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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision:02.08.2022***

+ RFA 71/2022

SH SHIVRAJ YADAV & ORS.

..... Appellants

Through: Mr.L.B.Rai & Ms.Asmita Rai,Adv.

versus

DR ARUN NIRULA

..... Respondent

Through: Mr. Dhruv Madan, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present Regular First Appeal under section 96 of the Code of Civil Procedure (hereinafter, 'CPC') seeks to assail the judgment and decree dated 08.11.2021 passed by the learned Additional District Judge-03 (South), Saket Court, Delhi in CS. No. 453/2019. Vide the impugned judgment, the learned Trial Court has decreed the respondent/plaintiff's suit for possession, permanent injunction and *mesne* profits by allowing the respondent's application under Order XII Rule 6, CPC.

2. The plaintiff, claiming to be the owner of the property bearing No. A-1/63, Freedom Fighter Enclave, Neb Sarai, South Delhi, Delhi-110068 measuring 500 sq. yards (hereinafter 'suit property'), filed a suit for possession, permanent injunction and *mesne* profits against the appellant/defendant. It was the plaintiff's case before the learned Trial Court that the entire plot, except a small built up structure on an area measuring 25 sq. yards, comprising of a small room, a kitchen and a bathroom was given



to the defendant as a caretaker for looking after the plaintiff's deceased father. It was the plaintiff's further case that he was compelled to file a suit against the defendant seeking possession and permanent injunction, as after he was found to be indulging in stealing electricity from the meter installed in the suit property, he still refused to vacate the suit property despite repeated requests being made by the plaintiff.

3. The suit was defended by the appellant by filing a written statement wherein it was not only denied that the plaintiff was the owner of the suit property but it was also contended that the suit was barred by limitation. It was further averred that in any event, since the alleged license of the defendant to occupy the suit premises was never terminated by the plaintiff, the suit for possession was premature. It was further contended that since the plaintiff was claiming to be the owner of the suit property on the basis of an unregistered and unstamped agreement to sell dated 05.08.1996, the suit was in itself, not maintainable. The defendant also raised a plea that the electricity connection in respect whereof the plaintiff was alleging theft, was in his name itself and therefore, there was no question of him committing any theft of the electricity. The defendant therefore sought dismissal of the suit.

4. After the written statement was filed by the defendant, the plaintiff preferred an application under Order XII Rule 6 CPC which has been allowed by the impugned judgment. The application was premised on the plea that the defendant had admitted being a licensee under the plaintiff, which license stood terminated, and therefore the suit was liable to be decreed on the basis of this admission itself. In the application, the plaintiff had contended that the stand taken by the defendant in his written statement



that the suit was pre-mature as his license had not been terminated by the plaintiff was in itself sufficient to show that the defendant had admitted that he was a licensee under the plaintiff. Reliance was also placed on the defendant's reply to the plaintiff's application seeking deposit of use and occupation charges in an earlier *inter se* proceedings between the parties being CS No. 755/2017, (later re-numbered as CS No. 1272/2017), wherein it had been contended by the defendant that he was a licensee under the plaintiff and had been permitted to occupy the suit property, without paying any license fees. The plaintiff also relied on two handwritten applications to the BSES, both dated 03.01.2014, one by the defendant and the other by his daughter wherein it was categorically stated that the plaintiff was the owner of the suit property and had granted them permission to occupy the same. Though the defendant filed a reply to the said application, one of the primary contentions raised by the defendant in the said reply was that since the license to stay in the suit property had not been terminated by the plaintiff in the first place, the suit for possession preferred by the plaintiff, was premature and hence liable to be rejected.

5. Based on these pleadings exchanged between the parties, the learned Trial Court came to a conclusion that there was an admission on the part of the defendant regarding the plaintiff being the owner of the suit property and the defendant being permitted by the plaintiff to occupy the suit premises. Consequently, the learned Trial Court decreed the suit of the plaintiff vide the impugned judgment. The relevant extracts thereof read as under-

“7. I have heard arguments advanced by learned counsel for the parties and perused the material available on record.



