



2023:DHC:7258



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

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Reserved on: 27th July, 2023

Pronounced on: 6th October, 2023

+ **C.R.P. 10/2023**

GURMEET SINGH SIDANA

..... Petitioner

Through: Mr.Kartik Yadav, Mr.Manhar Singh
Saini and Ms.Sumedha Chadha,
Advocates

versus

AMEEK SINGH SAWHNEY

..... Respondents

Through: Mr.Gurvinder Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under sub-section 1 of Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of the petitioner seeking the following reliefs: -

"A. Allow the present revision petition and set aside the Order dated 14.12.2022 passed by the Ld. Additional District Judge, South District, Saket Court in Application filed by the Petitioner under Order XII Rule 6 CPC in the Civil Suit No. 397 of 2022;

B. Allow the Application filed by the Petitioner under Order XII Rule 6 CPC in the Civil Suit No. 397 of 2022 for ejectment of the Respondent and possession of the Petitioner in Suit

Signature Not Verified

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By: DAMINI YADAV
Signing Date: 07.10.2023
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Property bearing flat bearing no. B-4/118, Ground Floor, Safdarjung Enclave, New Delhi-110029;

C. Award the costs of the revision petition in favour of the Petitioner:

D. Pass any other order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case, in the interest of justice."

FACTUAL MATRIX

2. The petitioner Sh. Gurmeet Singh Sidana, is a resident of Australia and has filed the present petition through its constituted attorney i.e., Mr. Sanjay Malhotra (hereinafter "Authorised Representative/AR"), who has been authorized vide the Special Power of Attorney dated 5th November 2021 (hereinafter "SPA"), executed in his favour by the petitioner.

3. The petitioner had filed a Civil Suit bearing no. 397/2022, seeking *inter alia* a decree of ejectment, *mesne* profits, arrears of rent and damages against the respondent. The said Suit is pending for adjudication before the learned ADJ-03, Saket District Court, South, New Delhi. The facts leading to the instant petition are as follows:

- a. The petitioner i.e., the plaintiff before the learned Trial Court is stated to be the absolute owner of the property admeasuring 297.33 sq. yds., bearing no. B-4/118, including the Basement, Ground Floor, First Floor and Second Floor, at Safdarjung Enclave, New Delhi – 110029. The petitioner is stated to be the owner of the above said property by virtue of a Relinquishment Deed dated 11th January 2019.



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- b. It is stated that the respondent i.e., the defendant before the learned Trial Court approached the present petitioner for occupying, on lease, the Ground Floor of property bearing no. B-4/118, comprising four bedrooms with attached bathrooms, kitchen, front and rear balconies, with all the fixtures and fittings, along with a space for two parking lots and a servant residence in the stilt area (hereinafter “suit property”).
- c. Pursuant to the above, a Lease Deed dated 10th January 2020 (hereinafter “agreement”), was executed between the parties as per which the suit property was transferred to the respondent i.e., the lessee, on lease, for a period of two years i.e., from 10th January 2020 to 9th January 2022.
- d. The monthly rent as per the said Lease Deed was fixed at Rs. 1,05,000/- including maintenance and the respondent was also obligated to pay a security deposit of Rs. 2,10,000/-. As per the said agreement, the monthly rent was payable on or before the first tenth day of each British calendar month. The petitioner handed over the possession of the suit property to the respondent on 10th January 2020.
- e. On 28th June 2020, the wife of the respondent sent an email to the petitioner, thereby, requesting him to reduce the monthly rent to Rs. 80,000/-, on the ground of then prevailing pandemic i.e., COVID-19. The said request was allowed by the petitioner on the assurance given by the respondent that there shall be no



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default of monthly rent and/or any other condition mentioned in the agreement. The respondent accordingly paid the above said reduced amount till March 2021.

- f. It is stated that the respondent did not adhere to the terms, conditions and rental obligations in accordance to the agreement and owing to such breaches, the petitioner called upon the respondent to pay the outstanding amount of monthly rent and other charges till 10th March 2021 and to vacate the suit property.
- g. It has been stated by the petitioner that even after his explicit instructions; the respondent continued to remain in illegal possession of the suit property and made part payments in pursuant to his outstanding balance.
- h. The petitioner, thereafter, issued a legal notice dated 9th May 2022, to the respondent, thereby, asking the respondent to vacate and hand over the vacant physical possession of the suit property, and to pay the arrears to the petitioner. Thereafter, the petitioner filed the above said Civil Suit on 10th June 2022, and the respondent filed his written statement on 23rd August 2022.
- i. Subsequently, on 8th September 2022, the petitioner filed an application under Order XII Rule 6 read with Section 151 of the CPC, seeking decree on the basis of admissions made by the respondent in his written statement.



- j. The learned Trial Court dismissed the application filed by the petitioner under Order XII Rule 6 read with Section 151 of the CPC, vide the impugned order dated 14th December 2022.
4. The petitioner, being aggrieved by the said dismissal, has approached this Court under Section 115 of the CPC, seeking revision of the impugned order dated 14th December 2022, passed by the learned ADJ-03, Saket District Court, South, New Delhi, in Civil Suit bearing no. 397/2022.
5. The petitioner has filed the instant petition, wherein, he has raised the grounds in paragraph No. 'A to Q' stating that the impugned order passed by the learned Trial Court is erroneous and has been passed against the settled principles of law.
6. The respondent in paragraph no. 'A to M' of his reply dated 22nd March 2023, has raised the preliminary objections with regard to the maintainability of the instant petition, and in paragraph no. '1 to 38' has further denied and opposed the submissions made by the petitioner on its merits.
7. The written submissions have been filed by the petitioner and the respondent on 2nd August 2023 and 29th July 2023, respectively.

SUBMISSIONS

(On behalf of the petitioner)

8. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned order since it failed to



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take into consideration the entirety of the facts and circumstances of the instant dispute.

9. It is submitted that the respondent had made certain admissions in his written statement. However, the learned Court below erred by overlooking such admissions and the material plea of the respondent in order to appropriately adjudicate upon the petitioner's application under Order XII Rule 6 of the CPC.

10. It is submitted that the respondent by way of his written statement at paragraph No. 'J, 2, 3 (b) and 3 (c)' has admitted that he is not the owner of the suit property, and is still in possession of the said property since 10th January 2020.

11. It is submitted that the learned Trial Court failed to appreciate that respondent at paragraph No. 'J, 2, 3 (b) and 3 (c)' of his written statement has admitted to the factum of him being in possession of the suit property as a licensee since 10th January 2020.

12. It is submitted that the learned Court erred by not taking into consideration that the respondent has evasively stated in his written statement that he received the possession of the suit property from the wife of the petitioner by way of an oral license agreement upon payment of license fee.

13. It is also submitted that the respondent in his written statement has evasively denied the contents of the plaint with respect to the expiry/termination of the tenancy which was communicated to him vide legal notice dated 9th May 2022.



14. It is further submitted that the said bald and evasive denials by the respondent tantamount to admissions in view of the mandate of Order XII Rule 6 of the CPC. Learned counsel placed his reliance upon the judgment passed a Coordinate Bench of this Court in ***Dinesh Sharma v. Krishna Kainth, 2022 SCC OnLine Del 1142***, and ***Ishpinder Kochhar v. Deluxe Dentelles (P) Ltd., 2014 SCC OnLine Del 368***.

15. It is submitted that Order XII Rule 6 of the CPC, is an enabling provision that confers discretion to the Court for ensuring speedy justice on admission to the extent of the claim admitted by one of the parties of his opponent's claim. It is also submitted that as per the settled law, the Court under Order XII Rule 6 of the CPC, is empowered to consider the admissions which can be in the form of pleadings or otherwise. The said admissions can be oral or in writing, including constructive admissions.

