



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5450 OF 2024

1. Shiraz S/o Khurshedji Doongaji,
aged about 67 years,
Occ.: Business,
R/o. Ground Floor, Doongaji Villa,
511, New Colony, Nagpur - 440 001.
2. Shernaz W/o Homi Sethna,
aged about 60 years,
Occ.: Business/House-wife,
R/o. West Croft, Club Road,
Conoor 643 101.

....PETITIONERS

....VERSUS....

Jehangir S/o Khurshedji Doongaji,
aged about 69 years, Occ.: Retired,
Resident of First Floor, Doongaji Villa,
511, New Colony, Nagpur-440001.

....RESPONDENT

Shri Anand Jaiswal, Senior Advocate assisted with Shri C.S. Samudra,
Advocate for petitioners
Shri S.P. Bhandarkar, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 24/03/2025
DATE OF PRONOUNCING THE JUDGMENT: 29/04/2025

JUDGMENT

. **Rule.** Rule made returnable forthwith.

2. The petitioners are challenging the order dated 18.07.2023 passed Below Ex.26 in Special Civil Suit No.46/2020 by 6th Jt. Civil Judge, Senior Division, Nagpur, by which the application filed by the petitioners/Orig. Plaintiffs under Order XII Rule 6 of CPC for passing a decree on admission is rejected.

3. The petitioners/Orig. Plaintiffs and respondent/Ori. Defendant are the real brothers and sisters and children of Late Shri Khurshedji Edulji Doongaji and Smt. Najoo w/o Khurshedji Doongaji. The petitioners/Orig. Plaintiffs have filed a suit for Partition, Separate Possession, Mesne Profit and Perpetual Injunction against the Respondent/Ori. Defendant in respect of the 'suit property', which is described in Para 2 of the plaint.

4. According to the petitioners/Orig. Plaintiffs the petitioners and respondent each are entitled to 1/3rd share in the suit property. The names of petitioners/Ori. Plaintiffs and respondent/Ori. Defendant have been duly recorded in the

revenue record and the same has also attained finality.

5. The suit property was jointly purchased in the name of the parents of the petitioners and the respondent namely Shri Khurshedji Edulji Doongaji & Smt. Najoo Khurshedji Doongaji. On 23/07/1987 Shri Khurshedji Edulji Doongaji expired leaving behind petitioners, respondent and their mother Smt. Najoo w/o Late Khurshedji Doongaji as his only surviving legal heirs. After his demise undivided share in the suit property devolved upon the petitioners/ Orig. Plaintiffs and the respondent / Orig. Defendant and their mother Smt. Najoo Doongaji by way of succession with equal undivided share in it. On 18/12/2016, Indenture of Family Settlement was executed between the petitioners and the respondent wherein they agreed to partition the suit property and their mother Smt. Najoo Doongaji relinquishing her undivided 1/4th share in the suit property in favour of the petitioners and the respondents.

6. After execution of the 'Indenture of Family Settlement' the Company Petition No.28/2016 Jehangir .Vs. M/s. Stewols India was unconditionally withdrawn by the respondent.

The petitioners filed Spl. C. S. No.46/2020 for Partition and Separate Possession of the suit property. The respondent/Orig. Deft. filed his written statement wherein he unequivocally admitted the 1/3 share of petitioner No.1 & petitioner No.2 in suit property. On 30/11/2022, Application was filed by the petitioners at Exh.-26 under Order 12, Rule 6 of CPC for passing a Decree on admission dated 31/03/2023. Reply at Exh.-28 is filed by the respondent opposing the application for passing a decree on admission. Learned Trial Court on 18/07/2023 rejected the application on unsustainable grounds. The aforesaid order is the subject matter of challenge in the present writ petition.

7. Learned Counsel for the petitioner contended that the Learned Trial Court failed to consider that from the perusal of the pleadings of the parties, it is clear that the parties are not at issue with respect to their right, title and interest in the suit property at all. The respondent in his paragraph B (Preliminary Objection) has clearly admitted the right and title of the Plaintiffs in the suit property. In paragraph 6 of the written statement, the respondent has not denied the joint ownership as well as the family settlement executed by them. Further, in paragraph 13 of the written

statement, the respondent has also admitted the plaintiffs right in the suit property.

