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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Judgment: 10.04.2023***

+ **RFA 277/2023, CM APPL. 16478/2023, 16479/2023,
16480/2023 & 16481/2023**

JASVEER LAL GOUR Appellant

Through: Mr. Md. Azam Ansari, Ms.
Afshan, Mr. Md. Ashfaqque
Ansari and Mr. Mohd. Shahnawaz
Alam, Advocates.

versus

**M/S DELCAP FINANCIAL SERVICES
PVT. LTD.** Respondent

Through: Ms. Sonam Anand and Mr.
Yakesh Anand, Advocates.

**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH**

GAURANG KANTH, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The Appellant/Defendant in the present Appeal is impugning the judgment dated 13.03.2023 ("***Impugned judgment***") in CS DJ No.146/2021 passed by the Court of Additional District Judge-02, South, Saket Courts Campus, New Delhi titled as '***Ms. Decalcap Financial Services Pvt. Ltd. v. Jasveer Lal Gour***'. Vide the Impugned Judgment, the learned Trial Court was pleased to dismiss the Counter Claim filed by the Appellant/Defendant and allowed the Application under Order XII Rule 6 CPC filed by the Plaintiff/Respondent and decree of possession was passed in favour of the Plaintiff.

2. Learned counsel for the Appellant states at the outset that he has filed complete Trial Court Record in accordance with the High Court Rules. The Appellant also filed a certificate in this regard. Learned counsel for the appellant states that the appeal may be heard today itself and no date for hearing of the appeal be fixed as contemplated by sub-Rule 1 of Rule 11 of Order XLI of the Code of Civil Procedure.

THE FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

3. It is the case of the Plaintiff/Respondent that the Defendant was inducted as a tenant in respect of property bearing No. N-43, Sainik Farms, New Delhi-110062 (herein referred to as the “*Suit Property*”) vide lease deed dated 25.09.2020. Pertinently, the lease was fixed for a period of 11 months commencing from 01.11.2020 till 30.09.2021, on an initial monthly rent of Rs. 90,000/- (Rupees Ninety Thousand Only), for the initial period from November 2020 till March 2021 and thereafter for the remaining period, on a monthly rent of Rs. 1,20,000 (Rupees One Lakh Twenty Thousand Only). Further, a security deposit amounting to Rs. 3,00,000 (Rupees Three Lakhs Only) was also supposed to be paid by the Defendant to the Plaintiff in respect of the Suit property.
4. As per the lease deed dated 25.09.2020, the Defendant was *inter-alia* solely responsible for running the business and for the procurement of all the requisite licenses, permissions, sanctions, approvals etc., with regard to running the Bed & Breakfast. It is further the case of the Plaintiff that the Defendant has explicitly agreed to observe/abide by all the rules and regulations.
5. Further, the Defendant stopped the payment of the lease rent from

December, 2020 without any explanation for the same. It is further the claim of the Plaintiff that out of the total security deposit of Rs.3,00,000/-, the Defendant has only paid a sum of Rs. 50,000/- and Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) is yet to be paid.

6. Further, the Plaintiff claims that as the Defendant manifestly failed to pay the rent as well the security amount for the suit property, the Plaintiff resultantly addressed a notice dated 08.01.2021, terminating the lease deed for the non-payment of rent. The Defendant was intimated that as per the lease deed, a representative will come and take over the possession of the suit property to which the Defendant agreed. However, he kept dilly dallying the possession on one pretext or the other, and on one such situation he even cleverly and malafidely called the local police and thereafter also filed a police complaint dated 08.01.2021. However, the police took no action against the Plaintiff as there was no trespassing and even requested the Defendant to pay the outstanding amount.
7. It is further the case of the Plaintiff that the Defendant inspite of several reminders neither cleared the outstanding amount nor vacated the suit property. On 17.01.2021, the Defendant in order to win the trust of the Plaintiff, issued a cheque bearing No. 549323 of Rs.20,000/- in favor of the Plaintiff and promised to vacate the suit property. However, the Defendant again did not vacate the suit property and it was also found out that the above-mentioned cheque was dishonored *vide* return memo with remarks "Funds Insufficient". Accordingly, the Plaintiff issued a legal notice dated 01.02.2021 against the Defendant under Section 138 of the Negotiable

Instruments Act, 1881, which is a pending consideration.