16. It is further submitted that the constructive admissions need not be specific or expressive and can be inferred from the vague and evasive denials in the written statement while responding to specific pleas taken in the plaint.

17. It is contended that Order XII Rule 6 of CPC, can also be invoked when the objections raised are such, which does not go to the root of the matter or whether the objections are inconsequential, making it impossible for the party to succeed, even if entertained.

18. It is submitted that in any case, the respondent, being a month-to-month licensee, even if he denies or disputes the nature of relationship regarding his occupancy of the suit property, ought to first deliver the suit



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property back to the petitioner. Learned counsel placed his reliance upon the judgment passed by the Hon'ble Supreme Court in *Nand Ram v. Jagdish Prasad*, (2020) 9 SCC 393.

19. It is contended on behalf of the petitioner with regard to the purported 'oral license' between the petitioner's wife and the respondent that pertinently it is imperative that neither any terms, nor any document whatsoever, has been relied upon/produced by the respondent. Moreover, the respondent has not even demonstrated or pleaded any steps taken in furtherance of such a purported 'oral agreement'.

20. It is also submitted that the respondent has admittedly not paid any amount pursuant to the said oral license agreement for occupying the suit property, with effect from May 2021. It is submitted that thus, it is evident that the defense set up by the respondent is a sham defense with the sole purpose of delaying the handing over of the possession of the suit property to its rightful owner i.e., the petitioner and is clearly an ingenuous, clever and creative drafting, just to drag the above said Civil Suit.

21. It is further submitted that this Court is empowered to take judicial notice of the fact that the respondent is enjoying illegal possession of a prime property in New Delhi, without admittedly paying any amount whatsoever for the same and yet, denying possession thereof, to its rightful owner, thereby, constantly committing illegal acts by perpetuating his illegalities.

22. It is submitted that the title of the suit property is crystal clear by virtue of the Relinquishment Deed dated 11th January 2019, which is in



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favour of the petitioner. In view of the same, the defense of the respondent with regard to the petitioner's title *qua* the suit property is merely an illusory statement, without any iota of evidence.

23. It is submitted that the respondent has just made bald denials with respect to the title of the petitioner and the nature of the respondent's possession of the suit property. The said bald denials amount to constructive admissions on the part of the respondent.

24. It is submitted that the learned Trial Court ought to have inferred from the vague and evasive denials in the written statement of the respondent, while answering the specific pleas raised by the petitioner in his plaint, that the petitioner is entitled to a decree of possession.

25. It is submitted that while denying every averment of the present petitioner made in his Plaint, the respondent in his written statement, has taken the defense regarding the Lease Agreement dated 10th January 2020, being unstamped and unregistered and that the respondent was handed over the suit property by the wife of the petitioner on the basis of an oral license, with a promise that it would be sold and transferred to the respondent after a few months.

26. It is submitted that the insufficiency of stamp and non-registration of the lease agreement is immaterial as firstly, the same has been terminated in the month of March 2021, or even by January 2022, due to efflux of time. Thereafter, the respondent has only continued possession of the Suit Property *de hors* any agreement and in illegal occupation, on the basis of false assurances given to the petitioner.



27. It is submitted that upon a bare perusal, of the Complaint and the written statement, it is revealed that the defense *qua* the stamping and registration of the above said agreement does not invite any triable issue *qua* the delivery of possession of the suit property.

28. It is submitted that the learned Court below failed to appreciate the above said admissions and evasive denials made by the respondent in his written statement, and erroneously reached to the conclusion that no case for grant of decree on the basis of admissions has been made out by the present petitioner. The same is against the settled principles of law in regard to the provisions of Order XII Rule 6 of the CPC.

29. It is therefore submitted that in view of the foregoing submissions, the instant petition may be allowed and the impugned order be set aside.

(On behalf of the respondent)

30. *Per Contra* learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted at the outset that the same is not maintainable, hence, is liable to be dismissed.

31. It is submitted that the instant petition has been filed by one Mr. Sanjay Malhotra, i.e., AR of Sh. Gurmeet Singh Sidana (present petitioner) who is a resident of Australia. It is submitted that the petitioner had allegedly authorized the AR, to institute the present petition vide a Special Power of Attorney dated 5th November 2021.

32. It is submitted that the instant petition is liable to be dismissed as purported AR of the petitioner neither has any authority, to file the Civil Suit



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before the learned Court below, nor to file the present revision petition. In the absence of a valid authorization in favour of Mr. Sanjay Malhotra, the instant petition has not been filed on the basis of a legally sustainable instrument, i.e., the SPA.

33. It is submitted that above said SPA is invalid and not a legal document in the eyes of the law. The instrument has been executed outside the territory of India and the same is neither authenticated by the Indian Consulate/Embassy, nor by the concerned Sub-Divisional Magistrate in India.

34. It is also submitted that the instrument authorizing Mr. Sanjay Malhotra as an AR of the petitioner is not even duly stamped in accordance with the provisions of the Indian Stamp Act, 1899 (hereinafter “the Act”).

35. It is further submitted that since the mandatory compliances to validate the instant SPA have not been followed, the said SPA being barred under Section 35 read with Article 48 of Schedule 1 A of the Indian Stamp Act, 1899, cannot be read as evidence for the purpose of adjudication of the above-mentioned suit.

36. It is therefore submitted that since the instant petition has been instituted by Mr. Sanjay Malhotra (AR) by virtue of the SPA, and the same being invalid and is inadmissible, hence, the petition filed on behalf of the petitioner, seeking revision of the impugned order dated 14th December 2022, is not maintainable and liable to be dismissed at the outset.



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37. It is contended on behalf of the respondent that even without going into the preliminary objection with regard to the maintainability of the instant petition, it is submitted that the present case also lacks merits.

38. It is submitted that the petitioner is alleging that the learned Trial Court has failed to exercise its jurisdiction in accordance with the law while adjudicating the petitioner's application under Order XII Rule 6 of the CPC.

39. It is also submitted that the petitioner has failed to show as to where the respondent has categorically and in clear words admitted to claims of the petitioner or any part of it.

40. It is further submitted that the present respondent had raised objections which the learned Trial Court held to be triable issues and therefore, passed the impugned order. The respondent, in this written statement had objected to the validity of the Lease Deed dated 10th January 2020.

41. It is submitted that the respondent had objected to the above said agreement on the ground that the same is not duly stamped and registered before the Sub-Registrar.

42. It is also submitted that as per the provisions mentioned under Section 105 and 107 of the Transfer of Property Act, 1882, and Section 17 of the Registration Act, 1908, the lease deed which has been executed for a period of term exceeding one year, is mandatory to be registered and to be duly stamped, in the absence of which, the said lease deed is liable to be declared invalid in the eyes of law.



43. It is further submitted that the alleged agreement is merely a forged and false document, fabricated by the petitioner with the mere intention to harass the respondent and to abuse the process of law. The said agreement cannot be stated to be true since the petitioner has been residing in Australia for last few years and the respondent never executed any such document with the petitioner.

44. It is submitted that the petitioner in his application under Order XII Rule 6 of the CPC, had alleged that the respondent has admitted that he is not the owner of the suit property. It is submitted that such 'admission' does not entitle the petitioner to seek decree *qua* the possession of the suit property when the respondent has specifically and categorically denied any *jural* relationship with the petitioner, or his ownership, and its *locus* to file the Civil Suit.

45. It is submitted that the respondent was permitted to enter into the suit property by the wife of the petitioner, being the real owner/licensor of the suit property.

46. It is submitted that the petitioner's contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions with regard to the provisions governing admissions by the party in CPC and there is no infirmity in the impugned order passed by it.

