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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 02nd June, 2023

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C.R.P. 87/2022 & C.M. APPL. 29381/2022, 45118/2022

GURMEET SINGH

..... Petitioner

Through: Mr. A.K. Singla, Senior
Advocate with Mr. R.S. Chaggar and
Mr. Akshit Sachdeva, Advocates.

versus

MANJEET KAUR & ANR.

..... Respondents

Through: Ms. Monika Arora, Mr. Yash
Tyagi and Mr. Subhrodeep Saha, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Present revision petition has been filed by the Petitioner challenging the impugned judgment and decree dated 04.02.2022 passed by the Trial Court decreeing the suit in favour of the Respondents herein under Order XII Rule 6 CPC to the extent of relief of possession. Petitioner herein was the Defendant before the Trial Court and Respondents were the Plaintiffs and parties are referred to by their litigating status before the Trial Court, hereinafter.

2. Factual matrix is in a narrow compass. Plaintiffs filed a suit under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') seeking possession of the suit property being first floor with roof rights measuring 95 sq. yds. i.e. (79.43 sq. meters) and roof rights of third floor area measuring 50 sq. yards. i.e. (41.80 sq. meters) out of built-up property bearing Municipal No. CB-8, Hari Nagar,



Clock Tower, New Delhi-110064 as well as for injunction and damages predicated on the ownership of Plaintiff No.2 and settled possession till 05.03.2019. Case of the Plaintiffs before the Trial Court was that Defendant in collusion with one Shri Joginder wanted to grab the property of the Plaintiffs and construct a multi-storeyed building on the suit property and thus repeatedly requested the Plaintiffs to sell the property. On 31.08.2018, terms of sale were settled between Plaintiff No.2 and the Defendant in presence of the property dealer and Defendant entered into an Agreement to purchase the suit property for a total sale consideration of Rs.57 lacs and a Receipt-cum-Agreement with blanks filled up in hand was signed between the parties and Shri Joginder was the attesting witness. Rs.1 lac was received as earnest money by the Plaintiffs and the remaining amount of Rs.56 lacs was to be paid by the Defendant within 120 days i.e. till 31.12.2018 since the Sale Deed was to be executed by the said date.

3. It is averred in the plaint that Defendant gave a further payment of Rs.1 lac to Plaintiff No.2 on 21.09.2018 and on 14.11.2018 requested for grant of 20-25 days for arranging the balance amount. Conceding to the request, Plaintiff No.2 entered into a fresh agreement dated 15.11.2018, which was witnessed by Shri Joginder and as per this Agreement Sale Deed was to be executed on 25.01.2019 only after full and final payment of the balance amount. On 17.11.2018, a further sum of Rs.4 lacs was paid to Plaintiff No.2 and a receipt to this effect was executed by the Defendant himself.

4. In the last week of December, 2018, it is stated that Defendant once again sought more time to clear the balance payment on the ground that he was having a problem in sanction of the loan from the



Bank as Plaintiff No.2 was GPA holder of the suit property and accordingly on his advice, Plaintiff No.2 executed a Gift Deed in favour of Plaintiff No.1 to facilitate the sanction of loan. Gift Deed was accordingly executed on 09.01.2019, however, on 20.01.2019 Defendant again sought 30 days for clearing the balance sale consideration.

5. In order to ensure that the transaction goes through and no further extension is sought by the Defendant, a legal notice was sent by Plaintiff No.2 to the Defendant calling upon him to appear before the Sub-Registrar on 25.01.2019 with Rs.51 lacs, the balance sale consideration. On 25.01.2019, Plaintiffs visited the office of Sub-Registrar-IIB, Janakpuri and their presence is established by two receipts bearing Nos. 38590 and 38591, however, Defendant did not come with the demand draft. He nonetheless expressed his willingness to conclude the transaction and assured payment of balance sale consideration.