7.1. The judgment on admissions is incorporated under Order XII Rule 6 CPC. In case, there is admission of fact either in pleadings or otherwise whether oral or in writing, the Court in its discretion at any stage of the suit, either on an application or on its own motion, give such judgment as regards to such admissions. The scope of Order XII Rule 6 CPC has been discussed in detail in 2016 (2) TVT 518 Delhi titled as Tirath Ram Shah Charitable Trust &Ors. Vs. Mrs. Sughra BI @ Sughra Begum (DECD.), the relevant extracts is reproduced below for ready reference:-

" .. 11. The object of Order XII Rule 6 CPC is that once there are categorical admissions made by a party, then the litigation should not be permitted to linger on unnecessarily and in appropriate cases, on an application filed by a party under Order XII Rule 6 CPC, asking for a decree on the basis of the said admissions, the Court ought to exercise its discretion and bring an end to such litigation by passing appropriate orders. The other consideration, while passing a decree under Order XII Rule 6 CPC, is to ensure that the judicial process is not abused and a person entitled to relief, is granted such relief without delaying the passing of a decree in his/her favour, or making him/her go through the rigorous of a trial. Para 12. In the case of Charanjit Lal Mehra Vs. Smt. Kamal Saroj Mahajan, (2005) 11 SCC 279, the Supreme Court has held that an admission under Order XII Rule 6 CPC can be inferred from the facts and circumstances of the case and that order XII Rule 6 CPC has been enacted to expedite trial and where the Courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so. It is also relevant to refer to the observations of a Division Bench of this Court in the case of Vijaya Myne Vs. Satya BhusanKaura 142 (2007) DLT 483, where in the light of innumerable authorities on



Order XII Rule 6 CPC, it was held that admissions can be constructive admissions and need not be specific or expressive, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even be inferred from the facts and circumstances of a case."

7.2. Further, admissions can be constructive and need not be specific or expressive and can be even inferred from the facts and circumstances of the case. In the present case, the Defendant has denied the ownership of the Plaintiff in his Written Statement. However, he in his reply stated that the present suit is premature as the License, if any, was never terminated nor did the Plaintiff provide for any terms and conditions for the license. The Plaintiff per contra, has relied on the Orders of the Hon'ble High Court of Delhi dated 20.10.2010, in CS (OS) 1304/2010 in the case titled as Brijesh Narula vs. Arnn Narula, where the Plaintiff as well as his brother entered into a settlement and in terms of the settlement, the Plaintiff herein became the owner of the property bearing no. 151, 152/1, Village Neb Sarai, New Delhi, admeasuring 500 sq. yards, which had been purchased in the name of the Plaintiff herein in the year 1988. The Plaintiff also relied on the orders of the Ld. Civil Judge, in Civil Suit no. 755/17, wherein the Defendant herein had filed a suit seeking to restrain the Plaintiff herein to illegally dispossessing him and from interfering in his peaceful possession of the suit property without due process of law. In the aforementioned suit, the Defendants herein did not claim to be owners of the suit property but were claiming right of possession on account of long residence.

7.3. The Defendant has not only denied the ownership of the Plaintiff in his entire Written Statement but has further denied that the suit property was given on license basis by the Plaintiff and has averred that the Defendants are living in the suit property for the past 20 years. As already discussed above, in the reply to the application under Order XII Rule 6



CPC, the Defendant has taken the plea of the suit being premature on account of non-termination of license, if any. Therefore, it appears that the arguments regarding the claim of the Defendant qua the suit property is not sustainable in any manner. No document has been placed on record by the Defendant to show that the Plaintiff is not the owner of the property and has no interest therein. Further, perusal of the letters signed by Defendant no. 1 & 3 namely Shivraj and his daughter Mithlesh reflect that they have stated that the Plaintiff had allowed the Defendant to reside in the property and further there is an admission regarding theft of electricity carrying a penalty of Rs.33,802/- which was paid by the Plaintiff herein to BSES. Careful perusal of the entire pleadings and the documents annexed thereto reflect that the Defendants have taken contradictory stand in the present suit regarding their status qua the suit property. The factum that the Plaintiff is the owner of the suit property and the Defendants were allowed to occupy the suit premises, therefore, prima facie shows the existence of relationship of licensor and licensee between the Plaintiff and the Defendants.

