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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (STAMP) NO. 2160 OF 2024
WITH
INTERIM APPLICATION NO. 2017 OF 2024
IN
CIVIL REVISION APPLICATION (STAMP) NO. 2160 OF 2024

Jayant Maniklal Lunawat

.. Applicant

Versus

Sunil Mohan Balwadkar and Others

.. Respondents

-
- Mr. Virendra Tulzapurkar, Senior Advocate a/w. Mr. Rashmin Khandekar, Mr. Devash Bheda and Mr. Parth Jasani, Advocates i./by M/s. Purnanand & Company for Applicant.
 - Mr. Anil Anturkar, Senior Advocate a/w. Mr. Dormaan Dalal, Mr. Amey Deshpande, Mr. Hari Shetty and Mr. Harsh Nishar, Advocates for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 13, 2024.

JUDGMENT:

1. At the outset, Mr. Tulzapurkar, learned Senior Advocate appearing for the Applicant would submit that Interim Application No.2017 of 2024 is filed for condonation of delay of 36 days in filing the Civil Revision Application (CRA).

2. I have perused the Interim Application. For the reasons mentioned in the Interim Application, Interim Application stands allowed in terms of prayer clause 'a'. Delay of 36 days stands condoned.

3. After allowing the Interim Application, present CRA is taken up for final hearing immediately.

4. This CRA takes exception to the order dated 16.09.2023 passed by the 2nd Civil Judge (Senior Division), Pune in Application filed below Exhibit “58” in Regular Civil Suit No.787 of 2023. By the said Application, Plaintiff in the Civil Suit prayed for a decree / judgment on admission against Defendants (Defendant Nos.1 to 4) under Order XII Rule 6 of the Code of Civil Procedure, 1908 (for short “CPC”). Parties shall be referred to as Plaintiff and Defendants for convenience. Mr. Tulzapurkar appears for Plaintiff and Mr. Anturkar appears for Defendants.

5. Mr. Tulzapurkar, learned Senior Advocate appearing for Plaintiff would submit that Defendants have filed their Affidavit-in-Reply to the Application for temporary injunction. He would submit that certain admissions by Defendants in their counter claims filed in two previous Suits admit and accept that Plaintiff is the legal owner of Suit property No.1B and this needs to be considered for adjudicating the *lis* under Order XII Rule 6 of CPC. He would submit that Suit is filed for injunction against Defendants from interfering with the Suit property described as 1B in paragraph No.1 of the Suit plaint which is the subject matter of Application filed by Plaintiff seeking decree on admission. According to him, the Suit property admeasures 14,927 square meters.

6. According to Plaintiff, he is entitled to the Suit property and acquired rights from its erstwhile owners namely the Murkute and Balwadkar families by diverse agreements, PoA and sale deeds at various points of time. The premise of the Plaintiff is that Defendants do not have any right, whatsoever in the Suit property as it belongs to the Plaintiff. He would submit that in the written statement / counter claim dated 10.11.2010 filed in Special Civil Suit No.1548 of 2010 between the parties previously, paragraph Nos.1 to 29 deal with the Suit plaint therein but thereafter from paragraph No.30 onwards, Defendant Nos.1 and 2 have filed their counter-claim. In that counter-claim, Defendants have referred to an area admeasuring 13.5 Ares out of land bearing Survey No.15, Hissa No.5 of Village Balewadi with its boundaries as belonging to Defendants and would contend that by virtue of such an averment made in paragraph No.30b, Defendants have admitted that Plaintiff is the legal owner of the Suit property described in paragraph 1B of the Suit plaint, which according to Mr. Tulzapurkar corresponds with the Suit property described in paragraph No.1B of the Suit plaint. Paragraph No.30b of the written statement is appended at page No.86 of the CRA. Similarly in paragraph Nos.3 to 5 of the written statement / counter claim dated 10.11.2020 in Special Civil Suit No.1551 of 2010, Defendant Nos.3 and 4 have made a similar admission in respect of area admeasuring 16.5 Ares corresponding to Suit property 1B.