6. Plaintiffs averred that they shifted some of their household articles from the suit property to their daughter's house at Noida on 20.01.2019 since they were assured that the Sale Deed will be executed in the near future. However, much to their shock on 02.02.2019, Defendant along with Shri Joginder and four musclemen entered the suit property and threatened the Plaintiffs which led to Plaintiff No.2 lodging a police complaint. This was soon followed by the Defendant again coming back on 16.02.2019 to the suit property to take forcible possession in which process he threatened and used unparliamentary language against Plaintiff No.2 and his daughter. While Plaintiffs were at their daughter's house, on 05.03.2019 one of



the neighbours informed them that at 11:45 a.m. some unknown persons in the presence of the Defendant had tried to break open the lock. On reaching the suit property on 07.03.2019, Plaintiffs discovered that the lock had been changed on the main door and with the help of the Police they put their own lock. On 08.04.2019, Plaintiff No.2 was informed that Defendant had forcibly entered the suit premises and placed his luggage and household articles by breaking open the lock. Several requests were made thereafter to the Defendant to hand over the possession but to no avail and an FIR is pending against the Defendant in this regard for trespass.

7. It is in the aforesaid circumstances that the Plaintiffs filed a suit under Section 6 of the Act for possession, injunction and damages. Upon service of summons, Defendant filed a written statement in which it is stated that a deal for sale of the suit property was finalized on 31.08.2018 and Defendant paid Rs.1 lac to Plaintiff No.2 as an advance on 31.08.2018 followed by another sum of Rs.1 lac on 21.09.2018. After payment of further amount of Rs.4 lacs, Agreement to Sell was executed on 15.11.2018 and balance sale consideration of Rs.51 lacs was to be paid on or before 25.01.2019. On repeated requests of Plaintiff No.2, a further sum of Rs.29 lacs was paid in December, 2018 against acknowledgement on the back side of the receipt executed on 15.11.2018. Since Plaintiff No.2 had received Rs.35 lacs, he handed over the keys of two rooms, kitchen and bathroom of the first floor on 21.01.2019 with an assurance that Sale Deed would be executed on 25.01.2019. However, Plaintiffs did not execute the Sale Deed although Defendant appeared before the Sub-Registrar on 25.01.2019 and purchased a stamp paper for execution of



the Deed. It is stated that Defendant was always ready and willing to perform his part of the contract and has also filed a suit for specific performance.

8. Subsequent thereto along-with the replication, Plaintiffs filed an application under Order XII Rule 6 CPC seeking decree on admission on the ground that Defendant has admitted the ownership of Plaintiff No.2 of the suit property as also execution of documents such as Agreement to Sell dated 15.11.2018, Gift Deed, Receipt-cum-Agreement dated 31.08.2018 and the fact that Defendant is in possession of the suit property since 20.01.2019. Plaintiffs contended that Defendant cannot take refuge under Section 53-A of Transfer of Property Act, 1882 (hereinafter referred to as the 'TP Act') by stating that he was given possession of the suit property in part performance of the Agreement to Sell since the agreement was unregistered as also in view of a stipulation in the Sale Agreement that possession shall be given only after receipt of the full sale consideration.

9. In response to the application, Defendant stated that there was no admission in the written statement entitling the Plaintiffs to a decree on admission. Plaintiffs have received Rs.35 lacs and the property was handed over to the Defendant peacefully on 20.01.2019 in part performance of the Agreement to Sell.

10. Trial Court by the impugned judgment has allowed the application under Order XII Rule 6 CPC and partially decreed the suit to the extent of relief of possession on the ground that there was unambiguous admission of the Defendant that Plaintiff No.2 is the owner of the suit property which he had agreed to sell for Rs.57 lacs and has also admitted the possession. Court also held that the defence



set up by the Defendant under Section 53-A of TP Act was no more than a smoke screen in view of the admitted position that Agreement to Sell was unregistered and insufficiently stamped. To so conclude, Trial Court relied upon judgments of this Court, wherein it is held that after amendment to Section 53-A of TP Act w.e.f. 24.09.2001, benefit of Agreement to Sell in the nature of part performance cannot be given unless the agreement is registered before the Sub-Registrar and is stamped for the value of 90% of the sale consideration of the property.