47. It is submitted that merely because the learned Court below refused to exercise its discretion in passing the order in favour of the petitioner, the question of illegal or irregular exercise of jurisdiction by the learned Trial



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Court cannot be raised by the petitioner. The same cannot be brought within the ambit of Section 115 of the CPC, as the petitioner has not been able to raise any ground which requires this Court to exercise its powers under its revisional jurisdiction, thereby, correcting the alleged jurisdictional error in the order under challenge.

48. It is submitted that there was neither clear, unequivocal, or specific admission in the written statement; nor in any of the documents on record filed either by the respondent or by the petitioner before the learned Trial Court.

49. It is submitted that there is nothing as such in the pleadings filed by the respondent which can be even remotely termed as admission or evasive denial, or not specific denial.

50. It is submitted that the learned Trial Court has taken into consideration the entirety of the facts and circumstances and only after such due consideration, it reached to the conclusion, whereby, it dismissed the petitioner's application filed under Order XII Rule 6 of the CPC. The same has been done rightly and in accordance to the settled legal principles of law.

51. Learned counsel has placed reliance on the judgments passed in ***Shyamala Bai v. S. Saraswathi Bai*, 1996 SCC OnLine Kar 417; Pandurang Dhondi Chougule v. Maruti Hari Jadhav, (1966) 1 SCR 102; S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287 and Krishna Kumari v. Sunil Kumar Goel, 2014 SCC OnLine Del 4621.**



52. It is submitted in view of the aforementioned arguments that the instant petition is liable to be dismissed at the threshold on the ground of non-maintainability and also on merits.

ANALYSIS AND FINDINGS

53. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

54. Before embarking upon the technical paraphernalia of the case, it is pertinent to understand the context and legislative intent behind the enactment of Section 115 of the CPC. The said Section has been reproduced for reference hereunder:

“115. Revision.—⁴ [(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:*

¹*[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the*



order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

²*[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.*

³*[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]*

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

55. Section 115 of the CPC, deals with the High Court’s power of revision. Briefly stating, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

56. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is



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one in which the Court has power to exercise its jurisdiction; and (iii) that in exercising jurisdiction the Court has not acted illegally, that is, breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

57. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

58. In the landmark case of ***Major S.S. Khanna v. Brig. F.J. Dillon, (1964) 4 SCR 409***, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of ***Major S.S. Khanna (Supra)*** have been reproduced herein:



“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

- (i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;*
- (ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and*
- (iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.*

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”*

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit



in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

59. The term ‘jurisdiction’ has not been defined in the CPC. The definition of the same has been defined by the Hon’ble Supreme Court and various High Courts by way of judgments. The said term means ‘the power of a Court to hear and decide a case or to pass a certain order’ and ‘the right or authority to apply laws and administer justice’. The expression ‘jurisdiction’ is a verbal cast of many colors, the adoptive definition of the



same has to be interpreted subjectively, i.e., depending upon the nature of the facts and circumstances of each case.

60. The primary objective of Section 115 of the CPC, is to prevent subordinate Courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers to see that the proceedings of the subordinate Courts are concluded in accordance with law within the bounds of their jurisdiction and in furtherance of justice.

61. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

62. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of ***Manick Chandra Nandy v. Debdas Nandy, (1986) 1 SCC 512***. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the



Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably



wrong that if allowed to stand, would result in grave injustice to a party.”

63. Regarding the scope of Section 115 of the CPC, the Hon’ble Supreme Court in the judgment of ***Sher Singh v. Jt. Director of Consolidation, (1978) 3 SCC 172***, had observed as follows:

“5. As the above section is pari materia with Section 115 of the Code of Civil Procedure, it will be profitable to ascertain the scope of the revisional jurisdiction of the High Court. It is now well-settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction under Section 115 of the Code of Civil Procedure to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself.

6. The legal position was succinctly laid down by the Privy Council as early as 1884 in Rajah Amir Hassan Khan v. Sheo Baksh Singh [1884 LR 11 IA 237 : ILR 11 Cal 6 (PC)] in the following words:

“The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”



7. Again in *Balakrishna Udayar v. Vasudeva Aiyar* [1917 LR 44 IA 261] the Privy Council while discussing the scope of Section 115 of the Code of Civil Procedure observed:

“It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.”

8. In *N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras* [(1948-49) LR 76 IA 67] the Privy Council observed that:

“Section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law.”

9. The abovequoted observations made by the Privy Council have been approved and affirmed by this Court in a number of cases. In *Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336 : (1964) 3 SCR 495] , *Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai* [AIR 1964 SC 1341 : (1964) 5 SCR 157] and *D.L.F. Housing & Construction Company Private Ltd., New Delhi v. Sarup Singh* [(1969) 3 SCC 807 : (1970) 2 SCR 368] , this Court, however, drew a distinction between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of



jurisdiction of the said court, and errors of law which have no such relation or connection.

10. Again in *Pandurang Dhondi Chougute v. Maruti Hari Jadhav* [AIR 1966 SC 153 : (1966) 1 SCR 102] this Court held (SCR p. 107):

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of jurisdiction is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on those pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115.

11. Again in *M.L. Sethi v. R.P. Kapur* [(1972) 2 SCC 427 : (1973) 1 SCR 697] this Court observed (SCC p. 434, para 12):



*“The word ‘jurisdiction’ is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in *Anisminic Ltd. v. Foreign Compensation Commission* [(1969) 2 AC 147] namely, the entitlement ‘to enter upon the enquiry in question’. If there was an entitlement to enter upon an enquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction.”*

12. [Ed. : This passage incorporates the corrections made by his Lordship vide his letter of July 22, 1978] [The position that emerges from these decisions is that Section 115 of the Code of Civil Procedure empowers the High Court to satisfy itself on three matters: “(a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to have exercised its jurisdiction and failed to do so and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.”] And if the High Court is satisfied that there is no error in regard to any of these three matters, it has no power to interfere merely because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said courts, and errors of law which have no such relation or connection. An erroneous decision on a question of fact or of law reached by the subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

64. Recently, the Hon’ble Supreme Court in the judgment of ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8***



SCC 633, reiterated the principles governing the provision of revisional powers of the High Court and reaffirmed the earlier decisions passed by it in a catena of judgments, and observed the following:

“29.1. Gajendragadkar, C.J., in a judgment passed by the five-Judge Bench of this Court in Pandurang Dhondi Chougule v. Maruti Hari Jadhav [Pandurang Dhondi Chougule v. Maruti Hari Jadhav, AIR 1966 SC 153] dealt with the question of jurisdiction under Section 115CPC, as follows : (AIR p. 155, para 10)

“10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the



subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

29.2. Nariman, J. while discussing Section 115CPC and proviso thereto held that revision petitions filed under Section 115CPC are not maintainable against interlocutory orders in *Tek Singh v. Shashi Verma* [*Tek Singh v. Shashi Verma*, (2019) 16 SCC 678 : (2020) 2 SCC (Civ) 753] . The following observations were made in the said case : (SCC p. 681, para 6)

“6. Even otherwise, it is well settled that the revisional jurisdiction under Section 115CPC is to be exercised to correct jurisdictional errors only. This is well settled. In D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh [D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807] this Court held : (SCC pp. 811-12, para 5)

‘5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as



used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with.”

65. The scope and extent of the revisional powers of this Court has been discussed in depth in the foregoing paragraphs.

66. Before delving further into the analysis of issues pertaining to the instant dispute, the facts necessary for the adjudication of the present petition are recapitulated in the below stated paragraphs.