8. Apart from this, the respondent had unconditionally withdrawn the Company Petition No.28/2016, after execution of Family Settlement dated 18/12/2016 wherein he unconditionally agreed to partition to suit property. As such, Plaintiffs' right, title and interest in the suit property not only admitted in the written statement but is also admitted by the Respondent in the "Indenture of Family Settlement dated 18/12/2016" pursuant to which the Company Petition No.28/2016 was withdrawn by him unconditionally. The petitioners and respondent acted on the "Indenture of Family Settlement" dated 18/12/2016. The respondent has derived the benefit of the said "Family Settlement" in his favour. In view of this unconditional admission, there is nothing for the parties to proceed with the trial in the instant suit and decree ought to have been granted by the Trial Court which needs interference by this Court.

9. Learned Counsel for petitioners relied on following citations :

1. *Raveesh Chand Jain Vs. Raj Rani Jain, (2015) 8 SCC 428*
2. *Concrete Developers, Nagpur Vs. Central Bank of India, Mumbai and another, 2022(6) Mh.L.J. 137*
3. *Uttam Singh Duggal and Co. Ltd. Vs. United Bank of India and others, (2000)7 SCC 120*
4. *Kale and others Vs. Deputy Director of Consolidation and others, (1976) 3 SCC 119*
5. *Payal Vision Limited Vs. Radhika Choudhary, (2012) 11 SCC 405*
6. *Karam Kapahi and others Vs. Lal Chand Public Charitable Trust and another, (2010) 4 SCC 753*
7. *Rajiv Ghosh vs Satya Narayan Jaiswal, Special Leave Petition No. 9975/2025*

10. Learned Counsel for the respondent contended that in his written statement filed before the Learned Trial Court, specifically alluded to the fact that the construction of the first and second floors of the superstructure on the suit property was constructed solely with his own personal funds. In light of the said fact, it is wholly inappropriate and legally unsustainable to assert that the respondent has unconditionally and unequivocally admitted the pleadings advanced by the petitioners. The clear demarcation of the source of funding for the construction of these

floors underscores that such portions of the property remain the exclusive property of the respondent, thereby precluding any claim of joint ownership. The learned Trial Court has rightly considered all these facts and exercised its jurisdiction under Order XII Rule 6 of the CPC in rejecting the petitioners application which needs no interference and also needs to be confirm.

11. Learned Counsel for respondent relied on following citations :

1. *B.S. Narayan Vs. B.S. Anandan and others, 2016-2-L.W.843*
2. *Suman Ali Vs. Diljeet Singh Dogra and others, Delhi High Court – C.R.P. No. 46/2023*
3. *Vaijayanti w/o Amar Vazalwar Vs. Chandrakant s/o Odhavji Thakkar, 2007(1) Mh.L.J. 699*
4. *Hari Steel and General Industries Limited and another Vs. Daljit Singh and others, (2019)20 SC 425*
5. *Karan Kapoor Vs. Madhuri Kumar, (2022)10 SCC 496*
6. *Himani Alloys LimitedVs. Tata Steel Limited, (2011)15 SCC 273*
7. *S.M. Asif Vs. Virender Kumar Bajaj, (2015) 9 SCC 287*

12. Heard both the parties at length. Perused impugned order and considered citation relied on by the parties. The main

issue involved In this petition is that the trial court has erroneously rejected the application for passing decree on admission, specifically when, there are admissions given by original defendant about execution of indenture of family settlement dated 18/12/2016. For the sake of convenience Order 12 Rule 6 produced below 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) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.)

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 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.”

