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

% *Date of Decision: 12th May, 2023*

+ C.R.P. 28/2022

SANTOSH SINGH

..... Petitioner

Through: Mr. Nischay Chaudhary,
Advocate.

versus

SHRI ANIL AGARWAL

..... Respondent

Through: Mr. Rit Arora, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 11962/2022 (delay of 10 days in filing the petition)

1. Present application has been preferred seeking condonation of delay of 10 days in filing the revision petition.
2. For the reasons stated in the application, the same is allowed.
3. Delay of 10 days in filing the revision petition is condoned.
4. Application stands disposed of.

C.R.P. 28/2022, CM APPL. 11960/2022 (direction)

5. Present revision petition has been filed laying a challenge to the impugned order dated 23.11.2021 passed by the Trial Court whereby an application filed by the Petitioner herein under Order XII Rule 6 CPC has been dismissed. Petitioner herein is the Plaintiff before the Trial Court and Respondent is the sole Defendant and the parties are hereinafter referred to by their litigating status before the Trial Court.
6. Facts being in a narrow compass for the purpose of adjudicating this revision petition and as averred in the petition are that Plaintiff's

mother late Smt. Bhagwati Devi was the absolute owner of built-up property bearing No. B-7/C-58, ad-measuring 220 Sq. Yards in Khasra No. 1422, now bearing the new No. B-7/C-58, Sharda Puri, New Delhi-15 (hereinafter referred to as the 'suit property'). The suit property is stated to have been purchased in 1965 through a duly executed Sale Deed dated 19.08.1965. Mother of the Plaintiff expired leaving behind her husband, two daughters i.e. Plaintiff and Ms. Indira Rani Singh as her legal heirs.

7. It is the case of the Plaintiff that as per the law of succession, Plaintiff and her sister as well as their father became joint owners of the suit property. Plaintiff and her sister usually live in U.S.A. and the entire property was in occupation of their father. Son of the brother of Plaintiff's father namely Sh. Krishan was permitted to live in the suit property as a licensee out of love and affection since Plaintiff's father was old and was living alone and was becoming more and more dependent. Plaintiff avers that her father at the instance of her cousin raised unauthorized construction in the property for which a suit for mandatory and permanent injunction was filed and is pending in another Court. Father of the Plaintiff in connivance with her cousin also constructed a shop on the ground floor, which is under occupation of the Defendant and as learnt by the Plaintiff, the Defendant is paying a monthly rent of Rs.50,000/- but it is unknown as to who is the recipient of the rent.

8. It is averred that Plaintiff has repeatedly objected to the occupation of the premises by the Defendant and also sent a legal notice for vacation on 22.11.2019. When the efforts of the Plaintiff and her sister to have the ground floor vacated failed, present suit was filed for permanent injunction restraining the Defendant and others acting on his behalf from creating third party rights in the shop on the

ground floor as also seeking decree for recovery of possession directing the Defendant to hand over vacant and peaceful possession of the suit property.

9. Upon service of summons, written statement was filed by the Defendant and thereafter Plaintiff filed an application under Order XII Rule 6 CPC predicated on an alleged admission of the Defendant that he is a tenant of the father of the Plaintiff i.e. late Sh. Fateh Singh Chauhan and is paying a rent of Rs.30,000/- p.m. Reply was filed by the Defendant to the said application opposing the grant of decree on alleged admissions. Trial Court has dismissed the application on the ground that there is no unequivocal or categorical admission on part of the Defendant attorning the Plaintiff as owner/landlord of the suit premises inasmuch as it is the stand of the Defendant in the written statement that after the death of Sh. Fateh Singh Chauhan, one Sh. Krishan Chauhan is the landlord.

10. Assailing the impugned order, counsel for the Plaintiff contends that Trial Court has erred in dismissing the application under Order XII Rule 6 CPC as all ingredients of the said provision were met since Defendant has categorically admitted that he is a tenant in the suit property and paying rent @ Rs.30,000/- p.m. This admission is enough to decree a suit for possession in law. The tenancy is oral and on month-to-month basis, terminable by giving 15 days' notice and the rent is higher than the protected limit under the Delhi Rent Control Act, 1958 and there was no impediment in the Trial Court decreeing the suit in favour of the Plaintiff under Order XII Rule 6 CPC.

11. It is further argued that the only objective of the Defendant is to delay the suit so that Plaintiff is not able to recover the possession of the suit property. Defence of the Defendant in the written statement is totally frivolous and moonshine and it is a settled law that even though

there may not be unequivocal admissions, a defence which is moonshine, is no defence and this itself entitles the Plaintiff to a decree under Order XII Rule 6 CPC. The stand taken by the Defendant is that he is paying rent to Sh. Krishan Chauhan, which cannot be accepted in law since the owner of the suit property was the mother of the Plaintiff and after her death, property had devolved on the Plaintiff along with her father and sister and after the death of her father, who expired on 15.09.2020, being daughters the property can only come to their share as joint owners and no other person can be an owner/ landlord of the suit property.

