

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 952 of 2025
Nirmala Devi Agarwal
Vs.
Bhag Chand Agarwal**

For the Petitioner	: Mr. Partha Pratim Roy Mr. Pankaj Agarwal Mr. Rittick Chowdhury Ms. Chmpa Pal advocates
For the Opposite Party	: Mr. Debjit Mukherjee Mr. Kaustav Bhattacharya Ms. Priyanka Jana Ms. Shreejita Senadvocates

Heard on : 27.08.2025

Judgment on : 28.11.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 5, 2025 passed by the learned Civil Judge (Senior Division) 1st Court, Howrah in Title Suit No. 387 of 2016 heard analogously with Title Suit No. 104 of 2020.
2. By the order impugned, the application under Order 12 Rule 6 of the Code of Civil Procedure filed by the petitioner stood rejected.
3. The case made out by the petitioner in the plaint of Title Suit No. 387 of 2016 is summarized hereunder as follows:

The opposite party was inducted as a licensee in respect of a covered area for running a restaurant at a licence fee of Rs. 25,000/- per month payable according to English Calendar month. The defendant did not pay licence fee on and from the month of February 2015 and a certain sum of money was stated to be due and payable by the opposite party to the petitioner. Petitioner through her learned advocate issued a notice to quit. Opposite party replied to the said notice. Petitioner filed the suit for eviction since the opposite party failed and neglected to deliver vacant possession of the suit premises to the petitioner.

4. The opposite party is contesting the Title Suit No. 387 of 2016 by filing a written statement denying the material allegations contained therein. It has been specifically stated in the written statement that the opposite party was inducted as a monthly premises tenant in respect of the suit property at a monthly rent of Rs. 2000/- which was subsequently increased to Rs. 4000/-. The opposite party denied that he was inducted as a licensee in respect of the suit property at a licence fee of Rs. 25,000/- per month.
5. The opposite party filed a Title Suit No. 722 of 2016 praying for a decree of declaration that the opposite party is a bonafide tenant under the petitioner and for permanent injunction restraining the petitioner from causing any disturbance to the peaceful possession and enjoyment of the opposite party in the suit property. The said suit which was initially filed before the learned Civil Judge (Junior Division) 3rd Court at Howrah was transferred to the Court of the learned Civil Judge (Senior Division) 1st Court at Howrah and renumbered as Title Suit No. 104 of 2020.
6. Petitioner filed an application under Order 12 Rule 6 of the Code of Civil Procedure praying for passing a judgment on admission. In the said application, it has been stated that from the hand notebook/ rent collection book produced by the opposite party it is evident that the opposite party paid rent exceeding Rs. 10,000/- per month to the petitioner on account of his occupation in the suit premises and such occupation can never be governed by the West Bengal Premises Tenancy Act, 1997 as the premises is

situated within the limits of Howrah Municipal Corporation and used for non-residential purposes.

7. The application under Order 12 Rule 6 of the Code of Civil Procedure was rejected by the impugned order. Being aggrieved by such order, the petitioner has approached this Court.
8. Mr. Partha Pratim Roy, learned advocate for the petitioner contended that the monthly payments made by the opposite party on account of maintenance charges and electricity charges are components of rent. He contended that from the hand notebook/ rent collection book it is evident that the opposite party is paying a sum of Rs. 19, 000/- per month which includes rent, maintenance and electricity charges. He submitted that since the property is situated within the limits of Howrah Municipal Corporation and is used for non-residential purpose, the opposite party cannot claim to be a tenant under the West Bengal Premises Tenancy Act, 1997. He contended that the opposite party does not have any valid defence against the claim of the petitioner for eviction from the suit premises. He contended that even assuming that the occupation of the opposite party is governed under the provisions of the Transfer of Property Act, the opposite party could not have continued in possession of the suit property as the service of notice to quit upon the opposite party is admitted by the opposite party. In support of his contention that maintenance charges and electricity charges are components of rent, Mr. Roy placed reliance upon the decision of the Hon'ble Division Bench of this case in the case of ***Rajshri Productions Private Limited vs. T.E. Thomson and Company Limited*** reported at ***2023 SCC Online Cal 899***. Mr. Roy submitted that Order 12 Rule 6 of the Code of Civil Procedure permits the Court to pass judgment on the basis of admission made by the parties not only in pleadings but also in any document or in the statements recorded by the Court. He thus contended that the recordings in the rent collection book can be taken into consideration as an admission of the quantum of monthly rent. In support of such contention, Mr. Roy placed reliance upon a judgment of the Hon'ble