*7.4. Qua the issue of termination of license, admittedly, no notice seeking specific termination of license has been sent by the Plaintiff to the Defendants. Be that as it may, even assuming the notice of terminating license was not served upon the defendants, filing of eviction suit under law itself is notice to quit on the licensee. This Court places reliance to the decision of Hon'ble Supreme Court of India wherein it has been observed in **Nopany Investment Pvt. Ltd. vs. Santokh Singh (HUF) (2008) 2 SCC 728** as under:"*

In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also



been expressed in the decision of this court in V. DhanapalChettiar vs. Yesodai Ammal AIR 1979 SC 1745"

*Also, it has been held by Hon'ble Delhi High Court in **Nitin Jain vs. Geeta Raheja** that:*

"However, even if, one were to assume that the legal notice dated 25.01.2011 was not served upon the appellant/defendant, the position as it obtains in law today, is that, once a suit is filed for possession, the mere fact that no notice to quit and/or to vacate a demised premises is given will not inhibit a court from passing a decree of possession if, there is no other impediment in law, as the institution of the suit is an expression of the intention to seek possession. "

*7.5. In view of the aforesaid discussions, filing of the present suit would amount to notice of termination of license qua the suit property against the Defendants. In the present case, all the essential requirements for passing a judgment on admissions are fulfilled in the present case. Reliance is placed on judgment passed by Hon'ble High Court of Delhi in order dated 19.07.2016 passed in CS (OS) 160/14 titled as **S.C. Aggarwal vs. B.K. Goel &anr** which reads as follows:*

"11. The Courts are empowered to exercise the powers under Order XII Rule 6 CPC to enable a party to obtain a speedy judgment at least in respect of the admissions made by the defendant, the object being to cut short unnecessary delays and bring a litigation to an end. The second object of the said provision is to ensure that a party does not abuse the judicial process and a person entitled to relief, is not made to go through the travails of trial. 12. While deciding an application under Order XII Rule 6 CPC, the court is expected to confine itself to examining the pleadings/ documents referred to by the applicant, as



admission made by the other side. In the case of Charanjit Lal Mehra vs. Smt. Kamal Saroj Mahajan, Reported as (2005) 11 SCC 279, The Supreme Court has held that an admission under Order XII Rule 6 CPC can even be inferred from the facts and circumstances of the case and since Order XII Rule 6 CPC has been enacted to expedite trial, where the courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so.

14. It is also relevant to refer to observations of a Division Bench of this Court in the case of Vijaya Myne vs. Satya Bhushan Kaura, reported as 142 (2007) DLT 483, where in the light of the suit no. 10522/16, innumerable authorities on Order XII Rule 6 CFC, it was held that admissions can be constructive admissions and need not be specific or expressive which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even be inferred from the facts and circumstances of the case."

*Further, it has been held by Hon'ble Supreme Court in para no. 18 of the judgment titled as "**Usha Rani Jain vs. Nirulas Corner House Pvt. Ltd.**" 73 (1998) DLT 124, which reads as follows:-*

"18. The object of Order 12 Rule 6 CPC is to enable a party to obtain a speedy judgment, as least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a court can act under Order 12 Rule 6, the admission must be clear, unambiguous, unconditional and unequivocal. Admission in pleadings are either actual or constructive. Actual



admission consists of facts expressly admitted either in pleadings or in answer to interrogatories."

8. Taking into consideration all the facts and circumstances, the plaintiff has proved all the necessary ingredients for passing the decree for possession based on admissions. The plea taken by the Defendants are without any basis and the same cannot be treated as denial at least for the purposes of passing decree of possession under Order XII Rule 6 CPC. The prayer of the plaintiff under such circumstances qua possession of the suit property bearing no. A-1/63, Freedom Fighter Enclave, Neb Sarai, New Delhi-110068, situated in Khasra no. 151 and 152, measuring 500 sq. yards becomes allowable. The plaintiffs are entitled to claim the relief of possession of suit property that they are owners of the suit property and the license of defendants stood terminated, and thus a decree is passed in favour of plaintiffs and against defendants in respect of suit property. The defendants would handover the vacant possession of the suit property bearing no. A-1/63, Freedom Fighter Enclave, Neb Sarai, New Delhi-110068, situated in Khasra no. 151 and 152, measuring 500 sq. yards, to the Plaintiff within two months from the date of passing of this judgment. With regard to the other claims of the Plaintiff as claimed in the suit the same shall be adjudicated upon during trial. The application is, accordingly, allowed. Decree sheet be prepared."