7. Revision Applicant / Plaintiff has filed a brief note and argued for seeking decree on admission on the basis of the above submissions. It is seen that both these Special Civil Suits stood withdrawn by Plaintiff but the counter-claims are still pending decision. According to Plaintiff, Defendants have in the aforementioned paragraphs 30b and 3 of their previous written statements / counter-claims admitted that Plaintiff is the legal owner and entitled to Suit property described in paragraph No.1B of the Suit Plaintiff. This is the sum and substance of the submissions advanced by the Revision Applicant / Plaintiff. This incidentally is only required to be considered by this Court in the issue raised by Plaintiff in so far as Application under Order XII Rule 6 of the CPC is concerned and nothing more.

8. Though while making submissions, Revision Applicant / Plaintiff has also attempted to address several other issues on merits, but provisions of Order XII Rule 6 of the CPC as appearing in the statute and as interpreted by the Supreme Court are very clear. What is required to be seen by this Court is whether the other party has made a plain and clean admission entitling the former party to succeed and for it to apply. There has to be a clear admission of facts and most importantly it has to be with respect to the same cause of action. Hence when the matter was argued by Mr. Tulzapurkar, I repeatedly persuaded him to juxtapose paragraph No.1B of the Suit plaintiff which

is appearing and appended at page No.127 with paragraph No.30b of the counter-claim dated 10.11.2010 at page No.86 of the CRA and paragraph No.3 of the counter claim dated 10.11.2010 at page No.99 of the CRA and then argue whether in the first place description and area of the property given therein corresponds to the Suit property 1B in the Suit plaint and whether there is any admission of Plaintiff's title. Valiant but completely unsuccessful attempts were made by Mr. Tulzapurkar to read both the aforesaid paragraphs. He failed to show either the alleged admissions or even whether the areas of the Suit properties corresponded with each other and that there is any similarity.

9. All that the Revision Applicant / Plaintiff would contend is that the Court should read the note which was given to the Court in the form of written submissions in which according to Plaintiff it was stated that Defendants had given clear admissions. He would argue that Plaintiff is the real owner and in possession of the Suit property described in paragraph No.1B of the Suit plaint totally admeasuring 17,100 square meters under 8 registered sale deeds executed between 2005 and 2018 by him with various third parties i.e. the erstwhile owners and as such, since the said sale deeds are not challenged by the Defendants in any proceedings, their subsistence is valid, resultantly leading to the Plaintiff being the real owner of the Suit property described in paragraph No.1B of the Suit plaint.

10. In so far as admissions by Defendants are concerned, he would submit that the Suit / property described in paragraph No.1B is distinct. According to the Plaintiff, Defendants in their written statement in paragraph No.4 have admitted that the sale deeds which are sought to be referred to and relied upon by the Plaintiff are not executed by them. Hence according to Plaintiff, if the 8 sale deeds are not executed by Defendants, then it has to be derivated that the Suit property described in paragraph No.1B belongs to the ownership of the Plaintiff. This is how the admission of Plaintiff's ownership is required to be construed for seeking a decree on admission according to Mr. Tulzapurkar.

11. Next, Mr. Tulzapurkar would submit that Defendants have defined their original property in their counter-claim as having been entirely described and situated in non-agricultural property (NA) and that they have been allowed to carry on construction thereon. Next, he would contend that description of the Suit property is repeatedly described by the Defendants in their counter-claim in paragraph Nos.3 and 5 filed in Special Civil Suit Nos.1548 of 2010 and 1551 of 2010 which is appended at page Nos.70, 71 and 99, 100 of the CRA. On the basis of the above, he would claim that admissions of Defendants in their counter-claims filed in the previous two Suits should be

considered as admissions for granting decree on admission in the present Suit. He would also submit that prayer clause in the twin counter-claims bear out the above position about Plaintiff's entitlement.