Supreme Court in the case of **Rajiv Ghosh vs. Satya Narayan Jaiswal** reported at **2025 SCC Online SC 751**. Mr. Roy contended that since the opposite party admitted service of the notice to quit, the Court can pass a decree under Order 12 Rule 6 of the Code of Civil Procedure in view of the judgment of the Hon'ble Division Bench delivered on 12.11.2024 in **FAT 191 of 2020 with FAT 194 of 2020** in the case of **M/s. Signotron (India) Pvt. Ltd. vs. M/s. Nautica Hospitality Consulting Private Limited**.

9. Mr. Debjit Mukherjee, learned advocate appearing for the opposite party seriously disputed the submissions made by Mr. Roy. He contended that the power under Order 12 Rule 6 of the Code of Civil Procedure is discretionary and cannot be claimed as a matter of right. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Karan Kapoor vs. Madhuri Kumar** reported at **(2022) 10 SCC 496**. He contended that the opposite party never admitted service of notice to quit.
10. Heard the learned advocates for the parties and perused the materials placed.
11. Order 12 Rule 6 of the Code of Civil Procedure reads thus-

“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.”

12. The Hon'ble Supreme Court in **Uttam Singh Duggal & Co. Ltd. vs. United Bank of India** and others reported at **(2000) 7 SCC 120** held that the object of Rule 6 of Order 12 is to enable a party to have a speedy judgment at least to the extent of admission. Where a claim made by a party is admitted by the other party, entitling the former to succeed, it should apply under Order 12 Rule 6 of the Code of Civil Procedure.

13. The Hon'ble Supreme Court in **Rajiv Ghosh** (supra) held that judgment on admission under Order 12 Rule 6 can be passed at any stage. It may be pronounced either on an application made by a party or even suo motu. Order 12 Rule 6 permits the Court to pass judgment on the basis of the statements made by the parties not only on the pleadings but also dehors the pleadings i.e., either in any document or even in the statement recorded in the Court. It was further held therein that use of the word "may" in Rule 6 makes the provision enabling, discretionary and permissive and not mandatory, obligatory or peremptory. It was further held therein that Rule 6 of Order 12 must be read with Rule 5 of Order 8 which is identical to the proviso to Section 58 of the Evidence Act. After noting the aforesaid provisions, the Hon'ble Supreme Court held that it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant.
14. In **Karan Kapoor** (supra) it was held that the power under Order 12 Rule 6 is discretionary and cannot be claimed as a matter of right. Such power 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 under Order 12 Rule 6 of the Code of Civil Procedure.
15. From the aforesaid discussion it follows that the power under Order 12 Rule 6 of the Code cannot be claimed as a matter of right and the Court is not obliged to grant relief to the plaintiff only on the basis of admission of the defendant.
16. This Court has to now consider whether the learned Trial Judge was right in refusing to invoke the power under Order 12 Rule 6 of the Code of Civil Procedure.
17. Petitioner filed the suit claiming that the opposite party was inducted as a licensee for running a restaurant at a licence fee of Rs. 25,000/-. A decree for eviction against the opposite party was prayed for upon revocation of licence.

18. The specific case of the opposite party in the written statement is that he was inducted as a monthly premises tenant at a monthly rent of Rs. 2000/- which was subsequently increased to Rs. 4000/-. The opposite party also filed a suit for declaration of tenancy right and for permanent injunction.
19. From a bare reading of the plaint of the suit filed by the petitioner and the written statement as well as the plaint of the suit filed by the opposite party, it does not appear to this Court that the opposite party has admitted the claim of the petitioner that there existed a licensor-licensee relationship between the parties. The question of invocation of power under Order 12 Rule 6 of the Code would arise when the claim of the plaintiff is admitted by the defendant.
20. Mr. Roy would contend that the opposite party has admitted service of notice to quit upon him and, therefore, a decree for eviction should follow in view of the provisions laid down under Section 106 of the Transfer of Property Act.
21. Opposite party claimed that he is a monthly premises tenant at a monthly rent of Rs. 4000/-. Mr. Roy placed strong reliance upon the hand notebook/rent collection book in support of his contention that the opposite party admitted that he is paying an amount exceeding Rs. 10,000/- per month for occupying the suit premises. Mr. Roy would contend that the opposite party cannot claim protection under the West Bengal Premises Tenancy Act, 1997.
22. Opposite party claims that the rent is only Rs. 4000/- per month and the maintenance charges and electricity charges do not form part of the rent.
23. In ***Rajshri Productions Private Limited*** (supra) a point was raised whether corporation tax or the commercial surcharge is an integral part of the rent for the purpose of ascertaining the quantum of rent. It was held therein that the property tax cannot ipso facto come within the purview of the rent but depends upon the intentions and the conduct of the parties in relation thereto and there is no uniform principle that the property tax shall be