6. Being aggrieved by the impugned judgment, the appellant has preferred the present appeal. In support of the appeal, Mr. Rai, learned counsel for the appellant, at the outset, submits that the impugned judgment is wholly perverse and is liable to be set aside as the learned Trial Court, in the present case, has failed to appreciate the fact that there was no admission whatsoever by the defendant regarding the ownership of the suit property. He submits that since it is a settled legal position that no decree on



admission can be passed unless the admission is unambiguous, clear and unconditional, the learned Trial Court, has committed a grave error by overlooking the preconditions which are required to be met before a decree can be passed upon admission under Order XII Rule 6 CPC. In support of his plea, he seeks to rely on the decision of a Co-ordinate Bench of this Court in ***Inder Mohan Singh Vs. Sube Singh (2014) SCC OnLine Del 2342***, as also on the decision of the Apex Court in ***Himani Alloys Ltd. Vs. Tata Steel Ltd.(2011)15 SCC 273***.

7. Mr. Rai then contends that the learned Trial Court has also failed to appreciate that there was nothing on record to show that the plaintiff was the owner of the suit property. He submits that the unregistered agreement to sell, being relied upon by the plaintiff, to claim ownership of the suit property, would not in any manner; confer any title on the plaintiff. By relying on the decision of the Apex Court in ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Ors. AIR 2012 SC 206.***, he submits that the learned Trial Court could not have taken cognizance of this unregistered agreement to sell in decreeing the plaintiff's suit for possession. He therefore submits that this ground alone was sufficient to show that the defendant had an arguable case and thus, ought to have been granted an opportunity to lead evidence to prove that the plaintiff was not the owner of the suit property.

8. Learned counsel for the appellant then contends that even otherwise, the agreement to sell dated 05.08.1996, based on which the suit has been decreed by the learned Trial Court, was not even stamped and therefore, in terms of Section 35 of the Indian Stamps Acts, 1899, the same not could have been relied upon by the learned Trial Court. In support of this plea, he



seeks to place reliance on the decisions of the Apex Court in *Om Prakash vs. Laxmi Narayan and Ors. (2014) 1 SCC 618* and *SMS Tea Estates Pvt. Ltd. vs. Chandmari Tea Company Pvt. Ltd. (2011) 14 SCC 66*.

9. Mr. Rai next contends that the learned Trial Court has further failed to appreciate that the suit for possession itself was premature as even the purported license of the defendant, who had been in continuous occupation of the suit property for the last almost 20 years, was never validly terminated by the plaintiff. Without prejudice to his plea that the defendant's license was neither terminated nor was terminable as the defendant was granted permission to occupy the suit property in perpetuity, he contends that if the plaintiff's plea that the defendant was an unauthorised occupant since 2014 were to be accepted, the suit having being filed in 2019, was clearly barred by limitation and ought to have been rejected on this ground.

10. Mr. Rai finally submits that even otherwise once the defendant disputed the very title of the plaintiff to the suit property, a simpliciter suit for possession and permanent injunction, without seeking a declaratory relief was not maintainable. For this purpose he places reliance on a decision of the Apex Court in *Anathula Sudhakar versus P. Buchi Reddy (2008) 4 SCC 594* and prays that the impugned judgment be set aside and the matter be remanded back to the learned Trial Court for fresh adjudication after giving the parties an opportunity to lead their respective evidence.

11. On the other hand, Mr. Madan, learned counsel for the respondent/plaintiff supports the impugned judgment and submits that this is a typical case where the defendant, as a caretaker, was granted permission to stay in the suit premises along with his family, and is now trying to take undue advantage of the generosity shown by the plaintiff and his father. He



submits that not only had the defendant admitted in his reply to the plaintiff's application in suit being CS No. 1272/2017, that he was allowed to occupy the suit property pursuant to the permission granted by the plaintiff, but, had further admitted in his handwritten application addressed to the BSES that he was occupying the suit premises as per the permission granted by the plaintiff. He submits that a similar application was also given by his daughter, wherein it was clearly stated that it was the plaintiff who was the true owner of the suit property and that the defendant could occupy the suit property only as long as he was permitted by the plaintiff.

