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

+ **RFA(OS) 25/2017**

GAURAV MONGA

.....Appellant

Through: Mr. Ashim Sood, Mr. Ekansh Gupta,
Ms. Isha Khurana, Mr. Ankur Singhal
and Mr. Prateek Singh, Advocates

Versus

ARGON HOTELS PRIVATE LTD. & ORS

.....Respondents

Through: Mr Ghanshyam Joshi and Mr Chirag
Joshi, Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

24.10.2024

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1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 ("CPC"), read with Section 10 of the Delhi High Courts Act, 1966, seeks to assail the judgment dated 06.01.2017 passed by the learned Single Judge in C.S.(OS) No. 548/2016.
2. Vide the impugned judgment, the learned Single Judge, after opining that the facts disclosed in the plaint did not constitute sufficient cause of action for instituting the suit, has, instead of rejecting the suit under Order VII Rule 17 CPC, proceeded to dismiss the same under Order XII Rule 6 CPC by holding that the facts emerging from the plaint were sufficient for the Court to exercise its inherent powers under Order XII Rule 6 CPC for



dismissing the suit on the basis of the admitted facts emerging from the record.

3. The short submission of the learned counsel for the appellant who has taken us through the orders passed by the learned Single Judge before passing the impugned order, is that the appellant was never even put to any notice that the Court was contemplating passing any order under Order XII Rule 6 CPC. It is his further plea that the impugned order does not disclose as to what were the admitted facts warranting dismissal of the suit under Order XII Rule 6 CPC. He, therefore, prays that the impugned judgment be set aside.

4. On the other hand, Mr. Joshi, appearing on behalf of the respondent, while conceding that the respondent was neither present before the Court nor called upon to assist the Court before passing of the impugned judgment, supports the same by urging that when the material on record in itself showed that the suit had been filed without any cause of action, the learned Single Judge was justified in dismissing the suit. He is, however, not in a position to deny that the impugned judgment does not disclose the grounds based on which the learned Single Judge has dismissed the suit under Order XII Rule 6 CPC.

5. Having considered the rival submissions of learned counsel for the parties and perused the record, we are in agreement with the learned counsel for the appellant that a judgment under Order XII Rule 6 CPC could not have been passed by the Court without at least recording as to what were the admitted facts which would amount to an admission under Order XII Rule 6 CPC so as to warrant passing of a judgment either decreeing or dismissing the suit, as the case may be.



6. Further, we find that before dismissing the suit even, neither any summons were issued to the respondent nor any issue(s) were ever framed qua the maintainability of the suit or its dismissal under Order XII Rule 6 CPC. We also find that even though the learned Single Judge is correct in urging that the power under the said provision can be exercised by the Court at any stage and on its own motion, we are of the opinion that this cannot, however, imply that a suit can be dismissed under Order XII Rule 6 CPC without even putting the parties to notice or recording as to what would constitute admission under Order XII Rule 6 warranting dismissal of the suit and dismissing the suit prior thereto.

7. We are, therefore, of the considered view that the learned Single Judge has erred in dismissing the suit by resorting to a provision, without issuing summons to the respondents and on the basis of which is neither recorded in the impugned judgment nor in any of the earlier orders passed by the Court.

8. For the aforesaid reasons, we have no hesitation in setting aside the impugned judgment and remanding the suit back to the learned Single Judge for fresh adjudication as per law. We, therefore, direct that the suit be listed before the Roster Bench, for consideration from the stage of issuance of summons, making it clear that the issue qua issuance of summons in the suit will be open for the learned Single Judge.

9. Needless to state, while setting aside the impugned judgment, we have not expressed any opinion on the aspect as to whether there was any cause of action for the appellant to institute the suit.



10. List before the Roster Bench Judge on 28.11.2024.

REKHA PALLI, J

SAURABH BANERJEE, J

OCTOBER 24, 2024/akr