8. The Plaintiff in the meantime also moved before the learned Trial Court and filed a civil suit in CS (OS) No. 146 of 2021 against the Defendant *inter alia* praying for possession, permanent injunction, recovery of arrears of rent, mesne profits and damages with respect to the suit property.
9. Subsequently, on 23.10.2021, the Defendant filed a written statement to the suit *inter-alia* praying for the dismissal of the suit filed by the Plaintiff. It was stated by the Defendant in its written statement that the Defendant was inducted as a tenant in respect of the suit property *vide* lease deed dated 25.09.2020. The lease was fixed for a period of 11 months commencing from 01.11.2020 till 30.09.2021, on an initial monthly rent of Rs. 90,000/- (Rupees Ninety Thousand Only), for the initial period from November 2020 till March 2021 and thereafter for the remaining period, on a monthly rent of Rs. 1,20,000 (Rupees One Lakh Twenty Thousand Only). Further, it was also stated by the Defendant that a Complaint has also been filed by the Plaintiff on 08.01.2021 with SHO, P.S. Neb Sarai *vide* DD No. 32 A, as the Plaintiff with some unauthorized persons illegally entered the suit premises. Further, they threw out the furniture and threatened the workers of the Defendant to face dire consequences, in case they tried to take any legal step.
10. Later, on 26.03.2022, the Plaintiff filed an Application under Order XII Rule 6 CPC stating that the Defendant has *inter alia* admitted the tenant landlord relationship. Further, the lease deed dated 25.09.2020 has also been admitted by the Defendant. Furthermore, it was also admitted by the Defendant that there is no clause in the lease deed

which burdens the Plaintiff to obtain any permission for running of a hotel/Bed & Breakfast in respect of the suit property. Thus, the Plaintiff *inter-alia* prayed for recovery of possession/ejectment with respect to the suit property. Further, it was prayed for the payment of arrears of rent along with interest @18% p.a. It was also prayed for decree of Rs. 10,000/- per day from the date of termination of lease deed towards illegal occupation of the suit property from 25.01.2021 till the date of handing over possession along with an interest @18% p.a. Furthermore, it also prayed for a decree awarding interest @18% p.a on all amounts found due and payable to the Plaintiff.

11. Subsequently, the Defendant filed written submissions to the Application filed by the Plaintiff denying all the claims made by the Plaintiff and *inter-alia* submitted that the Defendant has raised triable issues and the above-mentioned suit CS (OS) No. 146 of 2021 should go for trial and the discretionary powers vested under Order XII Rule 6 CPC should not be exercised by the learned Trial Court.
12. On 27.02.2023, the Defendant also moved an Application under Section 151 of CPC for directing the Plaintiff to place on record the proof of ownership of the suit property. However, it is pertinent to note that the learned Trial Court *vide* its order dated 27.02.2023 disposed of the Application filed by the Defendant and observed that there is no requirement of any direction to the Plaintiff to file the documents of ownership.
13. Pursuantly, the Defendant on 10.03.2023, filed a Counter Claim under Order VIII Rule 6A CPC, stating that the Plaintiff is not the true and absolute owner of the suit property and the Plaintiff has not produced any document to prove his title over the suit property. The Defendant

inter-alia prayed for a decree of compensation for a sum of Rs.8,20,000/- for causing extreme harassment, i.e., mental, physical & financial and fraudulently executing the lease deed dated 25.09.2020. Further, it was prayed that the lease deed dated 25.09.2020 be declared *non-est* in the eyes of law. It was prayed that the decree of declaration be passed for declaring the Plaintiff to be not the absolute owner of the suit property. The Defendant further prayed that the admission of the Defendant regarding tenant-landlord relationship be cancelled in view of the changed facts and circumstances. Furthermore, it was also prayed to refer the matter to the nearest Jurisdictional Magistrate as a criminal complaint under Section 340 read with Section 195 of the CrPC.

14. Learned Trial Court *vide* the Impugned judgment was pleased to dismiss the Counter Claim filed by the Appellant/Defendant and allowed the application under Order XII Rule 6 CPC filed by the Plaintiff/Respondent and a decree of possession was passed in favour of the Plaintiff.
15. Aggrieved by the same, the Appellant/Defendant preferred the present Appeal challenging the Impugned judgment.

SUBMISSIONS OF THE APPELLANT/DEFENDANT

16. Learned counsel for the Appellant/Defendant, Mr. Md. Azam Ansari, initiated his arguments by submitting that the learned Trial Court erred in passing the Impugned judgment and in over zealotness, ignored the basic law relating to a civil suit and counter claim.
17. The case set up by the Appellant/Defendant in its counter claim is that on 26.02.2023, the Defendant came to know that one Malti Devi is the absolute owner of the suit property and not the Plaintiff. The said fact

was brought to notice of the learned Trial Court on 27.02.2023. In view of the subsequent development, the Defendant filed the Counter Claim on 10.03.2023. It is further his case that on 09.03.2023, relatives of Malti Devi had visited the suit property claiming its ownership and have also shown several documents to prove the same. The Appellant informed the relatives that he was inducted as a tenant and is not a trespasser. He furthered his case by submitting that the relatives left the suit property by stating that they will initiate legal proceedings against the Plaintiff. Furthermore, they did not provide any photocopy of those documents despite request.