12. Mr. Madan then contends that the appellant's reliance on the decision in *Suraj Lamp and Industries Pvt. Ltd.(supra)*, *Om Prakash (Supra)* and *SMS Tea Estates Pvt. Ltd. (Supra)* is wholly misplaced and would not be applicable to the facts of the present case. He submits that, in the present case, the learned Trial Court was not required to determine whether the plaintiff was the owner of the suit property or not as the defendant had himself admitted that he had only been occupying the suit property as a licensee under the plaintiff. Once it was the defendant's own stand that the suit was not maintainable as the license granted in his favour had not been terminated coupled with his plea that he was allowed by the plaintiff to stay in the suit premises without any payment of license charge, there were categorical admissions on the part of the defendant to the effect that the plaintiff was the owner of the suit property. He, therefore, contends that in the light of these admissions by the defendant, there was no requirement for the learned Trial Court to delve into the question regarding the ownership of the suit property.



13. Without prejudice to his aforesaid submissions, Mr. Madan submits that in any event, the decision in ***Suraj Lamp and Industries Pvt. Ltd. (Supra)*** cannot be interpreted so as to invalidate all earlier genuine transactions entered into between the parties. He submits that the defendant's plea that the suit for possession was not maintainable on account of the agreement to sell dated 05.08.1996 being unregistered, is misconceived, as the same overlooks the fact that not only was the aforementioned agreement to sell backed by a registered general power of attorney and a registered will, but was also relied upon by this Court while passing a decree in suit being CS (OS) 1304/2010. He, therefore, contends that the transaction through which the plaintiff became the owner of the suit property was genuine, and therefore prays that the appeal be dismissed with costs.

14. Having considered the submissions of learned counsel for the parties and perused the record, I find that though the impugned judgment is based solely on the admissions made by the defendant, learned counsel for the appellant/defendant has, before this Court, sought to raise a number of grounds qua the purported defect in the plaintiff's title to the suit property. He has, by placing reliance on the decision in ***Suraj Lamps (supra)*** vehemently urged that the claim of ownership of the suit property by the plaintiff, being based on an unregistered agreement to sell, the very suit was in itself not maintainable. He has further contended, by placing reliance on the decision in ***Om Prakash (Supra)*** and ***SMS Tea Estates Pvt. Ltd. (Supra)*** that the agreement to sell being unstamped, could not, in the light of the bar under Section 35 of the Indian Stamps Act, 1899, be taken cognizance of by the learned Trial Court. His plea, thus is that the plaintiff could neither claim



any title on the basis of unregistered agreement to sell nor could an unstamped agreement be relied upon by the learned Trial Court.

15. Having given my thoughtful consideration to the aforesaid plea, I find that as noted hereinabove, the learned Trial Court had decreed the suit after coming to the conclusion that there was an admission by the defendant not only qua the plaintiff being the owner of the suit property but also qua the defendant being a licensee under the plaintiff. It was only in the light of this finding that the learned Trial Court did not consider the question as to whether the suit preferred by the plaintiff on the basis of an agreement to sell dated 05.08.1996, which although backed by a registered general power of attorney and a registered will, was admittedly an unregistered and unstamped document, was maintainable. Learned counsel for the defendant does not dispute that in a case where there is a clear and unequivocal admission by the defendant in the aforesaid terms, the Court would be justified in not examining the defendant's plea regarding the alleged defect in the plaintiff's title to the suit property or on the non-maintainability of the suit. He has, however, vehemently urged that, in the present case, the learned Trial Court has gravely erred in holding that there was an admission on the part of the defendant regarding the plaintiff's ownership of the suit property. He has urged that the learned Trial Court failed to appreciate the fact that it was categorically asserted in the written statement that the suit for possession, on the basis of an unregistered agreement to sell, was not maintainable. He has raised a similar plea regarding the suit not being maintainable on the basis of an unstamped document.

16. In the light of this position, I am of the considered view that the foremost issue which needs to be considered is as to whether there was any



admission on the part of the defendant and if yes, whether the same would fall within the ambit of Order XII Rule 6 CPC. It is only if the answer to this question is in the negative that the question regarding the maintainability of the suit on the basis of an unregistered documents and the admissibility of an unstamped agreement to sell would be required to be considered in depth.