11. Defendant has filed the present revision petition challenging the impugned judgment on the grounds: (a) there are no clear, unqualified or unambiguous admissions in the written statement with regard to alleged dispossession of the Plaintiffs from the suit property, warranting a decree on admission under Order XII Rule 6 CPC; (b) to grant relief under Section 6 of the Act on the basis of admission of the Defendant, admission regarding forcible dispossession or dispossession without consent by the Plaintiff is an essential ingredient and in the present case Defendant never admitted that he had forcibly dispossessed the Plaintiffs and on the contrary the plea in the written statement is that Plaintiffs handed over possession of the suit property to the Defendant in part performance of the Agreement to Sell. Reliance was placed on the judgment of the Division Bench of this Court in *Kiran Abnashi Chawla & Anr. v. Marguerite Chawla, 2016 SCC OnLine Del 1513*; (c) admission of the fact that Plaintiff No.2 was the owner of the suit property or that an Agreement to Sell had been executed is not enough to decree a suit filed under Section 6 of the Act under Order XII Rule 6, where the requirement is to



establish that there is admission with respect to forcible dispossession by the Defendant, which ingredient is completely missing in the written statement; (d) proceedings under Section 6 of the Act are in the nature of summary proceedings where question of title of the Plaintiff to the suit property is immaterial and irrelevant and the only question that needs to be decided is the possession of the Plaintiff and his dispossession without consent in the last six months prior to the filing of the suit and therefore the very basis of decreeing the suit is flawed; and (e) question of title or better right for possession does not arise for adjudication in a suit under provisions of Section 6 of the Act as held by the Supreme Court in *Mohd. Mehtab Khan and Others v. Khushnuma Ibrahim Khan and Others*, (2013) 9 SCC 221.

12. Plaintiffs, *per contra*, contended that admissions made in the written statement by the Defendant were specific, clear and categorical. Defendant admitted that Plaintiffs are the owners of the suit property. It was also admitted that an Agreement to Sell was executed on 15.11.2018 and part sale consideration was exchanged between the parties. Significantly, Defendant also admitted that full sale consideration was Rs.57 lacs which was to be paid on or before 25.01.2019 and that he was in possession since 20.01.2019, without paying the full consideration amount. In view of the admissions with respect to ownership of the suit property and the Defendant being a trespasser who had dispossessed the Plaintiffs, the suit was rightly decreed by the Trial Court.

13. It was next contended that under Section 6 of the Act the only thing that the Court is required to ascertain is that the party claiming possession of the suit property is the rightful owner and was in



possession at any time upto 6 months prior to the date of filing of the suit. In *Mohd. Mehtab Khan (supra)*, the Supreme Court held that a proceeding under Section 6 is a summary proceeding, the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of a property from which he has been illegally dispossessed. In *Sanjay Kumar Pandey and Others v. Gulbahar Sheikh and Others, (2004) 4 SCC 664*, the Supreme Court held that the remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover the possession notwithstanding the adverse decision under Section 6 of the Act and the remedy of filing a revision is only by way of an exception.

14. It was also argued that Order XII Rule 6 CPC gives wide discretion to a Court to decree a suit under Section 6 of the Act when there are clear admissions of the Defendant as to ownership and possession of the suit property being that of the Plaintiffs. Admission of execution of an Agreement to Sell is in itself an admission of ownership of the Plaintiffs and clearly Plaintiffs are entitled to a decree of possession.

15. Next plank of the argument was that the defence set up under Section 53-A of TP Act was a moonshine defence and a smoke screen since the Agreement to Sell was neither registered nor sufficiently stamped. In any case, the entire sale consideration of Rs.57 lacs was not paid by the Defendant on or before 25.01.2019 and therefore possession was never handed over by the Plaintiffs. Defendant has failed to produce on record any material document to establish



handing over of possession of the suit property by the Plaintiffs to him. In the absence of having received the full sale consideration, there was no reason for the Plaintiffs to have handed over the keys of the property peacefully to the Defendant. In any case, law does not transfer title to a purchaser on the basis of mere Agreement to Sell as held by this Court in *Suraj Lamps and Industries Private Limited (2) Through Director v. State of Haryana and Another, (2012) 1 SCC 656* and the defence set up on this document is a meaningless defence in the eyes of law. Trial Court has therefore rightly concluded that Section 53-A does not apply to the present case and this Court in *Praveen Saini v. Reetu Kapur & Anr., 2018 SCC OnLine Del 6500* has recognized this position of law that in the absence of the Agreement to Sell being duly registered and stamped with a stamp duty of 90% of the value of sale consideration, defence of Section 53-A is unavailable to the concerned party.

