

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

WRIT PETITION NO.939 OF 2022

Mr. Nagesh Krishnaji Koyalkar,
aged about 60 years, Hindu,
Inhabitant, Occupation : Service, Residing
at Room No.5, 2nd Floor, Building No.23,
Kamathipura, 10th Lane, Mumbai-400 008.

... Petitioner

V/s.

1. Mr. Balaram Ashok Manjarekar,
an adult, Indian Inhabitant, Age : Not
Known, Occupation : Not Known,
2. Mr. Ramesh Ashok Manjarekar,
an adult, Indian Inhabitant, Age : Not
Known, Occupation : Not Known,
3. Mr. Shivaji Ashok Manjarekar,
an adult, Indian Inhabitant, Age : Not
Known, Occupation : Not Known,
4. Mrs. Varjaveni Shankar Manjarekar,
an adult, Indian Inhabitant, Age : Not
Known, Occupation : Not Known,
5. Mr. Mohan Ashok Manjarekar,
an adult, Indian Inhabitant, Age : Not
Known, Occupation : Not Known,
All are landlords of Building No.23
situated at Kamathipura, 10th Lane,
Mumbai 400 008, and
All the residing at 2nd Floor, Building No.23
Kamathipura, 10th Lane, Mumbai-400 008. ... Respondents

Mr.Juzer Udaipuri with Ms.Sofia Udaipuri i/by M/s Udaipuri and company, Advocates for the Petitioner.

Mr.Tushar V. Dahibawkar i/by Ms.Rita P. Swaminarayan, Advocates for the Respondents.

CORAM : ABHAY AHUJA, J.

DATE : 27 JUNE, 2023.

JUDGMENT :

1. This is a petition filed under Article 227 of the Constitution of India impugning the order dated 23rd November, 2021 of the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 39 of 2020 in Exhibit No.37 in pending R.A.D. Suit No.489 of 2016 (the “said suit”) confirming the order dated 15th January, 2020 passed by the Trial court below Exhibit No.37 in the said suit rejecting Petitioner’s application under Order XII Rule 6 of the Code of Civil Procedure, 1908 for a decree on admission.

2. The Petitioner is the original Plaintiff in the said suit and the Respondents No.1 to 5 are the landlords against whom the Petitioner has filed the suit for declaration of tenancy in his favour in respect of premises

being Room No.5, 2nd floor, Building No.23, Kamathipura, 10th Lane, Mumbai 400 008 (the “suit premises”).

3. It is the case of the Petitioner that he is the son of deceased Respondent No.6 alongwith other siblings who are the legal heirs of the original tenant viz. late Shri Krishnaji Mahadeo Koyalkar who was the husband of Respondent No.6 (who died during the pendency of the Revision Application). After the death of the original tenant the rent receipts were transferred in the name of Respondent No.6 as it was claimed that the Respondent No.6 alongwith one of the other legal heirs was paying the rent in respect of the suit premises.

4. The Petitioner has filed the said suit in the Small Causes Court for declaration as tenant and also that the transfer of rent receipts in the name of his mother-the Defendant No.6 therein and Respondent No.6 herein be declared as null and void.

5. It has been contended that the Defendants No.1 and 5 therein and Respondent No.1 to 5 herein viz. the landlords had filed an affidavit dated 6th December, 2017 in reply to the application by the heirs of deceased

original tenant for impleadment, in which they have admitted the tenancy of the Petitioner at page No.1, paragraph No.1, line No.5 and therefore, the prayer for decree on admission as there is a categorical admission that the Petitioner is entitled to tenancy rights in the suit premises.

6. The said application below Exhibit 37 for decree on admission before the Trial Court was resisted by the landlords contending that all the legal heirs of the original tenant were residing in the suit premises at the time of his death and also after the death of the original tenant and therefore, the legal heirs of the original tenant were all entitled to the tenancy rights.

7. Mr.Udaipuri, learned counsel for the Petitioner would submit that an application at Exhibit35 for impleading themselves as party Defendants made in the said suit filed by the heirs of the original tenant was rejected by the Trial Court against which a revision was preferred which was allowed and against which Petitioner had filed a writ petition bearing No.2069 of 2019 before this court, which was disposed of by this court observing that the Respondents No.1 to 4 had unconditionally withdrawn the application and the order of the Appellate court dated 5th January,

2019 was set aside permitting the Respondents therein to consider filing of a separate suit if they were so advised. Learned counsel for the Petitioner submits that no such suit has been filed till date by the other heirs and therefore, the courts below ought to have allowed the application for decree on admission.

