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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24.03.2023

Pronounced on: 09.05.2023

+ RFA 582/2022 and CM APPL. 49586/2022

POONAM KAKKAR

.... Appellant

Through: Ms. Aakanksha Kaul, Mr. Aman Sahani and Ms. Versha Singh, Advocates.

versus

VAISHALI & ANR.

..... Respondents

Through: Mr. Pardeep and Mr. Satish Kumar Dabas, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant in the present Appeal is impugning the judgment dated 04.08.2022 ("*Impugned judgment*") in CS No. 287/2020 passed by the Additional District Judge-05: South-West District Dwarka, New Delhi titled as '*Ms. Vaishali & Anr. v. Smt. Poonam Kakkar*'. Vide the Impugned Judgment, the learned Trial Court was pleased to allow the application under Order XII Rule 6 CPC filed by the Respondents and a decree of possession was passed in favour of them.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT APPEAL ARE AS FOLLOWS:

2. It is the case of the Respondents that Respondent No.2 is the legal and lawful owner of the property i.e. Flat No.265 (two room+ one room set),

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Second Floor, Janta Flat, Group-1, Hastal, Uttam Nagar, New Delhi (hereinafter referred to as “*suit property*”).

3. It is further the case of the Respondents that Respondent No.2 was employed in Air India and due to the nature of the job and his busy schedule, he authorized Respondent No.1 to deal with the suit property for the purpose of giving it on rent and other ancillary activities of maintenance. Accordingly, Respondent No.2 executed the authorization letter in favor of Respondent No.1.
4. Further, it is the Respondents’ claim that the Appellant was inducted as a tenant by the Respondents *vide* a rent agreement dated 09.08.2018 for a period of 11 months from 01.05.2018 to 31.03.2019 at a monthly rent of Rs. 9000/- exclusive of electricity and water charges. As per the above mentioned rent agreement, the rent was to be paid in advance on or before 1st day of the English calendar and a security deposit of Rs. 9000/- was also to be paid. Pertinently, a penalty of Rs. 1000/- per day was to be levied in the event of failure to pay rent on time or vacate the premises on the expiry of the rent agreement.
5. Subsequently, the Appellant failed to pay the monthly rent of the suit property from the month of June 2018 onwards and promised to pay a lump-sum within the next six months, which the Respondents allowed as a humanitarian gesture. However, the Appellant failed to pay the rent and arrears till December 2018 and continued to live in the suit property even after the expiry of the Rent Agreement on 31.03.2019.
6. Respondent No.2 addressed a legal notice dated 16.06.2020 to the Appellant to pay the arrears of rent, penalty, water and electricity bills totaling Rs. 6,18,000/-.

7. Thereafter, the Respondents on 13.07.2020, also filed a civil suit being CS No. 287/2020 before the learned Trial Court *inter-alia* praying for possession of the suit property. The Respondents prayed for recovery of the outstanding rent of Rs.81,000/- along with an interest @18% p.a (from 01.07.2018 to 30.03.2019). Further, the Respondents also prayed for the recovery of Rs. 4,57,000/- towards damages for the unauthorized use and occupation of the suit property from the period 01.04.2019 to 30.06.2020. Furthermore, the Respondents prayed for recovery of Rs. 80,000/- towards arrears of electricity and water bill. Lastly, they prayed for future damages/mesne profits of Rs. 30,000/- per month or such further amounts commensurate to the market rate of similarly situated properties to be paid till the actual handling of the suit property.
8. The Respondents in the meantime on 13.07.2020, also filed an application under Order XXXIX Rule 10 CPC in CS No. 287/2020, praying for directing the Appellant to pay a sum of Rs. 81,000/- as outstanding amount towards the rent for the period from 01.07.2018 to 31.03.2019 along with interest @18% p.a. Further, it was also prayed for directing to deposit a sum of Rs.4,57,000/- along with an interest @18% p.a towards damages/mesne profits from the period 01.04.2019 to 30.06.2020 till the peaceful possession of the suit property is granted. Furthermore, a direction was also sought to pay a sum of Rs. 80,000/- along with an interest @18% p.a. as pending electricity and water charges. The Appellant filed a reply dated 21.09.2020 to the above-stated application refuting all the claims made by the Respondents.

