



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7064 OF 2022

Maneesh Bawa & Anr.

..Petitioner/s

v/s.

Satish Palta S/o. Late Diwanchand Palta

..Respondents

Mr. J.S.Kini a/w. Mr. Arun Kini i/b. Ms. Sapna Krushnappa for the
Petitioner/s.

Mr. Abhishek Sawant a/w. Tinay Kapadia i/b. LR And Associates for the
Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 3rd OCTOBER, 2023.**

P.C.

1. The petitioner herein who is the original plaintiff challenged order dated 13.10.2021, whereby the learned Judge has dismissed the application under Order 12 Rule 6 of CPC.

2. Heard learned Counsel for the Petitioner and learned Counsel for the Respondent. I have perused the records.

3. The petitioner has filed a suit for eviction essentially on the ground that the respondent herein has carried out permanent additions/alterations to the suit premises without prior permission of the petitioner/plaintiff. Learned Counsel for the petitioner contends that

the respondent has admitted that the Corporation has taken action against him for carrying out additions/alterations to the suit premises. He therefore contends that the said statement would clearly indicate that the respondent has carried out alterations and in view of these admissions, the Petitioner plaintiff is entitled for decree of eviction under Order 12 Rule 6 of CPC. Learned Counsel for the petitioner further states that the petitioner had amended the plaint on 21.4.2016, wherein he had specifically pleaded that the respondent has constructed additional floor. He states that the said averments are not disputed and on the contrary the respondent has admitted the said photographs. He contends that the petitioner is entitled for decree of eviction on the basis of these admissions.

4. Learned Counsel for the respondent submits that the Respondent had not filed additional written statement and the application under Order 12 Rule 6 was filed on the basis of the averments in the written statement. He submits that the respondent has specifically denied having made any alterations or additions to the suit structure. He contends that there is no admission in the written statement or otherwise which would justify decree under Order 12 Rule 6 CPC.

5. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

6. Order 12 Rule 6 confers wide powers on the court to pass a judgment on the basis of admission of fact, either in the pleadings or otherwise, whether orally or indirectly. It is trite law that a decree under Order 12 Rule 6 CPC can be passed only if the admission is categorical and unambiguous and not on the basis of inferences. In ***Himani Alloys Ltd. v/s. Tata Steel Limited 2011 (15) SCC 273***, the Apex Court while considering the scope of Order 12 Rule 6 CPC has held that the admission should be categorical, conscious and deliberate act of the party making it, showing an intention to be bound by it. It is held that 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 the 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 the defendant to contest the claim. In short, the discretion should be used only when there is a clear ‘admission’ which can be acted upon.

7. In the instant case, the Petitioner has filed a suit for eviction interalia on the ground that the respondent-tenant has carried out permanent alteration and addition to the suit structure. A perusal of the

written statement clearly reveals that the respondent had specifically denied having carried out any addition or alteration in the suit premises. The respondent had also disputed the correctness of the plan and the photographs produced by the petitioner along with the plaint. The respondent has averred that the Petitioner is instigating the BMC to take action against the respondent. It is specifically averred that it was under the instigation of the petitioner that the Corporation has issued a notice. It is further averred that the Corporation has not taken any action pursuant to the said notice since it was satisfied that the Respondent had not carried out any additions or alterations.

8. The written statement does not contain any admission as claimed by the Petitioner. In that view of the matter, there was no scope to pass a judgment under Order 12 Rule 6 of the CPC. There is no illegality or infirmity in the order. The Petition is devoid of merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)