outside the purview of the rent. If the parties have agreed that the rent shall include the tax then in that event the tax component will become the part of the rent. The Hon'ble Division Bench held that every component in respect of the enjoyment of the premises payable to the landlord may not come within the definition of rent as it depends upon the intentions and the conduct of the parties in relation to the creation of tenancy. It was further held therein that any amount or a component which is variable in nature cannot be regarded as a component of the rent even if it is paid along with the basic rent.

24. From the aforesaid reported decision it follows that the intentions and conducts of the parties in relation to creation of tenancy plays an important role for arriving at a conclusion as to whether an amount paid by the tenant to the landlord would come within the definition of rent. Whether it was the intention of the parties at the time of creation of the tenancy that maintenance charges and electricity charges shall form part of the rent cannot be decided at this stage.
25. Even if the contention of Mr. Roy is accepted that the occupation of the opposite party is governed not under the West Bengal Premises Tenancy Act, 1997 as the amount on account of maintenance and electricity charges form part of rent and it, therefore, exceeds the threshold limit fixed under the West Bengal Premises Tenancy Act, 1997, the question that would arise is whether a decree for eviction should be passed by invoking the provisions of Order 12 Rule 6 of the Code of Civil Procedure.
26. Section 111 of the Transfer of Property Act, provides for determination of a lease of immovable property. Clause (h) thereof provides that a lease of immovable property determines on expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.
27. In case, a lease of an immovable property is one from month to month and not governed under the West Bengal Premises Tenancy Act, 1997, it is a

monthly tenancy terminable by 15 days' notice under Section 106 of the Transfer of Property Act.

28. The provision relating to determination of a lease of immovable property under Section 111 read with Section 106 of the Transfer of Property Act shall apply only if there exists a lessor-lessee or landlord-tenant relationship between the parties.
29. No material has been produced before this Court to show that the petitioner has admitted the landlord-tenant relationship between the parties. On the contrary, it is the case of the petitioner that the relationship between the parties was that of licensor and licensee.
30. Law Commission after considering the provisions of Order 12 Rule 6 of the Code as it existed prior to Code of Civil Procedure (Amendment) Act, 1976 recommended to modify the rule. The statement of Objects and Reasons for the amendment was noticed in **Rajiv Ghosh** (supra), which is extracted hereinafter.

"23. In Statement of Objects and Reasons, it had been stated:

"Clause 65, sub-clause (ii)- 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 speedy judgment at least to the extent of 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"

31. From the statement of Objects and Reasons it is evident that under Rule 6 of Order 12 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.
32. The learned Trial Judge rightly observed that the relationship of landlord-tenant between the parties is disputed.
33. Upon going through the materials on record this Court could not find any specific, clear and categorical admission of the claim made by the petitioner.

34. In view of the aforesaid discussion this Court holds that the learned Trial Judge was right in refusing to invoke the provisions of Order 12 Rule 6 of the Code of Civil Procedure.
35. In ***M/s. Signotron (India) Pvt. Ltd.*** (supra) in a suit for eviction inter alia on the ground of notice under Section 106 of the Transfer of Property Act and arrear rents, the jural relationship of lessor-lessee between the parties governed under the Transfer of Property Act as well as the service of notice under Section 106 of the said Act was admitted. On such admitted facts, the Hon'ble Division Bench held that the judgment on admission directing eviction was justified. The said decision being distinguishable on facts, cannot come to the aid of the petitioner.
36. It is well settled that the power under Order 12 Rule 6 of the Code is discretionary and not a matter of right. The learned Trial Judge exercised its discretion judiciously. The order impugned does not suffer from any infirmity. This Court is, therefore, not inclined to interfere with the impugned order under Article 227 of the Constitution of India.
37. Accordingly, CO 952 of 2025 stands dismissed. There shall be, however, no order as to costs.
38. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)