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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Pronounced on: 12<sup>th</sup> December, 2023**  
+ **C.R.P. 31/2022**

**SATISH SWAROOP & ANR.** ....Petitioners

Through: **Mr. Akshay Sapre, Advocate**  
**and Abhijeet Swaroop, Advocate**

versus

**NIPON DHOLUA** ..... Respondent

Through: **Ms. Rituparna Hazarika, Advocate**

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

#### **CHANDRA DHARI SINGH, J.**

1. The instant petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of the petitioners seeking the following reliefs: -

*"a. Set aside the Order dated 16th October 2021 passed by the Learned Additional District Judge, Shri Pawan Singh Rajawat rejecting the Petitioners' Application under Order XII Rule 6 of CPC in CS No. 678 of 2020.*

*b. Pass an appropriate judgment on admission under Order XII Rule 6 CPC in view of the admissions contained in the Reply to Legal Notice on behalf of the Respondent;*



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*c. Pass any other or further order/reliefs which this Hon'ble Court may deem fit and proper in light of justice, equity and good conscience."*

### **FACTUAL MATRIX**

2. The petitioners, Mr. Satish Swaroop and Ms. Richa Srivastava, are directors of Chaturbahave Electronic Business Solutions Private Limited. The said company is *inter alia* engaged in the business of providing IT services. The respondent, Mr. Nipon Dholua, is the promoter and director of Nipon BDK Communication Private Limited.
3. The petitioners engaged the services of the respondent as a business consultant to aid and assist in development of their IT Business for a total period of two years, i.e., from 1<sup>st</sup> October 2019 to 31<sup>st</sup> October 2021 (hereinafter "proposed project").
4. In terms of the understanding and as a necessary pre-condition to enter into a formal agreement for the proposed project, the petitioners released an advance sum of Rs. 50,00,000 /- (hereinafter "advance payment") on 20<sup>th</sup> September 2019. Subsequently, the terms and conditions were reduced to writing in the form of a draft agreement.
5. It is stated by the petitioners that the respondent, in complete breach of its obligations, failed to develop any business for the petitioners. Therefore, on account of non-performance by the respondent, the above said draft agreement was not signed and was treated as null and void.
6. In view of the above, the petitioners issued a legal notice dated 11<sup>th</sup> February 2020, calling upon the respondent to refund the advance payment.



In response to the same, the respondent sent a reply dated 14<sup>th</sup> February 2020. The petitioners have alleged before the learned Trial Court that the respondent has admitted to certain position of facts and the same amounts to admission in terms of Order XII Rule 6 of the CPC.

7. Since, the respondent failed to refund the entire advance payment, the petitioners instituted a Civil Suit bearing CS no. 678/2020, seeking recovery of Rs. 47,50,000/-, before the learned ADJ-08, West, Tis Hazari Court, Delhi.

8. In the said suit, the petitioners filed an application under Order XII Rule 6 of the CPC, seeking decree against the respondent on the basis of categorical, unequivocal and unambiguous admissions made by the respondent in its reply to the legal notice dated 14<sup>th</sup> February 2020, and in his written statement filed on 2<sup>nd</sup> February 2021.

9. The above said application filed by the petitioners was dismissed by the learned Trial Court vide the impugned order dated 16<sup>th</sup> October 2021. Aggrieved by the same, the petitioners have approached this Court seeking revision of the impugned order.

10. The petitioners have filed the instant petition, wherein, he has raised the grounds in paragraph no. 'A to T' stating that the impugned order passed by the learned Trial Court is erroneous and has been passed against the settled principles of law. The written submissions have been filed by the petitioners on 10<sup>th</sup> November 2023.

### **SUBMISSIONS**

*(On behalf of the petitioner)*



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11. Learned counsel appearing on behalf of the petitioners submitted that the learned Trial Court erred in passing the impugned order since it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.

12. It is submitted that the respondent had made certain admissions in paragraphs '1 to 11' in his reply to the legal notice issued on behalf of the petitioners and also in paragraphs '3, 5, 6, 13, 18, 19, 20, 22 and 23' of the written statement. However, the learned Court below erred by overlooking such admissions and the material plea of the respondent in order to appropriately adjudicate upon the petitioners' application under Order XII Rule 6 of the CPC.

13. It is submitted that pursuant to the reply dated 14<sup>th</sup> February 2020, the respondent proceeded to refund only a part of the amount to the tune of Rs. 5,00,000/-, and defaulted in refunding the balance sum of Rs. 45,00,000/-. Accordingly, the petitioners filed the civil suit seeking recovery of aforesaid quantum of money along with interests accrued thereto.

14. It is submitted that the respondent has unequivocally admitted regarding the receipt of advance amount, the purpose for which the advance amount was paid and the respondent's obligations post such payment, his inability to perform such obligation and consequent offer to make the refund once his financial position is stabilized.

15. It is submitted that the respondent in its written statement is raising baseless allegations, which stands contrary to its own admitted liability in



the reply, and the same is done in order to dilute the admissions given by the respondent in its reply.