16. I have heard learned Senior Counsel for the Defendant and counsel for the Plaintiffs.

17. The vexed question that arises in the present case is whether the Plaintiffs are entitled to a decree of possession on alleged admission of the Defendant under Section 6 of the Act and in order to answer this, provisions of Section 6 would require examination. Section 6 of the Act provides that if any person is dispossessed of immovable property, without his consent, otherwise than in due course of law, he or any person claiming through him may file a suit to recover possession and further provides that no suit will be brought after expiry of 6 months from the date of dispossession. Therefore, the essential ingredients for relief of possession under Section 6 are that Plaintiffs will be required



to prove their previous possession and subsequent forcible dispossession and/or dispossession without consent, otherwise than in due course of law within 6 months of the suit. In **Sanjay Kumar Pandey (supra)**, the Supreme Court held as follows:-

“4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

18. In **Petchimuthu @ Mani v. Anitha Sruthi, 2009 SCC OnLine Mad 1532**, Madras High Court held as under:-

“12. The proceeding contemplated under Section 6 of the Specific Relief Act (hereinafter referred to as “the Act”) is summary in nature. The Court was concerned only with the factum of dispossession otherwise than in due process of law. The question of title is immaterial in such proceedings. In case the Court was of the view that the materials produced by the plaintiff clearly shows that he was dispossessed within six months of the institution of the Suit, the Court was obliged to permit him to recover possession. This provision was intended to enforce the rule of law as otherwise there would be attempt to recover possession without approaching the Court of law and through the means forbidden by law. The unsuccessful defendant in such a summary Suit was not without remedy. It would enable him to establish his title by way of a comprehensive Suit and to recover possession.

13. The remedy under Section 6 of the Act being one intended to take care of an emergent situation on account of forcible dispossession, the parties so dispossessed should be given immediate relief. Though Section 6(4) of the Act permits the title holder to institute a suit to



establish his title and to recover possession, execution of a decree under Section 6 of the Act cannot be postponed, as otherwise there would be attempt on the part of the title holder to retain his possession under the guise of pendency of the Suit on title as permitted by Section 6(4) of the Act. It is evident from the very Proviso itself as it gives liberty to the title holder to recover possession. The concern of the law makers to put the persons, who have been dispossessed, without re-course through the process known to law, is also evident by the fact that no Appeal is provided against a decree passed in a Suit under Section 6 of the Act and not even a Review is permitted. Therefore the Court deciding the Suit under Section 6 of the Act was obliged to execute the decree with all its seriousness, as otherwise the very purpose in enacting such a provision would be defeated.”

19. In ***V.K. Maeyyazhagan v. Amalorpava Rani and Ors., decided on 15.03.2021 in C.R.P. (NPD) No. 231 of 2012***, the Madras High Court while dealing with Section 6 of the Act observed that question of filing a suit under Section 6 arises only when a party is dispossessed unceremoniously and without taking recourse to law. Cause of action for filing a suit under this provision is an act of dispossession restricted to a period of 6 months prior to filing of the suit and the dispossession contemplated is forcible dispossession. The proceedings under Section 6 are summary in nature and Court is concerned only with the factum of dispossession. Relevant para is as follows:-

“22. It is settled law that the proceedings contemplated under Section 6 of the Specific Relief Act is summary in nature. The Court is concerned only with the factum of dispossession, otherwise than due process of law. The remedy for a person who is unsuccessful under Section 6 of the Specific Relief Act is to file a regular suit establishing his title to the suit property and in the event of succeeding, he will be entitled to recover possession of the property notwithstanding the adverse decision Section 6 of the Act. The remedy of filing a revision is available, but that is only by way of exception and the High Court would not interfere the decree under Section 6 of the Act except on a case for interference being made out. Therefore, it is evident that as against the decree passed in the suit filed under Section 6 of the Specific Relief Act, revision under Section 115 of C.P.C., is available for the unsuccessful party and



this Court exercising revision jurisdiction is only concerned with the legality/proprietary of the exercise of jurisdiction and not re-appreciate the evidence.”

