47 lacs w.e.f. August 2018 to 31.06.2021 @ 18% per annum in favour of the plaintiffs and against the defendants;*
- iv) *Pass a decree for recovery of mesne profits / for Rs.6,36,000/- w.e.f. August 2018 to 31.06.2021 in favour of the Plaintiffs and against the defendants;*
- iv) *Grant pendent-lite and future mesne profits @ Rs.25,000/- per month or at such higher rate as may be prevalent at the relevant time from the date of institution of the suit till the recovery of possession in favour of the plaintiffs and against the defendants on which, the plaintiffs undertake to pay the requisite court fee upon grant of the relief;*
- v) *Grant a sum of Rs.31,03,500/- towards Recovery of Damages caused to the suit property in favour of the plaintiffs and against the defendants.*
- vi) *Grant pendent-lite and future interest @ 18% per annum till realization on damages and mesne profits in favour of the*

Plaintiffs and against the defendants.

- vii) *Award cost of suit in favour of the plaintiffs and against the defendants; and*
- viii) *Any other order or relief in favour of the plaintiffs and against the defendants as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case”.*

14. The Appellant filed a detailed written statement. In the written statement, the Appellant alleges that the suit is barred by limitation. Appellant further alleges that the suit is hit by Order II Rule 2 of CPC and hence the same is required to be dismissed at the outset. The Appellant admitted the execution of registered sale deed in favour of Respondent Nos. 1&2 qua the Suit Property. However, it is the case of the Appellant that Respondent Nos.1&2 paid only Rs. 37,60,000/- towards the sale consideration payable against the Suit Property. The balance sale consideration of Rs.9,40,000/- is still due to the Appellant. The Appellant denies the fact that the possession of the Suit Property was ever handed over to Respondent Nos.1&2. According to the Appellant, Respondent Nos.1 &2 failed to pay Rs. 9,40,000/- towards the balance sale consideration and hence the possession of the Suit Property was not handed over to Respondent Nos.1&2. The Appellant further avers that the sale deed was only executed because Respondent Nos.1&2 wanted to avail the loan facility from the Bank.

15. Respondent Nos.1&2 filed an application under Order XII Rule 6 of CPC seeking a Judgement on admission. It was the contention of Respondent Nos.1&2 that the Appellant in their written statement admitted the factum of execution of a registered sale deed in favour of Respondent Nos.1&2 and hence thereby admitted the ownership of Respondent Nos.1&2 qua the Suit Property. The Appellant further admitted the receipt

of the sale consideration of Rs.37,60,000/- whereas as per the sale deed the total consideration was only Rs. 20 Lakhs. By virtue of registered sale deed, the Appellant becomes absolute owner of the Suit Property and hence in view of the said admission, Respondent Nos.1&2 prayed for the decree of possession in their favour and against the Appellant.

16. The Appellant filed reply to the application under order XII Rule 6 of CPC. The Appellant has submitted that there is no unequivocal, unambiguous and independent admission on their part. It is further submitted that Respondent Nos.1&2 have falsely alleged that they had paid the entire sale consideration to the Appellant. It is further submitted that the Appellant never handed over the possession of the Suit Property to Respondent Nos.1&2, despite registration of sale deed. It is further submitted that Respondent Nos.1&2 have in fact paid a sum of Rs.37,60,000/- only and an amount of Rs.9,40,000/- is still outstanding against Respondent Nos.1&2 along with interest @ 18% per annum. In view of the submission, the Appellant prayed for the dismissal of the Application with heavy cost.

17. Learned Trial Court vide impugned Judgment & Decree dated 30.08.2022 allowed the said Application filed by Respondent Nos.1&2 and partly decreed the suit. Learned Trial Court passed a decree of possession in favour of Respondent Nos.1&2 and against the Appellant in respect of the Suit Property.

18. Being aggrieved by the impugned Judgment & Decree dated 30.08.2022, the Appellant has preferred the present Appeal.

SUBMISSION ON BEHALF OF THE APPELLANT

19. Mr. Praveen Suri, learned counsel for the Appellant vehemently

argues that there is no unequivocal and independent admission on behalf of the Appellant. The Appellant raised a triable issue and the same can be decided only after leading evidence by the parties.