12. He would submit that Defendants are in possession of collectively 20,000 square feet of land in the non-agricultural property and the remaining land i.e. non-agricultural property minus Defendants' land plus the Suit property would admeasure 35,200 square meters which is presently held by the Plaintiff. Hence according to him it is clear that Defendants have no interest in the Suit property described in paragraph No.1B of the Suit plaint nor they are in possession thereof and therefore they can never disturb Plaintiff's possession. It needs to be stated here that this case of the Plaintiff is refuted by the Defendants. That is evident from the Affidavit-in-Reply filed by Defendants to the temporary injunction Application.

13. Mr. Tulzapurkar has referred to and relied upon the following decisions / citations in support of Plaintiff's case:-

13.1. In contending that Order XII Rule 6 of the CPC is extremely wide in its scope and permits for a decree to be drawn up based on admissions made in pleadings filed in another proceeding pertaining to the same subject Suit land, he would place reliance on the decisions of the Supreme Court in the case of *Uttam Singh Duggal & Co. Ltd. Vs.*

*United Bank of India and Ors.*¹ and *Karam Kapahi and Ors. Vs. Lal Chand Public Charitable Trust and Anr.*².

13.2. In support of the proposition that Plaintiff is entitled to a decree on admission when Defendant has admitted in another proceeding what has been denied by him in the present suit, he would place reliance on the decision of this Court (Coram: Roshan S. Dalvi, J) in the case of *H. K. Taneja and Ors. Vs. Bipin Ganatra*³ and most importantly in support of the proposition that admissions need not be made specifically or expressly and could be constructive admissions also, he would rely upon the decisions of the Delhi High Court in the case of *Delhi Jal Board Vs. Surendra P. Malik*⁴.

13.3. Next, he would submit that while considering an application under Order XII Rule 6 of the CPC, Court can certainly look into past illusory and moonshine defences as held by the Delhi High Court in the case of *M/s Anjaneya Bisanpur Agro Industries Pvt. Ltd. Vs. Dilawar Singh Rawat & Anr.*⁵ which has been confirmed by the Supreme Court by order dated 25.08.2022 passed in in SLP (C) No. 12067 of 2020. He would also rely upon the decision of the Division Bench of the Delhi High Court in the case of *Vijaya Myne Vs. Satya Bhushan Kaura*⁶ in this regard.

1 (2000) 7 SCC 120

2 (2010) 4 SCC 753

3 2013 (1) Mh.L.J. 783

4 2003 (68) DRJ 284 (DB)

5 MANU/DE/1566/2020

6 2007 SCC Online Del 828

13.4. He would submit further that as held in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By Lrs. And Ors.*⁷ the Supreme Court held that for grant of permanent injunction, Plaintiff needs to only prove lawful possession and interference in such possession.

14. On the basis of the aforesaid submissions and decisions, he would maintain challenge to the impugned order dated 16.09.2022 which rejects Plaintiff's Application under Order VII Rule 6 of the CPC.

15. Before I advert to the reply of the Defendants, briefly stated, the impugned order after narrating the aforementioned facts from the pleadings of the parties, in paragraph Nos.15, 16 and 17 returns the following findings:-

"15] This is a suit for simplicitor perpetual injunction restraining the defendants from entering into the suit property which is described as land of 18100 square meters of S. no. 15/2A/1A (old S.no. 15/2+15/3/1+15/3/2+15/4+15/5+15/6) as described in paragraph no. 1(a) of the plaint and land of 17100 square meters, out of of S. no. 15/2A/1A (old S.no. 15/2+15/3/1+15/3/2+15/4+15/5+15/6) as described in paragraph no. 1(b) of the plaint, and disturbing the possession of the plaintiff over the suit property in any manner.