16. It is submitted that the respondent has evasively denied the contents of the Civil Suit, in order to wriggle out of its admitted payment obligations. In the absence of specific denial by the respondent in its written statement to the averments made by the petitioners, the respondent has admitted to its liability towards the petitioners.

17. It is submitted that the learned Trial Court failed to appreciate that the reply to the legal notice contains express and unequivocal admissions and there was no whisper of any fact contradicting the purpose for which the respondent was paid by the petitioners.

18. It is submitted that the learned Court below failed to take into consideration that in the written statement, the respondent has admitted to the receipt of Rs. 50,00,000/-. It is a settled law that a party should not be permitted to wriggle out of its admissions in order to defeat the legitimate claims of the counterparty and the perusal of the reply to the legal notice followed by the written statement and counter claim filed by the respondent clearly establishes that the respondent is trying to wriggle out of the admissions made in the reply to the legal notice as an afterthought and only to defeat the legitimate claims sought by the petitioners in the present suit.

19. Learned counsel has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of ***Badat and Co. Bombay v. East India Trading Co., (1964) 4 SCR 19***, wherein, it was held that the written



statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively.

20. Learned counsel appearing on behalf of the petitioners has further placed his reliance upon the judgment passed by the Division Bench of this Court in the matter titled as *Universal Finance Traders Ltd. v. Lunar Diamonds Ltd. & Ors.*, 2012 SCC OnLine Del 4883, wherein, the Court held that if the defence taken by the defendant is devoid of any merit of any kind which is not recognized by law, a decree on admission can be passed.

21. It is submitted that Order XII Rule 6 of the CPC, is an enabling provision that confers discretion to the Court for ensuring speedy justice on admission to the extent of the claim admitted by one of the parties of his opponent's claim. It is also submitted that as per the settled law, the Court under Order XII Rule 6 of the CPC, is empowered to consider the admissions which can be in the form of pleadings or otherwise. The said admissions can be oral or in writing, including constructive admissions.

22. It is contended that Order XII Rule 6 of CPC, can also be invoked when the objections raised are such, which do not go to the root of the matter or if the objections are inconsequential, making it impossible for the party to succeed, even if entertained.

23. It is submitted that the learned Court below failed to appreciate the admissions as submitted in the preceding paragraphs and evasive denials made by the respondent in his reply and the written statement, and erroneously reached to the conclusion that no case for grant of decree on the basis of admissions has been made out by the present petitioners. The same



is against the settled principles of law in regard to the provisions of Order XII Rule 6 of the CPC.

24. It is therefore submitted that in view of the foregoing submissions, the instant petition may be allowed and the impugned order be set aside.

***(On behalf of the respondent)***

25. *Per Contra* learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the instant petition is liable to be dismissed being devoid of any merits.

26. It is submitted that the respondent has only admitted Rs. 6,00,000/-, as per the calculations and had never admitted to the amount of Rs. 50,00,000/. It is also submitted that the agreement as alleged by the petitioners is required to be proved by them which will ultimately lead to the determination of the issue of maintainability of the present suit.

27. It is submitted that the petitioners are submitting false and misconceived statement before this Court by stating about a purported business development project, instead, the petitioners had approached the respondent for execution of a film project since the respondent is a well known and award winning film maker.

28. It is further submitted that in the written statement filed by the respondent before the learned Trial Court, there were no unequivocal admissions on his part and on the contrary the respondent had filed a counter claim in terms of Order VIII Rule 6A of the CPC, as a film project was supposed to be executed among the parties, and in view of the same the petitioners are required to pay a sum of Rs. 68,00,000/-, being counter claim.



29. It is submitted that the petitioners' contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions with regard to the provisions governing admissions by a party in the CPC and hence, there is no infirmity in the impugned order passed by it.

30. It is submitted that merely because the learned Court below refused to exercise its discretion in passing the order in favour of the petitioners, the question of illegal or irregular exercise of jurisdiction by the learned Trial Court cannot be raised by the petitioners. The same cannot be brought within the ambit of Section 115 of the CPC, as the petitioners has not been able to raise any ground which requires this Court to exercise its powers under its revisional jurisdiction, thereby, correcting the alleged jurisdictional error in the order under challenge.

31. It is submitted that there was no clear, unequivocal, or specific admission neither in the written statement; nor in any of the documents on record filed either by the respondent or by the petitioners before the learned Trial Court.

32. It is submitted that there is nothing as such in the pleadings filed by the respondent which can be even remotely termed as admission or evasive denial, or not a specific denial.

33. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and only after the due consideration, it reached to the conclusion, thereby, dismissing the



petitioner's application filed under Order XII Rule 6 of the CPC. The same has been done rightly and in accordance to the settled legal principles of law.

34. In view of the aforementioned arguments, it is submitted that the instant petition may be dismissed being devoid of any merit.