9. Subsequently, on 21.09.2020, the Appellant filed a written statement to the suit denying all the claims made by the Respondents and *inter-alia* submitted that the suit filed by the Respondents is a gross misuse and abuse of the process of law.
10. The Respondents also filed a replication to the written statement denying the claims made by the Appellant and reiterated their case set up in the Plaint.
11. Later on the Respondents filed an Application under Order XII Rule 6 CPC stating that the Appellant has admitted the fact that she has been living as a tenant in the suit property. Further, it has also been admitted by the Appellant that she had taken the suit property on lease/rent. The Respondents stated that depositing of the sum of Rs. 4,00,000/- to the deceased wife of Respondent No.2 against the suit property has not been supported by any documents. It is further stated in the Application that as the execution of the rent agreement has not been disputed by the Appellant, hence the Appellant has no right to retain the possession of the suit property. Lastly, it was stated that the tenancy of the Appellant is month to month tenancy which is not protected under Transfer of Property Act, 1882 (hereinafter referred to as "*the Act*") and thus, the Respondents are entitled for a decree of possession under Order XII Rule 6 CPC.
12. The Appellant filed a Reply to the Application filed by the Respondents under Order XII Rule 6 CPC. The Appellant, while refuting the claims made by the Respondents stated that the application filed by the Respondents is not maintainable as the Rent Agreement alleged by the Respondents does not bear the signatures of the Appellant. He further

stated that not even a single ingredient of Order XII Rule 6 CPC is fulfilled and hence the application needs to be dismissed with heavy costs. While referring to the telephonic conversation held between the owner of the property (Smt. Durga Swami, now deceased) and Respondent No.2, the Appellant stated that in the above conversation, reference of the Agreement is duly mentioned and Smt. Durga Swami has agreed to refund the security amount. Further, even the amount of Rs. 4-5 Lakhs has also been admitted by her. Lastly, it was stated by the Appellant that claim of the Respondents was beyond the settlement arrived between Smt. Durga Swami and the Appellant.

13.Learned Trial Court *vide* the Impugned judgment was pleased to allow the application under Order XII Rule 6 of CPC filed by the Respondents and a decree of possession was passed in favor of them.

14.Aggrieved by the same, the Appellant preferred the present Regular First Appeal No. 582 of 2022, challenging the Impugned judgment.

SUBMISSIONS OF THE APPELLANT

15.Learned counsel for the Appellant, Ms. Aakanksha Kaul, initiated her arguments by submitting that the learned Trial Court erred in exercising the powers under Order XII Rule 6 CPC in as much as the dispute between the parties involves contested question of facts and law which could only be decided after framing of issues and leading evidence and not on a preliminary stage.

16.The premise of the Appellant's case is based on the fact that the Appellant entered into a Lease and Security Agreement dated 07.04.2018 ("*Security Agreement*") with Respondent No.1 *vide* which she was permitted to reside in the suit property for a period of 22 months. The

Security Agreement started with effect from 07.04.2018 and was for a period of 11 months i.e. till 06.03.2019. In furtherance of the Security Agreement, the Appellant paid a sum of Rs. 4,00,000/- to Respondent No.1 as security deposit in cash. As per their agreement, the suit property was to be used by the Appellant without any monthly rental charges as per Clause 14 of the Security Agreement and the Appellant was entitled to occupy the suit property, until the sum of Rs. 4,00,000/- was repaid to her by the Respondents. It was also incumbent upon both the parties to serve two months' notice in advance prior to vacating the suit property. Further, on 25.12.2018, the Appellant filed an F.I.R. qua the loss of the Security Agreement.

17.Ms. Kaul further advanced her arguments by submitting that the Security Agreement entered into between the Appellant and Respondent No.1, created an 'English Mortgage' as defined under Section 58(e) of the Transfer of Property Act. The Property was mortgaged by Respondent No.1, against a sum of Rs. 4,00,000/-, which constituted 'Mortgage-money' under the said provision of the Act. She further submitted that the Security Agreement was acknowledged and accepted by the Respondents, as is evident from the fact that the Appellant continued to reside undisturbed at the Property from April 2018 and even after, the legal notice dated 16.06.2020 till date.

18.Learned counsel for the Appellant while vehemently denying the execution of the Rent Agreement dated 09.08.2018, averred that the agreement *vide* which the Respondents alleged that the Appellant has been inducted as tenant in the suit property, is forged and fabricated. She further submitted that the fabrication of the rent agreement is evident

from the fact that the rent agreement does not bear the signature of any of the witnesses. Ms. Kaul further submitted that the Rent Agreement filed by the Respondents raises suspicion as the date of execution of the Rent Agreement was 09.08.2017, whereas the e-stamp paper pertains to 09.08.2018. It was further assertively argued by the learned counsel for the Appellant that the Appellant has not signed the alleged Rent Agreement and further the signature of the Appellant in the Rent Agreement is completely different from the signature in the Security Agreement. She further submitted that there was no admission by the Appellant as to the execution of the Rent Agreement.