16] Though the plaintiff is intending to rely upon pleadings of the defendants made in the written statement and counter claim filed by the defendants in Special Civil Suit no. 1548/2010 and Special Civil Suit no. 1551/2010, it cannot be lost of sight that in the present suit, the defendants have strongly combated contents of the plaint and even this application by filing sav at Exh. 62. In the verdict of Karan Kapoor Vs. Madhuri Kumar [(2022) 10 SCC 496], the Hon'ble Supreme Court has been pleased to observe in paragraph no. 23 that -

"23. Order XII Rule 6 of the Civil Procedure Code confers discretionary power to a Court who "may" at

⁷ (2008) 4 SCC 594

any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word "may" and "as it may think fit" to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse the power of Order XII Rule 6 of the Code of Civil Procedure."

17] I have also gone through the citations submitted by the plaintiff with Exh. 71. The verdict of M. Kallappa Shetty is in respect of grant perpetual injunction on better title. It is not on the point of judgment on admission. So also the verdict of Sunkamma through LRs' is on the point of proof required on the part of the plaintiff in suit for permanent injunction relating to possession of immovable property. Said verdict is also not on the point of judgment of admission. Observations made in the verdict of Uttam Singh Duggal are already discussed as aforesaid. Citation of Karam Kapahi and others provides that in Order XII Rule 6 of the Code, the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact.... either in the pleading or otherwise, whether orally or in writing". Further, verdict of Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors. [MANU/SC/0485/2000], is also relied upon in paragraph no. 43 in Karam Kapahi's case, wherein it is held that the expression "either in the pleading or otherwise" should be interpreted ejusdem generis. Rule of ejusdem generis means of the same kind and nature."

16. PER CONTRA, Mr. Anturkar, learned Senior Advocate appearing on behalf of the contesting Defendants would submit that there is absolutely no unconditional and unequivocal admission on the part of the Defendants in any of the pleadings referred to and relied upon by the Plaintiff much less any constructive admission which can be construed as admission for grant of decree on admission to the Plaintiff. He would infact submit that reading of the defences filed by Defendants in their previous pleadings / counter claim, reveal that

Defendants have strongly contested the previously filed twin Suits and the present CRA also. He would submit that in so far as pleadings in the present case are concerned, there is absolutely no case whatsoever made out by Plaintiff while comparing the contents of paragraph No.1B of the Suit plaint with paragraph No.30b and 3 of the previous counter-claims.

16.1. Next, he would submit that reliance of Plaintiff on the subsisting counter-claims in the two previous suits namely Special Civil Suit No.1448 of 2010 and Special Civil Suit No.1551 of 2010 cannot be considered to be unequivocal and unconsidered admission in any event. He would submit that such contention adopted by Plaintiff in the year 2023 ought to have been adopted by him in the year 2010 itself, which was never done. Rather, the Plaintiff after filing of the written statements and counterclaims in the two previous Suits, has withdrawn both his earlier Civil Suits filed in 2010 did not prosecute the same. This, he would submit is an important fact and facet for consideration. He would submit that Suit filed by Plaintiff is seriously contested and opposed by Defendants. He would submit that this Hon'ble Court should juxtapose the pleadings and ascertain whether the Plaintiff's submission of admissions can even be considered.

17. It is seen that most of the submissions which are advanced before the Court by the learned Senior Advocate appearing for

Applicant - Plaintiff are on pure merits of the matter. For an application to be decided under Order XII Rule 6 of the CPC, only admissions in the previous proceedings are required to be seen. On perusal of the pleadings, it is seen that admissions of Defendants in paragraph Nos.30b and 3 in the twin counter-claims in the two previous Suits are all that are required to be seen and ascertained to determine whether the same are clear, unconditional and unequivocal admissions of admitting the Plaintiff's right and entitlement to the Suit property 1B. Hence, it would be in the fitness of things to juxtapose these averments in the present Suit Plaintiff and the counter-claims.