13. Petitioner Nos. 1 and 2 and respondents are siblings. There were various family properties. The disputes were settled by executing indenture of family settlement dated 18/12/2016. After demise of late Shri khurshedji Dhunga on 23/07/1987, his

undivided share in the suit property devolved upon petitioner / original plaintiff and respondents original defendant and their mother Smt. Najoo Dungaji by way of succession with equal undivided share in it. On 18/12/2016, by way of indenture of family settlement between petitioner and respondent, they agreed to partition the suit property. Their mother Smt Najoo Dungaji relinquishing her undivided 1/4th share in the suit property in favor of petitioners and respondents. As per the terms of family settlement the Company Petition No. 28/2016, *Jehangir Vs.M/s Stelwols India* was unconditionally withdrawn by the respondents on 23 /12/2016 itself. On 23/12/2016 mother of the petitioner/respondents Smt. Najoo Dungaji executed registered relinquishment deed of her undivided 1/4 share in favor of petitioners and respondents. On 16/12/2019 petitioners filed Special Civil Suit No. 46/2020 for partition and separate possession of the suit property. Respondent/original defendant filed his written statement, wherein, he unequivocally admitted the execution of indenture of family settlement and 1/3 share of the petitioner No. 1 and petitioner No. 2 in the suit property.

14. Learned Counsel for petitioner drawn my attention to

the paragraph Nos. 3, 4 and 6 of the suit wherein, plaintiffs specifically pleaded that the suit property was earlier jointly owned by late Shri Khurshedji Doongaji and mother of plaintiff and defendant Smt. Najoo wife of late Khurshedji Doongaji. It is also specifically pleaded that the suit property was jointly purchased in the name of late Shri Khurshedji and Najoo vide sale deed dated 26/04/1959. Khurshedji expired on 23/07/1987. After the demise of late Shri Khurshedji on 23/07/1987 his undivided share in the suit property devolved upon the plaintiff defendant and their mother Smt Najoo by way of succession with equal undivided share and interest therein. Accordingly, their names duly mutated and recorded as co-owners of the said suit property in all revenue record. Defendant filed his written statement and raised preliminary objection that as indenture of family settlement (for brevity IFS) is not registered document, therefore, suit is not maintainable. It is admitted by the defendant, the execution of indenture of family settlement and it is specifically stated in written statement that defendant has not denied or interested in denying the legal character or right to any property belonging to the plaintiffs. There is no infringement of the property rights of the plaintiff at the instance of defendant. In reply to paragraph 3, the

defendant stated that he do not dispute that by way of the present suit plaintiffs are claiming partition and separate possession of their 1/3 share each in the entire property. So far as reply to paragraph No. 4 wherein, plaintiff pleaded that the suit property was jointly purchased in the name of their parents on 26/05/1959. It is also mentioned in paragraph 4 that by way of succession - Khurshedji's undivided share in suit property devolved upon plaintiff and their mother Smt. Najoo with equal undivided share and interest therein. This fact is clearly admitted in reply to paragraph 4. In reply to paragraph 6, the defendant submitted that it is not disputed that the suit property presently consists of the super structure mentioned in this paragraph .

15. The joint ownership of plaintiffs and defendants with regard to the suit property is also not disputed. He further admitted that the ground floor garage and godown at the back were constructed by the father of the plaintiffs and defendants. He also admitted that the entire land of plot No. 6 a and b along with ground floor structures are ancestral in nature under common ownership. However, his contention is that he has constructed first and second floor of the suit house property out of his own funds /

share from the family business to other amounts inherited from the father. My attention also drawn to the order passed in Company Petition No. 28/2016, wherein, petitioner/present respondent filed application for withdrawal of the petition in view of the settlement arrived at between the parties which is also taken on record and marked as 'x' for identification. Parties personal presence was marked by the Court and verified that the settlement is signed by the parties. In view of that the petition was permitted to be withdrawn as settled between the parties and disposed of. In reply to paragraph No. 9, the defendants admitted contents of the family settlement being matter of record. In reply to paragraph No. 11, the defendants specifically made statement that the family settlement dated 18/05/2016 was obviously with the consent and knowledge of all the family members. The defendant in reply to paragraph No. 12 also admitted relinquishment deed dated 23/12/2016 executed by their mother and parties acted upon it. Thus, learned Counsel for petitioners submitted that the relinquishment deed which is registered one is admitted by the defendant respondent.

16. Learned Senior Counsel placed reliance on *Concrete*

Developers, (supra), wherein, this Court held in paragraph 15 and 17 as under -

"15. A perusal of the written statement shows that the contents of the said paragraph of the plaint, which referred to the indenture of lease dated 22-7-2005 and wherein the aforesaid clauses were quoted, was not denied. In fact, it was stated that the contents of the said paragraph were a matter of record. The respondents raised dispute about the manner in which the petitioner wanted to proceed in the matter and reference was made to the communications exchanged between the parties.