18. It is the contention of the learned counsel for the Defendant/Appellant that a Counter Claim is treated as a civil suit and a civil suit cannot be dismissed on day one without issuing summons and without granting an opportunity to the Claimant to prove his case by leading evidence on the issues framed. He furthered his submissions by submitting that a written statement to the counter claim is mandatorily required to be filed which was not done by the learned Trial Court in the present case. It is further his submissions that although the word 'may' has been used in Order V Rule 1 CPC but it is mandatory in nature. Hence, the judgment of the learned Trial Court is erroneous on this ground alone.
19. The next thrust of contention raised by the learned counsel for the Defendant is the cost of Rs.1,00,000/- (Rupees One Lakh) imposed by the learned Trial Court is absolutely illegal and unwarranted as the maximum cost that could be imposed under CPC is Rs.3000/- as per Section 35A (2) of CPC.
20. It is further the contention of the learned counsel for the Appellant that the Counter Claim can be filed even after filing of the written

statement by the Defendant but before framing of issues and in certain exceptional cases, counter claim can be filed even after framing of issues but before recording evidence. Mr. Ansari, submitted that in the present case, even the issues were not framed by the learned Trial Court and thus the Appellant was fully entitled in law to file the Counter Claim and further he also contended that the Appellant has filed the Counter Claim within the period of limitation. With regard to that, he relied on the judgment of the Hon'ble Apex Court in the matter of *Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri* reported as **(2020) 2 SCC 394**.

21. It is contended by learned counsel for the Appellant that learned Trial Court ignored the subsequent facts which were made by the Appellant in the Counter Claim which completely nullifies the admission of the Defendant with regard to the landlord-tenant relationship.
22. Lastly, it was submitted by the learned counsel for the Appellant that the learned Trial Court was duty bound to let the matter go for trial to unearth the truth and not use the discretionary power under Order XII Rule 6 CPC, in order to let the Defendant produce evidence. Further, it was also contended by the learned counsel for the Appellant that the Defendant has not clearly, unconditionally and categorically admitted the case of the Plaintiff except the landlord-tenant relationship.
23. The learned counsel heavily relied on *Karan Kapur v. Madhuri Kumar* reported as **(2022) 10 SCC 496** and averred that the discretion under Order XII Rule 6 CPC should only be exercised if there is a clear, categorical and unconditional admission.

SUBMISSIONS OF THE RESPONDENT/PLAINTIFF

24. *Per Contra*, Ms. Sonam Anand, learned counsel for the Respondent/Plaintiff while relying on the Impugned judgment submitted that the Impugned judgment passed by the learned Trial Court is legal, well-reasoned and does not need interference of this Hon'ble Court.

25. It is the contention of the learned counsel for the Plaintiff/Respondent that the Defendant admitted the following facts which squarely falls within the ambit of Order XII Rule 6 CPC:

- a) He has been living as a tenant in the suit property and had taken the suit property on lease *vide* lease deed dated 25.09.2020. The Defendant admitted the tenancy and the lease deed in his statement dated 23.12.2021 given under Order X of CPC. In the statement dated 23.12.2021, it was admitted that the Defendant was asked to vacate the suit property by the Plaintiff.
- b) The lease deed dated 25.09.2020 was executed for a period of 11 months i.e., from 01.11.2020 to 30.09.2021 and the tenancy of the Defendant has come to an end by efflux of time on 30.09.2021.
- c) He has only paid Rs.1,50,000/- and has not paid any other amount, despite being in the suit premises.
- d) There is no clause in the lease deed which burdens the Plaintiff to obtain any permission for running of a hotel/Bed& Breakfast in respect of the suit property. Further, he has also admitted that the permission for running hotel/bed & breakfast in respect of his other rented premises at Tughlakabad was obtained by the Defendant himself.
- e) The Defendant in para 8 of the Para wise reply of his written statement submitted that the contention of the Plaintiff with regard

to the payment of the security deposit of Rs.3,00,000/-, need no reply and hence admitted the requirement of the payment of the security deposit.

f) Lastly, the Defendant in his statement given under Order X of CPC had admitted the dishonour of cheque bearing No. 549323 of Rs.20,000/- due to “Funds Insufficient”.