20. In **Mohd. Mehtab Khan (supra)**, the Supreme Court held as follows:-

“16. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months' prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.”

21. Therefore, on a reading of the aforementioned judgments and the provision of Section 6 of the Act, it is palpably clear that intent of the Legislature behind enacting the provision is to provide an immediate succour to a person who has been forcibly dispossessed so as to reclaim possession which he may have been unjustly denied by illegal act of dispossession. Questions of title or better rights are irrelevant for adjudication of the suit under Section 6 of the Act.

22. Since the Trial Court has decreed the suit by the impugned judgment under Order XII Rule 6 CPC, it needs to be seen if the parameters required for passing a decree on admission are met in the present case. Order XII Rule 6 CPC reads as follows:-

“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.”

23. Rule 6 of Order XII CPC provides that where admissions of fact are made either in the pleadings or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on an application by a party or on its own motion and without waiting for the determination of any other question, make such order or give such judgment as it may think fit having regard to the admissions made.

24. In ***Himani Alloys Limited v. Tata Steel Limited, (2011) 15 SCC 273***, the Supreme Court considered the nature and scope of Order XII Rule 6 CPC and held that the discretion conferred under the said provision is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant. Para 11 of the judgment is 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.”



25. In ***S.M. Asif v. Virender Kumar Bajaj***, (2015) 9 SCC 287, the Supreme Court held 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.”

26. In ***Balraj Taneja v. Sunil Madan***, (1999) 8 SCC 396, significantly the Supreme Court held that Court is not to act blindly upon the admission of a fact made by the Defendant in the written statement. Applying the aforesaid judgments to the fact situation emanating in the case of ***Hari Steel and General Industries Limited and Another v. Daljit Singh and Others***, (2019) 20 SCC 425, the Supreme Court held that unless the admission is clear, unambiguous and unconditional, the discretion should not be exercised to decree a suit on the insistence of the Plaintiff, denying the valuable right of the Defendant to contest the claim. It was observed that Order XII Rule 6 CPC is an enabling provision and is neither mandatory nor peremptory but discretionary. In ***Karan Kapoor v. Madhuri Kumar***, (2022) 10 SCC 496, the Supreme Court was dealing with a landlord-tenant dispute where a lease agreement had been entered into between Appellant/tenant and Respondent/landlord. The lease was extended from time to time and the Appellant did not pay rent after the expiry of the last extended lease agreement and continued in occupation of the suit property. Appellant did not vacate the property despite a legal notice by the Respondent leading to the Respondent filing a suit for



recovery of possession, arrears of rent, etc. Appellant filed a written statement contending that after the expiry of the lease agreement, Respondent had approached him and made an offer to sell the right, title and interest in the suit property, in furtherance whereof an Agreement to Sell was executed between the parties and it was agreed that the rent for a certain period will be adjusted in the money payable under the Agreement to Sell. In view of the averments in the written statement, Respondent filed an application under Order XII Rule 6 CPC praying for judgment on admission since Appellant had admitted landlord-tenant relationship, rate of rent and the defence was a sham. In this context, the Supreme Court held as follows:-

“23. Order 12 Rule 6 confers discretionary power to a court who “may” at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial.”

27. Having perused the provisions of Section 6 of the Act as well as Order XII Rule 6 CPC, the position that emerges from the conjoint reading of the two provisions is that in a suit filed under Section 6 of



the Act, Plaintiff would require to establish forcible dispossession without his consent and otherwise than in due course of law. The proceedings are summary in nature and the limited question is of finding out dispossession within 6 months prior to institution of the suit. Therefore, one of the essential ingredients is 'forcible dispossession' of the Plaintiffs. In order to decree a suit filed under Section 6 of the Act on an application under Order XII Rule 6 CPC, Plaintiffs would need to establish that Defendant has admitted in the written statement that he had forcibly dispossessed the Plaintiffs and the admissions must be clear, unequivocal and unambiguous. Succinctly put, Plaintiffs would have to establish that the written statement contains admissions of previous possession and dispossession of the Plaintiffs, without their consent, within the period stipulated under Section 6 of the Act in order to reclaim possession.

