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

% *Date of Decision: 25th April, 2023*

+ RFA 187/2023 & CM APPL. 11197/2023

M/S DIVINE MESSENGERS Appellant
Through: Mr. B.N. Sharma, Advocate.

versus

DR PRERNA DIWAN Respondent
Through: Mr. Vikas Yadav, Advocate
with Respondent-in-person.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present appeal has been filed assailing the impugned judgment/decreed dated 09.11.2022 passed by the learned Trial Court decreeing the suit of the Respondent herein for possession of the suit property as also dismissing the application of the Appellant under Order 6 Rule 17 CPC by the same judgment. Appellant herein was the Defendant before the Trial Court and Respondent was the Plaintiff and parties are referred to by their litigating status before the Trial Court, hereinafter.

2. Facts necessary for adjudication of the appeal are in a narrow compass and are captured as follows:

(a). Plaintiff filed a suit for possession, arrears of rent and damages, claiming to be the lawful owner of property bearing Unit No.206, 2nd Floor, Krishna Plaza, Plot No.1, Sector-11, Pocket-4, Dwarka, New Delhi, purchased by the Plaintiff vide Sale Deed dated 20.05.2014.

(b). Plaintiff inducted the Defendant as a tenant and a Lease Agreement dated 17.07.2017 was executed between the parties for a period of two years and the Agreement was registered vide registration No. 5760 on 18.07.2017 with the Office of Sub-Registrar-IX, New Delhi. The monthly rent agreed between the parties was Rs.19,500/- for the first year and Rs.21,450/- for the second year.

(c). After expiry of the lease of the tenanted premises, Plaintiff asked the Defendant repeatedly to vacate the premises and also sent a legal notice dated 07.08.2019 terminating the tenancy. However, when the Defendant refused to vacate the premises and even stopped paying the rent, Plaintiff filed the suit from which the present appeal arises.

(d). Upon service of summons, Defendant filed the written statement on 03.09.2020 and thereafter, the Plaintiff filed an application under Order 12 Rule 6 CPC on 18.11.2021 seeking decree on admission. Thereafter, on 05.05.2022, an application was filed by the Defendant under Order 6 Rule 17 CPC for amendment to the written statement along with reply to the application under Order 12 Rule 6 CPC. By the impugned judgment, the Trial Court dismissed Defendant's application and allowed the application under Order 12 Rule 6 CPC decreeing the suit for possession.

3. Assailing the judgment and decree of the Trial Court, learned counsel for the Defendant argued that there were no clear or unequivocal admissions by the Defendant and the Trial Court thus erred in decreeing the suit on an application under Order 12 Rule 6 CPC. It is further submitted that the suit property was leased out to the Defendant in the year 2015 and the lease was renewed from time to

time. Defendant deposited security of Rs.3 lakhs with the Plaintiff for the initial lease and the successive renewals, which was to be refunded at the end of the lease periods, however, Plaintiff failed to do the needful. The next argument on behalf of the Defendant is that Defendant is a Partnership Firm of which her husband and she are partners and despite having knowledge of this fact, Plaintiff did not implead the partner, namely, Shri Acharya V. Shastri as party to the suit. The only other argument pressed on behalf of the Defendant by the learned counsel is that when the premises was taken on lease by the Defendant, it was not being used for commercial purpose but was run as a hotel with a kitchen and a lot of renovation work was done by the Defendant leading to an investment of over Rs.3 lakhs, but till date money has not been reimbursed by the Plaintiff.

4. *Per contra*, learned counsel for the Plaintiff supports the impugned judgment and prays for the appeal to be dismissed with costs. It is submitted that the law is well settled with respect to the adjudication of a suit for possession/ejectment between a landlord and tenant and the Plaintiff is only required to establish: (a) relationship of landlord-tenant; (b) tenancy not protected under the Delhi Rent Control Act, 1958; and (c) tenancy has been terminated. It is urged that each of the three ingredients stand satisfied in the present case and the judgment of the Trial Court should be upheld.

5. I have heard the learned counsels for the parties and given my thoughtful consideration to the respective contentions.

6. Before proceeding to examine the impugned judgment with respect to the application filed by the Plaintiff under Order 12 Rule 6 CPC, I may first deal with the judgment to the extent Trial Court has dismissed the application of the Defendant under Order 6 Rule 17 CPC. From a perusal of the application, it is apparent that the

Defendant sought amendment of almost the entire written statement to incorporate pleadings with regard to non-impleadment of the second partner of the Defendant Firm, non-refund of security deposit and the amounts allegedly spent on the renovation of the suit premises.

