



2024 : DHC : 629



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

% **Date of order : 11th January, 2024**

+ **RFA 248/2022 & CM APPL. 26081/2022**

KIRAN Appellant

Through: Mr. __, Advocate (Appearance not given)

versus

VIRENDER KUMAR JAIN Respondent

Through: Mr. __, Advocate (Appearance not given)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant regular first appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of appellant seeking the following reliefs:-

"In view of the above facts and circumstances, it is, therefore, prayed that the Hon'ble Court may please allow the appeal and set aside the Order / decree dated 30.03.2022 passed by learned Trial Court of Shri Pawan Singh Rajawat, ADJ, (West), Tis Hazari Courts, Delhi in Civil Suit No. 268 / 2017 titled as Virender Kumar Jain vs. Kiran against the appellant /defendant in the interest of justice



Any other order or direction as this Hon'ble court deems fit and appropriate in the facts and circumstances of the case be passed in favour of the appellant in the interest of justice. ”

2. Briefly stated, the facts of the instant appeal are as follows-
 - a. The respondent filed civil suit bearing no. 268/2017 seeking possession, permanent and mandatory injunction against the appellant before the learned Trial Court. The appellant filed her written statement stating therein that she has paid Rs. 2,50,000/- in cash as security to Mr. Monu Jain, attorney of the respondent and that she is regularly paying rent of Rs. 500/- per month.
 - b. Thereafter, the respondent filed an application under Order XII Rule 6 of the CPC, seeking decree of possession on the ground that the appellant, i.e., the defendant therein, unequivocally acceded to being a tenant of the respondent in her written statement as well as in the legal notice dated 30th December, 2016.
 - c. Pursuant to above, the appellant filed a reply to the aforesaid application and the learned Trial Court passed an order dated 30th March, 2022, thereby, allowing the application filed under Order XII Rule 6 of the CPC, and held that the respondent is entitled to a decree of possession of the suit property. It further held that other reliefs of injunctions and arrears of rent and mesne profit will require evidence from both the parties.
 - d. Aggrieved by the impugned order dated 30th March, 2022 the appellant has preferred the instant appeal before this Court.



3. Learned counsel appearing on behalf of the appellant submitted that she is residing in the suit property by paying rent of Rs. 500/- per month and no rent agreement was executed between the parties. The appellant had paid a sum of Rs. 2,50,000/- as security to the respondent, i.e., the plaintiff before the learned Court below but no receipt was given.

4. It is further submitted that there is nothing as such in the pleadings filed by the appellant before the learned Court below, which can be even remotely termed as admission or evasive denial, or not specific denial.

5. It is submitted that the learned Trial Court failed to appreciate the provision of Order XII Rule 6 of the CPC in right prospective as per which the admission in the pleadings must be made by the defendant in an unequivocal, unambiguous manner and the admission should not be vague or equivocal.

6. It is submitted that the learned Trial Court must bear in mind that while passing the decree/judgment based on an admission, it is the document which has to be read as whole and the Court should not read out one or two sentences, in order to treat the same as an admission.

7. It is contended that the learned Trial Court committed error and illegality in passing the impugned order and only picked one word which stated that the defendant was inducted as tenant on a monthly rent of Rs. 5000/- via rent agreement dated 17th November, 2017 but no such agreement was on court record of the learned Court below and the appellant never admitted that she was paying rent of Rs. 5000/- per month to the respondent. The appellant in her written statement as well as reply to the legal notice



dated 30th December, 2016 has stated that she was paying rent of Rs. 500/- per month to the plaintiff regularly but no rent receipt was issued by the plaintiff or his attorney despite repeated requests. Hence, the impugned order of the learned Trial court is illegal and unlawful and the same is liable to be set aside and quashed.

8. It is submitted that the learned Trial Court committed an error and failed to take into consideration the pleadings and documents available on its record to show that the appellant was paying rent of Rs. 5000/- per month to the respondent considering that no rent agreement was on its record. On the other hand, the appellant specifically pleaded that she was inducted as a tenant at the rate of Rs. 500/- per month in the premises in question and has paid Rs. 2.5 Lakhs as refundable security to the plaintiff through his attorney. Hence, in view of the submissions made in the written statement, the learned Trial Court has no jurisdiction to try the present suit as the same is barred by Section 50 of Delhi Rent Control Act, 1958. Therefore, the impugned order passed by the learned Trial Court is without jurisdiction and the same is liable to be set aside and quashed.

9. It is submitted that the respondent is neither the owner of the suit property nor has he purchased the shop from the original allottee from the DDA office. Further, there is no mutation in the name of the respondent.

10. It is submitted that the learned Trial Court had committed error while passing the impugned order by holding that the admission in reply to legal notice as well as in written statement is unequivocal and unambiguous. Hence, the impugned order suffers from infirmity and the same is liable to



be set aside.

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

12. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant appeal and submitted that the same is liable to be dismissed being devoid of any merits.