### **ANALYSIS AND FINDINGS**

35. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

36. Before embarking upon the technical paraphernalia of the case, it is pertinent to understand the context and legislative intent behind the enactment of Section 115 of the CPC. The said Section has been reproduced for reference hereunder:

*“115. Revision.—<sup>4</sup> [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

- (a) to have exercised a jurisdiction not vested in it by law,*
- or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally*  
*or with material irregularity, the High Court may make*  
*such order in the case as it thinks fit:*

<sup>1</sup>*[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue,*



*in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]*

<sup>2</sup>*[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.*

<sup>3</sup>*[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]*

*Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”*

37. Section 115 of the CPC, deals with the High Court’s power of revision. Briefly stating, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

38. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order



passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (ii) that in exercising jurisdiction the Court has not acted illegally, that is, breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

39. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

40. In the landmark case of ***Major S.S. Khanna v. Brig. F.J. Dillon, (1964) 4 SCR 409***, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of ***Major S.S. Khanna (Supra)*** have been reproduced herein:



*“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:*

- (i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;*
- (ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and*
- (iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.*

*The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:*

*“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”*

*The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit*



*in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”*

41. The term ‘jurisdiction’ has not been defined in the CPC; however, the definition of the same has been defined by the Hon’ble Supreme Court and various High Courts by way of judgments. The said term means ‘the power of a Court to hear and decide a case or to pass a certain order’ and ‘the right or authority to apply laws and administer justice’. The expression ‘jurisdiction’ is a verbal cast of many colors the adoptive definition of the



same has to be interpreted subjectively, i.e., depending upon the nature of the facts and circumstances of each case.

42. The primary objective of Section 115 of the CPC, is to prevent subordinate Courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers to see that the proceedings of the subordinate Courts are concluded in accordance with law within the bounds of their jurisdiction and in furtherance of justice.

43. It is a settled principle of law that the Courts below have jurisdiction to decide the case, and in context of the provisions of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

44. The CPC however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of ***Manick Chandra Nandy v. Debdas Nandy*, (1986) 1 SCC 512**. The Hon'ble Court in the said judgment had observed as follows:

*“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the*



*Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably*



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*wrong that if allowed to stand, would result in grave injustice to a party.”*

45. The scope and extent of the revisional powers of this Court have been discussed in depth in the foregoing paragraphs. Before delving further into the analysis of issues pertaining to the instant dispute, the facts necessary for the adjudication of the present petition are recapitulated in the below stated paragraphs.

46. It is the case of the petitioners that they had filed a Civil Suit against the respondent seeking recovery of a sum of Rs. 47,50,000/-. In the said suit, the petitioners had further filed an application under Order XII Rule 6 of the CPC, wherein, they sought a decree on the basis of the alleged admissions made on behalf of the respondent in his reply to the legal notice dated 14<sup>th</sup> February 2020, and in his written statement filed on 2<sup>nd</sup> February 2021.

47. It has been averred on behalf of the petitioners that the respondent in paragraphs no. ‘1 to 11’ in his reply to the said legal notice issued on behalf of the petitioners and also in paragraphs ‘3, 5, 6, 13, 18, 19, 20, 22 and 23’ of the written statement has admitted to the case of the petitioners which amounts to clear and unequivocal admissions, thereby, making the petitioners entitled to a decree on the basis of such admissions. It has been argued on behalf of the petitioners that the learned Court below has erred by overlooking such admissions and the material plea of the respondent in order and hence, has not adjudicated the petitioners’ application filed under Order XII Rule 6 of the CPC, in accordance with the jurisdiction ascribed upon it



under the above said provisions. The paragraphs no. '1 to 11' of the reply to the legal notice issued on behalf of the petitioners and paragraphs '3, 5, 6, 13, 18, 19, 20, 22 and 23' of the written statement are being reproduced herein below for reference:

Paragraph no. '1 to 11' of the reply to the legal notice dated 14<sup>th</sup>

February 2020:

*".... I am as the legal counsel is replying the Notice dated 11.02.2020 of your client as follows-*

*1. That my client got the notice dated 11.02.2020 in the mail Id of the same and gone through. In respect of the contents of Para No. 1 the term Said transactions was not properly explained.*

*2. That as per the para no 2 the term of the proposed work was fixed for total period of 2 years and the amount and all work of agreement may come into the force as per the face value of the stated agreement. All persons are equally responsible for the implementation of the said agreement as per the version of my client.*

*3. That in respect of para no.3 any final amount will be fixed for exchange on the execution of the final draft of the agreement as agreed between the parties to this agreement.*

*4. That in respect of the minutes of the para no. 4 of the notice dated 11.02.2020 the transaction shown in the said para is matter of record. At present in that respect my client will not comment further.*

*5. That in respect of para no 5, as per the instruction of my client the commitment was made by my client but not specific*



*because in official work every work is not fixed not fixed in the matters of tender floated by the Govt. or any other organization, so the implantation of the agreement is always under threat.*