17. I, therefore, now proceed to determine the first and foremost issue regarding the defendant's plea that there was no admission on his part. In order to appreciate this plea of the defendant, it would be necessary to refer to the relevant extracts of the pleadings and documents which according to the learned Trial Court, were admissions on the part of the defendant warranting passing of a judgment upon admission under Order XII Rule 6 CPC.

18. In order to appreciate the effect of the pleadings exchanged between the parties so as to determine whether the same amounts to admission on the part of the appellant, it would be apposite to refer to the provisions of Order XII Rule 6 CPC. The same reads as under:

“(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.”

19. I may now refer to the legal position with regard to the interpretation



given to Order XII Rule 6 CPC and the circumstances in which the Court will apply the principles thereof and situations where the Court can, while exercising its discretion, pass a judgment without requiring the parties to lead evidence. In this regard, reference may first be made to the observations of the Apex Court in ***Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha and Ors. (2010) 6 SCC 601***. The relevant extracts of the said decision reads as under:

12. Learned Counsel for the respondents-plaintiffs relied on a judgment of this Court in Karam Kapahi and Ors. v. Lal Chand Public Charitable Trust and Anr. reported in MANU/SC/0240/2010: 2010 (3) SCALE 569 and contended that in view of the principles laid down in that case, this Court may affirm the judgment of the High Court in the instant case. This Court is unable to accept the aforesaid contention. In Karam. Kapahi (supra) a Bench of this Court analyzed the principles of Order 12 Rule 6 of the Code and held that in the facts of that case there was clear admission on the part of the lessee about non- payment of lease rent. The said admission was made by the lessee in several proceedings apart from its pleading in the suit. In view of such clear admission, the Court applied the principles of Order 12 Rule 6 in the case of Karam Kapahi (supra). The principles of law laid down in Karam Kapahi (supra) can be followed in this case only if there is a clear and unequivocal admission of the case of the plaintiff by the appellant.

18. 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. This 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 (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.



20. What emerges from the aforesaid is that the question whether there is a clear and unambiguous admission in a case is essentially a question to be decided on the facts of each case. The only paramount requirement for an application under Order XII Rule 6 CPC being allowed is that there should be a clear and unequivocal admission by the defendant of the plaintiff's case.

21. I may now refer to the decision in ***Himani Alloys Ltd. versus Tata Steel Ltd. (2011)15 SCC 273***, wherein the Apex Court observed that the power under Order XII Rule 6 CPC is discretionary which should be exercised only when the admission is clear, unambiguous and unconditional. The Apex Court, however, held that such a judgment under Order XII Rule 6 CPC could be based on admissions contained in documents other than pleadings, and infact, observed that a judgment could be given, even on the basis of an admission contained in the minutes of a meeting. The relevant extracts of the said decision read as under:

4. Order 12 Rule 6 of the Code provides that where admission of facts have been made in the pleadings or otherwise, whether oral 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.

9. 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 and Co. Ltd. v. United Bank of India MANU/SC/0485/2000: 2000 (7) SCC 120, Karam Kapahi v. Lal Chand Public Charitable Trust MANU/SC/0240/2010: 2010 (4) SCC 753 and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha MANU/SC/0355/2010 : 2010 (6) SCC 601. There is No. such admission in this case.

22. Reference may now also be made to the decision of a Coordinate Bench of this Court in ***Inder Mohan Singh Vs. Sube Singh, (2014) SCC OnLine Del 2342***, heavily relied upon by the defendant. The Court, in the said case, while setting aside the concurrent decisions of the learned Civil Judge and the Appellate Court in passing a judgment upon admission, held that if a case involve questions which cannot be conveniently disposed of, the Court can refuse to exercise its discretion. The relevant extracts of the said decision reads as under:

12. Order XII Rule 6 of the Code of Civil Procedure confers wide powers on the Court to pass a decree on clear, unambiguous, unconditional and unequivocal admissions. A judgment on admission under Order XII Rule 6 is not a matter of right but a matter of discretion of the Court. No doubt such discretion has to be exercised judiciously. However, if a case involves questions which cannot be conveniently disposed of, the Court can refuse to exercise discretion. Where the defendants have objections which go to the root of the matter, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff.



23. Having noted the legal position on the scope of exercise of discretion under Order XII Rule 6 CPC, I may now refer to the pleadings of the parties.

