

VRJ

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

CIVIL REVISION APPLICATION NO.374 OF 2023

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Chandrashekhar Sitaram Joglekar &

Anr.

... Applicants

V/s.

Jayashree Vijaykumar Joglekar

... Respondent

Mr. Sandeep Jalan for the applicants.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

P.C.:

1. The applicants are the plaintiffs who filed a suit for injunction restraining defendant from disturbing possession over the suit property. In the said suit the defendants filed a counter claim seeking a mandatory injunction against the plaintiffs that the plaintiffs shall allow the defendants to carry on business in the suit property in compliance with understanding dated 11th February 2020. In the said suit the plaintiffs, defendants in the counter claim filed an application under Order 12 Rule 6 of the Civil Procedure Code, 1908. According to the plaintiffs, payment of salary by the defendants amounts to admission under Order 12 Rule 6 of the Civil Procedure Code, 1908.

2. According to learned advocate for the the applicants, factum of admission of payment of salary is sufficient to pass decree in

counter claim filed by the applicants.

3. It needs to be noted that in the counter claim the defendants are seeking mandatory injunction seeking rejection against the plaintiffs to allow defendants to run the business in compliance with understanding with defendants dated 11th February 2020. For grant of such injunction, payment of salary may be one of the factor which is relevant under section 41 of the Indian Evidence Act, 1872. However, acceptance of fact of payment of salary by itself cannot be termed as an admission under Order 12 Rule 6 of the Civil Procedure Code, 1908, which requires such admission to unequivocal, unambiguous and clear. Based on such admission and proof of such fact, the defendants by themselves are not entitled to the relief of injunction as prayed. The relief of injunction being discretionary relief, there are other factors which the Trial Court needs to consider at the time of hearing of the suit. Therefore, no illegality can be found in the order passed by the Trial Court.

4. There being no error of jurisdiction, the civil revision application is dismissed. No costs.

(AMIT BORKAR, J.)