*6. That my client never gave any false commitment to your client, everything was done by my client as per the agreement as agreed with your client. On its Own motion the client of your entered into the agreement with my client and there was no question loss of money of our client at the relevant point of time. This is the statement of my client in respect of the para no. 6 of the notice dated 11.02.2020.*

*7. That in regard to the para no.7 of the legal notice my client begs to state that no such act was done by my client because the same was busy with some personal and other works as earlier committed. My client never committed any default against your client.*

*8. That as per my client in respect of the statement made in the para no.8 of the notice 11.02.2020. Every such commitment of my client have to be on record. And my client is denying the allegations made in the said Para.*

*9. That in respect of the minutes of para no.9 of the notice dated 11.02.2020 my client states that at present some financial discomfort with my client and for the stated amount the admitted amount as per my client will be repay our client when the financial status will be stable. My client never stated that he will not repay your client. My client understood the condition of the matter.*

*10. That due to some financial crisis, my client proposed repayment was delayed and at present my client arranged an amount for the repayment and the said amount will be deposited to the account of your client and the rest admitted*



*amount of my client will be payable in instalments. That is why no question of any case under Section 406, 468, 471, 120 B, 201 and 420 of Indian Penal Code at all. My client is cooperating in the matter of your client and for that reason my client will not make any comment. In legal Notice dated 11.02.2020, the question of interest was raised but my client stated that no discussion was made in respect of this interest between the parties. In the whole dealing my client also invested his own money and the said money of my client yet to be recovered.*

*11. That in respect of the para no. 13 of the mention notice my client states that the same never avoided your client states, that the same never avoided your client in any means and ready to repay the admitted amount by my client to your client and for the said reason the time for repayment may be extend to the comfort of my client. If accommodation given to my client then the same will repay the admitted amount without fail And for the stated reasons there is no questions of any litigation between my client and your client...”*

Paragraph no. ‘3, 5, 6, 13, 18, 19, 20, 22 and 23’ of the written statement dated 2<sup>nd</sup> February 2021:

*“3. That, the humble defendant in respect pf para no.1 of the plaint of the plaintiff begs to state, the humble defendant never admitted the liability of Rs.50,00,000/- (Rupees Fifty Lakh) only. The amount of Rs.50,00,000/- (Rupees Fifty Lakh) only was paid by the plaintiff's as per the calculation made by the same, not as per the agreement as stated by plaintiff. The minutes of the para no.1 is denied by the defendant instantly.*

*4.     xxx   xxx   xxx   xxx*

*5. That, the humble defendant partly denying the contents of the para no.3 of the plaint of the plaintiff, because the defendant*



*never received any advance money in Delhi. The stated amount of the plaintiff was received by the defendant at Guwahati (Assam). That is why the cause of action of the mention suit arose at Guwahati (Assam) not at Delhi (India). That is why this present suit is not maintainable at Delhi.*

*6. That, the humble defendant in respect of the para no.4 of the plaint of the plaintiff begs to state, the term agreement is best known to the plaintiff only because the humble defendant never entered into any agreement with the plaintiff and also never signed any agreement with the plaintiff at any time. The agreement annexed with the plaint of the plaintiff was not signed by the defendant or by the plaintiff, cannot be an admissible document in any legal process. The said agreement of plaintiff was a forged document and don't have any credibility.*

7. xxx xxx xxx xxx

8. xxx xxx xxx xxx

9. xxx xxx xxx xxx

10. xxx xxx xxx xxx

11. xxx xxx xxx xxx

12. xxx xxx xxx xxx

*13. That, in regards to the para no.15 of the plaint of the plaintiff the defendant begs to state that the defendant suffered loss for the execution of the film project which was offered to the defendant by the plaintiff. The defendant invested own money in the film project of the plaintiff utilized all the money of the plaintiffs by the defendant as per the instrumentation of the plaintiff. And that is why irreparable loss was suffered by the defendant only, but not by the plaintiff's.*

14. xxx xxx xxx xxx

15. xxx xxx xxx xxx

16. xxx xxx xxx xxx

17. xxx xxx xxx xxx



18. That, the humble defendant in respect of the para no. 21, 22 & 23 of the plaint of the plaintiff begs to state that without any valid cause of action the Notice was send the defendant by the plaintiff and liability was incurred by the plaintiff on the strength of one unsigned agreement which is not sustainable in the eyes of law. Still the defendant is standing on the following statements as stated "That in the last communication dated 18.02.2020 from my client side (defendant) it was quarried that what kinds of clauses are there is the agreement as mentioned in your legal notice dated 11.02.2020 (plaintiff's notice). A copy of the said agreement may be send into the address of my client on my above address as early as possible to solve the matter between my client and your client". But the plaintiff never responded to the quarries of the defendant and without any cause of action the plaintiff instituted this suit against the humble defendant, which was totally illegal in the eyes of law.