28. Having perused the written statement filed by the Defendant, it emerges that admissions have been made with regard to the ownership of Plaintiff No.2 with regard to the suit property. It is also admitted that Plaintiff No.2 had agreed to sell the property to the Defendant on 31.08.2018 and thereafter documents such as Receipt-cum-Agreement dated 31.08.2018, Agreement to Sell dated 15.11.2018 were executed and signed between by Plaintiff No.2 and the Defendant. There is also admission that Defendant came in possession of the suit property on 20.01.2019. However, this Court is unable to discern any admission on the focal point of the suit under Section 6 of the Act i.e. forcible dispossession by the Defendant. The heart of the dispute in the present case, pertaining to a suit filed under Section 6 of the Act, is forcible dispossession other than by due process of law and in the absence of



admission on this crucial requirement of the Section, in my view, a decree cannot be passed under Order XII Rule 6 CPC in favour of the Plaintiffs. It may also be noted that in the written statement, Defendant has specifically claimed that it was Plaintiff No.2 who gave possession of the suit property to the Defendant on 20.01.2019, in part performance of the Agreement to Sell executed between the parties and on this score, protection was sought by invoking Section 53-A of the TP Act.

29. Trial Court has examined the case on the threshold of admissions made in the written statement with respect to ownership of the suit property, execution of the documents pertaining to the purported Agreement to Sell as well as payment of part of the sale consideration. Defence set up by the Defendant has been examined on the touchstone of the amendment to Section 53-A w.e.f. 24.09.2001 by Act 48 of 2001, whereby benefit of an Agreement to Sell in the nature of part performance could not be given unless the Agreement to Sell was stamped for the value of 90% of the sale consideration of the property and was registered before the Sub-Registrar. Trial Court placed reliance on the judgment of this Court in ***Rekha Gupta v. Ashok Kumar & Anr., 2018 SCC OnLine Del 8075***, where this Court has held that post 24.09.2001 no person can claim a right predicated on an Agreement to Sell by invoking doctrine of part performance contained in Section 53-A until the agreement is registered and duly stamped. Reliance was also placed on the judgment of this Court in ***Jiwan Dass Rawal v. Narain Dass and Others, 1981 SCC OnLine Del 156***, for the proposition that mere Agreement to Sell of immovable property does not create any right, title or interest, except



to seek performance of the said contract. However, the Trial Court has overlooked the most crucial element i.e. admission of the Defendant that he had forcibly dispossessed the Plaintiffs and/or the dispossession was without their consent. In the absence of such a categorical and unequivocal admission and in light of the specific defence in the written statement disputing the forcible dispossession and a claim to have been placed in possession in part performance of the Agreement to Sell, the impugned decree passed on admissions, is unsustainable

30. In *Kiran Abnashi Chawla (supra)*, Plaintiff had filed a suit under Section 6 of the Act seeking a decree against the Defendants to hand over the vacant and peaceful possession of the suit property on the ground that it was her matrimonial home and she had constructive possession of the property through her husband. It was alleged that Defendants trespassed into the suit property on the basis of a will executed by her husband appointing Defendant No.1 as one of the executors of the will. Defendant No.1 contested the suit by filing a written statement but the Plaintiff filed an application under Order XII Rule 6 CPC seeking a decree on admission by Defendant No.1. Learned Single Judge of this Court decreed the suit with a direction that possession of the suit property be handed over to the Plaintiff. An appeal was filed before the Division Bench of this Court. While the Plaintiff contended that the suit property being her matrimonial home, she was always in possession and the ingredients required to be proved for the purpose of Section 6 suit i.e. previous possession, dispossession and filing of the suit within 6 months of dispossession stood proved and admitted. Defendant No.1 on the other hand



contended that there was no admission qua the claim of title or possession.

31. Division Bench observed that no doubt, Plaintiff is the legally wedded wife of her deceased husband but she was not in actual physical possession of the suit property either before or after his demise while Defendant No.1 claimed to be in possession along with Plaintiff's late husband being his erstwhile partner and the claim of constructive and legal possession was categorically disputed in the written statement. The Division Bench noted that it was not a case where it could be said that there was an admission regarding 'dispossession' of the Plaintiff, which is one of the essential ingredients of Section 6 of the Act. The issues that were arising were required to be adjudicated after a full-fledged trial as several disputes were raised by the Defendants and it was not a case where a decree could be granted on admission. The Court negated the plea of the Plaintiff that possession of the Plaintiff being legal possession was sufficient to grant a decree under Section 6 and distinguished the judgment in *Sadashiv Shyama Sawant (Dead) through LRs. and Others v. Anita Anant Sawant, (2010) 3 SCC 385*.