26. Accordingly, the Plaintiff/Respondent prayed for the dismissal of the Appeal filed by the Appellant/Defendant.

LEGAL ANALYSIS

27. This Court had heard the rival contentions of both the parties and perused the documents placed on record.

COUNTER- CLAIM

28. It is the contention of the learned counsel for the Defendant/Appellant that a Counter Claim is treated as a civil suit and a civil suit cannot be dismissed on day one without issuing summons and without granting an opportunity to the Claimant to prove his case by leading evidence on the issues framed. He furthered his submissions by submitting that a written statement to the Counter Claim is mandatorily required to be filed which was not done by the learned Trial Court in the present case. It is further his submission that although the word ‘may’ has been used in Order V Rule 1 CPC but it is not mandatory in nature. It has also been argued by the learned counsel for the Appellant that the Counter Claim can be filed even after filing of the written statement by the Defendant but before framing of issues and in certain exceptional cases, Counter Claim can be filed even after framing of issues but before recording evidence

29. At this juncture, it is apposite to set out herein below Order VIII Rule 6-A CPC, which pertains to the Counter Claim, reads as under:

“Order 8 Rule 6-A:

6-A. Counterclaim by defendant.—(1) *A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not:*

Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.

(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints.”

30. The majority decision of the three Judge Bench of the Hon’ble Supreme Court in the matter of **Ashok Kumar Kalra** (*supra*) has held that:

“17. The time limitation for filing of the counterclaim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation

Act, 1963 as the time-barred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A.

21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed...

31. In the present matter, the Defendant filed the written statement on 23.10.2021, however, the Defendant himself mentioned in the counter claim filed that the cause of action had first arisen on 26.02.2023. Thus, in terms of Order VIII Rule 6-A CPC, there is an embargo to the Counter Claim filed by the Defendant.

32. Further, it is quintessential to examine the conduct of the Defendant from the orders passed by the learned Trial Court:

Firstly, Plaintiff filed an Application under Order XII Rule 6 CPC, however, inspite of the Defendant seeking time and persistent directions passed by the learned Trial Court *vide* its orders dated 28.03.2022, 07.06.2022, 14.11.2022, 15.11.2022, the Defendant filed the reply to the Application under Order XII Rule 6 CPC only on 27.02.2023. The above conduct of the Defendant is evident from the order dated 17.02.2023. *Vide* this order the learned Trial Court has also observed that the Defendant had not filed a reply to the Application under Order XII Rule 6 CPC and had further also sought an adjournment for 6 weeks and the learned Trial Court rightly observed that even though sufficient opportunities have been granted to the Defendant to file the reply. *Howbeit*, the defendant tactically changed

the counsel every now and then just to gain the time and to delay the proceedings.

Relevant part of the order is reproduced hereunder:

“Sh. Mohd. Mustafa, Ld. counsel for the defendant who was earlier representing the defendant. Mr. Mustafa submits that in view of the fact that the defendant has engaged a new counsel, he may be discharged. He also submits that he has already returned the file to the defendant on 27.01.2023.

Considering the submission, Ld.counsel is discharged from this case.

Ld. counsel for the defendant submits that he has not received the certified copies. Earlier Ld. counsel was arguing that his client had not given the file as he did not have the file. However, after hearing the submissions of earlier counsel, now the defendant submits that he has lost his file in auto. This is a substantial improvement in the submission made on behalf of the defendant.

Perusal of record would show that the application under Order XII rule 6 CPC is pending since 28.03.2022. Various opportunities have been granted to the defendant to file reply to the said application. Vide order dated 07.06.2022, further opportunity was granted for filing reply subject to cost of Rs 20,000/- to be deposited in DLSA South. The reply was not filed. On 14.11.2022, the defendant had appeared alongwith his counsel in presence of counsel for the plaintiff. It was noticed that previous cost was not paid by the defendant. On 15.11.2022, fresh vakalatnama was filed on behalf of the defendant and he informed that the defendant had paid the previous cost. However, it is informed today that the said cost was paid to counsel for the plaintiff and that it was not deposited in the DLSA. Be that as it may, on 15.11.2022 one last and final opportunity was granted to the defendant to file reply subject to further cost of Rs.20,000/- to be paid to the plaintiff. In these circumstances, the cost imposed vide order dated 15.11.2022 which was directed to be paid to the plaintiff is considered to be already paid in view of the above-mentioned fact that the previous cost was paid by the defendant to the plaintiff. However, the defendant is directed to deposit the balance cost of Rs.20,000/- in the account of DLSA south. Ld. counsel submits that defendant will pay the cost in next three days.

Today one application has been filed on behalf of the defendant for deciding the application of the defendant seeking adjournment of the six weeks which was moved on 28.01.2023.