19. That, the humble defendant in regard to the para no. 24 of the plaint of the plaintiff begs to state, the defendant on itS own motion calculated the liability of the plaintiff and found that an amount of Rs.6,00,000/- (Rupees Six Lakh) only was due as loss sustained by the present plaintiff and for the said reason the defendant replied the Notice dated 11.02.2020 and repayed an amount of Rs.5,00,000/- (Rupees Five Lakh) only on 14.02.2020. And at present only One Lakh is the liability of the defendants towards the plaintiff in respect of the Notice dated 11.02.2020 of the plaintiff accordingly.

20. That, the humble defendant in respect of the para no.25 of the plaint of the plaintiff begs to state that the reply of the defendant via Notice dated 14.02.2020 it was disclosed that "at present some financial discomfort with my client (defendant) and for the stated amount the admitted amount as per my client will be repay to your client when the financial status will be stable. The defendant never admitted the whole amount coded



*by the plaintiff's at all. Only the calculation made by the defendant was admitted by the present defendant. The plaintiff misread the whole calculation and wrongly instituted the above numbered suit against the defendant.*

21. xxx xxx xxx xxx

*22. That the humble defendant in respect of para no. 29 & 30 humbly begs to state that the plaintiff's in the period mention is the said para's with the help of political Gundas of New Delhi continuously threatened the defendant and family with dire consequences. But the defendants never lodged any F.I.R. because the same is a family man and alone at the relevant point of time. Also with a malafide intention the plaintiff communicated the defendant and stated that, plaintiff had no interest on the project of Cinema and will invest the money in Supari Business and the said SupariBusiness is totally alien to the humble dependant at any point of time the humble defendant invested more than Rs.50,00,000/- (Ruppes Fifty Lakh) only is the Film project of the plaintiff because the defendant wrote two stories and scripts and deployed professional person to find out location for shooting and engaged various artists for the Film project of the plaintiff's.*

*23. That, the defendant in respect of the para no. 31 & 32 of the plaint of the plaintiffs begs to state, the minutes of the both para and the faith of the same will be decide by this Honble Court after hearing the parties.”*

48. In rival submissions, it has been contended on behalf of the respondent that the learned Trial Court has rightly adjudicated upon the application of the petitioners and there is neither any illegality nor is there any material irregularity with the impugned order that would warrant the interference of this Court under its revisional jurisdiction. The respondent



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has further submitted that the petitioners' case before the learned Trial Court is required to be proved as maintainable since the agreement upon which the petitioners are relying was never executed and finalized. Further, the whole contention of the petitioners is baseless and without any merits since the proposed project as stated by the petitioners is not with regards to any consultancy services for development of business, instead the project proposed among the parties was with regards to a film project that the respondent was asked to execute by the petitioners.

49. It has been contended that the respondent never admitted to any particulars as alleged by the petitioners, rather the respondent had filed a counter claim of Rs. 68,00,000/- against the petitioners seeking recovery of expenses incurred on respondent's behalf for the film project. It has been also submitted that the respondent has only admitted to Rs. 6,00,000/-, as per the calculations and had never admitted to the amount of Rs. 50,00,000/-. Moreover, the respondent has paid Rs. 5,00,000/- to the petitioners on 14<sup>th</sup> February 2020, and only Rs. 1,00,000/- is the liability of the respondent towards the petitioners.

50. It is further submitted that in the written statement filed by the respondent before the learned Trial Court, there were no unequivocal admissions on his part and on the contrary the respondent had filed a counter claim in terms of Order VIII Rule 6A of the CPC, with respect to a film project which was supposed to be executed among the parties, and in view of the same the petitioners are required to pay a sum of Rs. 68,00,000/-, to the respondent.



51. The learned Trial Court vide the impugned order dated 16<sup>th</sup> October 2021, dismissed the above said application filed by the petitioner. The petitioner, being aggrieved by the said impugned order, has approached this Court under Section 115 of the CPC, challenging the said order passed by the learned ADJ-08, West, Tis Hazari Court, Delhi, in Civil Suit bearing CS no. 678/2020. The relevant extracts of the same are being reproduced as under:

*“...9. In the present suit the plaintiff is seeking recovery of money stated to have been given to defendant for procuring some business. The Written Statement of defendant is on record. Moreover, the defendant has also filed a counter claim seeking Rs.68 lacs from plaintiff. In the written statement, the defendant has categorically denied the existence of agreement between the parties and claimed that the copy of agreement filed is a forged document. The defendant has also denied the averments of plaintiff as mentioned in para 5, 6 and 7. He has also denied if any promise was made by him to procure business for plaintiff and the defendant himself suffered losses for the execution of film project offered by plaintiff to the defendant. The defendant has also denied the validity of the legal notice and had repaid Rs.5 lacs on 14.02.2020. It is also claimed by defendant that only Rs.1,00,000/- is the liability of the defendant towards the plaintiff. It is also claimed by the defendant that initially plaintiff deposited Rs.25 lacs in the account of defendant without any consent of the defendant which was duly refunded.*