8. The Trial Court relying on the reply of the legal heirs where they have submitted that they are also entitled to the tenancy rights alongwith the Petitioner and the deceased Defendant No.6 and observing that that being the basis on which the Petitioner is seeking the decree on admission, as well as relying upon the definition of tenant and deemed tenant under the provisions of Maharashtra Rent Control Act, 1999 rejected the application filed by the Petitioner vide order dated 15th November, 2020 holding that since there was a dispute amongst the legal heirs and that the tenancy had already been transferred in the name of Defendant No.6-mother, the statement of the landlords that the Plaintiff being one of the legal heirs and entitled to the tenancy would not amount to recognition of the Plaintiff as the only tenant in whose name the tenancy rights need to be transferred.

9. Aggrieved by the same, the Petitioner filed Revision Application No.39 before the Appellate Bench of the Small Causes Court and the Appellate Bench observing that it was not an admitted fact that the Plaintiff alone was entitled for the tenancy rights to the suit premises held that Petitioner was not entitled to declaration for decree on admission and confirmed the order of the Trial Court.

10. I have heard Mr.Juzer Udaipuri, learned counsel for the Petitioner and Mr.Tushar Dahibawkar, learned Counsel for the Respondents at length and with their able assistance, I have perused the papers and proceedings in the matter and considered the rival contentions.

11. The Petitioner has filed the said suit for the following prayers against landlords viz the Respondents No.1 to 5:-

- a) that the Plaintiff be declared as a tenant of the Defendant Nos. **1 to 5** in respect of the suit premises that is room No.5, 2nd floor, building No.23, 10th Lane, Kamatipura, Mumbai 400 008;
- b) that the rent receipt transferred in the name of the Defendant No.6 Smt. Laxmibai Krishnaji Koyalkar be declared as null and void.

12. The affidavit-in-reply filed by the landlords (Respondents No.1 to

5) in an application dated 2nd December, 2017 by the heirs of the original tenant for impleadment admitted that the mother i.e. Respondent No. 6 (deceased) and the Petitioner's siblings are also the legal heirs of deceased-original tenant viz. late Shri Krishnaji M. Koyalkar and all the family members were residing in the suit premises at the time of the death of the original tenant and also after his death. That the applicants are entitled to the tenancy rights alongwith the Plaintiff (the Petitioner herein) and Defendant No.6 (the Respondent No. 6 viz. the deceased mother). It is also stated in the said affidavit that the rent in respect of the suit premises was being paid only by the Defendant No.6 and the Applicant No.2. It has also been stated that the Applicants have not given up their rights and claim in respect of the tenancy rights of the suit premises and that it would be necessary to implead them as proper and necessary parties to the suit. Paragraphs No.1,2,3,4 and 5 of the said affidavit are usefully quoted as under :-

“1. At the outset, these Defendants submit that the Applicants are also the legal heirs of deceased original tenant i.e. late Shri Krishnaji Mahadev Koyalkar and all the family members were residing at the suit premises at the time of death and also after the death of original deceased tenant. These Defendants further submit that the Applicants are also entitled to the tenancy rights alongwith the Plaintiff and Defendant No.6.

2. At the further outset, these Defendants submit that the rent in respect of the suit premises was being paid only by Defendant No.6 and Applicant No.2.

3. At the further outset, these Defendants say and submit that the Applicants have not given up their rights and/or claim in respect of the tenancy rights of the suit premises though they may have shifted elsewhere for the reason of family settlement and understanding.

4. At the further outset, these Defendants submit that the names of original deceased tenant still reflects as the tenant of Room No.5 i.e. the suit premises.

5. These Defendants submit that they support the contention raised by the Applicants in their application for impleading them as party Defendants being a proper and necessary part to the suit.