17. This Court is of the opinion that the true purport of the contents of the written statement and the said document on record dated 8-12-2011, was not properly appreciated by the Court below while passing the impugned order. Even though the respondent-Bank claimed that the petitioner had accepted the rent, the fact that the maximum period for which the respondent-Bank could continue in the premises expired on 31-7-2020, could not be denied in view of the material on record."

17. This Court further held that at the stage of admission of the pleadings and the admission on record on behalf of respondents decree of possession must follow immediately upon expiry of the period of lease stretch to the maximum that is up to 31/07/2020. The Small Causes Court committed an error in holding that petitioner was not entitled to the decree on admission. Since this Court find the aforesaid material on record demonstrates a clear admission that the lease could remain alive at the maximum till 31/ 07/2020.

18. There is a family settlement and everything is complied with the terms of settlement. It is also agreed that so far as residential house is concerned, it will be divided into three siblings and mother will relinquished her share in favor of petitioners and respondents. Only contention of defendant is that he has constructed in 1995-96 second and third floor. It needs to be noted that construction is prior to settlement. If defendant is having any right, he ought to have challenged the family settlement. He is signatory to IFS. Till 2020 there was no challenge to the said family settlement, even today, he is admitting the IFS. The defendant derived benefits of the said documents, therefore, he cannot approbate or reprobate.

19. Learned Counsel placed reliance on *Karam Kapahi* (supra), wherein, Hon'ble Apex Court in paragraph Nos. 50, 52 and 57 held as under:

"50. The phrase "approbate and reprobate" is borrowed from Scots law where it is used to express the common law principles of election, namely, that no party can accept and reject the same instrument.

52. The principle of election has been very felicitously expressed in the treatise Equity- A Course of Lectures by F.W. Maitland, Cambridge University, 1947. The learned author has explained the principle thus:

"The doctrine of election may be thus stated: That he who

accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it...."

57. Therefore, the common law doctrine of election is a part of our jurisprudence and squarely applies in this case inasmuch as the Club has advanced inconsistent pleas as noted hereinabove."

20. Learned Senior Counsel for petitioner relied on ***Raveesh Chandra Jain*** (supra), wherein Hon'ble Apex Court held that Order 12, Rule 6 of the CPC is not mandatory but discretionary provision, it confers a wide discretion on Court to pass for a judgment at any stage of suit on the basis of admission of facts made in pleadings or otherwise without waiting for determination of other questions arising between the parties. Thus, by virtue of said provision, there can be more than one decree that may be passed at different stages of same suit. The principle behind Order 12, Rule 6 of the CPC is to give plaintiff a right to speedy judgment so that either party may get rid of rival claims which are not in controversy.

21. Learned Counsel for petitioner placed reliance on ***Uttam Singh Duggle*** (supra), in support of his contention that in the objects and reasons while amending Rule 6 of Order 12 of the

CPC., it is stated that "where a claim is admitted the court has jurisdiction to enter a judgment for the plaintiff and to pass decree on admitted claim. The object of the rule is to enable the parties 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". What is held in paragraph No. 13 in the said judgment is as under :

"13. The next contention canvassed is that the resolutions or minutes of the meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent Bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and grant a decree, we think this approach is unexceptionable."

22. So far as objection of the respondent that as indenture of family settlement is not registered and therefore suit is not

maintainable, the petitioner contented that even if indenture of family settlement is not registered still once it is acted upon the defendant is estoppel from turning back to the clauses, specifically when the defendant have taken advantage of the same. In the judgment of *Kale and others* (supra), the Hon'ble Apex Court held in paragraph No. 10 as under:

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlernent must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable:

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

23. The Hon'ble Apex Court held that even if a family arrangement which required registration was not registered, it would operate as a complete estoppel against the parties who have taken advantage of the family arrangement.