7. Insofar as the non-impleadment of Shri Shastri, the second partner of the Defendant Firm, is concerned, Trial Court rejected the contention of the Defendant on the ground that if a Partnership Firm is sued, service upon one of the partners is valid service and in any case, it is not imperative that each and every partner has to be impleaded and/or served. Trial Court also noted that no separate claim was raised by Shri Shastri *dehors* his character as a partner of the Firm and all acts from entering into a lease deed to payment of the lease rent, etc. were undertaken in the capacity of a partner of Defendant Firm.

8. In my view, Trial Court has rightly dismissed the application and in this context provisions of Order XXX Rules 3, 5 and 6 CPC are explicitly clear and are extracted hereunder for ready reference:

“3. Service. – Where persons are sued as partners in the name of either firm, the summons shall be served either –

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within [India] upon any person having, at the time of service, the control or management of the partnership business, there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without [India];

Provided, that in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within [India] whom it is sought to make liable.

5. Notice in what capacity served. – *Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.*

6. Appearance of partners. – *Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.*”

9. A conjoint reading of the provisions of Order XXX CPC leads this Court to conclude that when a Partnership Firm is sued, Plaintiff can choose either to sue the partners without bringing on record the Partnership Firm and is equally entitled to bring an action against some partners to the exclusion of the others. This position of law is fairly well settled and as a ready reference, I may only refer to a judgment of the Bombay High Court in ***Aftab Currim v. Ibrahim Currim & Sons and Others, 2022 SCC OnLine Bom 801***, which I am persuaded to follow and the relevant paras are as follows:-

“9. In order to bolster up the aforesaid submission, Mr. Khandekar placed reliance on a Division Bench judgment of the High Court of Jammu and Kashmir in the case of Jodh Singh Gujral v. S. Kesar Singh¹. In the said case, the tenability of the suit was assailed on behalf of the defendants by canvassing a submission that the omission on the part of the plaintiffs to bring all the partners in the array of the defendants is fatal to the maintainability of the suit when the suit is not brought against the firm under the provisions of Order XXX Rule 1 of the Civil Procedure Code, 1908 (“the Code”). Repelling the contention, the Jammu and Kashmir High Court observed that the said contention overlooks the provisions of Section 43 of the Indian Contract Act, 1872, and was also based upon the misconception of the provisions of Order XXX Rule 1 of the Code. After advertent to the provisions contained in Section 43 of the Contract Act, which provides that when two or more persons make joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. the Division Bench held that, there was no reason why the principle contained in Section 43 shall not apply to the partners.

10. To arrive at the said conclusion the Division Bench drew support from a Division Bench judgment of this Court in the case of *Molilal v. Ghellabhai*² ILR 17 Bombay, which was followed by the Madras High Court in the case of *Narayan Cheety v. Laxman Chetti*³ ILR Madras, 256. The observations of the Jammu and Kashmir, High Court, which, in turn, incorporated the aforesaid pronouncements, are to be found in paragraphs 8 to 12 of the report.

“8. Even so, the question is whether S. 43, Contract Act applies to partners. There appears no reason in principle why it should not, and there is sufficient authority for holding that it does.

(9) In Lukmidas Khimji v. Purshotam Haridas, ILR 6 Bom 700 it was held that “in a suit brought upon a contract made by a firm the plaintiff may select as defendants those partners of the firm against whom he wishes to proceed, allowing his right of suit against those whom he does not make defendants to be barred.”

(10) THIS decision was based upon the provisions of S. 43 of the Contract Act.

(11) In Motilal v. Ghellabhai, ILR 17 Bom 6 (at page 11) a Division Bench of the Bombay High Court approving the decision in ILR 6 Bom 700 slated as follows:

“The provisions of S. 43 Contract Act, which gives the right to the creditor to compel any one of the joint contractors, or the representatives of a deceased contractor, to perform the contract, seems new both in the case of ordinary joint contractors and in that of partners jointly contracting; as far as the liability under a contract is concerned, it appears to make all joint contracts joint and several. We cannot doubt but that these sections, which we have referred to, relate to partners as well as to other co-contractors. It has been so decided in Lukmidas Khimji v. Purshotam Haridas, ILR 6 Bom 700. and we think rightly. If the legislature had intended to except partners from the provisions of these sections, it would have done so in express words. There is no reason for thinking that the general rules laid down in Chapter IV of the Contract Act are not applicable to partners as well as to other contracting parties. The sections under consideration seem, on the contrary, to be intended to assimilate the law relating to joint contract generally that which has always been applied to partners contracting jointly.”