67. The petitioner Sh. Gurmeet Singh Sidana, is a resident of Australia and has filed the present petition through its constituted attorney i.e., Mr. Sanjay Malhotra who has been authorized vide the Special Power of Attorney dated 5th November 2021, executed in his favour by the petitioner.

68. The present petitioner had filed a Civil Suit before the learned Court below seeking ejectment, arrears of rent, *mesne* profits and damages, against the respondent. The said Suit was also filed through the constituted attorney.

69. It has been averred on behalf of the petitioner that he is the absolute owner of the suit property. Upon the request of the respondent, a Lease Deed dated 10th January 2020, was executed between the present parties, as per which the tenancy period was fixed for a period of two years w.e.f., 10th January 2020, till 9th January 2022. It has been further stated that the



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monthly rent was fixed at Rs. 1,05,000/- along with a one-time security deposit of Rs. 2,10,000/-. Thereafter, the possession of the said suit property was handed over to the respondent on lease on 10th January 2020.

70. As per the averments made in the petition, the respondent breached his obligations pertaining to the payment of rent and violated the terms of the said lease agreement. The petitioner communicated to the respondent to pay the arrears of rent and other pending charges till 10th March 2021, and to vacate the suit property. It is stated that even after his clear instructions and termination of the lease agreement, the respondent continued to enjoy the illegal possession of the suit property. Subsequently, the petitioner issued a legal notice dated 9th May 2022, to the respondent, thereby, calling upon him to pay the outstanding arrears of rent and to vacate the suit property. It has been further averred that despite the above said legal notice, the respondent continued to enjoy the illegal possession of the suit property and paid irregular monthly rent. Hence, being aggrieved by the same, the petitioner filed the said Civil Suit.

71. Meanwhile, the respondent filed its written statement, and thereafter, the petitioner filed an application under Order XII Rule 6 read with Section 151 of the CPC, seeking decree of the Suit in his favour on the ground of admissions and evasive denials made by the respondent in his written statement.

72. The learned Trial Court dismissed the above said application filed by the petitioner vide the impugned order dated 14th December 2022. The petitioner, being aggrieved by the said impugned order, has approached this



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Court under Section 115 of the CPC, challenging the said order passed by the learned ADJ-03, Saket District Court, South, New Delhi, in Civil Suit bearing no. 397/2022.

73. At this juncture this Court deems fit to proceed with the adjudication of the instant petition by framing the following issues:

- i) *Whether the instant petition filed by virtue of a Special Power of attorney which has been executed outside the territory of India, is maintainable?*
- ii) *Whether there is any admission on behalf of the respondent which entitles the petitioner to seek a judgment in his favour under Order XII Rule 6 of the CPC?*

i) Whether the instant petition filed by virtue of a Special Power of attorney which has been executed outside the territory of India, is maintainable?

74. The respondent in their reply have raised a preliminary objection regarding the maintainability of the instant petition and has contended to the effect that the petition filed under Section 115 of the CPC, is liable to be dismissed at the threshold.

75. It has been averred on behalf of the respondent that Mr. Sanjay Malhotra, the alleged SPA holder has no authority to institute the present petition on behalf of the petitioner as the Special Power of Attorney dated 5th



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November 2021, was executed outside the territory of India and the same has not been executed as per the law.

76. It has been contended on behalf of the respondent that the instant revision petition is liable to be dismissed because there is absence of a valid authorization in favour of Mr. Sanjay Malhotra, and in view of the same the instant petition has not been filed on the basis of a legally admissible instrument, i.e., the SPA. The respondent has further alleged that above said SPA is invalid and not a legal document in the eyes of the law since, the instrument having been executed outside the territory of India has neither been authenticated by the Indian Consulate/Embassy, nor by the concerned Sub-Divisional Magistrate in India, and the same has not been stamped in accordance to the law.

77. The respondent while addressing the arguments on the maintainability of the present revision petition has further submitted that since the mandatory compliances have not been followed, the alleged SPA is barred to be read into evidence in accordance to Section 35 read with Article 48 of Schedule 1 A of the Indian Stamp Act, 1899. As per the said provision, the instrument authorizing Mr. Sanjay Malhotra as an AR of the petitioner is not duly stamped.

78. It has been further argued that the instant petition has been instituted by Mr. Sanjay Malhotra (AR) by virtue of the said SPA, and since the same is invalid and inadmissible, hence, the petition filed on behalf of the petitioner, seeking revision of the impugned order dated 14th December 2022, is not maintainable and liable to be dismissed at the outset.



79. While advertng to the above stated issue, Section 35 along with Article 48 of Schedule 1 A of the Indian Stamp Act, 1899, has been reproduced herein for reference:

Section 35

“35. Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

(a) any such instrument ⁶[shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;



(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”

Article 48

“Description of Instrument

Proper Stamp-duty

48. POWER-OF-ATTORNEY

[as defined by section 2(21)],
not being a PROXY (No. 52),—

- | | |
|---|--------------|
| (a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents; | Eight annas. |
| (b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 (XV of 1882); | Eight annas. |
| (c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a); | One rupee. |
| (d) when authorizing not more than | Five rupees. |



five persons to act jointly and severally in more than one transaction or generally;

(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;

(f) when given for consideration and authorizing the attorney to sell any immovable property;

(g) in any other case.....

Ten rupees.

The same duty as a Conveyance (No. 23) for the amount of the consideration.

One rupees for each person authorized.

N.B.—The term “registration” includes every operation incidental to registration under the 1 Indian Registration Act, 1877 (III of 1877).

Explanation.—For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.”

80. Upon bare perusal of Section 35 of the Act, it is evident that for an authority to receive evidence shall not admit any instrument unless it is duly stamped. The said provision ascribes a bar to the admissibility of a document



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which by law is mandated to be stamped. The words used therein, ‘for any purpose whatsoever’ imply that the purpose for which a document is sought to be admitted in evidence or the extent thereof, would not be a relevant factor for not invoking the aforementioned provisions. Article 48 of Schedule 1 A of the Act prescribes the relevant stamp duty.

81. For the purpose of the instant facts, it can be contemplated that as per the said provisions, a power of attorney being an instrument that empowers one person to represent another, or act on his behalf, for certain purposes, is necessitated to be duly stamped to be termed as a legally valid document.

82. The Special Power of Attorney dated 5th November 2021, in the present revision petition empowers one Mr. Sanjay Malhotra to represent the petitioner. This Court while taking into consideration the said SPA has observed that the same has been executed outside the territory of India i.e., in Australia.

83. The respondents have contended that the SPA cannot be read into evidence due to twofold reasons. *Firstly*, the same is barred under Section 35 of the Act as it is not stamped and *secondly* the same has neither been authenticated by the Indian Consulate/Embassy, nor by the concerned Sub-Divisional Magistrate in India.

84. With regards to the *first ground*, it is imperative to reproduce Section 3 (c) and Section 18 of the Act which reads as under:

“3. Instruments chargeable with duty. —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the



amount indicated in that Schedule as the proper duty therefore respectively, that is to say—

...

*(c) every instrument (other than a bill of exchange, ⁸ ***or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of ⁶ [India] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in ⁶ [India] and is received in ⁶ [India]:”*

“18. Instruments other than bills and notes executed out of India.—(1) Every instrument chargeable with duty executed only out of ² [India], and not being a bill of exchange ³ *** or promissory note, may be stamped within three months after it has been first received in ² [India].

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the ¹ [State Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.”

85. According to Section 3 (c) of the Act, it is mandatory that an instrument such as a power of attorney is stamped adequately when it has been executed outside India. Further, this Court is of the view that as per Section 18 of the Act, every instrument chargeable with stamp duty, if executed out of India and the same is not a bill of exchange or promissory note, may be stamped within three months after it has been first received in India.