Submissions on application heard. Sufficient opportunities have been granted to the defendant to file the reply. It appears that the defendant tactically changes the counsel every now and then just to gain the time and to delay the proceedings. The application seeking adjournment for six weeks as above mentioned is therefore, without merits. It is dismissed and disposed of accordingly. Accordingly, the application moved today is also disposed of."

Secondly, the malafide conduct of the Defendant is also evident from various applications, such as Application under Order VII Rule 11 CPC, wherein the Defendant had questioned the jurisdiction of the learned Trial Court, however, the application was dismissed by the learned Trial Court *vide* its order dated 28.03.2022. Further, another Application for adjournment for 6 weeks was also filed by the Defendant which was also dismissed by the learned Trial Court *vide* its order dated 17.02.2023. Furthermore, an Application was also filed by the Defendant under Section 151 of the CPC seeking directions to the Plaintiff to place on record the proof of ownership of the suit property, however, the learned Trial court had dismissed that application *vide* its order dated 27.02.2023. Relevant part of the order dated 27.02.2023 is reproduced hereunder:

"The plaintiff has filed the present suit against the defendant seeking possession of the suit property, arrears of rent, mesne profits and damages qua the property bearing No. N-43, Sainik Farms, New Delhi. The plaintiff has claimed itself to be the absolute owner of the suit property while the defendant is stated to be a tenant in the suit property. A lease deed dated 25.09.2020 is also stated to be executed between the parties. The defendant in his WS has admitted that he was inducted as tenant by the plaintiff in the suit property. Once, the defendant admits that he is in possession of the suit property as tenant of the plaintiff, the plaintiff is not required to prove his ownership in such a suit. Therefore, there is no requirement of any

directions to the plaintiff to file the documents of ownership of the suit property. The application is therefore, dismissed and disposed of accordingly.”

33. Further, after the dismissal of Application of the Defendant seeking directions to the Plaintiff to place on record the proof of ownership of the suit property, was dismissed, the Defendant on 10.03.2023, filed a Counter Claim under Order VIII Rule 6A CPC, *inter-alia* on the ground that since the Plaintiff is not the true and absolute owner of the suit property and the Plaintiff has not produced any document to prove his title over the suit property and one Mrs. Malti Devi is the true and absolute owner of the suit property. Hence, the Plaintiff has fraudulently executed the lease deed dated 25.09.2020 with the Defendant and it should be declared *non-est* in law. Further, one of the prayers in the Counter Claim is that in view of the new facts, that the Plaintiff is not the owner of the suit property, the admission of the Defendant regarding tenant-landlord relationship be cancelled. The Defendant further goes on to say in his counter claim that even though the Appellant had requested the relatives of Mrs. Malti Devi to handover the photocopies of the property documents. However, they refused to hand over the same to the Defendant.
34. After the perusal of the orders of the learned Trial Court and the counter claim, it is clear from the conduct of the Defendant, that the Defendant had adopted dilatory tactics and filed the counter claim just to delay the disposal of the suit.
35. Even otherwise, the Defendant in terms of Section 116 of the Indian Evidence Act, 1872, the tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy. Further, it is needless to

emphasize that admission of a party in the proceedings is the best evidence and the same does not need any further corroboration. Hence, the prayer with regard to the admission of the Appellant with regard to landlord-tenant relationship cannot be cancelled. Further, the Defendant also cannot claim that he has been harassed by the Plaintiff only because some party has approached him claiming ownership of the suit property.

36. At the outset, this Court is also of the opinion that there is no gainsaying that the procedural justice is imbued to provide further impetus to the substantive justice. It is this extended procedural fairness provided by the national courts, which adds to the legitimacy and commends support of general public. On the other hand, we must be mindful of the legislative intention to provide for certainty and clarity. In the name of substantive justice, providing unlimited and unrestricted rights in itself will be detrimental to certainty and would lead to the state of lawlessness. In this regard, this Court needs to recognize and harmoniously stitch the two types of justice, so as to have an effective, accurate and participatory judicial system. Rules of procedure must not be interpreted in a manner that ultimately results in failure of justice. Hence, from the conduct of the Defendant, it seems that the Defendant had adopted dilatory tactics and filed the counter claim just to delay the disposal of the suit. Further, it is a cardinal rule of our jurisprudence that procedural provisions are not meant to thwart the course of justice, but to advance it.
37. Another issue raised by the learned counsel for the Defendant is with regard to the cost of Rs.1,00,000/- imposed by the learned Trial Court. It is his claim that the cost imposed is absolutely illegal and

unwarranted as the maximum cost that could be imposed under CPC is Rs.3000/-.