(emphasis supplied)

13. It is not in dispute that the application for impleadment of the legal heirs was initially rejected by the Trial Court which was however allowed by the Appellate Court in revision and against which Writ Petition No.2069 of 2019 was filed in this court which came to be disposed of observing that the Respondents No.1 to 4 had unconditionally withdrawn the application and that they could consider filing a separate suit, if so advised. The said order dated 17th July, 2019 of this court in Writ Petition No.2069 of 2019 is usefully reproduced as under :-

“Heard Mr. Udaipuri, learned Counsel for the petitioner,

Mr. Nagvadaria, learned Counsel for respondents No.1 to 4 and Mr. Seegarla, learned Counsel for respondents No.5 to 9.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and decree dated 5th January, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.526 of 2018. By that order, the Appellate Court allowed the Revision Application filed by respondents No.1 to 4, herein and set aside the order dated 23rd October, 2018 passed by the learned trial Judge below Exhibit 35 in R.A.D Suit No.489 of 2016. The Appellate Court allowed application Exhibit 35 filed by respondents No.1 to 4 herein and directed the plaintiff to implead them as party defendants in R.A.D Suit No.489 of 2016.

3. The plaintiff has instituted suit for declaration of his tenancy rights in respect of Room No.5, 2 nd Floor, Building No.23, Kamathipura 10th Lane, Mumbai 400 009 (for short 'suit premises'). Defendants No.1 to 5 are the landlords. During pendency of the suit, respondents No.1 to 4 took out application Exhibit 35 on 2 nd December, 2017 for impleading them as party defendants in the suit. By order dated 23 rd October, 2018, the learned trial Judge rejected the application. Aggrieved by this order, respondents No.1 to 4 preferred Revision Application before the Appellate Court. By the impugned order, the Appellate Court has allowed the Revision Application.

4. The Petition was heard at length on 19th June, 2019. Arguments were concluded and the matter was posted on 3rd July, 2019 for passing order. The matter was posted on 3rd July, 2019 so as to enable Mr. Nagvadaria for taking instructions from respondents No.1 to 4 as to whether they want to withdraw

application Exhibit 35 unconditionally. Mr. Nagvadaria states that respondents No.2 and 4 are present in the Court. He has tendered photo copy of PAN Card of respondent No.2 and Identity Card issued by Election Commission of India of respondent No.4, which are taken on record and marked “X Colly” for identification. Upon taking instructions from them, Mr. Nagvadaria states that;

[1] respondents No.1 to 4 unconditionally withdraw application Exhibit 35;

[2] respondents No.1 to 4 will not file application in the suit filed by the petitioner/plaintiff seeking identical relief;

[3] respondents No.1 to 4 may consider filing a separate suit, if so advised.

Statements made on instructions are recorded.

5. Mr. Udaipuri submits that if respondents No.1 to 4 are permitted to file separate suit, all contentions of the petitioner/plaintiff including maintainability of such suit may be expressly kept open.

6. In view thereof, on the motion made by Mr. Nagvadaria, application Exhibit 35 is allowed to be withdrawn unconditionally. In view thereof, the impugned order dated 5th January, 2019 passed by the Appellate Court is set aside. In case, respondents No.1 to 4 institute separate suit, all contentions of the plaintiff including maintainability of such suit are expressly kept open. Liberty is reserved to the petitioner/plaintiff to file application for disposal of the suit in a time bound manner. If such application is made, the learned trial Judge will pass the appropriate order. Petition is disposed of.”

(emphasis supplied)

14. The Petitioner thereafter has filed the application below Exhibit 37 for a decree on admission on 20th December, 2017 on the basis of the affidavit of Respondents No.1 to 5 dated 6th December, 2017 and in particular on the basis of the admission on page 1 paragraph 1 line 5 which reads thus :-

“These Defendants further submit that the Applicants are also entitled to the tenancy rights alongwith the Plaintiff and Defendant No.6.”

15. The Petitioner has also made allegations that the landlord and the Petitioner’s mother and other siblings of the Petitioner have been acting in cohorts.

16. I have perused the aforementioned affidavit as well as order of this court dated 17th July, 2019 in Writ Petition No.2069 of 2019 and am of the view that the admission made by the landlord with respect to the tenancy in the suit premises does not confer the tenancy rights only upon the Petitioner but also upon the mother of the Petitioner (now deceased) as well as on the other siblings of the Petitioner. Paragraph No.1 of the said affidavit quoted above clearly bears this out.