86. The scheme of the Section 18 of the Act, also suggests that, except in the case of instruments like promissory notes and bill of exchange, an opportunity is provided to the concerned party, to make good the deficiency of the stamp. The same was also the view of the Division Bench of the Punjab and Haryana High Court in the judgment of *Saudagar Singh v. Gurdip Singh Gill*, 1979 SCC OnLine P&H 91.

87. Thus, above stated clause (c) of Section 3 of the Act, is germane for the purpose of adjudication of this case and it states that every instrument mentioned in the Schedule 1 of the Act, other than bill of exchange or promissory note which was not previously executed by any person and is executed outside India on or after 1st July 1899, related to any property situated in India, or to any matter or thing done or to be done in India and is received in India shall be chargeable with duty of an amount indicated in the said Schedule. As per Article 48 of the Schedule 1, a power of attorney is chargeable with a duty as mentioned in the said Article. Therefore, if a power of attorney is executed outside India and received in India, it is mandatory to pay the prescribed stamp duty.

88. Be that as it may, in the instant case, the petitioner has not claimed that the SPA which was executed in Australia was duly stamped as per the applicable rate of stamp duty. Hence, it is an admitted fact that the procedure envisaged in Section 18 of the Act, needs to be followed and the petitioner has failed miserably to comply with the same. In light of the instant facts, there is no material placed on record which would imply that the said SPA has been properly stamped within three months as prescribed.



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89. With regards to the *second ground* of the respondent, this Court has observed that an Apostille Certificate dated 15th November 2021, has been appended with the above said SPA which has been annexed as Annexure P-2 with the instant petition.

90. Here, it is prudent to note that India and Australia are party to the Hague Apostille Convention, 1961 (hereinafter “Convention”), which abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate has been issued by a competent authority of the country where the document originates. The said Convention states that no further attestation or legalization by the concerned Indian Authority, is required for use in India as India is a member of the Convention.

91. Upon perusal of the provisions of the Convention, it is deliberated that a certification is usually attached to public documents, effectively legalizing them for international use without the need for additional certification or legalization by the Embassy or the Consulate of the foreign country. In the present case, public document being the SPA, which is being used internationally. However, to be recognized, these documents need to be authenticated, typically through a process called legalization. The Convention, recognizing the inherent complexity and costliness of this process, prescribes an Apostille certificate for the purpose of simplifying the authentication of public documents for foreign use.

92. This Court is of the view that the said Convention has replaced the formalities of requirement of diplomatic or consular legalization for foreign



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public documents and legalization process of authentication, by issuance of an Apostille Certificate. Therefore, foreign public documents do not require legalization if it bears an Apostille certification. The said principle has been followed by a Division Bench of this Court in ***China Railway No. 10 Engineering Group Co. Ltd. v. National Highways Authority of India***, 2020 SCC OnLine Del 2524, and also by a Coordinate Bench of this Court in ***Sanjay Khanduja v. Punjab National Bank***, 2021 SCC OnLine Del 3209.

93. Since it has been observed that no process of authentication is necessary to be followed for proving the genuineness of a foreign document, henceforth, the above said Apostille certificate attached to the instant SPA is taken to be sufficient legalization with respect to the objection of the respondent in regard to the authentication of the concerned Indian authority.

94. At this stage, it is pertinent to note that although the instant SPA has been duly certified by the said Apostille Certificate, the same cannot be taken to be duly admissible since the petitioner has failed to comply with the mandate of Section 18 and Section 35 of the Act.

95. In view of the above discussions of facts and law, this Court is of the view that the Special Power of Attorney dated 5th November 2021, cannot be read into evidence as the same has not been duly stamped within three months after it has been first received in India.

96. In the absence of such stamping and non-compliance of the statutory requirement, this Court is inclined to hold that the said SPA does not qualify as evidence.



97. Therefore, this Court is of the view that due to the above stated reasons, the Special Power of Attorney dated 5th November 2021, is inadmissible and hence, the instant petition being instituted by virtue of the said SPA is, hereby, held to be non-maintainable.

98. Accordingly, ‘issue no. i’ *qua* the maintainability has been decided.

ii) Whether there is any admission on behalf of the respondent which entitles the petitioner to seek a judgment in his favour under Order XII Rule 6 of the CPC?

99. Even though the instant petition is not maintainable in view of the discussion held in the preceding issue, this Court deems it appropriate to also discuss the facts of the instant petition on its merits.

100. Before proceeding to test the legality of the impugned order, it would be prudent to refer to the nature, scope and object of the law settled by the various Courts with regards to Order XII Rule 6 of the CPC. In order to understand the basics, the relevant provision of law under which the application filed by the petitioner was dismissed by the learned Trial Court and is under challenge before this Court, is reproduced herein:

“ORDER XII

Admissions

⁴[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.]”

101. Upon perusal of the above, it is implied that Order XII Rule 6 of the CPC, governs judgments on admission verbatim. The Courts have the power to pass a judgment in regard to any oral or written submission made by the parties at any stage of the proceedings and such admission may be made in the pleading or otherwise.

102. It is important to comprehend upon the aspects as to what admission is, what constitutes as a legal admission, in which situation such an admission may be made, and under what conditions a judgment under this provision may be rendered by the Court, notwithstanding how straightforward it may seem. The same has been discussed by this Court herein below.

An admission is a statement made by the parties to a dispute, which may be oral, documentary or contained in electronic form, and which suggests an inference with respect to any fact in issue. The provision contemplates that in case of a clear admission by which the Court cannot even entertain the possibility of a different view, a judgment on admission may be passed without trial. It ensures that any fact which has been admitted during the hearing, or in writing in the pleadings, would not be required to be proved



by way of a trial. The said provision is an enabling provision, therefore, it is neither mandatory nor pre-emptory, however, it is discretionary. Hence, the Court, on examination of such facts and circumstances, must exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial.

103. Admission is a common law norm and the main objective of the governing provision is to make it possible for a party to expeditiously obtain judgment in cases when such admission is made in the pleadings or otherwise by the defendant. A party under this rule can approach the Court to get a judgment with regard to the extent of relief to which such party is entitled to, based on the admission by the other party. The intent behind the said principle is to interpret this norm in a way that allow for swift justice while being careful not to trample on the right to a fair defense by taking into account the peculiar circumstances of the case.

104. The Hon'ble Supreme Court in the judgment passed in ***Balraj Taneja v. Sunil Madan***, (1999) 8 SCC 396, enunciated the principles governing the provisions of Order XII Rule 6 of the CPC and held as under:

“21. 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:

"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) decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

22. 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."

23. 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

24. In Razia Begum Sahebzadi Anwar Begums it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.



25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

"58. Facts admitted need not be proved.-No fact need be any proceeding which the parties thereto or their agents agree to admit at the proyeed hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted in to be proved otherwise than by such admissions."

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

28. Having regard to the provisions of Order 12 Rule 6. Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum cases observed as under:

"In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as



have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms: Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission." The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

The Court further observed:

Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers."

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and,



therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8. or the expression "may make such order in relation to the suit as it thinks fit" in Rule 10 of Order 8."

105. There is no doubt that Rule 6 of Order XII of the CPC, has been couched in a very wide language. However, before a court can act under Rule 6 of Order XII of the CPC, the admission must be clear, unambiguous, unconditional and unequivocal. Furthermore a judgment on admission by the defendant under Order XII Rule 6 of the CPC, is not a matter of right rather the same is a matter of discretion of the Court; no doubt such discretion has to be exercised judicially and on the basis of the facts of the case at hand.