18. At the outset, paragraph No.1B of the Suit Plaintiff is reproduced below to confirm and ascertain the description and nomenclature of the Suit property 1B.

"1. ...

B) All that piece and parcel of land admeasuring 14927 Square Meters, from and out of the land bearing Survey No. 15/2A/1 (Old Survey No.15/2 + 15/3/1+ 15/3/2+ 15/4 + 15/5 + 15/6), totally admeasuring 17100 Square Meters along with one store room/watchman room constructed thereon as well as full grown trees standing thereon and having common chain link fencing along with the land bearing Survey no. 15/10 on three sides of the land, situated within the limits of Pune Municipal Corporation at Revenue Village Balewadi, Taluka Haveli, District Pune, now in Residential Zone and entire property is bounded as under:-

On or towards the East: By River,

On or towards the South: By S. No. 15/7,

On or towards the West: By 24 meter D.P. Road and thereafter by Survey No. 15/2A/1A,

On or towards the North: By Survey No. 15/1/C, owned by the Plaintiff."

18.1. Thus it is seen that Suit property 1B according to Plaintiffs admeasures 14927 sq.mtrs. and comprises of six old Survey numbers out of 17100 sq.mtrs. alongwith its boundaries.

19. Paragraph No.30(b) of the counterclaim dated 10.11.2010 in Special Civil Suit No.1548 of 2010, which according to Plaintiff is an admission is reproduced below and reads thus:-

“30. ...

b) It is submitted that the Defendants are owners of 13.5 Ares land out of Survey No.15, Hissa No.5 village Balewadi Pune and same is bounded as under :-

On or towards the East: By S. No.15/5 (part) of Shri Bajirao Balwadkar;

On or towards the South: By S. No. 15/6 of Shri Dharmaji Balwadkar;

On or towards the West: By Baner-Balewadi Road;

On or towards the North: By S. No. 15/4 of Shri Mangade.”

20. Similarly, paragraph Nos.3, 4 and 5 of the counter claim dated 10.11.2010 in Special Civil Suit No.155 of 2010, which according to Plaintiff is an admission is reproduced below and reads thus:-

“3. As regards contents of para 1(A) of the plaint i.e. the description of the 13.5 Ares of land out of Survey No.15, Hissa No.5 village Balewadi, Pune is bounded as under :-

On or towards the East By S. No.15/5 (part) of Shri Bajirao Balwadkar;

On or towards the South By S. No. 15/6 of Shri Dharmaji Balwadkar;

On or towards the West: By Baner-Balewadi Road;

On or towards the North By S. No.15/4 of Shri Mangade.

It is submitted that the Defendants are owners of the property described above.

4. As regards contents of para 1(B) of the plaint i.e. 3.5 Ares land out of the land described in para 1(A) of the plaint. It is submitted that the Defendants had authorised to use 3.5 Ares land out of land described in para 1(A) of the plaint to the Plaintiff for carrying out development by constructing building as per the terms and conditions of the registered Development Agreement dated 9/08/2001 registered at Serial No.9296 in the office of Sub Registrar of Assurances Haveli 4, Pune which is now terminated by the Defendants by their notice dated 2/08/2010.

5. As regards contents of para 1(C) of the plaint i.e. description of the plot admeasuring about 10,000 sq.ft. (i.e. 929.37 sq.mtrs.) out of amalgamated property bearing Survey Nos. 15/2 + (15/3) / 1 + (15/3) / 2 + 15/4 15/5 + 15/6 village Balewadi, Pune bounded as under :-

On or towards the East: By plinth plot of Shri Bajirao Malhari Balwadkar;

On or towards the South By S. No.15/7;

On or towards the West: By Baner-Balewadi Road;

On or towards the North By remaining property out of S. No. 15/2+ (15/3) / 1 + (15/3) / 2 + 15/4 + 15/5 + 15/6.