24. In the present matter the defendant not only admitted the execution of indenture of family settlement but also acted upon it. As per indenture, mother of the plaintiff and defendant relinquished her right by registered the relinquishment deed in favor of her siblings. The defendant on the basis of that IFS withdrawn the Company Petition as referred above and the said deed is marked as Exhibit 'X' in the said proceedings. He has duly

received other movables and other benefits. After taking advantage of the family arrangement, which was entered on 18/12/2016, by the parties. If at all as per contention of the defendant that first floor and second floor of the house was constructed by him, therefore, it cannot be said that it is ancestral property. Admittedly IFS executed on 18/12/2016 and as claimed by the defendant he has constructed the said two floors in the year 1995. He could have objected to IFS. On the contrary, he has acted upon it. He has availed all benefits. He has not filed any proceeding for cancellation or declaring any part of IFS as not agreed or binding. On the contrary, he also admitted that Shri Khurshedji's undivided share in the suit property devolved upon plaintiff, defendant and their mother Smt. Najoo, by way of succession. Accordingly, their names are recorded as co-owners of the said suit property. He has admitted execution of IFS and he has stated in written statement that defendant has not denying nor interested on denying the legal character or rights to any property belonging to the plaintiffs. There is no allegation of any fraud, fabrication in the execution of IFS.

25. Learned Senior Counsel for the petitioner placed

reliance on *Payal Vision Limited* (supra), wherein, execution of lease deed is though not denied but it is submitted that the said document was entered upon on the asking of the plaintiff whereas the terms were different than those incorporated in the lease deed.

Hon'ble Apex Court held that in paragraph No.11 as under :

"11. When placed in juxtaposition the averments made in the plaint and the written statement clearly spell out an admission by the defendant that the lease agreement dated 10-10-2001 was indeed executed between the parties. It is also evident that the monthly rent was settled at Rs. 50,000 which fact too is clearly admittedly the defendant although according to the defendant, the said amount represented rent for commercial use of the premises and not residential purposes, as alleged by the plaintiff. Suffice it to say that the averments made in the written statement clearly accept the existence of the jural relationship of landlord and tenant between the parties no matter the lease agreement was not duly registered. Whether the tenancy was for residential or commercial use of the property is wholly immaterial for the grant of a decree or possession. Even if the premises were let out for commercial and not residential use, the fact remained that the respondent-defendant entered upon and is occupying the property as a tenant under the plaintiff. The nature of this use may be relevant for determination of mesne profits but not for passing of a decree for possession against the defendant."

26. Learned Counsel also placed reliance on recent judgment of Hon'ble Apex Court in *Special Leave Petition No. 9975/2025*. In the said matter the contention of the defendant was that :

"11. However, the proviso to the Section states that the Court has discretionary power to require the alleged admitted, facts to be proven by means other than such admission. It is pertinent to note that the Rule provides that Court "may" pass a judgment or order based on the admission. Thus, it is clear that the legislative intent is to confer a discretionary power of the Court and judgment based on admission cannot be clarified as a matter of right. The legislative intent is further clarified by the proviso to Order 6 Rule 5. The proviso provides that even, where a fact has been admitted by an admission, the Court has discretionary power to require the admitted fact to be proved by any other means."

27. Hon'ble Apex Court held as observed in paragraph

No. 27 :

"27. As observed in the Statement of Objects and Reasons for amending Rule 6, "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the 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."

28. Hon'ble Apex Court referred judgment of **Uttam**

Singh Duggal (supra), and held in paragraph No. 35 as under :

"35. The words "or otherwise" are wide enough to include all cases of admissions made in the pleadings or de hors the pleadings. Under Rule 6, as originally enacted, it was held that the words "or otherwise" without the words "in writing" used in Rule 1 showed that a judgment could be given upon oral or verbal admission also. [See: Beeny, re, (1894) 1 Ch D 499] The Amendment Act of 1976, however, made the position clear stating that such admissions may be "in the pleading or otherwise" and "whether orally or in

writing". Thus, after the amendment in Rule 6, the admissions are not confined to Rule 1 or Rule 4 of Order 6, but are of general application. Such admissions may be express or implied (constructive); may be in writing or oral; or may be before the institution of the suit, after the suit is brought or during the pendency of proceedings."