*10. The admission, if any, must not only be categorical but also unequivocal and unconditional. However, there is no unambiguous and unequivocal admission on the part of defendant in his written statement with respect to the claims of plaintiff. On the other hand, defendant has also sought recovery of Rs.68 lacs by filing counter claim.*



*11. Accordingly, I am satisfied that at this stage, no occasion has arisen to exercise the power U/o XII Rule 6 CPC. The application of plaintiff U/o XII Rule 6 CPC stands dismissed and disposed off.”*

52. Upon perusal of the above quoted impugned order, it is observed that the learned Trial Court whilst dismissing the application filed by the petitioners under Order XII Rule 6 of the CPC, held that as per the settled law, the Courts are permitted to pass a judgment under Order XII Rule 6 of the CPC, but before a Court can act under the said provisions, the alleged admissions must be clear, unambiguous, unconditional and unequivocal.

53. The learned Court held that in the aforementioned civil suit, the petitioners, i.e., the plaintiffs therein, are seeking recovery of money stated to have been given to the respondent, i.e., the defendant therein, in order to procure some business. It observed that the respondent had also filed a counter claim seeking Rs. 68,00,000/- from the petitioners, and further observed that the agreement pursuant to which the petitioners are basing their case and made the payment of Rs. 50,00,000/-, has been categorically denied by the respondent in his written statement. The respondent denied the liability *qua* the amount of Rs. 50,00,000/- and has admitted to the quantum of only Rs. 1,00,000/- as part of his remaining liability.

54. In view of the above observations made by the learned Trial Court, it did not find any merit in the contentions made by the petitioners and accordingly dismissed the petitioners' application seeking a decree on the basis of purported admissions made by the respondent, thereby, holding that



there is no unambiguous and unequivocal admission on the part of the respondent in his written statement with respect to the claims of the petitioners.

55. At this juncture the issue before this Court is whether there is any admission on behalf of the respondent which entitles the petitioners to seek a judgment/decreed in their favour under Order XII Rule 6 of the CPC?

56. Before proceeding to test the legality of the impugned order, it would be prudent to refer to the nature, scope and object of the law settled by the various Courts with regards to Order XII Rule 6 of the CPC. In order to understand the basics, the relevant provision of law, is reproduced herein:

**“ORDER XII**

***Admissions***

***<sup>4</sup>[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.]”***

57. Upon perusal of the above, it is deliberated that Order XII Rule 6 of the CPC, governs judgments on admission verbatim. The Courts have the power to pass a judgment in regard to any oral or written submission made



by the parties at any stage of the proceedings and such admission may be made in the pleading or otherwise.

58. An admission is a statement made by the parties to a dispute, which may be oral, documentary or contained in electronic form, and which suggests an inference with respect to any fact in issue. The provision contemplates that in case of a clear admission by which the Court cannot even entertain the possibility of a different view, a judgment on admission may be passed without trial. It ensures that any fact which has been admitted during the hearing, or in writing in the pleadings, would not be required to be proved by way of a trial. The said provision is an enabling provision, therefore, it is neither mandatory nor pre-emptory, however, it is discretionary. Hence, the Court, on examination of such facts and circumstances, must exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without the conduction of a trial.

59. It is important to comprehend as to what admission is, what constitutes as a legal admission, in which situation such an admission may be made, and under what conditions a judgment under this provision may be rendered by the Court, notwithstanding how straightforward it may seem. The same has been discussed by this Court herein below.

60. Admission is a common law norm and the main objective of the governing provision is to make it possible for a party to expeditiously obtain judgment in cases when such admission is made in the pleadings or otherwise by the defendant. A party under this rule can approach the Court to get a judgment with regard to the extent of relief to which such party is



entitled, based on the admission by the other party. The intent behind the said principle is to interpret this norm in a way that will allow swift justice while being careful not to trample upon the right to a fair defense by taking into account the peculiar circumstances of the case.

61. The Hon'ble Supreme Court in the judgment passed in **Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396**, enunciated the principles governing the provisions of Order XII Rule 6 of the CPC and held as under:

*"21. There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides as under:*

*"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) decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this amendment are given below:

*"Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule*



*is to enable a 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. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule."*

*23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers, the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit*

*24. In Razia Begum Sahebzadi Anwar Begums it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.*

*25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:*

*"58. Facts admitted need not be proved.-No fact need be any proceeding which the parties thereto or their agents agree to admit at the proveyd hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted in to be proved otherwise than by such admissions."*



26. *The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.*

27. *In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.*

28. *Having regard to the provisions of Order 12 Rule 6. Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum cases observed as under:*

*"In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms: Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission." The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."*

*The Court further observed:*



*Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers."*

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8. or the expression "may make such order in relation to the suit as it thinks fit in Rule 10 of Order 8."