It is submitted that the plot described in para 1(C) of the plaint has been retained by the Defendants as per terms and conditions of the registered Development Agreement dated 9/08/2001 and same is in actual and physical possession of the Defendants as owners thereof."

21. At the outset, provisions of Order XII Rule 6 of the CPC and its scope and applicability needs to be seen. Under this provision, it is stated that where admissions of fact have been made either in the pleadings 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. When such an

application is made under Order XII Rule 6 of CPC and objections are filed by Defendants denying the Plaintiff's case, an opportunity is required to be given to Defendants to explain the admissions that were made. This would undoubtedly in such a case entail a trial.

22. In the above backdrop, let us examine the issue at hand. According to the Plaintiff, Suit property is described in paragraph No.1B of the Suit plaint. The description as given by the Plaintiff pertains to and comprises of 6 old survey numbers corresponding to one new survey number and admeasures 14,927 square meters out of the total area of 17,100 square meters. The boundaries of the Suit property are also stated therein. This description is made in Regular Civil Suit No.787 of 2020 filed by Plaintiff for seeking permanent injunction against Defendants which is the only relief sought in the Suit. Thus, this is a Suit for injunction only. One of the averment made in the Suit plaint as appearing in paragraph No. 4 thereof is that Plaintiff by virtue of 8 separate registered Sale Deeds acquired 15202 square meters of the Suit property described in paragraph No.1B from various parties between 2005 and 2018 and out of that, since 275 square meters is reserved for Bus Bay reservation, it is Plaintiff's contention that he has become the exclusive owner of the area admeasuring 14,927 square meters. Thereafter in paragraph No.7 onwards, the Plaintiff describes other properties which alongwith the Suit property would totally admeasure 35,200 square meters and how

the Plaintiff has dealt with the said property by carrying out construction on some part of the said property and entering into two separate registered Development Agreements with Defendants Nos.1 and 2 alongwith their family members on the one hand and Defendant Nos.3 and 4 alongwith their family members on the other hand. Thereafter in paragraph No.12, the Plaintiff avers that dispute has arisen between Plaintiff and Defendants in furtherance of the twin Development Agreements dated 09.08.2001 and 14.08.2001. In paragraph No.14, the Plaintiff gives details of the twin Suits filed by the Plaintiff namely Special Civil Suit No.1548 of 2010 and Special Civil Suit No.1551 of 2010 against Defendants for specific performance. Here, the Plaintiff avers that Plaintiff has withdrawn the said Suits but the counter-claim of Defendants in those Suits are pending final disposal in the Civil Court at Pune.

23. It is Plaintiff's case that in those counter-claims namely paragraph Nos.30b and 3, the averments made therein amount to admission on the part of Defendants that Suit property described in paragraph No.1B of the Suit plaint admeasuring 14,927 square meters as averred in the present Suit plaint belongs to the ownership of Plaintiff and therefore Plaintiff is entitled to a decree on admission. This is the limited case of the Plaintiff.

24. As noted and reproduced above, paragraph Nos.30b and 3 of the counter-claim in the previous two Suits are appended and appearing on page Nos.86 and 99 of the CRA. Firstly, paragraph No.30b, if seen, refers to area admeasuring 13.5 Ares and it is stated therein that Defendants' names are recorded in the record of rights in respect of 13.5 Ares land. It is seen that there is no admission or averment made by the Defendants that property described in paragraph No.1B of the Suit plaint belongs to the ownership of Plaintiff. Similarly, in paragraph No.3 of the counterclaim dated 10.11.2010 filed in Suit No.1551 of 2010 as appearing on page No.99 of the CRA and more specifically in paragraph Nos.3,4 and 5 thereof, there are three different areas which are referred into in the said paragraphs under reference namely 16.5 Ares, 6.5 Ares and 929.37 square meters. Once again, in these three paragraphs under reference of the previous counter-claim, there is no admission or averment to the effect that Plaintiff is the legal owner of the Suit property described in paragraph No.1B of the Suit plaint.