106. If a case involves questions which cannot be conveniently disposed under this rule, the Court is free to refuse to exercise its discretion in favor of the party invoking it. It is not in each case where Order XII Rule 6 of the CPC, is invoked that the Court is obliged to pass a decree as the same would depend upon its own peculiar facts.

107. It is peculiar to note that where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favor of the plaintiff. The purpose of Order



XII Rule 6 of the CPC, is to avoid the pendency of a suit, when there is a clear, unequivocal, unambiguous and unconditional admission by the defendant in respect of the claim of the plaintiff.

108. The rule only secures that if there is no dispute between the parties, and if there is, on the pleadings, or otherwise, such an admission as to make it crystallized that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once, to the extent of such admissions.

109. However, the rule is not intended to apply where there are serious questions of law which are to be asked and determined. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to the decree and the plaintiff in that event cannot have a decree by virtue of the provisions under Order XII Rule 6 of the CPC, without proving those issues.

110. The Hon'ble Supreme Court in the case titled as ***Charanjit Lal Mehra v. Kamal Saroj Mahajan***, (2005) 11 SCC 279, has held that Order XII Rule 6 of the CPC, has been enacted for a specific purpose, which is to expedite the trials. If there is any admission on behalf of the defendants or any admission that can be inferred from the facts and circumstances of the case without any dispute, then, in order to expedite the proceedings, the said case could be disposed of. The relevant provision of the above said judgment is as under:

“8. Learned counsel made an alternative submission that the revision petition was not maintainable and the lease deed is not



a registered one and therefore, it is not maintainable. None of these objections were raised by the defendants before the learned Single Judge. Even before the trial court, the non-registration of lease deed (which did not prescribe any term) was not put in issue. It is only devised now to somehow defeat and delay the eviction and possession of the premises to the landlady. In fact, Order 12 Rule 6 CPC is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. In the present case, looking at the terms of the lease deed, there can be no two opinions that the tenancy was joint/composite and not an individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120]. Their Lordships have held as follows : (SCC p. 121)

“In the objects and reasons set out while amending Rule 6 of Order 12 CPC it is stated that ‘where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the 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 Supreme Court should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment.”

Therefore, in the present case, as appearing to us, there is a clear admission on behalf of the defendants that there existed a relationship of landlord and tenants, the rent is more than Rs.



3500 and the tenancy is a joint and composite one. As such, on these admitted facts, there are no two opinions in the matter and the view taken by the learned Single Judge of the High Court appears to be correct and there is no ground to interfere in this special leave petition and the same is dismissed.”

111. Further, the power under the said provision is not only discretionary but also requires exercise of caution, and unless there is an ambiguity in the admission, the Court may pass a judgment. The Hon'ble Supreme Court in the judgment of ***S.M. Asif v. Virender Kumar Bajaj***, (2015) 9 SCC 287, had delved into the aspect of extent of the Court's discretion to exercise its power under Order XII Rule 6 of the CPC. The Hon'ble Court observed as follows:

“8. The words in Order 12 Rule 6 CPC “may” and “make such order ...” show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

112. It is trite law that when a Civil Court deals with an application under Order XII Rule 6 of the CPC, the Court shall not only look into the pleadings but also the documents annexed thereto, in order to ascertain the position of the purported ‘admissions’ emerging from the pleadings and evidence on record of such Civil Court.



113. This Court is of the considered view that to make an order or to pronounce a judgment on admissions, is at the discretion of the Court. *Firstly*, the word ‘may’ is used in Order XII Rule 6 of the CPC, and not the word ‘shall’ which *prima facie* shows that the provision is an enabling one. The provisions of Rule 6 are discretionary and not mandatory or obligatory in nature and it is not incumbent on the Court to make an order or to pronounce a judgment in favour of the plaintiff in all cases on the basis of such admissions by the defendant.

114. While interpreting the above said provisions, this Court is also of the view that an admission in order to entitle a party to a judgment under Order XII Rule 6 of the CPC, must not be ambiguous but should be clear. Hence, it becomes clear that the admissions must be plain, unambiguous and unequivocal before a judgment on admissions can be passed on the same.

115. It is also clear that when a defense is set up and it requires evidence for the determination of the issues then the provisions of Order XII Rule 6 of the CPC, are not applicable and therefore, a judgment cannot be passed in this regard. Accordingly, the pleadings of parties are required to be considered and scrutinized to reach to the conclusion to pass such judgment as sought, on the basis of the alleged admissions.

116. The admissions need not be made specifically, particularly, or expressly, and could be constructive admissions also. The test, therefore, is *first*, whether admissions of facts arise in the suit, *second*, whether such admissions are plain, unambiguous and unequivocal, *third*, whether the defense set up is such that it requires evidence for determination of the



issues and *fourth*, whether objections raised against rendering the judgment are such which go the root of the matter or whether these are inconsequential, thereby, making it impossible for the party to succeed even if entertained. The said view has been enunciated by the Hon'ble Supreme Court in the judgment passed in ***Hari Steel & General Industries Ltd. v. Daljit Singh*, (2019) 20 SCC 425** and reaffirmed in ***Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414**.

117. Now this Court shall adjudicate upon the instant issue.

118. The petitioner has contended before this Court that the respondent had made certain admissions and further has made bald and evasive denials in paragraph No. 'J, 2, 3 (b) and 3 (c)' of his written statement. The said paragraphs have been reproduced below for reference:

“J. That it is submitted that wife of the Plaintiff told the Defendant that she is the owner/licensor of the entire suit property and has promised the Defendant that the property in question will be transferred in the name of the Defendant after few months, hence Defendant has been allowed to remain in possession of the suit property by Meenu, wife of Plaintiff and Defendant has agreed to purchase the same from the wife of the Plaintiff after obtaining the possession of the suit property on license from the wife of the Plaintiff on payment of license fee.

xxx

2. That the contents of the para 2 of the plaint under reply are wrong and denied. It is vehemently wrong and strongly denied that Defendant is an illegal occupant of the suit property or is in continuous violation of the law. It is submitted that Defendant has been permitted to enter into the property by the wife of the Plaintiff, being the real owner of the suit property and not the Plaintiff.



3. *The contents of the para 3 of the plaint are denied except admitted as correct.*

xxx

b. That in response to the contents of the para 3(b) of the plaint under reply it is denied that on the basis of Defendant's express or implied representations or any negotiations, the Plaintiff agreed to let out the suit property to the Defendant or pursuant thereto any agreement to lease for two years has ever been executed or Defendant ever agreed to pay any rent to the Plaintiff. It is submitted that lease agreement is an unregistered, fabricated and forged document as Plaintiff neither visited India for the past three years nor Defendant ever met or seen the Plaintiff ever, hence no such document was ever executed between the parties to the suit. Further, each and every clause of the lease agreement is denied. It is submitted that Defendant has never met or seen the Plaintiff in his lifetime. It is further submitted that it is the wife of the Plaintiff who has been in touch with the Defendant, and allowed him to occupy the suit property on license on the basis that it is the wife of the Defendant who is the owner/licensor of the suit property. It is further submitted that there has been some dispute between the Plaintiff and his wife, and latter has been claimed the ownership/licensor of the suit property from the inception of the license.

c. That in response to the contents of the para 3(c) of the plaint under reply it is denied that as per lease agreement the Defendant was handed over possession of the suit property on 10.01.2020. It is submitted that wife of the Plaintiff handed over the suit property on oral license as same is known to the family.”



119. The petitioner has contended to the effect that by way of the above said submissions made in the written statement filed by the respondent, there have been specific admissions on the respondent's part which the learned Trial Court had failed to appreciate and hence, the impugned order is liable to be aside.

