



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

% **Date of order : 6th September, 2023**

+ **C.R.P. 46/2023**

SUMAN ALI

..... Petitioner

Through: **Mr.Prabhat Chaurasia and Mr.Rajpal
Singh, Advocate**

versus

DILJEET SINGH DOGRA ALIAS DEEPAK DOGRA & ORS.

..... Respondent

Through: **Mr.U.Madhukar and Mr. Hakikat
Yadav, Advocates for D-1**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner has filed the present petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter “CPC”), seeking the following reliefs:

*“a. allow the present Petition and set aside the impugned Order dated 19.11.2022 passed in Civ DJ 94/21 by the Additional District Judge-05/West, Tis Hazari Court, Delhi ;
b. any other order, direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*

2. The instant petition has been preferred by the eldest daughter of Late Sh. Puran Chand and Late Smt. Santosh Kumari. Late Sh. Puran Chand was



the owner of the below mentioned Suit Property. The relevant facts leading to the filing of the instant petition are recapitulated herein below:

- a. Petitioner and the respondents are siblings. The family pedigree of the parties to the instant petition is as follows—

Puran Chand [Husband] [Date of Demise 29.03.2017]	Santosh Kumari [Wife] [Date of demise-2.4.2016]
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1. Mr.Diljit Singh Dogra-Son-
Date of Birth-21.02.1987
2. Mrs.Suman Ali, Daughter-
Date of Birth 28.06.1976
3. Mrs. Jyoti- Daughter
Date of Birth 12.12.1979
4. Mrs.Arti-Daughter-
Date of Birth 18.10.1981
5. Mrs.Sapna-Daughter-
Date of Birth 18.10.1983

- b. The petitioner had issued a legal notice to the respondent No. 1 on 12th November 2020, thereby, seeking partition of the property bearing No. B-196/197 DDA Colony, Khyala, New Delhi (hereinafter “Suit Property”). By way of the said legal notice, the petitioner had further sought information with regard to the rentals collected by the respondent No. 1, from the Suit Property. The respondent No. 1 had responded to the said notice on 24th December 2020.
- c. Thereafter, the petitioner filed a suit for partition on 28th



January 2021, which was registered as Civ DJ No. 94/2021, and the same is pending for adjudication before the learned Additional District Judge 05, West, Tis Hazari, Delhi.

- d. Subsequently, the petitioner filed an application under Order XII Rule 6 of the CPC, wherein, it was averred that the respondents in their written statement and other documents have admitted to the case of the petitioner, and therefore, she is entitled to the reliefs as prayed in the Suit by way of judgment on admissions.
- e. The learned Trial Court dismissed the above said application of the petitioner *vide* the impugned order dated 19th November 2022. The petitioner being aggrieved by the said impugned order has approached this court by way of the instant revision petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the plaintiff, i.e., the petitioner herein, had filed an application under Order XII Rule 6 of the CPC, seeking judgment in the Suit on the basis of the admissions made by the defendant No. 1, i.e., the respondent No. 1 herein.

4. It is submitted that the learned Court below has wrongly considered and misinterpreted the provisions of Order XII Rule 6 of the CPC. It is also submitted that the learned Trial Court erred in holding that only specific and unequivocal admissions can be considered if the same are admitted in the written statement.

5. It is submitted that the law regarding the admission is well settled with



regards to cases wherein, even if there is no specific and categorical admission of facts and documents, an application under Order XII Rule 6 of the CPC, can be allowed.

6. It is submitted that the respondent No. 1 in para 10 of the reply 24th December 2020, to the legal notice dated 24th December 2020, had admitted to the fact that the parents of the parties have died intestate and that the same is a matter of record. This implies to admission on the part of the respondent No. 1 and hence, the petitioner is entitled to judgment on admissions under Order XII Rule 6 of the CPC.

7. It is submitted that the documents, i.e., the Agreement to Sell and the Power of Attorney, which were filed along with the reply to the application under Order XII Rule 6 of the CPC, were neither mentioned in the above said reply to the legal notice nor in the written statement. Since no supporting application seeking to place the said documents on record was filed, the learned Trial Court whilst deciding the application of the petitioner erred by taking into consideration the above said documents, as the same were never placed on record.