62. There is no doubt that Rule 6 of Order XII of the CPC, has been couched in a very comprehensive manner. However, before a court can act under Rule 6 of Order XII of the CPC, the admission must be clear, unambiguous, unconditional and unequivocal. Furthermore, seeking a judgment on admissions made by a defendant under Order XII Rule 6 of the CPC, is not a matter of right rather the same is a matter of discretion of the Court; no doubt such discretion has to be exercised judicially and on the basis of the facts of the case at hand.

63. If a case involves questions which cannot be conveniently disposed under this rule, the Court is free to refuse to exercise its discretion in favor of the party invoking it. It is not in each case where Order XII Rule 6 of the CPC, is invoked that the Court is obliged to pass a decree as the same would depend upon its own peculiar facts.

64. It is peculiar to note that where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favor of the plaintiff. The purpose of Order XII Rule 6 of the CPC, is to avoid the pendency of a suit, when there is a clear, unequivocal, unambiguous and unconditional admission by the defendant in respect of the claim of the plaintiff.

65. The rule only secures that if there is no dispute between the parties, and if there is, on the pleadings, or otherwise, such an admission that crystallizes that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once, to the extent of such admissions.



66. However, the rule is not intended to apply where there are serious questions of law which are to be asked and determined. Likewise, where specific issues have been raised in spite of admission on the part of the defendants, the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to the decree and the plaintiff in that event cannot have a decree by virtue of the provisions under Order XII Rule 6 of the CPC, without proving those issues.

67. The Hon'ble Supreme Court in the case titled as ***Charanjit Lal Mehra v. Kamal Saroj Mahajan, (2005) 11 SCC 279***, has held that Order XII Rule 6 of the CPC, has been enacted for a specific purpose, which is to expedite the trials. If there is any admission on behalf of the defendants or any admission that can be inferred from the facts and circumstances of the case without any dispute, then, in order to expedite the proceedings, the said case could be disposed of.

68. Further, the power under the said provision is not only discretionary but also requires exercise of caution, and unless there is an ambiguity in the admission, the Court may pass a judgment. The Hon'ble Supreme Court in the judgment of ***S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287***, had delved into the aspect of the extent of the Court's discretion to exercise its power under Order XII Rule 6 of the CPC. The Hon'ble Court observed 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."*

69. It is trite law that when a Civil Court deals with an application under Order XII Rule 6 of the CPC, the Court shall not only look into the pleadings but also the documents annexed thereto, in order to ascertain the position of the purported 'admissions' emerging from the pleadings and evidence on record of such Civil Court.

70. This Court is of the considered view that to make an order or to pronounce a judgment on admissions is at the discretion of the Court. *Firstly*, the word 'may' is used in Order XII Rule 6 of the CPC, and not the word 'shall' which *prima facie* shows that the provision is an enabling one. The provisions of Rule 6 of Order XII of the CPC, are discretionary and not mandatory or obligatory in nature and it is not incumbent on the Court to make an order or to pronounce a judgment in favour of the plaintiff in all cases on the basis of such admissions by the defendant.

71. It is also clear that when a defense is set up and it requires evidence for the determination of the issues, then the provisions of Order XII Rule 6 of the CPC, are not applicable and therefore, a judgment cannot be passed in



this regard. Accordingly, the pleadings of parties are required to be considered and scrutinized to reach to the conclusion to pass such judgment as sought, on the basis of the alleged admissions.

72. The admissions need not be made specifically, particularly, or expressly, and could be constructive admissions also. The test, therefore, is *first*, whether admissions of facts arise in the suit, *second*, whether such admissions are plain, unambiguous and unequivocal, *third*, whether the defense set up is such that it requires evidence for determination of the issues and *fourth*, whether objections raised against rendering the judgment are such which go the root of the matter or whether these are inconsequential, thereby, making it impossible for the party to succeed even if entertained. The said view has been enunciated by the Hon'ble Supreme Court in the judgment passed in ***Hari Steel & General Industries Ltd. v. Daljit Singh*, (2019) 20 SCC 425** and reaffirmed in ***Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414**.

73. Now this Court shall adjudicate upon the instant issue.

74. The petitioners have contended before this Court that the respondent had made certain admissions in paragraph no. '1 to 11' in his reply to the legal notice dated 14<sup>th</sup> February 2020, and also in paragraphs '3, 5, 6, 13, 18, 19, 20, 22 and 23' of his written statement which have been reproduced hereinabove. The petitioners have contended to the effect that by way of the above said submissions made in the reply and the written statement filed by the respondent, there have been specific admissions on his part which the learned Trial Court had failed to appreciate and hence, the impugned order is



liable to be aside. It has been submitted that the learned Court below erred in dismissing the application filed by the petitioners under Order XII Rule 6 of the CPC, and further failed to take into consideration that the respondent by way of the above quoted statements made in the reply and in the written statement, has made specific admissions with respect to the following:

- a. receipt of advance amount;
- b. the purpose for which the advance amount was paid;
- c. the respondent's obligations post such payment;
- d. his inability to perform such obligation and;
- e. consequent offer to make the refund once his financial position is stabilized.