29. As against this, learned Counsel for respondent relied on *B.S. Narayan* (supra), in support of his contention that this rule confers a very wide discretion on the Court. It is to be borne in mind that pleadings are not to be dissected but are to be read as a whole.

30. Learned Counsel for respondent placed reliance on *Suman Ali* (supra), wherein, Delhi High Court held that :

"35. This Court is of the view that the Trial Court while exercising its jurisdiction under Order XII Rule 6 of the CPC, should refrain itself by keeping in mind that the judgment on admission is a judgment without trial which permanently denies the remedy to the party against whom the judgment has been passed, to appeal on merits."

The same view is taken in *Hari Steel* (Supra) .

31. Learned Counsel for respondent also placed reliance on *Vaijayanti Vazalwar* (supra), wherein, this Court held in paragraph Nos. 7 and 8 as under:

"7. Seen from any angle, the admission of the defendant

relied upon by the plaintiff is only limited to the extent of execution of agreement, dated 16th March, 1996. The foundation of the claim of the plaintiff is the breach committed by the defendant. The facts constituting breach on the part of the defendant, alleged in the plaint, have not been admitted by the defendant. It is, therefore, not a case where decree can be prayed for or granted under Rule 6 of Order 12, Civil Procedure Code.

8. "Facts", which need to be admitted for passing a decree under Rule 6 of Order 12 of Civil Procedure Code, have to be "facts jurisdictional to the grant of decree", and not the facts on which the transaction commenced, and isolated reading of admission cannot be done."

32. However, learned Counsel for petitioner drawn my attention to the paragraph No. 10 of the said judgment which reads as under :

"10. This Court finds that the petitioner's reliance on these judgments is totally misplaced. There is no doubt that if facts permit, i.e., an unambiguous admission is on record, an urge to put an end to the litigation may be justified. On the perusal of Written Statement, it is seen that there is an unequivocal admission. When an admission cannot be found even on discreet search, recourse to Rule 6 of Order 12 is impermissible."

33. Learned Counsel for respondent placed reliance on judgment of Hon'ble Apex Court in *Karan Kapoor* (supra), wherein, Hon'ble Apex Court held that defendant tenant, inter alia contended that on account of execution of the three agreements to

sell with respect to the suit property for a sum of Rs.3,60,00,000/-, the relationship of landlord-tenant ceased to exist and the defendant acquired the status of the owner as he has already parted with the possession of the property under the lease agreement. Though there may be admission with respect to tenancy as per lease agreements but the defence as taken was also required to be looked into by the Court and there was need to decide justiciability of defence by the full-fledged trial.

34. In my considered opinion, thus discretion under Order 12, Rule 6 depends on the facts of each case. What is held by the Hon'ble Apex Court in *Himani Alloys Limited* (supra), the judgment on which reliance is placed by the respondent Order 12, Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary the Court on examination on the facts and circumstances has to exercise it's judicial discretion unless the admission is clear, and unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defence to contest the claim. The learned Counsel for respondent relied on Full Bench decision of the Hon'ble Apex Court in *S.M. Asif* (supra), "expression may

suggest power of Court under Order 12, Rule 6 of the CPC is discretionary and cannot be claimed as of right.

35. Learned Counsel for respondent placed reliance on judgment of Madras High Court, *B.S. Narayanan* (supra), wherein, the Madras High Court in paragraph No. 53 observed as under:

"53. It is to be pointed out that the provisions of Order 12 Rule 6 cannot be construed that the Judgment on admission is a matter of right, but it is a matter of discretion of the court which is to be judiciously exercised. Further, this Court finds that the particular averments made by the respondents 1 and 5 in their written statement cannot be termed as an admission and since several triable issues are there, it may be better to direct the parties to face the trial."

36. It is held having regard to the related facts and circumstances of the case. The Court finds that there are a lot of triable issues, therefore, no judgment can be passed based on the written statement filed by the respondent. The Madras High Court held that the object of Rule 6, is to enable the party to obtain a speedy judgment at least to the extent of the admissions of the defendant, entitled that relief to the plaintiff. The Court should not unduly narrow down the meaning of this Rule, as the object is to enable a party to obtain speedy judgment.