24. I may first refer to the reply of the defendant to the plaintiff's application for deposit of use and occupation charges, filed by him in an earlier suit filed by the defendant seeking permanent injunction against the plaintiff. In the suit being CS No. 755/2017 (later re-numbered as 1272/2017), the defendant, in its reply to the plaintiff's application for deposit of use and occupation charges, had stated in Para 3 thereof that he was given the suit premises by the plaintiff herein to stay without paying any charges/license fee. The said Para 3 of the defendant's reply to the application reads as under:

3. That the application filed by the defendant is liable to be dismissed as it not based on true facts. It is submitted that the Plaintiff were given the suit premises by the defendant to stay there without paying any charges/licence fee. Since no licence fee was fixed at the time of giving the premises to the plaintiff, so the defendant cannot claim any licence fee as usage and occupation charges from the plaintiff.

25. I may now refer to Para 3 of the preliminary objections filed by the defendant in response to the suit filed by the plaintiff in which the impugned judgment has been passed. Even in this Para, the defendant had urged that the suit filed by the plaintiff was not maintainable as the alleged license granted by the plaintiff in his favour had not been terminated. The relevant extracts thereof read as under:

3. That the present suit is not maintainable before this Hon'ble Court as plaintiff has not terminated the alleged license allegedly granted by the Plaintiff in favour of the Defendants. The plaintiff has filed the present suit without



terminating the alleged license.

26. It may also be necessary to refer to the two applications submitted by the defendant and his daughter to the BSES in January 2014, wherein it was admitted, not only by the defendant but also by his daughter that the plaintiff was the owner of the suit premises. It was further stated in the said applications that the defendants had no right in the suit property and they would be residing there as long as the plaintiff permitted them. The relevant extracts of the English translations of these applications, one by the defendant and the other by his daughter read as under:

Application submitted by the defendant-

I, Shivraj s/o Babadeen, native resident of village Samrola District Rae Bareilly Delhi is residing in A1/63 Freedom Fighter Enclave. This plot belongs to Dr. Arun Nirula s/o Sh. Ramsar Nirula. Dr. Nirula has given me the permission to reside in his plot since I am known to him since long. I have no right over this plot or land. In the raid conducted by electricity company on 13.12.2013, action was taken against my wife Sunita and a Bill of Rs.33802/- is received. This Bill is being paid by Dr. Nirula. I will not use the electricity till the time meter is not installed.

Application submitted by the defendant's daughter-

I am living in Fighter Enclave with my family. This plot is of Dr. Arun Nirula and he has permitted me to live there. I have no ownership right over this plot. We will remain living there till the time Dr. Arun Nirula permit me to live there. One year back, meter no.21963137 was installed on this plot. On 09.2.2016, bill of Rs.124920/- was received. Neither me, nor my family has misused the electricity. Me and my family live in one room only. We have only one fridge and one television



and one cooler and...

27. From a perusal of para 3 of the written statement, what emerges is that the defendant had, while trying to take vague and general pleas in his written statement that the plaintiff was not the owner of the suit property, also simultaneously contended that as the license granted in his favour had not been terminated by the plaintiff, the suit was not maintainable. This admission by the defendant that he was occupying the premises as a licensee of the plaintiff is indeed categoric and clearly shows that despite the defendant trying to take the plea that the plaintiff was not the owner of the suit property, had admitted that he was a licensee under the plaintiff.

28. Now coming to the defendant's statement in his reply to the plaintiff's application in an earlier suit instituted by him against the plaintiff, i.e., CS No. 1272/2017, I find that even in this reply, the defendant while opposing the plaintiff's claim for deposit of use and occupation charges, had taken a stand that permission to stay in the premises had been granted to him by the plaintiff without payment of any license charges and therefore no license charges could have been demanded by the plaintiff. Even though this admission by the defendant was not made in the subject suit, the fact remains that this in itself was a categoric admission on his part that he was a licensee under the plaintiff.

29. Similarly, the applications submitted by the defendant and his daughter to the BSES in 2014 also go on to show that the consistent stand of the defendant was that he was staying in the suit premises as per the oral license granted by the plaintiff. Even though, these two applications are sought to be denied by the defendant and may not be a part of the pleadings,



it is interesting to note that during the course of hearing, the defendant has not seriously disputed the submissions of these applications but has merely tried to urge in ground (i) of the appeal that the application was submitted by his daughter at the time when she was a minor.