19. The next contention raised by the learned counsel for the Appellant is that there is no categorical admission on the part of the Appellant as claimed by the Respondents and the learned Trial Court erred in holding that the Appellant has admitted the rent as Rs.9000/- per month. The learned counsel for the Appellant navigated the attention of this Court to the written statement filed by the Appellant wherein the Appellant outrightly denied signing any Rent Agreement dated 09.08.2018. Further, the learned counsel also submitted that the learned Trial Court also erred in holding that the monthly rent of the suit property is above Rs. 3500/-.

20. Learned counsel for the Appellant while referring to clauses 1, 14, and 15 of the Security Agreement contended that the Appellant was never required to pay any rent to the Respondents. Further, she also contended that it is an admitted position that no rent is being paid by the Appellant to the Respondents.

21. Another contention raised by the learned counsel for the Appellant is that the existence of the Security Agreement has further also been proved by

the transcript of the telephonic conversation of Respondent No.2 with his deceased wife, wherein it was categorically admitted by her that no rent had been paid for the suit property. This was due to the fact that the amount of Rs. 4,00,000/- had been paid for the suit property as 'Mortgage-money'.

22.Learned counsel for the Appellant bolstered her submissions by relying on the judgment of the Hon'ble Supreme Court in the matter of *Himani Alloys Ltd. v. Tata Steel Ltd.* reported as (2011) 15 SCC 273 and submitted that admissions under Order XII Rule 6 CPC must follow exercise of judicial discretion as it is a decision without trial and ought to be based on admissions that are clear, unambiguous and unconditional. In the present case, the Appellant has never admitted to being in a tenancy with the Respondents. Hence, the Impugned Judgment passed by the learned Trial Court suffers from infirmity and further also ignores the terms of the Security Agreement.

23.Lastly, Ms. Kaul submitted that it has been the consistent case of the Appellant that she is entitled to continue occupying the Property till the sum of Rs. 4,00,000/- is refunded to her and to that extent she was able to produce before the learned Trial Court the Security Agreement, bearing the signature of a witness. She further submitted that the question as to whether the Appellant was occupying the Property under the Rent Agreement or Security Agreement and until when she would be entitled to occupy the suit property are questions that could only be decided after evidence has been produced by the parties.

24.With these submissions, learned Counsel for the Appellant prays for the setting aside of the the impugned Judgment.

SUBMISSIONS OF THE RESPONDENTS

25. *Per Contra*, Mr. Pardeep, learned counsel for the Respondents 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.
26. It is the contention of the learned counsel for the Respondents that for deciding an application under Order XII Rule 6 CPC, only two things are required to be seen i.e. admission of relationship of tenancy and termination of the tenancy. He furthered his submissions by submitting that since both the conditions have been fulfilled, the application filed by the Respondents under Order XII Rule 6 CPC has rightly been allowed by the learned Trial Court.
27. It is Mr. Pradeep's contention that the Appellant has made contradictory pleas in her written statement filed before the learned Trial Court. With regard to that, he submitted that the Appellant in her written statement has claimed that she has paid the alleged sum of Rs.4,00,000/- as security deposit to Smt. Durga Swami and even denied that Respondent No.1 is the daughter of Smt. Durga Swami. However, in the present appeal, she alleges to have paid the sum of Rs.4,00,000/- to Respondent No.1, to whom she claimed no connection in its written statement.
28. It is further his contention that the Appellant had been introduced to the deceased wife of Respondent No.2, Smt. Durga Swami by the local property dealers Sh. Shyam Sundar and his son Himanshu Vinayak and the Appellant is in collusion with the above-mentioned property dealers for unlawful gains and for grabbing the suit property of the Respondents. It is further the contention of the learned counsel for the Respondents that

the defence of the Appellant is not tenable and plausible in facts and circumstances of the case and is mere sham to remain in illegal possession of the suit property. Furthermore, he submitted that no documents of lease, security deposit, transaction details, financial capacity or lease registration details have been provided by the defendant which proves the falsehood and lies of Appellant.

29. Learned counsel for the Respondents while relying on the judgment of the Hon'ble Supreme Court in the matter of ***Bachhaj Nahar v. Nilima Mandal and Anr.*** reported as **(2008) 17 SCC 491** contended that a decree can be passed in terms of Order XII Rule 6 CPC in case, jural relationship of landlord and tenant between the parties and the termination of tenancy by either lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act, is established.
30. Further, it is the contention of the learned counsel for the Respondents that the Appellant has tried to make out a fresh case of English Mortgage under Section 58(e) of the Act which was never pleaded before the learned Trial Court. He further also contended that the Appellant has alleged to make all her dealings with the late Mrs. Durga Swami and denied any kind of dealings with the Respondents as regards the suit property. However, later the Appellant filed the Security Agreement purportedly executed between the Appellant and Respondent No.1 in regard to which no pleadings were made in the written statement or any attempt was made by the Appellant before the learned Trial Court to raise a plea of English Mortgage in her favor.