20. Learned counsel further submits that Respondent Nos.1&2 have falsely alleged that they had paid the entire sale consideration to the Appellant. According to the Appellant, the sale deed was executed in favour of Respondent Nos.1&2 as they wanted to avail the loan facility from the Bank. However, the Appellant never handed over the possession of the Suit Property to Respondent Nos.1&2, even after the registration of sale deed. It is further submitted that Respondent Nos.1&2 have paid only a sum of Rs.37,60,000/- and an amount of Rs.9,40,000/- is still outstanding against Respondent Nos.1&2 along with interest @ 18% per annum.

21. Learned counsel for the Appellant further argues that for the purposes of Order XII Rule 6 of CPC, the written statement needs to be read as a whole. A careful reading of the written statement reveals that there is no clear admission on the part of the Appellant and hence the learned Trial Court ought not to have partly decreed the suit and granted the relief of possession in favour of Respondent Nos.1&2.

22. To buttress his argument, learned counsel for the Appellant relied upon the recent Supreme Court Judgement of **Karan Kapoor Vs Madhuri Kumar** reported as **2022 SCC OnLine SC 791**. With these submissions, learned counsel for the Appellant prays for setting aside of the impugned Judgment & Decree dated 30.08.2022.

LEGAL ANALYSIS

23. This Court heard the arguments advanced by the learned counsel for the Appellant and examined the documents on record and Judgments

relied upon by the Appellant.

24. Learned Trial Court passed the impugned Judgement and Decree dated 30.08.2022 on an application filed by Respondent Nos.1&2 under Order XII Rule 6 of the Code of Civil Procedure, 1908. Hence, at the outset, it is desirable to examine the law relating to Order XII Rule 6 CPC. Order XII Rule 6 CPC, reads as follows:

“Judgement 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”

25. Order XII Rule 6 CPC was amended by Act 104 of 1976. Earlier to the 1976 amendment, judgment on admission was confined only on application in writing. By virtue of the amendment, whether admissions are oral or in writing, the court is empowered at any stage of the suit to give judgment on such admissions.

26. The law relating to Order XII Rule 6 CPC is no more *res integra*. The power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a right. In cases where the defendants have raised objections, which go to root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 of CPC. The Hon'ble Supreme Court in ***Balraj Taneja & Anr vs. Sunil Madan & Anr*** reported as **(1999) 8 SCC 396** examined the ambit of Order XII Rule 6 CPC and held as under:

"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 :

"R.6 Judgment on admissions.

(1) Where admissions of fact have been made either in the pleadings 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."

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."

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.

27. That in view of the law laid down by the Hon'ble Supreme Court in **Balraj Taneja (Supra)**, it is expedient to examine the facts of the present case. This Court notes the following facts from the present case:

(i) Respondent Nos.1 & 2 filed the Application under Order XII

Rule 6 CPC seeking possession of the Suit Property.

- (ii) The Appellant in the written statement admitted the fact that a registered sale deed dated 23.10.2012 was executed by the Appellant in favour of Respondent Nos.1&2 and thereby admitted that Respondent Nos.1&2 are the absolute owners of the Suit Property.
- (iii) The Appellant also admitted the fact that they received a sum of Rs.37,60,000/- from Respondent Nos.1&2 towards the sale consideration for the Suit Property.
- (iv) It is not the case of the Appellant that they are retaining the possession of the Suit Property as a lessee/licensee/tenant.
- (v) It is the case of the Appellant that Respondent Nos.1&2 failed to pay balance sale consideration and hence the Appellant is not handing over the possession of the Suit Property to Respondent Nos.1&2.

28. Respondent Nos.1&2 are absolute owners of the suit property by virtue of a registered sale deed dated 23.10.2012. Being the absolute owners of the Suit Property, they are claiming possession of the same. As per the said sale deed, the total sale consideration was Rs. 20,00,000/- and the said payment was already made to the Appellant by Respondent Nos.1&2 as per the details mentioned in the sale deed. It is not the case of the Appellant that they are holding Suit Property as a tenant/Lessee/Licensee. The Appellant was the erstwhile owner of the Suit Property and retaining the possession of the Suit Property as according to the Appellant, Respondent Nos.1&2 failed to pay the balance sale consideration. The Hon'ble Supreme Court in *Vidhyadhar Vs Manikrao* reported as **1999 (3)**

SCC 573, has categorically held that non-payment of sale consideration would not affect the validity of the sale deed. Once the sale deed is executed, a valid title is transferred from seller to buyer. Hence, buyer becomes the absolute owner of the transferred property. Seller has no right to retain the possession of the property on the ground that total sale consideration was not paid.