38. The learned Trial Court *vide* its Impugned judgment has held as follows:

“A cost of Rs. 1,00,000/- is also imposed on the defendant for filing such a frivolous counter claim just to delay the matter. Out of the cost Rs. 50,000/- shall be paid to the plaintiff and remaining amount of Rs. 50,000 /- shall be deposited in DLSA, South, Saket. The counter claim is disposed of accordingly.”

39. In this regard it is profitable to refer to the judgment of the Hon’ble Supreme Court in the matter of **Ashok Kumar Mittal v. Ram Kumar Gupta**, reported as (2009) 2 SCC 656:

“6. Under Section 35 of the Code, award of costs is discretionary but subject to the conditions and limitations as may be prescribed and the provisions of any law for the time being in force. Under Section 35-A, compensatory costs for vexatious claims and defences may not exceed Rs 3000. Further, the primary object of levying costs under Sections 35 and 35-A CPC, is to recompense a litigant for the expense incurred by him in litigation to vindicate or defend his right. It is therefore payable by a losing litigant to his successful opponent. When an appellant or a plaintiff has already paid the prescribed court fee in regard to the appeal or suit, to the State at the time of institution, it is debatable whether any costs can be awarded to the State by way of penalty, in a litigation between two private parties. Courts will have to act with care while opening new frontiers.

7. One view has been that the provisions of Sections 35 and 35-A CPC do not in any way affect the wide discretion vested in the High Court in exercise of its inherent power to award costs in the interests of justice in appropriate civil cases. The more sound view however is that though award of costs is within the discretion of the Court, it is subject to such conditions and limitations as may be prescribed and subject to the provisions of any law for the time being in force; and where the issue is governed and regulated by Sections 35 and 35-A of the Code, there is no question of exercising inherent power contrary to the specific provisions of the Code.

8. Further, the provisions of Section 35-A seem to suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded, in addition to regular costs, shall not exceed Rs 3000. It is also to be noted that huge costs of the order of rupees fifty thousand or rupees one lakh, are normally awarded only in writ proceedings and public interest litigations, and not in civil litigation to which Sections 35 and 35-A are applicable. The principles and practices relating to levy of costs in administrative law matters cannot be imported mechanically in relation to civil litigation governed by the Code.

9. The present system of levying meagre costs in civil matters (or no costs in some matters), no doubt, is wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation borne out of ego or greed, or resorted to as a “buying-time” tactic. More realistic approach relating to costs may be the need of the hour. Whether we should adopt suitably, the western models of awarding actual and more realistic costs is a matter that requires to be debated and should engage the urgent attention of the Law Commission of India.

10. We do not however propose to examine or decide the above issues here, except to observe that courts should not exceed or overlook the limitations placed by the Code with reference to costs in civil litigation. Insofar this case is concerned, even though the order relating to costs may not strictly be correct, we do not propose to interfere with the same, in exercise of our jurisdiction under Article 136, as the order has not resulted in any injustice. It is stated that the respondents have already deposited the costs. The time for deposit of costs by the petitioner is extended at his request by a month from today.

11. We would however like to refer to two aspects of the order of the High Court relating to costs. The first is, whether a court, having reached a conclusion that a party deserves to be prosecuted for perjury, should let him off with what it considers to be a stiff penalty by way of costs, on the ground that courts are overburdened with work. We propose to leave open for the present, this question involving moral and ethical issues.

12. The second aspect relates to the recipient of the costs. In para 38 of the impugned judgment, the High Court specifically stated that it had decided to saddle the parties with heavy costs to be paid to the State which spends money on judicial infrastructure. Having said so, in para 39, the High Court directed that the costs should be paid to the Delhi High Court Legal Services Committee. The High Court Legal Services Committee, a statutory authority under the Legal Services Authorities Act, 1987, is not the “State” that spends money on

providing judicial infrastructure, referred to in the earlier para. Once the Court held that costs had to be paid to the State, it should have directed payment of the costs to the State and not the High Court Legal Services Committee.

13. No litigant should be made to feel that heavy costs are being levied in some cases by Judges to create a corpus or expense fund for the High Court Legal Services Committee or the State Legal Services Authority. While levy of a uniform token sum, as costs payable to the Legal Service Authority/Committee by way of a deterrent fine, in regard to non-compliance with procedural requirements, delays in representation of papers, etc. may not be objectionable, levy of huge amounts as costs in selected cases, made payable to the Legal Service Authorities, may invite adverse comments and evoke hostility to legal services in general. We have also come across cases of costs being levied and made payable to some non-party charitable organisations. Levy of such costs should be avoided.”

14. The Delhi High Court Legal Services Committee when it receives the sum of rupees two lakhs as costs from the parties, shall make over the same to the State Government as directed in para 38 of the impugned judgment. Let a copy of this order be sent to the Delhi High Court Legal Services Committee, for compliance.