(12) The decision in ILR 6 Bom 700 was followed by a Bench of the Madras High Court in Narayana Chetti v. Lakshmana Chetti, ILR 21 Mad 256, in a case relating to partners, where they held:

“According to the law declared in the Contract Act, S. 43, especially when taken with S. 29 of the Civil Procedure Code, it is clear that it is not incumbent on a person dealing with partners to make them all defendants. He is at liberty to sue any one partner as he may choose.”

11. On the aspect of applicability of the provisions contained in Order XXX Rule 1 of the Code, in the said case, the Division Bench observed as under:

“17. Mr. L. N. Sharma for the respondents has argued that the plaintiff ought to have framed the suit under O.30 R.1, Civil P. C. if he did not choose to implead all the partners as party defendants. What I have already stated is sufficient to demonstrate the untenability of the argument that it is incumbent on the plaintiff to bring the suit against all the partners and that he is not entitled to seek relief against some of the partners chosen by him. The argument that the plaintiff is bout to bring the action under O. 30, R.1, Civil P.C. is equally untenable. Order 30, R.1 only prescribes a convenient procedure for suing a firm. It does not vary or abrogate the right which is available to the plaintiff under the provisions of S.43 of the Contract Act. Nor does O. 30, R.1 control or over-ride the provisions of O. 1, R.6 of the Civil P. C. The plaintiff can well chose to sue the partners without bringing on record the firm itself. He is equally entitled to bring an action against only some of the partners. Order 30 R. I which merely prescribes the procedure in case the plaintiff desires to sue the firm does not in any manner affect this right of the plaintiff.”

12. *The Division Bench, in terms, observed that Order XXX Rule 1 is only a convenient procedure for suing a firm. It does not vary or abrogate the right which is available to the plaintiff under the provisions of Section 43 of the Contract Act. Nor does Order XXX Rule 1 control or override the provisions of Order I Rule 6 of the Code. The plaintiffs can choose to sue the partners without bringing on record the firm itself. He is equally entitled to bring an action against only some of the partners. Order XXX Rule 1 merely prescribes the procedure in case the plaintiff desires to sue the firm. However, it does not in any manner affect the right of the plaintiffs flowing from the provisions contained in Section 43 of the Contract Act.*

13. *The aforesaid pronouncement of Jammu and Kashmir High Court was followed by the Allahabad High Court in the case of Gokul Prasad v. Additional District and Sessions Judge, (2003) 1 ARC 347.*

14. *The matter can be looked at from a slightly different perspective. Defendant no. 4 asserts that the impleadment of the rest of the partners of defendant no. 1 - firm becomes imperative in the wake of the notice of dissolution of firm given by defendant no. 1 on 21st December, 2021. There is no qualm over the claim of the plaintiffs that defendant no. 1 is a registered partnership firm and defendant nos. 2 to 4 are its partners. Section 25 of the Partnership Act, 1932, provides that every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner. It is trite, a firm is not legal entity. A partnership firm is only a collective or compendious name for all the partners. To put it in other words, a partnership firm does not have any existence apart from its partners. Thus, a decree in favour of or*

against firm in the name of the firm has the same effect like a decree in favour of or against the partners. When the firm incurs a liability, it can be assumed that all the partners have incurred that liability and so the partners remain liable jointly and severally for all the acts of the firm.

15. If this nature of the liability of the partners of a firm is considered in juxtaposition with the provisions contained in Section 43 of the Contract Act, it becomes explicitly clear that the plaintiffs are not enjoined to implead all the partners of the firm. I am, therefore, persuaded to agree with the submissions on behalf of the plaintiffs that the impleadment of the rest of the partners is not necessary.”

10. Therefore, there is no merit in the contention of the Defendant that non-impleadment of Shri Shastri as one of the partners of the Defendant Firm was fatal to the suit of the Plaintiff. Insofar as the submission that Defendant had deposited Rs. 3 lakhs as security deposit for the first Lease Deed as well as the successive Lease Deeds is concerned, this fact is clearly belied by a perusal of the covenants of the three Lease Deeds which have been placed on record. Trial Court has correctly recorded that the security deposit for the first lease was Rs.32,000/-, for the second lease was Rs.36,000/- and for the third lease, which is the subject matter of dispute before this Court, was Rs.39,000/-. Defendant is unable to establish that the security deposit was payable over and above the amounts, mentioned in the Lease Deeds. Section 92 of the Indian Evidence Act, 1872 provides that when terms of any contract or any other disposition of property are required to be reduced to the form of document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, addition to or subtracting from its terms. Execution of the Lease Deed and the covenants therein are not disputed by the Defendant and therefore it is not open to the Defendant to make oral statements which contradict the written terms in the Lease Deed with respect to the security deposit. I may, in this context, refer to the judgment of the Supreme

Court in ***Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595***, where the Supreme Court held as follows:-

“13.