32. Applying the ratio of the aforementioned judgment, this Court agrees with the learned Senior Counsel for the Defendant that a suit under Section 6 of the Act can be decreed under Order XII Rule 6 CPC only when the admissions of the Defendant are clear and unequivocal both with respect to possession and 'forcible dispossession'. Mere admission of ownership or the Plaintiffs being in possession is not enough to decree a suit under Section 6, as is clearly evident from the language of the provision itself.



33. It is true that Plaintiffs have made out a case of ownership and possession in the property and there is also admission by the Defendant that he had agreed to purchase the property and part sale consideration was exchanged *albeit* there are serious disputes on the actual money received by the Plaintiffs, however, Plaintiffs have been unable to point out any admission by the Defendant in the written statement with respect to forcible dispossession. Reliance was placed by learned counsel for the Plaintiffs on the judgment in ***Karan Kapoor (supra)***, to contend that the legislative intent behind Order XII Rule 6 CPC is that if facts raised by one side are admitted by the other side and the Court is satisfied on the nature of admission then parties should not be compelled to go through a full-fledged trial and a judgment must be pronounced on admission. There can be no debate on this proposition of law. However, it is equally settled that Rule 6 of Order XII confers a discretionary power on a Court to pronounce a judgment but only where there are unequivocal, clear and unambiguous admissions and therefore the judgment will not apply in a case like the present where not only there are no ‘admissions on forcible dispossession’ of the Plaintiffs by the Defendant, but to the contrary there are assertions in the written statement that possession was peacefully handed over to the Defendant in part performance of the Agreement to Sell.

34. Reliance was placed by the Plaintiffs on the judgment in ***Monika Tyagi and Others v. Subhash Tyagi and Others, 2021 SCC OnLine Del 5400***, to contend that even in the absence of clear and unequivocal admissions, a suit can be decreed under Order XII Rule 6 CPC, if the Court finds that the defence raised by the Defendant is



meaningless and moonshine and the pleas and the averments in the pleadings are vague and unsubstantiated. Defendant in the present case has averred in the written statement that an Agreement to Sell was executed between the parties and in part performance, consideration was paid by the Defendant to the Plaintiffs although the quantum of the amounts is under serious dispute. While the Defendant claims that out of a total sale consideration of Rs.57 lacs, he has paid Rs.35 lacs, Plaintiffs contend otherwise and admit having received only Rs.6 lacs. In view of these highly disputed questions and in the absence of a clear admission on forcible dispossession, the judgment in *Monika Tyagi (supra)*, cannot inure to the advantage of the Plaintiffs.

35. Judgments were also relied on by the Plaintiffs with respect to the transfer of title under an Agreement to Sell as well as on the legal issue as to whether on the basis of Agreement to Sell which is unregistered and insufficiently stamped, a defence of coming into possession in part performance under Section 53-A of TP Act can be sustained. Trial Court has held in favour of the Plaintiffs that after the amendment to Section 53-A, the defence of part performance is a smoke screen as the agreement is neither registered nor sufficiently stamped.

36. In my view, all these issues are triable issues requiring evidence and were not germane to the decision of the application under Order XII Rule 6 CPC, as aforementioned. Accordingly, the impugned judgment is set aside. I may, however, pen down that Section 6 is a summary suit and is meant to give succour to a party who was in possession and has been unjustly dispossessed. The suit was filed in



the year 2019 and therefore, it is directed that the Trial Court would decide the suit within six months from today, after affording due opportunity to the parties to lead evidence.

37. Revision petition is accordingly allowed and disposed of. Pending applications are also disposed of.

38. It is made clear that this Court has not expressed any opinion on the merits of the case and the Trial Court will decide the suit independent of any observations in the present judgment, which are only for the purpose of deciding the present revision petition.

JUNE 02, 2023/kks

JYOTI SINGH, J



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