8. It is submitted that the impugned order has been passed by the learned Trial Court without considering the relevant statutory provisions as well as the judgments of this Court and the Hon'ble Supreme Court.

9. It is submitted that as per the settled law admissions can be made in the pleadings or even otherwise, such as in documents, correspondence etc. The admissions can even be constructive and need not be specific or expressive which can be inferred from the vague and evasive denial in the



written statement.

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

11. *Per contra*, learned counsel appearing on behalf of the respondent whilst vehemently opposing the present petition submitted during the course of the arguments that the learned Trial Court has passed the impugned order after taking into consideration the documents, reply, and the averments made in the plaint as well as the submissions made on behalf of the parties in their pleadings.

12. It is submitted that the instant petition has been filed with a mere purpose to abuse the process of law and being devoid of any merit, the same is liable to be dismissed.

13. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

14. In the instant matter, the petitioner has contended that the application filed by him under Order XII Rule 6 of the CPC, was erroneously dismissed by the learned Trial Court and the same is against the settled principles of law.

15. It has been averred on behalf of the petitioner that the respondent No. 1 by way of his reply dated 24th December 2020, to the legal notice sent by the petitioner on 12th November 2020, had admitted to the case of the petitioner, whereby, she had sought for partition of the Suit Property.

16. It is the case of the petitioner that since the respondent No. 1 has already admitted to the factum of the case of the petitioner, there exists no



reason for further adjudication of the Suit and the matter should be decided on the basis of the admissions made by the respondent No. 1.

17. The petitioner in his application under Order XII Rule 6 of the CPC, has raised the ground that the respondent No. 1 by way of the above said reply, had admitted to the fact that the Suit Property is the self-acquired property of the father of the parties to the dispute and that he had died intestate. Since, this factum has been admitted by the respondent No. 1, the issue for the partition of the Suit Property may be decided on the basis of such admission.

18. The learned Trial Court had dismissed the application under Order XII Rule 6 of the CPC *vide* the impugned order dated 19th November 2022. The relevant paragraphs of the impugned order are reproduced hereunder:

12. Thus, it gets apparent that in a suit the Court may pass a decree partly, on the basis of the admissions of the defendant if the admissions are clear, unambiguous and unequivocal and the said provision is an instance of expediting the trial.

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14. Now, reverting back to the present case in hand, in written statement para no.9, the defendant has submitted that the claim of the plaintiff is not maintainable because the plaintiff had taken the total sum of Rs.9,20,000/- and all the jewellery on the pretext of her share by threatening the defendant no.1 to file false cases, of the mother of defendant and the plaintiff has no share in the properties as claimed. In para no.10 it is specifically denied that the plaintiff and defendants are surviving legal heirs as both father and mother died intestate and documents are there which are not traceable and will be filed when they be found. It is also relevant to mention here that the defendant while filing the reply to the present application



has placed on record certain documents i.e. CPA, agreement to sell, receipt, possession letter etc. on record. Thus, in view of this Court, there has not been any clear, unequivocal and unambiguous admission on behalf of the defendant.

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*17. It is also profitable to rely on the recent judgment passed by Hon'ble Supreme Court of India in the matter of **Karan Kapoor V Madhuri Kumar 2022 see OnLine SC 791** (Before the Bench of Hon'ble Indira Banerjee and Hon'ble I.K. Maheshwari, authored by Hon'ble Sh. 1. K. Maheshwari) in which law related Order 12 Rule 6 CPC and its object and purpose has been minutely discussed and interpreted. The following paras of the judgment are relevant and reproduced as under:-*

" ... 16. Thus, the scheme of Order XII Rule 1 prescribes that any party to a suit may give notice, by his pleading, or otherwise in writing that he admits the truth of whole or any part of the case to other party. As per Rule 2 of Order XII notice to admit the documents may be given by either party to the other party within the specified time for admission of a document and in case of refusal or admission of the document after the notice, the cost of proving such document shall be borne by the party who neglects or refuse, which shall be based on the discretion of the Court. Rule 2A enables the deemed admission if after notice the document has not been denied. The said notice is required to be given in Form No. 9 of Appendix 'C' of cpc. Rule 3A confers overriding powers to the Court, that even in absence of a notice to admit a document under Rule 2, the Court may record such admission on its own motion or by calling upon a party. The Court also have a power to record whether the party admits or refuses or neglect to admit such document. Rule 4 of Order XII relates to notice to admit the facts. Any party may by a notice in writing at any time not later than 9 days before the day fixed for the hearing, call upon