This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the “best-evidence rule”. It is in reality declaring a doctrine of the substantive law, namely, in the case of a written contract, that all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thayer's Preliminary Law on Evidence, p. 397 and p. 398; Phipson's Evidence, 7th Edn., p. 546; Wigmore's Evidence, p. 2406.) It has been best described by Wigmore stating that the rule is in no sense a rule of evidence but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process — the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of proving it is merely that dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into play when the counsel offers to “prove” it or “give evidence” of it; otherwise, any rule of law whatever might be reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects — sale, contract etc. there are specific requirements varying according to the subject. On the contrary there are also certain fundamental elements common to all and capable of being generalised. Every jural act may have the following four elements:

- (a) the enactment or creation of the act;*
- (b) its integration or embodiment in a single memorial when desired;*
- (c) its solemnization or fulfilment of the prescribed forms, if any; and*
- (d) the interpretation or application of the act to the external objects affected by it.*

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16.

This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object.

When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p. 294.) As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted.

17. *It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Starkie on Evidence, p. 648.)"*

11. Coming to an amount of Rs.3 lakhs allegedly spent on the renovation of the suit premises, suffice would it be to state that there is no material placed on record by the Defendant to establish the alleged expenditure and this claim is merely an afterthought.

12. The next limb of the argument of the Defendant is with respect to the application under Order 12 Rule 6 CPC. Plaintiff is right in his contention that in order to seek a decree of possession against a tenant, landlord is required to fulfill only three parameters, which can be culled out as: (i) Relationship of landlord and tenant; (ii) Tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958; and (iii) Tenancy has been terminated and the Respondent tenant has failed to hand over possession.

13. In this context, I may refer to the judgment of Supreme Court in ***Payal Vision Limited v. Radhika Choudhary, (2012) 11 SCC 405***, relevant paras of which are as follows:-

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC, which reads as under:

“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 upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

8. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd. (supra)* relied upon by the High Court where this Court has observed:

*“Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi (supra)* may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”*

14. To test the impugned order whereby a decree has been passed under Order 12 Rule 6 CPC, it needs a mention that Rule 6 was amended by Act 104 of 1976, by which several Amendments were made to the Code of Civil Procedure, 1908. Prior to the amendment, judgment on admissions were confined only to an application in writing. By virtue of the Amendment, whether admissions are oral or in writing, Court is empowered, at any stage, of the suit, to give judgment on admission(s). In case of ***Himani Alloys Limited v. Tata Steel Limited, (2011) 15 SCC 273***, the scope of Order 12 Rule 6 CPC was considered. Relevant para of the judgment reads as follows:-

“11. 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 & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120], Karam Kapahi v. Lal Chand Public Charitable Trust [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745].) There is no such admission in this case.”

15. In this regard, I may allude to the following judgments:-

(i). In ***Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396***, it was observed as follows:-

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

(ii). In ***S.M. Asif v. Virender Kumar Baja, (2015) 9 SCC 287***, it was 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.”

(iii). In ***Karam Kapahi v. Lal Chand Public Charitable, (2010) 4 SCC 753***, it was observed as follows:-

“37. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about “which there is no controversy” (see the dictum of Lord Jessel, the Master of Rolls, in Thorp v. Holdsworth [[L.R.] 3 Ch.D. 637] in Chancery Division at p. 640).

38. In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:

“6. Judgment on admissions.—Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that

the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it “ex debito justitiae”, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by “pleading or otherwise in writing” but in Order 12 Rule 6 the expression “or otherwise” is much wider in view of the words used therein, namely: “admission of fact ... either in the pleading or otherwise, whether orally or in writing”.

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan [(2005) 11 SCC 279], SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla's Commentary on the Code, 16th Edn., Vol. II, p. 2177).

42. In Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

43. In Uttam Singh Duggal case [(2000) 7 SCC 120] it was contended on behalf of the appellant, Uttam Singh Duggal, that:

“(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5(1) of the Code and the court may call upon the party relying on such admission to prove its case independently.

(c) The expression “either in pleadings or otherwise” should be interpreted ejusdem generis. (See para 11, p. 126-27 of the Report.)