31. Lastly, learned counsel for the Respondents bolstered his submissions by relying on the judgment of the Hon'ble Supreme Court in the matter of *Park Street Properties (P) Ltd. v. Dipak Kumar Singh* reported as (2016) 9 SCC 268 and this Hon'ble court in the matter of *Delhi Jal Board v. Surender P. Malik* reported as *ILR (2003) Delhi 269, Rajpal Singh v. Deen Dayal Kapil* reported as *2014 SCC OnLine Del 337*.
32. With these submissions, learned counsel for the Respondents prays for the dismissal of the present Appeal.

LEGAL ANALYSIS

33. This Court had heard the rival contentions of both the parties and perused the documents placed on record and Judgments relied upon by the parties.
34. At the outset, it is important to examine the relevant law regarding the 'Judgment on admissions'. Order XII Rule 6 CPC reads, *inter alia*, as follows:

"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.

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."

35. A bare perusal of Order XII Rule 6 CPC re-produced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the defendants have tried to

put their own interpretation to those facts with a view to defeat the claim of the plaintiff, would not be a sufficient ground to decline relief under Order XII Rule 6 CPC. This provision can be invoked only in the case of a clear and unambiguous admission by the defendant in favour of the plaintiff. For the said purposes, the entire defence of the defendant is to be taken and read as a whole and a part of it cannot be read in isolation.

36.The Hon'ble Supreme Court in the matter of ***S.M. Asif v. Virender Kumar Bajaj*** reported as (2015) 9 SCC 287, held that the power exercised under Order XII Rule 6 CPC is discretionary in nature and where the Defendant has raised objections which goes to the root of the case, the discretion should not be exercised.

“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.”

37.Further, the Hon'ble Supreme Court in another matter of ***Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha***, reported as (2010) 6 SCC 601 has held as:

“19. Similar view has been expressed by Broadway, C.J. in Abdul Rahman and Bros. v. Parbati Devi [AIR 1933 Lah 403] . The learned Chief Justice held that before a court can act under Order 12 Rule 6 CPC the admission must be clear and unambiguous.”

38. The Hon'ble Supreme Court in catena of cases has held that 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, discretion should be used only when there is a clear "admission" which can be acted upon.

39. It is well settled law that in order to seek a decree of possession against a tenant, the landlord has to fulfil the following parameters which have been enumerated and carved out in several judgments from time to time:-

- (i) Relationship of landlord and tenant.
- (ii) Tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958.
- (iii) There is no registered subsisting lease agreement
- (iv) Tenancy has been terminated and the respondent/tenant has failed to hand over possession

40. Coming to the present matter, in order to appreciate this controversy, it will be proper to set out the relevant paragraphs of the Impugned judgment *inter-alia* on the basis of which the Appellant has contested the present Regular First Appeal:

"21. Now coming to the factual matrix of the present case, it be noted that from the pleadings of the parties, it is crystal clear that there is no dispute regarding relationship of tenant and landlord between the parties as the defendant in the Lease/Security Agreement dated 07.04.2018 and Rent Agreement dated 09.08.2018, executed between the parties, duly put her signatures on the aforesaid documents. Further, defendant has also admitted the rate of rent as Rs. 9,000/- per month i.e. exceeding Rs. 3,500/- which brings tenancy out of purview of Delhi Rent Control Act.

23. Also, the tenancy has expired by efflux of time as the tenancy was for a period from 01.05.2018 to 31.03.2019. The present suit has been filed on 17.07.2020 and law is well settled that

*service of summons of suit can be taken as a notice u/s 106 of the Transfer of Property Act. Reliance may be placed upon the judgment titled as **Mis Jeevan Diesels & Electricals Ltd. vs. Mis Jasbir Singh Chhadha (HUF) & Anr. 2011 (182) DL T 402.***

*25. 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 termination of tenancy vide legal notice dated 16.06.2020. As such, no triable issue is left to be adjudicated upon so far as the relief of possession as claimed by the plaintiffs is concerned and suit is labile to be decreed on the basis of admission made by the defendant. Hence, application moved by the plaintiffs u/o 12 rule 6 CPC is allowed and a decree of possession is passed in favour of the plaintiffs and against the defendant in respect of the suit property i.e. **Flat no.264 (2+1 room set), Second Floor, Janta Flat, Group-1, Hastal, Uttam Nagar, New Delhi.**"*