37. The learned Counsel for respondent place reliance on *Hari Steel and General Industries* (supra), of the Hon'ble Apex Court, wherein, it is held that mere admission of entering into an arrangement/contract itself cannot be considered in isolation, without considering the further objections of the appellant-defendants that certain pages in the agreement to sell were fabricated. However, in the present matter there was allegation that though defendant admitted that he has entered into an agreement to sell in the suit for specific performance of such agreement, however, his further objection was that certain pages in the agreement to sell were fabricated. In the present matter there is no such defence in the written statement.

38. Thus, to summarize the legal position in respect of Order 12, Rule 6, is that it is not mandatory but discretionary provision. It confers a wide discretion on Court to pass for a judgment at any stage of suit on the basis of admission of facts made in the pleadings or otherwise, without waiting for determination of other questions arising between the parties. The aim and object of this provision is to give plaintiff a right to speedy

judgment, so far as to get rid of rival claims which are not in controversy. As held in *Concrete Developers* (supra), the true purport of the contents of the written statement and the said document (indenture of lease) on record. The respondent-Bank claimed that the petitioner had accepted the rent, the fact that maximum period for which the respondent-Bank could continue in the premises expired on 31/07/2020, could not be denied in view of the material on record.

39. Even if, IFS is not registered, still once it is acted upon and defendant derived advantages, on the basis of same, he is completely estopped from turning back to the clauses. The doctrine of election states that he who accepts a benefit under a Deed or Will or other instrument must adopt the whole contents of that instrument, must confirm to all its provision and renounced all rights that are inconsistent with him.

40. The Amendment Act of 1976, made it clear that such admissions may be "in the pleading or otherwise" and "whether orally or in writing". Description is to be exercised by the Court judiciously. Order 12, Rule 6, being an enabling provision, it is

neither mandatory nor peremptory but discretionary. The Court on examination on the facts and circumstances as to exercise its judicial discretion. While exercising jurisdiction by the Court under Order 12, Rule 6 of the CPC, should refrain itself by keeping in mind that the judgment on admission is a judgment without trial which permanently denies the remedy to the party against whom the judgment has been passed, to appeal on merits. If there is an unambiguous admission is on record, an urge to put an end to the litigation may be justified, when an admission can not be found even on discrete search recourse to Rule 6, of Order 12 is impermissible.

41. As discussed in this judgment defendants have not denied that property devolved jointly upon plaintiff-defendant and their mother Smt. Najoo. He has also not disputed that Smt. Najoo relinquished her share in favor of two sons. He has also not disputed that suit property is the subject matter of IFS. He has not disputed that plaintiffs are having one third share in the property. He has not claimed any fraud, fabrication while executing IFS. He has not challenged the said indenture till today. He has acted upon the said IFS and derived benefits out of the same. Company

Petition is disposed of on the basis of that IFS. In IFS, wherein, the house property is clearly described and it is also mentioned therein that plaintiffs and defendant are joint owners of the said house structure on the plot. He has not raised any objection to the IFS nor challenged it at any point of time till today. Once IFS is admitted in all respect and also acted upon, party to IFS cannot raise any contention out of IFS. In that case Court has no option but to pass a decree for partition and separate possession as prayed for. As such, after deriving benefits out of the same, defendant is completely estopped from raising such ground that he has constructed first floor and second floor. Once execution is admitted without there being any allegation of fraud, fabrication, defendant cannot turn back by saying that it is unregistered. As such, learned Trial Court has not exercised its discretion in judicious manner. After admission of IFS without there being any allegation of fraud or fabrication. The defendant is estopped from taking any other defence out of the terms of IFS. It is binding on the defendant. As such, suit was required to be decreed on admission. Accordingly, I proceed to pass the following order.

ORDER

- i) The Writ Petition is allowed.
- ii) The impugned order dated 18/07/2023, passed below Exhibit 26, in Special Civil Suit No. 46/2020, by 6th Joint Civil Judge Senior Division, Nagpur, is hereby quashed and set aside.
- iii) Application Exhibit 26, is hereby allowed. Consequently learned Civil Judge Senior Division to pass a decree on admission.

The Writ Petition is disposed of in above terms. No order as to the costs.

(SMT. M.S. JAWALKAR, J.)

Jayashree..