In view of the above judgment of the Hon’ble Supreme Court in **Ashok Kumar Mittal** (*supra*) the Impugned Judgment of the learned Trial Court, to the extent it levies costs of Rs. 1,00,000/- on the Defendant is set aside and in its place, it is directed that the Defendant shall pay the costs of Rs.3000/- as exemplary costs to the Plaintiff.

Order XII Rule 6 CPC Application:

40. Now coming to the Application filed by the Plaintiff under Order XII Rule 6 of CPC which deals with judgment on admission. It is reproduced hereunder:

“6. Judgment on admissions.- (1) Where admissions 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 thing fit, having regard to such admissions.”

41. For passing a judgment/decreed sought on admission in the facts of the present matter, the Defendant should have made admissions on three essential aspects i.e. :-

i) There is relationship of landlord and tenant between the parties.

(ii) The rate of rent of the suit property is above Rs. 3,500/- per month and The Delhi Rent Control Act, 1958 should not be applicable to the suit property; and

iii) Tenancy was terminated.

42. This Hon'ble Court in the matter of ***Delhi Jal Board v. Surender P. Malik*** reported as ***2003 SCC OnLine Del 292*** has explained the object of filing an Application under Order XII Rule 6 CPC.

“8. The provision confers almost sweeping powers on the Court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. The only pre-requisite for this is that there must be admissions of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing. Such admission of facts must be clear and unequivocal, unconditional and unambiguous and may relate to the whole claim or a part of it. These need not be made specifically or expressly and could be a constructive admission also. Whether or not such admission arose in the suit would depend on the facts and circumstances of the case. If it involved disputed facts, claims and counter claims requiring evidence of parties for determination of issues or where the defence of a party touched the root of the matter, a judgment could not be passed under Order, 12 Rule 6 dispensing with the trial because the valuable right of going to trial could not be taken away from the party unless the claim was admitted. A duty was, therefore, cast on the court to ascertain the admission of facts and to render judgment on these either in respect of the whole claim or part of it. The court could do so on its own or on the application of a party and without waiting for the determination of any other question between the parties. It could do so at any stage of the suit. Dealing with the scope of provision. Supreme Court said

in Uttam Singh Duggal v. Union, (2000) 7 SCC 120 : AIR 2000 SC 2740:—

“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. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain a speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

43.This Hon’ble Court in the matter of ***Rajpal Singh v. Deen Dayal Kapil*** reported as 2014 SCC OnLine Del 337, wherein it was held that two things are required to be established by Plaintiff-landlord. *Firstly*, the existence of the jural relationship of landlord and tenant between the parties and *Secondly*, 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.

“...6. 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 Code of Civil Procedure,...”

(Emphasis supplied)

44.Now coming to the factual matrix of the present case, in order to appreciate this controversy, it will be quintessential to peruse the written statement of Defendant. Relevant part of the written statement is reproduced hereunder:

“4. That it is submitted that the defendant was inducted as tenant by the plaintiff with respect to the Property i.e. Entire N-43, Sainik Farm, New Delhi with servant quarters in with all its easements and appurtenances for residential and bed and break fast purpose. It is submitted that a lease agreement dated 25.9.2020 was executed between the plaintiff and defendant for a period of 11 months w.e.f. 1.11.2020 to 30.9.2021 at a initial rent of Rs.90,000/- from November 2020 to March 2021 and thereafter rent will be increased to Rs.1,20,000/- pm excluding electricity and water charges.”

45. After careful perusal of the written statement filed by the Defendant/Appellant, it is found that the Defendant in the instant case has categorically accepted the relationship of landlord- tenant with the Plaintiff. Further, the Defendant has also accepted that the Defendant was supposed to pay an initial monthly rent of Rs. 90,000/-, for the initial period from November 2020 till March 2021 and thereafter for the remaining period, on a monthly rent of Rs. 1,20,000 i.e. exceeding Rs. 3500/- which brings the tenancy out of the purview of the Delhi Rent Control Act. The Defendant has also admitted the lease deed dated 25.09.2020, which was executed between the Plaintiff and the Defendant. Furthermore, as regards the termination of tenancy, it is argued by the Plaintiff that a notice dated 08.01.2021 was issued to the Defendant terminating his tenancy. The legal notice along with postal receipt and tracking report has been filed before the learned Trial Court. Even though, the Defendant has denied receiving of the legal notice, however, it is trite law that, service of summons can be considered as service of notice as per law. Hence, all the three conditions required to be proved for deciding an application under Order XII Rule 6 CPC has been fulfilled.