120. It has been submitted that the learned Court below erred in dismissing the application filed by the petitioner under Order XII Rule 6 of the CPC, and further failed to take into consideration that the respondent by way of the above quoted submissions has made specific admissions with respect to the following:

- a. That the respondent/his family is not the owner of the suit property;
- b. That the respondent is occupying the suit property as a licensee;
- c. That the respondent is paying certain sum of money to the petitioner as license fee;
- d. That the respondent is no longer a lessee in the suit property; and
- e. That the respondent is in receipt of the legal notice dated 9th May 2022, issued by the petitioner seeking peaceful vacant possession of the suit property.

121. It has been submitted on behalf of the petitioner that the respondent in Paragraph No. J of the written statement has specifically admitted to the fact that the respondent is in possession of the suit property even after termination of the Lease Deed dated 10th January 2020. In the same



paragraph, the respondent has also admitted to paying amounts towards occupying the suit property. The respondent in his written statement has further admitted to his position as a licensee *qua* the suit property. The petitioner further stated that in paragraph no. 3 (c) of the written statement, the respondent has also admitted to the factum of him being put in possession on 10th January 2020, i.e., the date of commencement of the above said lease agreement.

122. It has been further argued by the petitioner that the respondent in his written statement has made evasive and bald denials against the averments made in the paragraph no. “3 1 and 2 t” of the plaint, which categorically mention about the tenancy being month to month and issuance of the legal notice dated 9th May 2022, respectively.

123. Learned counsel appearing on behalf of the petitioner has submitted to the effect that the learned Trial Court had failed to appreciate that in a suit for ejectment if the below mentioned factors are in favour of the plaintiff, the Court is ought to pass a decree of possession in favour of such plaintiff. The said factors are as follows:

- a) Existence of relationship of lessor and lessee or possession of the suit property by the defendant; and
- b) Determination of such relation.

124. It is also argued that the respondent has baldly and evasively denied the receipt of the above said legal notice, and did not state any basis or placing on record any document for such denial. It has been submitted that such a denial has only been contended to dispute the relationship of the



petitioner and the respondent, but the same cannot, in any manner whatsoever, lead to a conclusion that such bald denials makes the issues of landlord-tenant relationship and its determination as triable issues.

125. The respondent in his rival submissions has opposed the petitioner's contentions and submitted to the effect that the respondent had raised certain objections which go to the root of the matter and the defense set up therein, is such that it requires evidence for determination of the issues, hence the present petition is liable to be dismissed and the impugned order be upheld accordingly.

126. In response to the contentions of the petitioner, the respondent has also stated that the application filed by the petitioner under Order XII Rule 6 of the CPC, was not maintainable as it was an abuse and misuse of the due process of law. It is stated that there is no admission on behalf of the respondent and the respondent had objected the *locus standi* of the plaintiff i.e., the petitioner herein. It is also stated that the respondent has specifically denied any *jural* relationship between him and the petitioner. Moreover, the averments made in the written statement do not make out the case of admission under Order XII Rule 6 CPC. It is thus, prayed that the application as dismissed by the learned Trial Court is in accordance with the settled law.

127. The learned Trial Court had dismissed the petitioner's application vide impugned order dated 14th December 2022, and the relevant paragraphs of the same have been reproduced herein below:



“In the written statement filed on behalf of the Defendant, it is stated that Mr. Sanjay Malhotra, the alleged Power of Attorney holder has no authority to institute the present suit on behalf of the Plaintiff as it was executed outside India and has not been executed as per law. It is stated that no valid lease agreement was executed between Plaintiff and the Defendant and the alleged lease agreement was not signed by the Plaintiff as he was residing outside India. It is stated that the alleged lease agreement alongwith its description are forged and fabricated and the same is not admissible in evidence as no proper stamp duty has been paid. It is further stated that no document was ever executed between the parties and each and every clause of the agreement has been denied. It is stated that the wife of the Plaintiff had handed over the suit property on the oral license as they were known to each other and Defendant had been paying license fees to the wife of the Plaintiff. It is stated that the Defendant had never entered into any contract with the Plaintiff and there is no question of lease agreement being executed or monthly rental being paid.

*At this juncture, it is significant to mention that it is a trite position of law that only unequivocal, clear and specific admission by the Defendant of his liability in respect of the claim of the Plaintiff would amount to admissions to fall within the ambit of Order XII Rule 6 CPC. Reliance is placed on the judgment of **Krishna Kumari vs. Sunil K.Goel & Another, 2015 CCC 445 (DEL)**, wherein it has been observed as under:*

“16.It is settled law that a judgment on admission by the defendant under Order 12 Rule 6 CPC is not a matter of right and rather is a matter of discretion of the Court. If a case involves questions which cannot be conveniently disposed of or a motion under this rule, the Court is free to refuse exercising discretion in favour of the party invoking it.



17. It is not in each case where Order 12 Rule 6 CPC is invoked that the Court would be obliged to pass a decree which case would depend upon its own peculiar facts. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favor of the plaintiff.

18. The purpose of Order 12 Rule 6 CPC is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the defendant. The rule only secures that if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined.

19. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of Order 12 rule 6 CPC without proving those issues. The case of *State Bank of India vs. Midland Industries and Ors.* AIR 1988 Delhi 153 is relevant in this regard.”

It has been held by Hon'ble Apex Court in **Karan Kapoor vs. Madhuri Kumar** in Civil Appeal no. 4545 of 2022 that :-

“16. 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.”

It is a settled position of law that for the purposes of adjudication of application under Order XII Rule 6 CPC, clear, unequivocal and specific admission should be there. The Defendant has nowhere admitted being tenant of the Plaintiff herein and has raised doubts as to the execution of Lease Agreement relied upon by the Plaintiff on the ground that the Plaintiff was outside India at the relevant time and it was not mutually signed by the parties and has claimed certain documents pertaining to the fittings and fixture to be fabricated and forged. Further, the Defendant has raised issues regarding the admissibility of the Lease Agreement since the same is more than two years old and being unstamped and unregistered. The Defendant has claimed to be in oral license with the wife of the Plaintiff. The Defendant has also in the written statement raised question as to the locus standi of the SPA Sanjay Malhotra on the ground that the same has not been executed as per law as the Plaintiff was in Australia for more than 3 years and is not in a fit mental condition.

Accordingly, on a careful and meaningful reading of the written statement, in the considered opinion of this Court, the



relationship of landlord-tenant inter se between the parties has not been admitted in the written statement which is the fulcrum on the basis of which the Plaintiff is seeking ejectment of Defendant under Order XII Rule 6 CPC.

Therefore, from the entire facts and circumstances and the discussions above, triable issues have been raised in the present case by the Defendant which require adducing of evidence. There is no specific clear admission of any relationship of landlord-tenant between the parties inter se and the same cannot be covered within the domain of provisions of Order XII Rule 6 CPC. In the considered opinion of this court, the present application is not maintainable at this stage and is accordingly dismissed...”

128. Upon a bare perusal of the impugned order, it is evident that whilst adjudicating the application filed under Order XII Rule 6 of the CPC, the learned Trial Court duly took into consideration the averments made by the parties therein, and passed a detailed and reasoned order, whereby, it dismissed the said application. The learned Court observed that the no case for admission is being made out since triable issues have been raised by the respondent which requires adducing of evidence and hence, a full-fledged trial is necessary for proper adjudication of the instant suit. It further held that there is no specific and clear admission on the part of the respondent which will expressly imply that there is a relationship of a landlord and tenant between the parties *inter se* and due to such reasons, the application filed by the petitioner under Order XII Rule 6 of the CPC was dismissed.