25. What is argued by the Plaintiff is that even though if the admissions are not unequivocal or unconditional or specific or express, constructive admission should be derivated and construed by this Court on the basis of the above pleadings. In this regard, reference is made to the decision of the Division Bench judgment of the Madhya Pradesh

High Court in the case of ***Shikharchand Vs. Bari Bai***⁸. In that decision, G.P. Singh, J (as his Lordship then was) in a concurring judgment has explained the provisions of Order XII Rule 6 of the CPC very authoritatively at page No.79 of the Report. In paragraph No.19 of the reported judgment his Lordship held as follows:-

“19 I only add a few words of my own. Rule 6 of Order 12 of the Code of Civil procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see Annual Practice, 1965 Edn., Part I, p.569). The Supreme Court Rule came up for consideration in Ellis V. Allen (reported on 1914 1 Ch 904). In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee’s solicitors wrote to the plaintiff’s solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that Rule. Sargant J. rejected the argument that the Rule is confined to admissions made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said:

‘The Rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.’

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargant J. The words ‘either on the pleadings or otherwise’ in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also admissions made elsewhere during the trial.”

26. This decision has been approved by the Supreme Court in the judgment of ***Karam Kapahi and Ors. Vs. Lal Chand Public Charitable Trust and Anr. (supra)*** cited by the Plaintiff. While applying the said provision, it needs to be reiterated that it is an enabling, discretionary and pervasive provision and not a mandatory provision

⁸ AIR 1974 MP 75

and would depend upon the facts of each case. Thus in the present case it is seen that paragraph Nos.30b and 3 of the previous counter-claims in the first instance itself do not correspond to the Suit property 1B neither in terms of the area nor in terms of any averment made therein so as to construe that Plaintiff is the legal and juridical owner of the Suit property described in paragraph No.1B in the Suit plaint. The present Suit is filed for permanent injunction only. It is not a declaratory Suit for title.

27. Attention is also invited to the decision of the Supreme Court in the case of *Karan Kapoor Vs. Madhuri Kumar* decided on 06.07.2022 (unreported) in Civil Appel No.4545 of 2022 and more specifically paragraph Nos.16 to 18 therefore which read thus:-

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

17. Some special provisions have been made in Rules 7, 8 and 9 regarding affidavit of signature, notice to produce documents and also to the cost which may not have much relevance to the facts of the present case hence, not being discussed elaborately in this judgment.

18. On the issue of discretion of Court to pass judgment on

*admission, a three-Judge Bench of this Court in the case of **S.M. Asif v. Virendar Kumar Bajaj – (2015 9 SCC 287)** made the legislative intent clear to use the word ‘may’ which clearly stipulates that the power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right. In the said case, the suit for eviction was filed by the Respondent-Landlord against the Appellant-Tenant. The relationship of tenancy was admitted including the period of Lease Agreement. The Plaintiffs’ claim was resisted by the Defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs.82,50,000/- was paid. The Defendant in course of taking the defense stoutly denied that Respondent/Plaintiff has continued to be the landlord after entering into Agreement to Sell. The suit for specific performance was also filed which of course was contested by the Plaintiff. In the said case, this Court was of the view that deciding such issues requires appreciation of evidence. Mere relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 of CPC. Resultantly, this Court by setting aside the judgment passed by the High Court remitted the matter back to the Trial Court subject to deposit of the arrears of the rent and the compensation for use of occupation of the suit premises. Such deposit was subject to final outcome of the eviction as well as suit for specific performance.”*

28. The Application filed by the Plaintiff under Order XII Rule 6 of the CPC is resisted and opposed by Defendants. Pleadings which are filed by the Defendants clearly show that there is a longstanding dispute between the parties ever since the year 2010 in the Courts in Pune as also some disputes have traveled to this Court. In one of the pleadings of the Defendants appended to the present CRA which is appended as Exhibit “K” - page No.241 dated 14.09.2020 is the Defendants’ say to the temporary injunction Application of the Plaintiff. If that pleading is seen, it is clear that there is a substantive dispute raised by the Defendants with respect to the Development Agreements and entitlement stated therein alongwith the Power of

Attorneys which date back to the year 2001.