17. It is settled law that an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 can be allowed when there is clear admission in a pleading in favour of the Plaintiff. In this case the admission is that the Petitioner as well as his mother and other siblings are entitled to the tenancy rights. The suit had been filed by the Petitioner alone seeking to be declared as a tenant of the Respondents No.1 to 5 in respect of the suit premises and for declaring the transfer of rent receipts in the name of his mother to be null and void. The order dated 17th July, 2019 passed by this court in Writ Petition No.2069 of 2019 not only records unconditional withdrawal of the application of the Petitioner's siblings to be impleaded in the said suit but also records that they may consider filing of a separate suit, if so advised. The suit for declaration as tenant of the suit premises has been filed by the Petitioner but not by his siblings who also have been stated to be entitled to the tenancy rights in the suit premises and just because no suit has yet been filed by the siblings does not mean that they have given up their rights to the suit premises. In fact paragraph No.3 of the affidavit of the landlords dated 6th December, 2017 quoted in paragraph (12) above clearly bears this out.

18. Order XII Rule 6 of the Code of Civil Procedure, 1908 reads as under :-

6.Judgment on admission.-

(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 an party or 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. The Hon’ble Supreme Court in the case of **Karan Kapoor Vs. Madhuri Kumar**, reported in (2022)10 Supreme Court Cases 496, has after considering the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 set aside the decree on admission as confirmed by the High Court and remitted the matter back to the Trial Court to decide the suit on merits after affording opportunity to the parties to record evidence, observing as under:-

“19. Heard learned counsel for both the parties and perused the records. Prior to appreciating the arguments in

the facts and looking to the controversy involved in the present case, it is required to know the object and the purport to introduce Order XII of CPC . The relevant provisions are reproduced hereinunder:

“1. Notice of admission of case- Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party”.

2. Notice to admit documents- Either party may call upon the other party to admit, within 7 seven days from the date of service of the notice any document, saving all exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

2A. Document to be deemed to be admitted if not denied after service of notice to admit documents- (1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability: Provided that the Court may, in its discretion

and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission. (2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

3. Form of notice- A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

3A. Power of Court to record admission- Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document.

4. Notice to admit facts- Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may

be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice.

5. Form of admissions- A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

6. 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. (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”

20. Thus, the scheme of Order XII Rule 1 prescribes that any party to a suit may give notice, by his pleading, or otherwise in writing that he admits the truth of whole or any part of the case to other party. As per Rule 2 of

Order XII notice to admit the documents may be given by either party to the other party within the specified time for admission of a document and in case of refusal or admission of the document after the notice, the cost of proving such document shall be borne by the party who neglects or refuse, which shall be based on the discretion of the Court.

21. Rule 2A enables the deemed admission if after notice the document has not been denied. The said notice is required to be given in Form No.9 of Appendix 'C' of *CPC*. Rule 3A confers overriding powers to the Court, that even in absence of a notice to admit a document under Rule 2, the Court may record such admission on its own motion or by calling upon a party. The Court also have a power to record whether the party admits or refuses or neglect to admit such document.

22. Rule 4 of Order XII relates to notice to admit the facts. Any party may by a notice in writing at any time not later than 9 days before the day fixed for the hearing, call upon any other party to admit for the purposes of suit only, any specific fact or facts, mentioned in such notice that is required to be answered within a specified time or within such further time as directed by the Court in case of refusal or neglect to admit the same, the cost of proving such fact or facts be paid by the parties as directed. By adding a proviso, it was made clear that the admission, if any, made in

a proceeding would be relating to the same proceeding not for any other proceedings. The notice under Rule 4 is required to be given in Form No.10 of Appendix 'C' of, CPC as prescribed in Rule 5.

23. Order 12 Rule 6 confers discretionary power to a Court who 'may' at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word 'may' and 'as it may think fit' to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for fullfledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the Court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the Court a decree be drawn accordingly and parties to the case is not required to go for trial.

25. On the issue of discretion of Court to pass judgment

on admission, a three Judge Bench of this Court in the case of S.M. Asif v. Virendar Kumar Bajaj - (2015) 9 SCC 287 made the legislative intent clear to use the word 'may' which clearly stipulates that the power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right. In the said case, 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 Plaintiffs' claim was resisted by the Defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs. 82,50,000/ was paid.