46. It is further the contention of the learned counsel for the Appellant that the learned Trial court ignored the subsequent facts which were made

by the Appellant in the Counter Claim which completely nullifies the admission of the Defendant with regard to the landlord-tenant relationship. With regard to the above contention, this Court is of the opinion that admittedly the Defendant is a tenant in the suit property who took the suit property on rent. It is settled law that a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872. Further, even if assuming without conceding that the Plaintiff does not have a title/ownership of the suit property, if at all a real owner exists, he has the right to recover against the Plaintiff in any appropriate proceedings before the Court of law. Hence, the contention of the Defendant that the Plaintiff is not the owner of the suit property and fraudulently made the Defendant sign the lease deed is invalid and bad in law.

47. Further the Hon'ble Supreme Court in the matter of **Anar Devi v. Nathu Ram**, reported as (1994) 4 SCC 250 has held as follows:

"11. "Doctrine of tenant's estoppel" which governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them, is well settled. Jessel, M.R., who adverted to that doctrine in Stringer's Estate, Shaw v. Jones-Ford [LR 6 Ch D 1 : 37 LT 233 : 25 WR 815] explains it thus:

"Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title, as, for instance, if he takes for twenty-one years and he finds that the landlord has only five years' title, he cannot after five years set up against the landlord the jus tertii, though, of course, the real owner can always recover against him. That is a perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and

having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract."

12. Indeed, the said doctrine of tenant's estoppel, finds statutory recognition in Section 116 of the Indian Evidence Act, 1872, for short 'the Evidence Act', in that, it states that "no tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property".

48. It is also the contention of the learned counsel for the Appellant that it was the duty of the Plaintiff to provide requisite permission to run a Bed and Breakfast in the suit premises. However, the Plaintiff in spite of repeated requests also did not get the permission and as a result the Defendant was not able to run his business. *Au Contraire*, the learned counsel for the Plaintiff argued there is no clause in the lease deed which burdens the Plaintiff to obtain any permission for running of a hotel/Bed & Breakfast in respect of the suit property. Further, it was her submission that the Defendant has also admitted that the permission for running hotel/Bed & Breakfast in respect of his other rented premises at Tughlakabad was obtained by the Defendant himself.

49. A close reading of the lease deed dated 25.09.2020, which was executed between the Plaintiff and the Defendant is clearly and unequivocally admitted by the Defendant clearly states that the lessee/defendant should be the person to abide by the laws, rules, regulations of local authorities, RWA in respect of the suit property. Further, it is also mentioned that the lessee/defendant would be solely responsible to observe all rules and regulations with respect to the suit property and as prescribed under the laws or regulations applicable to

it and in case of any violation of the said provisions and regulations, the lessee/defendant would be solely responsible for it. Hence, the contention of the Defendant in this regard cannot be accepted.

50. Alternatively, even the learned Trial Court *vide* its order dated 23.12.2021 has also observed that there is no recital in lease pointed out by the Defendant side to the effect that the Plaintiff was under any obligation to apply for and obtain any permission for the defendant for running hotel/Bed & Breakfast facility in the suit premises, no such objection seems to legitimately available to the Defendant and this Court is in full agreement with the same:

“Defendant had been running the similar business prior to taking the suit property on lease, and admitted to have obtained the permission in respect of the another property. Having regard to the fact that there is no recital in lease pointed out by the defendant side to the effect that the plaintiff was under any obligation to apply for and obtain any permission for the defendant for running hotel/bread and breakfast facility in the suit premises, no such objection seems to legitimately available to the defendant.”

51. In view of aforesaid discussions, there are clear, unambiguous and unequivocal admissions on the part of the Defendant regarding existence of relationship of landlord and tenant between the parties, monthly rent of suit property being above Rs. 3500/- and further termination of tenancy *vide* legal notice dated 08.01.2021 has also been proved with the help of postal receipt and tracking report. As such, no triable issue is left to be adjudicated upon so far as the relief of possession as claimed by the Plaintiff is concerned and suit is liable to be decreed on the basis of admission made by the Defendant. Hence, the learned Trial Court rightly allowed the application moved by the Plaintiff under Order XII Rule 6 CPC and granted a decree of

possession in favour of the Plaintiff and against the Defendant in respect of the suit property.

52.As discussed hereinabove in detail, the learned Trial Court rightly dismissed the Counter Claim filed by the Defendant and allowed the Application filed by the Plaintiff under Order XII Rule 6 CPC. However, the cost imposed by the learned Trial Court is reduced from Rs.1,00,000/- to Rs.3,000/-.

53.Appeal is disposed of in the above terms. All the pending applications are also dismissed.

GAURANG KANTH, J.

APRIL 10, 2023

PS