any other party to admit for the purposes of suit only, any specific fact or facts, mentioned in such notice that is required to be answered within a specified time or within such further time as directed by the Court in case of refusal or neglect to admit the same, the cost of proving such fact or facts be paid by the parties as directed. By adding a proviso, it was made clear that the admission, if any, made in 0 proceeding would be relating to the some proceeding not for any other proceedings. The notice under Rule 4 is required to be given in Form No. 10 of Appendix 'C' of CPC is prescribed in Rule 5. Rule 6 confers discretionary power to a Court who 'may' at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

17. Thus, legislative intent is clear by using the word 'may' and 'is 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 full-fledged 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 on 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.. .. "

18. In view of the above discussion in the present case, there is no specific, clear and categorical admission of facts and documents are on record and the contentions and documents filed on behalf of defendant, in the opinion of this Court, are subject matter of full-fledged trial. Accordingly, application under Order 12 Rule 6 CPC filed by plaintiff is hereby dismissed."

19. Upon perusal of the impugned order, it is evident that the learned Trial Court delved deeply into the merits of the application filed under Order XII Rule 6 of the CPC, and only after due consideration of the entire facts and circumstances along with the judicial precedents cited therein, the learned Court below reached the conclusion that there is no clear and categorical admission on the part of the respondent No. 1, either in their written statement or in any documents annexed thereto.

20. By examining the documents placed on record, i.e., the general power of attorney, receipt, agreement to sell, possession letter etc., the learned Court below had observed that there has not been any clear, unequivocal and unambiguous admission on the part of the respondents. The impugned order further states that the contentions of the respondent No. 1 are the subject matter of a full-fledged trial.

21. At this stage, it is necessary for this Court to discuss the relevant provisions of law governing the aspect of judgement on admissions and also the legal principle settled by way of judgements passed by the Hon'ble Supreme Court. The relevant provision is being reproduced below for reference:



“ORDER XII Admissions

6 [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.].”*

22. Upon a bare reading of the abovementioned provision, it is manifest that under Order XII Rule 6 of the CPC, 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.

23. 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. The said provision also provides for judgment on admissions and since the same is an enabling provision, it is neither mandatory nor pre-emptory, but discretionary. 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.

24. The abovementioned provision 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 trial.

25. 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.

26. 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.”

27. In the judgment of ***Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao***, 2023 SCC OnLine SC 871, the Hon’ble Supreme Court held as under:

“28. There is some authority for the proposition, that the court's power under Order XII Rule 6, CPC, is not only discretionary but requires exercise of caution and that unless an admission is unambiguous, enabling the court to draw a decree, the power would not be exercised. Thus, in Himani Alloys Ltd. v. Tata Steel Ltd.,¹¹ this court held that:

“It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear ‘admission’ which can be acted upon. (See also Uttam Singh Duggal and Co. Ltd. v. United Bank of India 2000 Supp (2) SCR 187; Karam Kapahi v. Lal Chand Public Charitable Trust (2010) 4 SCR 422 and Jeevan Diesels and



Electricals Ltd. v. Jasbir Singh Chadha (2010) 6 SCC 601”

28. As per the above discussion concerning the legal propositions, it is explicit that while adjudicating an application under Order XII Rule 6 of the CPC, to pass a judgment on admission, the Court, if it deems fit that there is a clear and categorical admission, may pass an order, accordingly. In case the judgment is pronounced by the Court, a decree may be drawn accordingly, and thereafter, the parties to the case would not be required to proceed with the trial. It is prudent to mention herein, that the power under the said provision is a discretionary one and the same cannot be exercised as a matter of right by the party seeking reliefs under Order XII Rule 6 of the CPC.

29. In the light of the facts of the instant case, the petitioner is relying upon the statement made by the respondent in para 10 of the reply dated 24th December 2020, to the legal notice dated 12th November 2020. The same has been reproduced as under:

“10. That para No. 10 of your notice which is matter of record needs no reply.”