13. It is submitted that the appellant's contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance with the settled legal propositions in regard to the provisions governing admissions in CPC and there is no infirmity in the impugned order passed by the learned Trial Court.

14. It is submitted that as per paragraph 5 of the plaint, it has been stated by the appellant therein that she was the tenant of the respondent and merely disputed upon the quantum of the rent payable by her as well as the arrears of rent accrued.

15. It is further submitted that appellant in its reply to the legal notice stated that she is a tenant of the respondent. The said statement made by the appellant amounts to admission and in light of the same the respondent is entitled to judgment/order in terms of Order XII Rule 6 of the CPC.

16. It is hence, contended that the appellant has herself admitted in the written statement to the plaint as well as in the reply to the legal notice that she is a tenant of the respondent at the suit property.

17. It is submitted that the learned Court below has, pursuant to the admissions of the appellant, passed the impugned order and kept the suit



pending with respect to other reliefs sought by the respondent before it.

18. In view of the foregoing submissions, the learned counsel for the respondent prayed that the instant appeal is without merit and the same is liable to be dismissed by this Court.

19. Heard and perused the record.

20. 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 various Courts with regards to Order XII Rule 6 of the CPC. In order to understand the basics, the relevant provisions under which the application filed by the respondent was allowed by the learned Trial Court and is under challenge before this Court, is reproduced herein:

**“ORDER XII
Admissions**

⁴[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.]..”

21. Upon perusal of the above, it is deliberated that Order XII Rule 6 of the CPC, governs judgment 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.

22. 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, and 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 trial.

23. It is imperative to comprehend upon the aspects as to what admission is, what constitutes as a legal admission, in what situation such an admission may be made, and under what conditions a judgment under this provision may be rendered by the Court, and the same has been discussed by this Court herein below.

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



entitled to, based on the admission by the other party. The intent behind the said principle is to establish a procedure for swift justice while being careful to not to trample on the right to a fair defense by taking into account the peculiar circumstances of a case.

25. 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 proyeed 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."

26. There is no doubt that Rule 6 of Order XII of the CPC, has been couched in a very wide language. 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, a judgment on admission by the 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; and no doubt such discretion has to be exercised judicially and on the basis of the facts of the case at hand.

27. 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.

28. 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.

29. 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 as to make it crystallized 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.

30. 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.

31. 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 a defendant 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.

32. 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 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.”

33. 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 at 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.

34. This Court is of the considered view that in order to pass an order on



admissions, the same is the discretion of the concerned 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 under Rule 6 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.

35. 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.

36. 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.

37. Now advertent to the discussion of term “appeal”. The term appeal, has been defined in Black’s Law Dictionary as “*a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority*”.

38. Section 96 of CPC has been reproduced as follow:

“(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

¹[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ² [ten thousand rupees.]]”

39. Section 96 of the CPC provides for filing of an appeal from the decree filed by any Court exercising original jurisdiction to the Court which possesses the jurisdiction to hear the appeals from the decision of such Courts. It entails a judicial examination, both on facts and law of the decision by a Court of lower jurisdiction done by a higher Court to ensure that there is no error committed in the lower Court’s decision which merits interference.

40. Appeal is regarded as continuation of the suit and the appellate Court is incumbent to reassess the entire evidence on record. The Court of



competent jurisdiction may confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in compliance of its directions

41. The Hon'ble Supreme Court in the judgment of ***Manjula vs. Shyamsundar***, Civil Appeal No. 6744 of 2013 dated 27th January 2021 enunciated the scope of regular first appeal and the relevant portion of the same is as follows:

“8. Section 96 of the Code of Civil Procedure, 1908 (for short, ‘CPC’) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state (a) points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court’s jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court’s findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.”



42. Now this Court will advert to the perusal of the impugned order. The relevant extracts of the same have been reproduced herein below:

"12. In the present suit the plaintiff has sought relief of possession, permanent and mandatory injunction and recovery of arrears of rent and mesne profits.

13. In the Written Statement the defendant in para 5 has mentioned that plaintiff is not owner of the property but defendant has not denied her occupation and possession. However in para 6 of preliminary submissions it is mentioned that " at the time of taking on rent the property in question it was agreed between the plaintiff (on behalf of the plaintiff Sh. Monu Jain dealt with the defendant for all purposes) and the defendant that the defendant would pay Rs. 2.5 lacs as security to the said Sh. Monu Jain and which would be refundable at the time of vacating the property in question and the rent of the property in question would be Rs. 500/- per month excluding electricity and water charges."