41. It is the contention of the Respondents that the Appellant has admitted to the execution of the Rent Agreement and further she has also admitted to being the tenant in the suit property. The learned Trial Court *vide* its Impugned judgment has also held that there is no dispute as to the relationship of tenant and landlord as the Appellant in the Security Agreement and Rent Agreement, executed between the parties, duly put her signatures on the aforesaid documents. Further, the learned Trial Court also held that the Appellant has admitted to the rate of rent as Rs.9000/- per month i.e., exceeding Rs. 3500/- which brings the tenancy out of the purview of Delhi Rent Control Act.
42. This Court perused the written statement filed by the Appellant and it was found that the Appellant in the instant case has stoutly denied the execution of the Rent Agreement as alleged by the Respondents. Further as regards the observations of the learned Trial Court with regard to the

admission as to the rate of rent as 9000/-, it is seen that, the Appellant in the written statement has nowhere admitted the rate of rent as Rs. 9000/-. The relevant portion of the written statement filed by the Appellant, reads as follows:

“.....That the plaintiffs have filed a document alleging the same to be a Rent Agreement dated 09.08.2017 which was never executed between plaintiff no.1 and the defendant. The said alleged document even does not bear the signatures of defendant and the signatures of Ms. D. Bir Notary Public, also does not tally according to the record . The biggest contradiction in the said Rent Agreement is that the date of execution is shown as 09.08.2017 whereas the e-stamp paper pertains to 09.08.2018.

“.....It is denied that the defendant was inducted as a tenant by plaintiff no.2 through his daughter plaintiff no.1 for 11 months. It is also denied that any Rent Agreement was executed between the plaintiff no.1 and the defendant. It is submitted that the possession of the suit property was handed over to the defendant by late Ms. Durga Swami against which she has taken a huge security amount. This fact has been concealed by the plaintiffs but the records available with the defendant clearly indicates the admission of Ms. Durga Swami regarding security amount. The telephonic conversation recorded by the defendant held with late Smt. Durga Swami and after her death with defendant no.2 clearly shows the transaction between these parties. The facts admitted by Durga Swami has also been confirmed by defendant no.2. The transcript of the recording is filed along with the WS as the CD shall be brought on record at the time of recording the evidence.....”

“.....When the suit property is taken by the defendant by paying a security amount of Rs 4Lac there is no reason to pay any rent which is the first condition of huge security amount. The plaintiffs have admitted that since starting no rent has been ever paid by the defendant at any point of time. The call recording between late Ms. Durga Swami with the defendant and also the call records between plaintiff no.2 and the defendant clearly indicates that the defendant is asking for her security amount to vacate the property.....”

43. The perusal of the written statement reveals that there is a specific denial with respect to the Rent Agreement. The Appellant is disputing her

signature as appearing in the said Rent Agreement. It is the specific case of the Appellant that they paid Rs. 4 Lakhs to late Smt. Durga Swami as a security and never paid any monthly rent. It is the case of the Appellant that she can continue to occupy the suit property till her security is refunded. There is no admission regarding the tenancy or monthly rent. Hence, the learned Trial Court erred in observing that there is admission on behalf of the Appellant regarding the tenancy.

44. Further, the Appellant has also disputed the signatures of the Appellant in the Rent Agreement as being contrary to the Security Agreement. Hence, the veracity of the signatures in the Rent Agreement is a matter of trial. This Court *vide* its Order dated 06.12.2022, has rightly held that the Security Agreement has been produced before the learned Trial Court. *Ergo*, it is clear from the perusal of the averments made by the Appellant in the written statement that the Appellant has disputed (a) the fact of expiry of tenancy by efflux of time; (b) Rent Agreement and (c) receipt of the notice.

45. This Court is of the opinion that Order XII Rule 6 CPC 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. There is no such admission in this case.

46. On consideration of totality of facts and circumstances of this case, this Court is of the view that the present case involves questions which cannot be conveniently disposed of without recording of evidence and therefore, the Respondents should prove their case during trial. This Court makes it clear that this Court have not recorded any finding nor expressed any opinion in regard to the merits of the case or in regard to any part of the suit claim and shall be decided after allowing both the parties to lead the evidence. For the reasons detailed above, the appeal is allowed and the Impugned judgment is set aside. The matter is remanded back to the learned Trial Court for deciding the matter after conducting trial. The records of the Trial Court be returned back forthwith. The parties are free to seek the help of a local commissioner for recording of the evidence. Learned Trial Court is requested to dispose of the present matter as expeditiously as possible. Pending application is also disposed off accordingly. No order as to cost.

GAURANG KANTH, J.

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