129. The essential feature of admission under the relevant provision is that it should be ‘concise and deliberate act’. It must not be something which was



not intended or was not the intention of the party. At the cost of repetition, it is stated that the pre-requisites to admission are unconditional, unambiguous and intend the same to be read and construed as admission. The expression 'admission' has been given a wider meaning and connotation so as take within its ambit admissions made by a party in pleadings or otherwise, orally or in writing. These need not be made specifically or expressly and could also be a constructive admission.

130. The aforementioned provisions thus, are capable of liberal construction and without imposition of any unreasonable restriction, must be permitted to operate but the Courts have to be hyper vigilant while passing a decree on admission. The Court essentially should look into the fact that all the essential ingredients of an admission are satisfied before such a decree is passed in favor of any of the parties to the suit.

131. In view of the above, this Court while taking into consideration the contents of the written statement and the objections raised by the respondent, is of the view that no inference can be drawn from paragraph No. 'J, 2, 3 (b) and 3 (c)' of the written statement filed by the respondent which can be termed to be specific, clear, unambiguous and unequivocal admissions, to pass a judgment in the petitioner's favour.

132. Upon perusing the entire contents of the written statement, it is observed by this Court that the respondent has specifically denied the relationship of tenant and landlord between him and the petitioner. Therefore, the said denial cannot be taken to be an evasive and bald denial.



133. It is observed that the respondent has taken preliminary objections and also objections on merits with regard to the maintainability of the suit on the ground of invalid SPA and invalidity of the lease deed, respectively.

134. In the opinion of this Court, the said objections go to the root of the matter and it is necessary to deal with the same. The adjudication of the above said objections can only be done after the parties adduce their evidences and when the learned Court takes the same into its consideration.

135. Since the suit before the learned Trial Court is yet to reach the stage of evidence, the learned Trial Court held the application filed by the petitioner to be non-maintainable at the then relevant stage.

136. This Court is inclined with the view taken by the learned Trial Court whereby, it held that there is an absence of clear and categorical admissions on the part of the respondent and the same cannot be taken to be the basis of passing a judgment in favour of the present petitioner. Admission has to be unambiguous, clear and unconditional and the law would not permit admission by inference as it is a matter of fact. Admission of a fact has to be clear from the pleadings or the documents on the record itself and cannot be left to the determination by the Court by way of an interpretation of any pleading or document on record.

137. This Court has perused the entire facts, circumstances and contents of the annexures such as the plaint, written statement and the impugned order and has reached to the conclusion that the respondent has no where admitted to the factum of him being a tenant of the petitioner and has vehemently objected the tenability of the instant lease agreement on the ground that the



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petitioner was residing outside India at the relevant time, hence the said agreement could not have been executed mutually by the parties, therefore, the same is a fabricated and forged document. Further, the agreement is also unstamped and unregistered, making it inadmissible as evidence.

138. The suit of the petitioner was filed for eviction of the purported tenant i.e., the present respondent and a lease agreement is the basis upon which such relationship of tenant and landlord is concluded. Henceforth, the objections with respect to the validity and legality of the above said lease agreement raises imperative questions which need to be adjudicated upon by the learned Trial Court.

139. At this stage, it is essential to note that Section 105 and 107 of the Transfer of Property Act, 1882, and Section 17 of the Registration Act, 1908, mandates that a lease deed executed for a period of term exceeding one year, is mandatory to be registered and to be duly stamped. Since the said conditions are not fulfilled in the instant petition, it can be established that the objections raised by the respondent before the learned Court below are essential to be dealt by way of a full-fledged trial and without adjudicating the said triable issues, a judgment cannot be passed by exercising the powers under Order XII Rule 6 of the CPC.

140. As stated above, the respondent in his written statement has also objected to the maintainability of the suit filed by the petitioner. The said suit having being filed by virtue of the Special Power of Attorney dated 5th November 2020, is stated to be unstamped and inadmissible as evidence due to the reason that the same has not been duly authenticated by the concerned



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Indian Authority and unstamped. The law in this regard is settled which states that the above said provision is not intended to apply where there are serious questions of law to be asked and determined.

141. This Court is of the considered view that in the event a judgment is passed on the basis of alleged admissions as prayed by the petitioner, the same would cause grave injustice to the respondents, thereby, violating the settled principles of law.

142. In view of the above, it is therefore observed by this Court that the learned Court below has rightly exercised its jurisdiction whilst dealing with the application filed by the petitioner under Order XII Rule 6 of the CPC, wherein, it held that no such categorical and unambiguous admissions can be drawn on the part of the respondent which would entitle the petitioner for the relief of judgment in his favour.

143. It is a settled principle of law that the High Court shall not interfere with an order of the Court below unless it satisfies the conditions mentioned within the provision of Section 115 of the CPC, pertaining to the grounds of error of jurisdiction. Furthermore, with regard to the provision under which the application was filed before the learned Court below and which was dismissed, this Court is of the view that unclear and ambiguous admissions cannot be taken into consideration in isolation without taking into account the objections of the respondent. Categorical and unconditional admissions are required for granting of the relief under Order XII Rule 6 of the CPC. Also, in accordance with this rule, the power of this Court is discretionary and cannot be claimed as a matter of right.



144. In regard to the facts of the instant petition, the errors of jurisdiction, as explained in brief in the foregoing paragraphs, are absent in the impugned order and there is no force in the arguments advanced by the petitioner, hence, not inviting the attention of this Court.

145. Consequently, in view of the judgments cited above and the facts of the instant case, the application filed by the petitioner under Order XII Rule 6 of the CPC, fails to establish a clear and unambiguous admission on part of the respondent. Moreover, the lease deed dated 10th January 2020, relied upon by the petitioner to establish his case, since been objected by the respondent, makes I a triable issue as rightly held by the learned Trial Court, thereby, warranting a full-fledged trial for the adjudication of the above said Civil Suit.

146. Therefore, this Court is of the view that the learned Court below has rightly dealt with the application filed under Order XII Rule 6 of the CPC, and after taking into consideration the propositions put forth by the petitioner, this Court does not find any ground to exercise its revisional powers under Section 115 of the CPC.

147. Accordingly, 'issue no. ii' has been decided.

CONCLUSION

148. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the



jurisdiction of the Court below in deciding any application and does not go into the merits of the case.

149. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below.

150. It has been deliberated by way of the aforementioned judgments that in the absence of such clear and categorical admission there can be no judgment under Order XII Rule 6 of the CPC. The Hon'ble Supreme Court has by way of a catena of judgment has made it crystal clear that an admission should be a conscious and deliberate act of the party making it, thereby, showing an intention to be bound by it. The pre-requisites for passing a decree on admission are the existence of an unconditional, unambiguous, and clear admission. The Trial Court while exercising its jurisdiction under Order XII Rule 6 of the CPC, should keep in mind that the judgment on admission is a judgment without trial which permanently denies the remedy to the party against whom the judgment has been passed, to appeal on merits.

151. This Court is of the opinion that there was neither any admission nor any such evasive denial that would have required the learned Trial Court to pass a judgment based on the unsubstantiated grounds of the petitioner



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raised in his application under Order XII Rule 6 of the CPC. Hence, the contentions of the petitioner made against the impugned order are rejected.

152. In view of the above, the petitioner has been unable to make out a case for grant of relief of revision of the impugned order under Section 115 of the CPC. Therefore, it is held that the learned Trial Court has exercised its jurisdiction correctly and in accordance with the law.

153. In light of the above discussion of facts and law, the impugned order dated dated 14th December 2022, passed by the learned ADJ-03, Saket District Court, South, New Delhi, in Civil Suit bearing no. 397/2022, is hereby, upheld.

154. Accordingly, the instant petition stands dismissed along with pending applications, if any.

155. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 6, 2023
dy/ryp/db