30. When the facts of the present case are seen in the light of the principles governing the exercise of discretion under Order XII Rule 6 CPC, I am not persuaded to accept the defendant's plea that this was not a case for exercise of discretion in favour of the plaintiff under Order XII Rule 6 CPC. As held by the Apex Court in *Jeevan Diesels and Electricals Ltd. (supra)*, the question whether there is a clear and unambiguous admission by one party or not, depends on the facts of the case. In the instant case, not only has the defendant made clear admissions regarding the plaintiff being the owner of the suit property under whom he is a licensee as per his application submitted to the BSES way back in the year 2014, but has also, in his reply to the plaintiff's application seeking deposit of use and occupation charges in an earlier suit between the same parties as well as in his written statement, taken a plea that his license by the plaintiff was still continuing and was not terminated by the plaintiff. Undoubtedly, the defendant has, in his written statement, raised pleas to the effect that the plaintiff cannot be treated as the owner of the suit property on the basis of an unregistered agreement to sell and has also vaguely urged that the suit was not maintainable in its present form. However, what is noteworthy is that the defendant has neither raised a plea of adverse possession nor has even sought to explain as to how he came into possession of the suit property. When these pleas of the defendant denying the ownership of the plaintiff as also the maintainability of the suit are seen in the context of his admissions in different proceedings at different



stages, the only conclusion at which one can arrive at is that the defendant had, in unambiguous and clear terms admitted the plaintiff's claim that he was the owner of the suit property which was permitted to be used by the defendant as a licensee. In fact, on a cumulative reading of the aforesaid admissions and the stand taken by the defendant in his written statement, no other conclusion can be arrived at. The decisions in ***Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha and Ors. (2010) 6 SCC 601., Himani Alloys Ltd. versus Tata Steel Ltd. (2011)15 SCC 273 and Inder Mohan Singh Vs. Sube Singh (2014) SCC OnLine Del 2342,*** relied upon by the appellant, all turn on their peculiar facts and do not in any manner, forward the case of the defendant/appellant. The plaintiff is, therefore, justified in urging that the intention of the defendant, who was given permission to occupy one room, one kitchen and a bathroom in about 30 sq. yards of the 270 sq. yards of plot as a caretaker has turned dishonest and he, despite the termination of his license by the plaintiff, which in any event, stood terminated upon filing of the suit, is continuing to occupy the suit property. I, therefore, see no infirmity with the conclusion arrived at by the learned Trial Court that the plaintiff was entitled to judgment upon admission.

31. In the light of my aforesaid conclusion that the learned Trial Court was justified in passing a judgment upon admission, though it is not necessary to deal with the defendant's other pleas regarding the suit not being maintainable for want of a registered and sufficiently stamped transfer document in the plaintiff's favour, I find that even in the decision in ***Suraj Lamps (supra)***, heavily relied on by the learned counsel for the appellant, the Apex Court ,being conscious of the innumerable property transactions



based on unregistered documents which had taken place prior to the said decision, had observed that genuine transactions already entered into between the parties need not be disturbed. The relevant extract of the decision of the Apex Court in ***Suraj Lamp (Supra)*** reads as under:

“18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of Transfer of Property Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted and acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.”

32. I may also note that learned counsel for the defendant has, by placing reliance on a decision of the Apex Court in ***Anathula Sudhakar vs. P. Buchi Reddy (2008) 4 SCC 594***, vehemently urged that once the title of the plaintiff to the suit property was disputed by the defendant, it was incumbent upon the plaintiff to amend his suit by including a prayer for declaration which he failed to do and therefore, a simpliciter suit for possession and permanent injunction was not maintainable. In the light of my conclusion hereinabove that there was a clear admission by the defendant about the plaintiff being the owner of the suit property, this plea of the defendant does not merit any consideration and is accordingly rejected.



33. For all the aforesaid reasons, I have no hesitation in concurring with the findings arrived at by the learned Trial Court. The appeal, being meritless, is accordingly dismissed.

(REKHA PALLI)
JUDGE

AUGUST 2, 2022
kk