75. The respondent in his rival submissions has opposed the petitioner's contentions submitting to the effect that the respondent had raised certain objections which go to the root of the matter and the defense set up therein, is such that it requires evidence for determination of the issues, hence the present petition is liable to be dismissed and the impugned order be upheld accordingly.

76. In response to the contentions of the petitioners, the respondent has also stated that the application filed by the petitioners under Order XII Rule 6 of the CPC, was not maintainable as it was an abuse and misuse of the due process of law. It is stated that there is no admission on behalf of the respondent and the averments made in the written statement do not make out the case of admission under Order XII Rule 6 CPC. It is thus, prayed that the



order of dismissing the application by the learned Trial Court be upheld as the same is passed in accordance with the settled law.

77. This Court is of the considered view that in the event a judgment is passed on the basis of alleged admissions as prayed by the petitioners, the same would cause grave injustice to the respondents, thereby, violating the settled principles of law.

78. Upon perusal of the records, it is observed by this Court that the respondent has denied the averments of the plaint as mentioned in para 5, 6 and 7, and the same as been also contemplated by the learned Trial Court. The respondent has also denied the validity of the legal notice and had denied the liability towards the amount of Rs. 50,00,000/-, instead the respondent has submitted in his written statement that he has repaid Rs. 5,00,000/- on 14<sup>th</sup> February 2020, and that only Rs. 1,00,000/- is his liability towards the petitioners.

79. Further, it is noted that the respondent had filed a counter claim against the petitioners to the tune of Rs. 68,00,000/-, there, denying the existence of the agreement alleged by the petitioners. The respondent has also produced invoices to support his counter claim.

80. Accordingly, the respondent whilst denying the particulars of the proposed project has further contended that the petitioners had approached the respondent for execution of a film project since the respondent is a well-known film maker and it is for that very film project that the respondent has incurred various expenses which he has sought to be recovered by way of the said counter claim.



81. All such submissions, denials and statements made by the parties requires a trial and considering the above it cannot be stated that the principles governing the provision of decree on admissions has been met. In view of the same, it is therefore observed by this Court that the learned Court below has rightly exercised its jurisdiction whilst dealing with the application filed by the petitioners under Order XII Rule 6 of the CPC, wherein, it held that no such categorical and unambiguous admissions can be drawn on the part of the respondent which would entitle the petitioners for the relief of judgment in his favour.

82. This Court is of the view that unclear and ambiguous admissions cannot be taken into consideration in isolation without taking into account the objections of the respondent. Categorical and unconditional admissions are required for granting of the relief under Order XII Rule 6 of the CPC. It is observed that in the present case, the respondent has raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favor of the petitioners at this stage. The purpose of Order XII Rule 6 of the CPC, is to avoid the pendency of a suit, when there is a clear, unequivocal, unambiguous and unconditional admission by the defendant in respect of the claim of the plaintiff and no such case is being inferred herein.

83. Consequently, in view of the judgments cited above and the facts of the instant case, the application filed by the petitioners under Order XII Rule 6 of the CPC, fails to establish a clear and unambiguous admission on part of the respondent. Therefore, this Court is of



the view that the learned Court below has rightly dealt with the application filed under Order XII Rule 6 of the CPC, and after taking into consideration the propositions put forth by the petitioners, this Court does not find any ground to exercise its revisional powers under Section 115 of the CPC.

### **CONCLUSION**

84. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and does not go into the merits of the case.

85. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below.

86. It has been deliberated by way of the aforementioned judgments that in the absence of such clear and categorical admission there can be no judgment under Order XII Rule 6 of the CPC. The Hon'ble Supreme Court has by way of a catena of judgment has made it crystal clear that an admission should be a conscious and deliberate act of the party making it, thereby, showing an intention to be bound by it.

87. This Court is of the opinion that there was neither any admission nor any such evasive denial that would have required the learned Trial Court to



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pass a judgment based on the unsubstantiated grounds of the petitioners raised in their application under Order XII Rule 6 of the CPC. Hence, the arguments advanced by the petitioners against the impugned order are rejected.

88. In regard to the facts of the instant petition, the errors of jurisdiction, as explained in brief in the foregoing paragraphs, are absent in the impugned order and there is no force in the arguments advanced by the petitioners, hence, not inviting the attention of this Court. Therefore, it is held that the petitioners have been unable to make out a case for grant of relief of revision of the impugned order under Section 115 of the CPC. Henceforth, the learned Trial Court has exercised its jurisdiction in accordance with the law.

89. In light of the above discussion of facts and law, impugned order dated 16<sup>th</sup> October 2021, passed by the learned ADJ-08, West, Tis Hazari Court, Delhi, in Civil Suit bearing CS no. 678/2020, is hereby, upheld.

90. Accordingly, the instant petition stands dismissed being devoid of any merits.

91. Pending applications, if any, also stand dismissed.

92. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**DECEMBER, 12, 2023**  
**gs/ryp/ds**