Almost similar contentions have been raised on behalf of the Club. In Uttam Singh [(2000) 7 SCC 120] those contentions were rejected and this Court opined no effort should be made to

narrow down the ambit of Order 12 Rule 6.

44. *In Uttam Singh [(2000) 7 SCC 120] this Court made a distinction between a suit just between the parties and a suit relating to the Specific Relief Act, 1963 where a declaration of status is given which not only binds the parties but also binds generations. The Court held that such a declaration may be given merely on admission (SCC para 16 at p. 128 of the Report). But in a situation like the present one where the controversy is between the parties on an admission of non-payment of rent, judgment can be rendered on admission by the court.*

45. *Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of the Madhya Pradesh High Court in Shikharchand v. Bari Bai [AIR 1974 MP 75]. G.P. Singh, J. (as His Lordship then was) in a concurring judgment explained the aforesaid Rule, if we may say so, very authoritatively at p. 79 of the Report. His Lordship held : (AIR para 19)*

“... I will only add a few words of my own. Rule 6 of Order 12 of the Code of Civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see Annual Practice, 1965 Edn., Part I, p. 569). The Supreme Court Rule came up for consideration in Ellis v. Allen [[1914] 1 Ch. 904 : (1911) 13 All ER 906]. In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that Rule. Sargant, J. rejected the argument that the Rule is confined to admissions made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said:

‘The Rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.’

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargant, J. The words ‘either on the pleadings or otherwise’ in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also admissions made elsewhere during the trial.”

46. *This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by G.P. Singh, J. (as His*

Lordship then was). Mulla in his commentary on the Code has also relied on the ratio in Shikharchand [AIR 1974 MP 75] for explaining these provisions.

47. Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word “pleading” under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word “pleading” has been suffixed by the expression “or otherwise”. Therefore, a wider interpretation of the word “pleading” is warranted in understanding the implication of this Rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing the judgment on admission under Order 12 Rule 6 in view of clear words “pleading or otherwise” used therein especially when that petition was in the suit filed by the Trust.

48. However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word “may” has been used. But in a given situation, as in the instant case, the said provision can be applied in rendering the judgment.”

(iv). In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria***, (2012) 3 Scale 550, the Supreme Court held as under:-

“66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.”

(v). In ***Hill Elliott & Co. Ltd. v. Bhupinder Singh, (2011) 121 DRJ 438 (DB)***, Court held as follows:-

“18. The purpose of the enactment of provision of Order 12 Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If in a case like the present one, a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment in the provision would be frustrated.”

(vi). In ***State Bank of Patiala v. Chander Mohan Jain, 1996 RLR 404***, the Division Bench observed that it has become quite common for tenants, whose tenancies have been terminated validly, to continue occupation as trespassers, drive the landlords to file suits for eviction with a view to see how far the patience of landlord may last or how far the landlords or their Legal Representatives could fight the tenants particularly where the tenant has stopped payment even of the admitted rent.

16. In view of the aforesaid judgments, the admissions of the Defendant will have to be tested in the light of the judgment of the Supreme Court in ***Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha (2010) 6 SCC 601***. It is seen from the written statement that the Defendant has categorically admitted that he had taken the suit premises under a Lease Agreement dated 17.07.2017 from the Plaintiff for a period of two years and the Agreement was registered with the Office of Sub Registrar IX, New Delhi. Insofar as termination of the tenancy is concerned, a categorical stand is taken by the Plaintiff that a legal notice was sent to the Defendant terminating the tenancy and there is no rebuttal to the said averment in the written statement. In fact, the Defendant has averred that he had given a proper reply to the legal notice and denied all allegations made therein

by the Plaintiff. The rate of rent is admittedly Rs.19,500/- for the first year and Rs.21,450/- for the next year and therefore, the tenancy is not protected under the provisions of the Delhi Rent Control Act, 1958.

17. Therefore, in view of the judgment of the Supreme Court in *Payal Vision (supra)*, where the Supreme Court held that Order 12 Rule 6 CPC sufficiently empowers the Court trying the suit to deliver a judgment based on admissions, the suit was rightly decreed by the Trial Court. In a suit for recovery of possession from a tenant, whose tenancy is not protected, all that is required to be established by the Plaintiff/landlord, is the existence of jural relationship of landlord and tenant between the parties and termination of tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act, 1882 or even by merely filing a suit.

18. For all the aforesaid reasons, there is no merit in the appeal and the same is accordingly dismissed with the pending application.

JYOTI SINGH, J

APRIL 25, 2023/shivam/kks