30. The petitioner at para 10 of his legal notice dated 12th November 2020, had stated as under:

“10. Our client states that both father and mother died intestate leaving behind five children as surviving legal heirs. Our client further states that upon demise of the mother! you have rented out the ground floor, second and third floor of the property to various parties. You are collecting rent from the tenants,



however, you have not distributed the same to any other legal heirs.”

31. The contention of the petitioner is that the respondents have not denied, rather, have admitted to the factum that the parents of the parties to the instant dispute had died intestate. The petitioner has also averred that the respondent No. 1 has further admitted to the fact that he has been collecting rent from the Suit Property and is not distributing the same to the other legal heirs. Further, the respondent No. 1 has also stated that the above said is a matter of record. These statements amount to admission on the part of the respondent No. 1, as has been averred by the petitioner.

32. In view of the aforementioned averments made on behalf of the petitioner, it has been contended to the effect that it is a settled legal position that admissions can be inferred on vague and evasive written statement while answering specific pleas that have been raised in the plaint. Admissions could be in the pleadings or even otherwise, i.e.; in documents, correspondence etc.

33. It has been further contended that the admissions can even be constructive admissions and need not be specific or expressive. The admissions can even be inferred from the facts and circumstances of the case. Further, since the respondent has not filed any document alongwith the written statement to substantiate any of their claim or contentions and have made vague submissions, the same clearly indicate and tantamount to the fact that there is constructive admission on the respondent's part. Therefore,



the petitioner's application under Order XII Rule 6 of the CPC was wrongly dismissed by the learned Trial Court.

34. In light of the contentions made and the judgements referred in the foregoing paragraphs, it is observed that there is no clear and categorical admission on the part of the respondent No. 1, neither in the written statement nor in the reply dated 24th December 2020. Merely stating '*That para No. 10 of your notice which is matter of record needs no reply*', does not indicate the same to be an admission, which is clear and unambiguous. Contending the said statement to be an admission is farfetched and unsubstantial on the part of the petitioner. Moreover, the grounds that have been raised in the application under Order XII Rule 6 of the CPC, do indicate that the same requires a full-fledged trial for proper adjudication of the Suit. This observation is also in conformity with the legal principles settled by the Hon'ble Supreme Court.

35. This Court is of the view that the Trial Court while exercising its jurisdiction under Order XII Rule 6 of the CPC, should refrain itself by keeping 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.

36. The said provision has been enacted with the intent that if admission of facts raised by one side is admitted by the other, and the Court is satisfied with regard to the nature of the alleged admission, then the Court is not required to proceed with a full-fledged trial. In such an event, the judgment and order can be directed without taking any evidence.



37. The said settled legal principle of law has been rightly followed by the learned Trial Court while adjudicating upon the application of the petitioner made under Order XII Rule 6 of the CPC. The learned Court below passed a detailed order, thereby, taking into consideration the entire facts and circumstance put forth before it by the parties to the Suit. Only after perusing the averments made therein, it reached to the conclusion that there are no clear and categorical admissions on the respondent's part anywhere in the written statement or the documents.

38. In the absence of such clear and categorical admission there can be no judgment made under Order XII Rule 6 of the CPC. The Hon'ble Supreme Court has by way of abovementioned judgments has made it crystal clear that an admission should be a conscious and deliberate act of the party making it, 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.

39. Therefore, this Court is of the considered view that the learned Trial Court has rightly held that there exist no categorical and unambiguous admissions which can be construed to enable the Court to exercise its discretion, thereby, allowing the application filed under Order XII Rule 6 of the CPC.

40. 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 not to go into



the merits of the case.

41. 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. Therefore, in the instant petition, this Court does not find any infirmity in the impugned order as has been alleged by the petitioner.

42. In view of the above discussion of facts and law for the purposes of adjudication of the instant revision petition, the petitioner has not been able to make out a case which requires interference of this Court in the impugned order.

43. This Court finds no error in the impugned order dated 19th November 2022, passed in the Civil Suit bearing No. Civ DJ 94/21, by the learned ADJ-05, West, Tis Hazari Court, Delhi, and the same is hereby upheld.

44. Accordingly, this petition is thus, dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

45. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 6, 2023
SV/RYP

Click here to check corrigendum, if any