29. There is a clear, unequivocal and independent admission on behalf of the Appellant regarding the ownership of the Suit Property. The reason as cited by the Appellant for not handing over the possession of the suit property cannot be considered to be legally tenable. As on today, the Appellant is an unauthorised illegal occupant of the Suit Property. If the Appellant is of the view that Respondent Nos.1&2 failed to pay the balance sale consideration, he was free to initiate appropriate legal proceedings in accordance with law for the recovery of the balance sale consideration. However, the same does not entitle the Appellant to hold on to the possession of the Suit Property.

30. Learned Trial Court extensively considered this aspect. The reasoning adopted by the learned Additional District Judge is evinced in the following paragraphs:

“10. The defendant no.1 in the written statement has admitted the fact that the suit property was sold by her to the plaintiff no.1 and a registered sale deed was executed by her in favour of the plaintiff no. 1. The defendant no. 1 has also not disputed the receiving of sale consideration amount of Rs.20 lacs with respect to the sale of the suit property. Perusal of the clause II of the sale deed dated 23.10.2012 further shows that the vacant and peaceful possession of the suit property was handed over to the plaintiff no.1 and the plaintiff no.1 has occupied the same. In view of the terms mentioned in the sale deed, the oral averments of the defendant no. 1 that the possession of the suit property was never handed over to the

plaintiff no.1 on the spot cannot be entertained. Once there is the registered sale deed between the parties and the terms are clear and categorical then no oral evidence/vague plea to the contrary can be accepted. The principle as enshrined under Section 91 and 92 of the Indian Evidence Act, 1872 squarely comes into play. The defence put forth is completely in derogation to the terms of the sale deed. The plaintiff no.1 after the registration of the sale deed have become the owner of the suit property and being the owner of the suit property, the plaintiff no. 1 has a legal right, title and interest in the same and there is no disputed question of facts which requires trial with regard to ownership of the plaintiff with respect to the suit property is concerned.

11. The defendant no.1 has also admitted the fact that there was the property development agreement entered between the parties. It is the case of the plaintiffs that as per the said agreement, the defendants were to make the construction in the suit property so that the suit property can be occupied and used by the plaintiffs. It is also the agreement between the parties that the amount was to be paid by the plaintiff no. 1 as per the progress made in the construction in the suit property. It is also the case of the plaintiffs that they had made the payment over and above the amount of Rs.47 lacs which was agreed between the parties. However, it is the case of the defendant no.1 that the plaintiffs have not made the complete payment therefore, the possession was not handed over to the plaintiffs. This fact whether the plaintiffs have made the complete payment as alleged by them and disputed by the defendant no.1 is a triable issue which is to be proved by the parties by leading their respective evidence at the stage of trial."

31. This Court therefore, finds no illegality or perversity in the impugned Judgment & Decree dated 30.08.2022. The impugned Judgement is based on the correct legal position and hence this Court while exercising the appellate jurisdiction is not inclined to interfere with the impugned Judgment & Decree dated 30.08.2022.

32. Learned counsel for the Appellant has referred to the judgment of the Hon'ble Supreme Court in **Karan Kapoor (Supra)**. The facts of the

said case are distinguishable from the present case. In the said matter, the tenant admitted to the existence of a landlord- tenant relationship and took a plea that they paid part consideration for the purchase of the suit property and hence they were enjoying the suit property as owner and not as tenant. The Hon'ble Supreme Court held that this is a triable issue and hence it requires evidence. In the present case, facts are completely different as there is no dispute qua the ownership of the Suit Property. There is a clear and unequivocal admission on behalf of the Appellant regarding the execution of the sale deed. Hence, the said case law as cited by the Appellant is not applicable to the present case.

33. In view of the detailed discussion herein above, the present Appeal is dismissed. Pending Application is also dismissed accordingly. No order as to cost.

NOVEMBER 14, 2022

GAURANG KANTH, J.