14. Furthermore, in reply to para 5 of the plaint, the defendant in para 5 of reply on merits of Written Statement has mentioned that the contents of para 5 of the plaint is admitted and matter of record and need no reply. It is to be noted that in para 5 of the plaint, the plaintiff has mentioned that

" 5. That the defendant had approached the plaintiff in or around December, 2015 and represented that defendant was in dire need of commercial premises on monthly rent basis. Upon request made by the defendant, the plaintiff agreed to let out the suit property, which consists of a room, for the purpose of commercial use only. "

15. The defendant is claiming that since she had paid Rs. 2.5 lacs to the plaintiff or her SPA holder therefore the rate of rent is fixed as Rs. 500/-. But the defendant has not placed on record any document to show the payment of Rs. 2.5 lacs to the plaintiff or to Sh. Monu Jain.



The defendant has also not placed on record any rent receipts to show the rate of rent as Rs. 500/-

16. The present suit is filed by the plaintiff through his SPA holder Monu Jain about whom the defendant is also mentioned in her Written Statement that he had undertaken all the documentation/transaction of the tenancy. The plaintiff has placed on record the legal notice whose receipt has not denied by the defendant as he claimed that same was duly replied by the defendant. Copy of the reply is also on record. In reply to the legal notice also the defendant has not disputed that she is the tenant in the suit premises but has disputed only the rate of rent and the total outstanding rent/mesne profits. But in view of categorical and unequivocal admission in para 5 of reply on merits of the Written Statement, the relationship of landlord and tenant is not denied. The defendant is not claiming that she is in use and occupation of the suit premises having better title than the plaintiff.

17. Hence, I am satisfied that the relief of possession as sought by the plaintiff can be decreed against the defendant in terms of Order 12 Rule 6 CPC as the relationship of landlord and tenant as well as notice of termination of tenancy is not in dispute.

18. Accordingly, the application U/o XII Rule 6 CPC is allowed and plaintiff is entitled for decree of possession of the suit premises i.e. D-1/41, Rewari Lane, Mayapuri, Industrial Lane, Phase-II, New Delhi-110064. However, the other reliefs of injunction and arrears of rent and mesne profit will require evidence from both the sides as the said issues are disputed by the defendant.”

43. The learned Trial Court held that the relationship between the parties of lessor and lessee has not been denied by the appellant since the appellant stated in para 6 of her preliminary submissions of written statement stated that she paid respondent's agent a refundable security of Rs. 2.5 lakhs alongwith rent of Rs. 500 per month which excludes electricity and water



charges.

44. Moreover, as per the para 5 of the plaint which enunciated that respondent rented out the suit property to the appellant, has been admitted by the appellant in its written statement. The learned Trial Court further observed that the appellant is not claiming that though she is in use and occupation of the suit premises has better title than the respondent.

45. Before this Court addresses the instant appeal on merits. This Court shall examine the statements which have been accorded as admission by the learned Court below.

46. The learned Trial Court held that the paragraph 5 of the plaint has been admitted by the respondent. The same has been reproduced as follows:

"5. That the defendant had approached the plaintiff in or around December, 2015 and represented that defendant was in dire need of commercial premises on monthly rent basis. Upon request made by the defendant, the plaintiff agreed to let out the suit property, which consists of a room, for the purpose of commercial use only. "

47. The respondent's written statement which is accorded as admission is reproduced herein below:

"5. That the contents of para No.5 of the plaint are admitted and matter of record and need no reply. "

48. The aforesaid paragraph clearly establishes the fact that the respondent upon request of the appellant agreed to let out his premises, for the purpose of commercial use. Hence, the appellant admitted that there is relationship of lessor – lessee between the parties.



49. In the instant appeal, this Court is of the considered view that the learned Trial Court has rightly held that, on the basis of the admission made by the appellant, i.e., the defendant in her written statement, the respondent is entitled to an order of possession. There has been admission on behalf of the appellant regarding her being a tenant of the respondent and the only dispute is with regards to the amount of the rent and other total outstanding rent/mesne profits.

50. In view of the aforesaid discussion, this Court is of the view that the learned Trial Court passed the impugned order in the suit for possession on the basis of the admissions by the appellant regarding her being the tenant of the respondent. Hence, the admission of the appellant amounts to the respondent being declared as the tenant of the property and appellant is entitled to a decree of possession of the suit property in its favor.

51. This Court upon perusal of the entire material on record is of the view that the appellant has unequivocally admitted that there is relationship of lessor and lessee between the parties whereby the appellant is a tenant of the respondent. The only dispute is w.r.t. to the amount of rent which the appellant was entitled to pay and the arrears of the rent accrued thereto. In this regard, the learned Trial Court has rightly held that the said dispute would be adjudicated upon by it, after completion of the trial.

52. In view of the aforesaid discussions, this Court does not find any merit in the instant appeal and accordingly, the same is dismissed.

53. This Court upholds the impugned order dated 30th March, 2022 passed by learned Trial Court, ADJ, (West), Tis Hazari Courts, Delhi in Civil Suit



2024:DHC:629



bearing No. 268/ 2017 titled as “*Virender Kumar Jain vs. Kiran*”

54. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 11, 2024

dy/db/ryp

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 31.01.2024
17:35:35

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