

\$~54

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

% Judgment delivered on: 11.05.2023

+ CM(M) 785/2023

AJAY SAXENA

..... Petitioner

versus

KIRAN BHAGWASIYA AND ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Puneet Goyal and Mr. Kanishk Kharbanda, Advocates.

For the Respondents : Ms. Neha Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 24433/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 24432/2023 (for delay in filing)

3. For the reasons stated therein, the application is allowed. The delay in filing the present petition is condoned.
4. The application stands disposed of.

CM(M) 785/2023

5. Petitioner challenges the order dated 19.01.2023 passed by the learned Trial Court in CS DJ No. 980/2021 titled as “*Ajay Saxena vs. Kiran Bhagwasiya and Anr.*” whereby an application under Order XII Rule 6 of the CPC, 1908 filed by the petitioner/ plaintiff, was dismissed.

6. Learned counsel submits that the learned Trial Court had made an error in not appreciating the statements made by the respondents while applying for the anticipatory bail as also in the settlement argument, which had taken place between the parties in the mediation centre.

7. Learned counsel submits that the learned Trial Court without considering the admissions as considered under the provisions of Order XII Rule 6 of the CPC, 1908, has expanded the scope of examination of Order XII Rule 6 by referring to and going into irrelevant factual aspects which are yet to be considered by the learned Trial Court during trial.

8. Learned counsel submits that the respondent has categorically admitted the crucial aspects of the facts as mentioned in the plaint.

9. This Court had asked the learned counsel to show from any document or the pleadings like written statement etc. any such statement whereby it could be construed that the admissions are unambiguous and unequivocal in terms of the provisions of Order XII Rule 6 as also the catena of judgments starting from the judgment of the Supreme Court in *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India and Others* reported in (2000) 7 SCC 120, whereby it was categorically observed that for a decree to be drawn on admissions under Order XII Rule 6, it is a burden of the plaintiff to show that such admissions are unambiguous.

10. Learned counsel despite repeated queries of this Court has not referred to even one paragraph in the written statement which would show that there has been any unambiguous admission of the facts leading to a decree under Order XII Rule 6 CPC.

11. Learned counsel has referred to a Bailiff's report annexed at page No. 263 of the paperbook to show admissions.

12. This Court is unable to understand or appreciate as to how a Bailiff's report would be considered as an admission by the respondents/ defendants to the statement of facts contained in the plaint.

13. This Court has perused the settlement agreement as brought out in the impugned order at para 5 as also para 2 of the anticipatory bail application and keeping in view the averments of the written statement, this Court is not convinced that the same would be construed as an admission which are unambiguous and unequivocal.

14. This Court has cursorily perused the written statement and has not been able to ascertain any unequivocal admission on the part of the respondents/ defendant entitling the petitioner/ plaintiff to a decree forthwith.

15. At this stage, learned counsel seeks permission to withdraw the petition, the same is refused.

16. Ms. Neha Kapoor, learned counsel appears for the respondents on an advance notice.

17. In view of the aforesaid, this Court is of the considered opinion that there is no clear or unambiguous and unequivocal admission on the part of the respondents to entitle the petitioner to seek decree forthwith

under Order XII Rule 6 of the CPC, 1908.

18. Accordingly, the present petition is dismissed with no order as to costs.

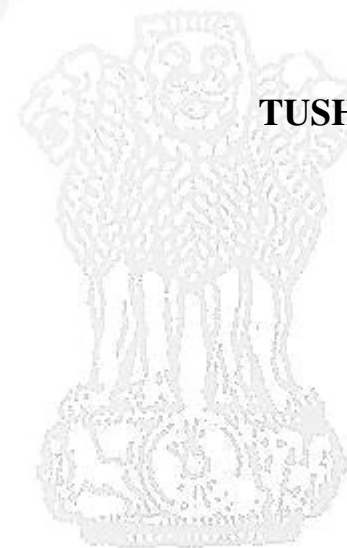
19. However, it is made clear that the aforesaid observations made hereinabove shall not tantamount to an expression on the merits of the case.

20. Learned Trial Court shall proceed with the hearing of the matter uninfluenced by the observations made herein.

TUSHAR RAO GEDELA, J.

MAY 11, 2023

nd



सत्यमेव जयते