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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 22nd October, 2024***+ **C.R.P. 60/2024****SURENDER KUMAR BADHWAR**PetitionerThrough: Counsel for petitioner (appearance
not given).

versus

ABHAY PRATAP SINGH RAGHUWANSHIRespondentThrough: Mr. Rajat Sang Sharma, Mr. Sandeep
Singh Nainwal, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T** (oral)**CM APPL. 8471/2024 (delay in refiling)**

1. The Application under *Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC")* has been filed on behalf of the Petitioner for condonation of delay in re-filing the accompanying Petition.
2. For the reasons stated in the Application and in the interest of justice, the delay in re-filing the accompanying Petition is condoned.
3. The Application is disposed of.

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4. The *Revision Petition under Section 115 of the CPC read with Section 151 of the CPC*, has been filed on behalf of the Petitioner/Plaintiff to clarify the Order dated 20.03.2023 vide which the learned ADJ has dismissed the Application under *Order XII Rule 6 CPC*, filed on behalf of the Plaintiff.
5. The Plaintiff had filed a *Suit for Decree of Ejectment, Recovery of*



Damages and Mesne Profits wherein it was asserted that the Defendant had admittedly had been inducted as a tenant, which was not denied. However, subsequently, he has stopped paying the rent. Legal Notice for possession had been served to which no specific denial has been made by the defendant. Hence, the Suit for Possession was sought to be decreed under *Order XII Rule 6 CPC*.

6. *The defendant on the other hand, had contested the Suit on various grounds including that there was no subsisting relationship of landlord and tenant.*

7. *Learned ADJ in the impugned Order dated 20.03.2023* observed that the defendant in his Written Statement, had claimed to have made certain payments to the Plaintiff for purchase of the shop. There was no admission made by the Defendant and consequently, the Application under *Order XII Rule 6 CPC* was dismissed.

8. *The Petitioner/Plaintiff has argued* that a legal notice was sent to the Defendant and in reply to the said notice, the defendant had made an admission in regard to the existence of tenancy and rent agreement. The Plaintiff wanted arrears of rent to be presumed to be admitted as not specifically denied in the reply to said legal notice. Hence, the Petitioner was entitled to a decree of possession under *Order XII Rule 6 CPC* on the basis of the admissions, which has been wrongly denied by the learned ADJ.

9. *The Respondent on the other hand, has contended* that there are various defences set up in the Written Statement and there is no categorical admission of any of the facts as claimed by the petitioner. Therefore, the Application under *Order XII Rule 6 CPC* has been correctly dismissed.

10. **Submissions heard.**



11. While the Plaintiff had filed a Suit for Possession, Mesne Profits/Arrears of rent on the ground that the Defendant had been inducted as a tenant and has ceased to pay the rent, the Defendant in his Written Statement had clarified that initially, he had been inducted as a tenant in respect of one shop in the property in question. Subsequently, the Defendant has handed over the possession of the entire property after taking an amount of Rs.5.2 Lakhs as part of the total sale consideration of Rs. 52,00,000/- for the construction of the property. The relationship of the landlord and the tenant had thus, ceased to exist. The Plaintiff has siphoned off the money which he had received and has now filed the frivolous Suit. It is claimed that there is no liability of the defendant, to pay the rent. He is the owner and is in possession of the entire property in question. In fact, no cause of action is disclosed in the Suit, which is liable to be dismissed.

12. The Defendant has taken a categorical defence that though the tenancy initially was created in respect of only one shop, which is the part of the property in question, but subsequently the parties had entered into an Agreement whereby Rs.52,00,000/- were agreed to be paid by the Plaintiff to the defendant for construction of the property and the possession was also handed over to the defendant. Consequently, the relationship of landlord and the tenant ceased to exist. The Defendant has also asserted that now he is in possession of the entire property, while initially the tenancy had been created only in respect of one shop in the property in question.

13. There is a specific defence disclosed by the Respondent/Defendant in the Written Statement which are required to be proved during the trial. It is evident that there is no clear unambiguous, unequivocal admission made in the Written Statement, which would entitle the Plaintiff to a decree on



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admissions.

14. The learned ADJ has rightly dismissed the Application under *Order XII Rule 6 CPC*. There is no merit in the Revision Petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 22, 2024/RS