27. The Defendant in course of taking the defense stoutly denied that Respondent/Plaintiff has continued to be the landlord after entering into Agreement to Sell. The suit for specific performance was also filed which of course was contested by the Plaintiff. In the said case, this Court was of the view that deciding such issues requires appreciation of evidence. Mere relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 of CPC. Resultantly, this Court by setting aside the judgment passed by the High Court remitted the matter back to the Trial Court subject to deposit of the arrears of the rent and the compensation for use of occupation of the suit premises. Such deposit was subject to final outcome of the eviction as well as suit for specific performance.

31. Learned counsel for the Appellant has placed heavy reliance on a judgment of R. Kanthimathi vs. Beatrice Xavier reported in (2000) 9 SCC 339. In the said case, this Court has specified that any jural relationship between two persons could be created through an agreement and

similarly could be changed through an agreement subject to the limitations under the law. However, it is urged that the relationship of the Appellant has now been changed to purchaser on signing the ATS-I by landlord subsequent to lease agreement, therefore the relationship of landlord and tenant extinguishes. Reliance has also been placed on the judgment of Himani Alloys Limited vs. Tata Steel Ltd. reported in (2011)15 SCC 273 and it has been urged by Appellant that in case the admission is not of the amount as alleged and not categorical and clear, the decree under Order XII Rule 6 cannot be directed. The case of Hari Steel & General Industries Ltd. Vs. Daljit Singh reported in (2019) 20 SCC 425 has also been relied upon to contend that the relief under Order XII Rule 6 is discretionary and the Court should not deny the valuable right of the Defendant to contest the suit, meaning thereby, the discretion should be used only when there is a clear, categorical and unconditional admission and such right should not be exercised to deny valuable right of a Defendant to contest the claim based on defense taken. Further, relying upon the judgment of Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi reported in (2002)3 SCC 676, it has been contended that when a possession is with the Appellant by virtue of a part performance of agreement to sell as prescribed under Section 53 of the Transfer of Property Act, 1882, he has right to defend or protect his possession.

33. 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 ATSI, 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 fullfledged trial.

34. 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. As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defense as taken by the Defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under Order XII Rule 6 of CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in S.M. Asif vs. Virender Kumar Bajaj reported in (2015) 9 SCC 287 are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case.

35. Consequently, the judgment and decree passed by the Trial Court, as confirmed by the High Court, only on admission of fact without considering the defense in exercise of power under Order XII Rule 6 of , CPC is hereby set aside. The matter is remitted back to the Trial Court to decide the suit as expeditiously as possible

affording due opportunity to the parties to record evidence that shall be appreciated by the Court on merit.

(emphasis supplied)

20. The Petitioner has filed this suit seeking tenancy rights in the suit premises for himself alone. The heirs of the original tenant are yet to file a suit. The admission by the landlords is with respect to the entitlement of the Petitioner as well as his mother and siblings who have not filed any such suit. There is no categorical finding or admission only in favour of the Petitioner. Going by the clear language of Order XII Rule 6 (1) of Code of Civil Procedure, 1908 and the law settled by the Hon'ble Supreme Court as elucidated above, the said admission in my view is not sufficient to decree the said suit by the Petitioner in his favour. Doing so would deny valuable rights of the other heirs of the original tenant viz. Late Shri Krishnaji M. Koyalkar before the final outcome. I therefore do not think that the Trial Court or the Appellate Court have improperly exercised discretion or erred in declining to grant Petitioner's Application for decree on admission.

21. I therefore, do not find any merit in this petition. There is no jurisdictional error nor any illegality or perversity by the Appellate Bench in confirming the order of the Trial Court and passing the impugned

order dated 23rd November, 2021. I am, therefore, not inclined to interfere with the order of the Appellate Bench.

22. The writ petition is dismissed. Parties to bear their own costs.

23. It is made clear that this Court has not given any finding on the facts/merits of the said suit. The reasons given herein are only for the purposes of deciding the present petition. All contentions/issues on the merits of the suit are left open to be decided at the trial of the suit, which the trial Court shall decide on its own merits in accordance with law.

(ABHAY AHUJA, J.)