29. In so far as Order XII Rule 6 of the CPC is concerned, though the Plaintiff would claim that even though the admission may not be specific or express but is constructive in nature, on reading paragraph Nos.30b and 3 of the previous counter-claims, such an admission whether express, specific or even constructive cannot be made out at all. If this was the case, then nothing prevented the Plaintiffs from adopting an identical stand in the previous two Suits. However, it is seen that the Plaintiff withdrew the previous two Suits.

30. Perusal of the pleadings also show that with respect to the Development carried out by the Defendants, by virtue of the twin Development Agreements *vis-a-vis* the development carried out by the Plaintiff, there is a dispute with respect to the potential entitlement also i.e. with regard to TDR between the parties. The Municipal Corporation is also involved incidentally in the dispute raised by the parties. All this is with respect to the Suit property described in paragraph No.1B as also the larger area of land which would totally admeasure 35,200 square meters.

31. Therefore, I am in complete consonance and agreement with the findings returned by the learned Trial Court in paragraph Nos.15 to 19 of its decision dated 16.09.2023 and do not find any reason whatsoever to interfere with the same, apart from the indistinction of

the area of the concerned properties, description of the same is also different in the pleadings filed in the previous two counter-claims. Admittedly, it is clearly seen that there is no specific or express admission by the Defendants as alleged by the Plaintiff. Even constructive admission is impossible to be construed after reading the previous two pleadings in the counter-claims. Once it is seen that Defendants have strongly contested the Suit and the Application, when the Court finds that the alleged admissions referred to by the Plaintiff in the previous pleadings are and cannot be considered to be unconditional and unequivocal admissions, the Application under Order XII Rule 6 of the CPC filed by the Plaintiff has to fail.

32. The Application made by the Plaintiff below Exhibit “58” under Order XII Rule 6 of the CPC is a frivolous Application. The present Civil Revision Application challenging the impugned decision of the learned Trial Court is also absolutely frivolous and cannot be countenanced. If it is presumed by the Plaintiff that he has a title to the Suit property described in paragraph No.1B on the strength of the 8 Sale Deeds as stated in the Suit plaint, the Plaintiff should not shy away from leading cogent evidence on the strength of his title and even his possession (as alleged by the averments made in the Suit plaint) and face a trial for seeking injunction. No case whatsoever has been made out by the Plaintiff for grant of any decree on admission. Considering the substantive disputes between the parties which are

evident from the pleadings, the Plaintiff is not entitled to any such decree on admission. Hence, the case of the Plaintiff fails in the present CRA. CRA is dismissed.

33. However, considering that the Suit is filed in the year 2020 and it is simplicitor for injunction only, the learned Trial Court is directed by this Court to determine the Suit proceedings as expeditiously as possible and in any event within a period of 1 year from today, strictly in accordance with law. If the Defendants have not filed their written statement, then the Defendants are directed to file their written statement within a period of 4 weeks from the date of uploading of the present judgment. Both parties shall thereafter approach the Trial Court for framing of issues by exchanging draft issues within a period of two weeks thereafter. The learned Trial Court shall thereafter proceed with the Suit proceedings at its discretion and strictly in accordance with law. It is clarified that the learned Trial Court shall not be influenced by any of the observations and findings returned in the order dated 16.09.2023 passed below Exhibit “58” while determining the Suit proceedings. The Suit shall be determined strictly on the basis of the evidence led by the parties by following the due process of law.

34. With the above directions, CRA is dismissed.

[MILIND N. JADHAV, J.]