12. *Per contra*, learned counsel for the Defendant submits that an amendment was sought in the written statement after the death of late Sh. Fateh Singh Chauhan on 15.09.2020 to incorporate the plea that upon his demise, Sh. Krishan Chauhan had become the owner of the shop and the amendment has been allowed, pursuant to which amended written statement has been filed. It is submitted that Defendant has not made any admission on the aspect of landlord-tenant relationship between the parties to the *lis* and in the absence of unequivocal and unambiguous admission, a decree cannot be passed under Order XII Rule 6 CPC and the Trial Court has rightly held that the suit must proceed to trial. It is submitted that Plaintiff is a complete stranger to the Defendant as the Defendant has been paying rent of Rs.30,000/- p.m. earlier to late Sh. Fateh Singh Chauhan and now to Sh. Krishan Chauhan, who lives in the premises and also owns the shop. Plaintiff has herself averred in the plaint that she was embroiled in the litigation with her father and suit for permanent injunction filed by her against him is still pending consideration and it is perhaps for this reason that during his life time, late Sh. Fateh Singh Chauhan had informed the Defendant that Sh. Krishan Chauhan has

become the owner of the shop and the rent will be payable to him after demise of late Sh. Fateh Singh Chauhan.

13. I have heard the learned counsels for the parties and examined the aforesaid contentions.

14. Order XII Rule 6 CPC provides that where admissions of fact have been made in the pleading or otherwise, whether orally or in writing, Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for 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. As held by the Supreme Court in *Karan Kapoor v. Madhuri Kumar*, (2022) 10 SCC 496, the said provision confers discretionary power on a Court who 'may' at any stage of the suit give a judgment with regard to admissions made by one party to the proceeding. Legislative intent clearly shows that the power is discretionary which should be exercised only when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power under Order XII Rule 6 CPC. The objective of the provision is that if the Court is satisfied of the nature of admission, then the parties should not be compelled to face a full-fledged trial and judgment can be directed without recording evidence, which would save judicial time of the Court and time and money of the parties. In a three-Judge Bench decision of the Supreme Court in *S.M. Asif v. Virender Kumar Bajaj*, 2015 SCC OnLine SC 717, the Supreme Court interpreting the word 'may' observed that the power under Order XII Rule 6 CPC being discretionary cannot be claimed as a matter of right. In the said case, a suit for eviction was filed by the landlord against the Appellant-tenant and relationship of tenancy was admitted including the period of Lease Agreement. Plaintiff's claim in

the suit was resisted by the Defendant on the ground that the suit property was agreed to be sold under an Agreement and an advance had been paid. Defendant had in the defence stoutly denied that Plaintiff continued to be the landlord after entering into a Sale Agreement. The Supreme Court was of the view that deciding such questions would require appreciation of evidence and in view of the defence set up, relationship of landlord-tenant was no longer an undisputed fact or an unequivocal admission to entitle the Plaintiff to a decree without trial. In this context, the Supreme Court in **Karan Kapoor (supra)** held that for the purpose of Order XII Rule 6 CPC the admission must be clear and categorical so as to exercise a discretion to decree a suit without considering the defence of the Defendant.

15. In the present case, in the amended written statement, a categorical stand is taken by the Defendant that he was a tenant of late Sh. Fateh Singh Chauhan and in occupation of the suit premises during his life time. While late Sh. Fateh Singh Chauhan was alive, he had informed the Defendant that after his death, Sh. Krishan Chauhan would be the owner of the shop and the rent was to be paid to him. It is stated that Plaintiff is a complete stranger to the Defendant and after the death of late Sh. Fateh Singh Chauhan, Defendant has been paying rent @ Rs.30,000/- p.m. to Sh. Krishan Chauhan and there is a denial of landlord-tenant relationship. It is also pleaded that relationships between the Plaintiff and her father during his lifetime were not cordial and they were embroiled in a separate litigation which is pending. This Court is unable to find any unequivocal, clear or unambiguous admission on part of the Defendant in the written statement which would lead this Court to agree with the Plaintiff that a decree without trial under Order XII Rule 6 CPC is warranted in the present set of facts. Counsel for the Plaintiff is right in his submissions

that for passing a decree for recovery of possession in a landlord-tenant relationship, it is only required to show that the said relationship exists, the rent is not in the protected limit and tenancy has been terminated, however, in the present case, one of the most important ingredients, i.e. landlord-tenant relationship is disputed and therefore, in the absence of a categorical and clear admission on this aspect, a decree cannot be passed under Order XII Rule 6 CPC. The Trial Court has, in my view, rightly dismissed the application holding that there are no admissions and the issues raised in the written statement would require evidence and the suit should proceed to trial.

16. There is no infirmity in the impugned order of the Trial Court warranting any interference at this stage. Revision petition along with pending application is accordingly dismissed with no order as to costs.

MAY 12, 2023/shivam

JYOTI SINGH, J

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