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

Date of Decision: 17.04.2025

+ **C.R.P. 119/2024 & CM APPL. 19138/2024**

SUKH DEVI

.....Petitioner

Through: Mr. Sahil Kalra, Advocate.

versus

SAROJ

.....Respondent

Through: Mr. Vivek Narayan Sharma, Ms. Shruti Priya Mishra, Mrs. Mahima Bhardwaj Kalucha and Mr. Adhiraj Wadhera, Advocates.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition seeks to challenge a judgment dated 09.01.2024 passed by the learned Additional District Judge, District South West, Dwarka Courts, New Delhi [hereinafter referred to as “Impugned Judgment”]. By the Impugned Judgment, the Application under Order XII Rule 6, Code of Civil Procedure, 1908 [hereinafter referred to as “Application”] filed by the Petitioner (Plaintiff before the learned Trial Court) has been dismissed.

2. Briefly, the facts are that the Petitioner is the mother-in-law of the Respondent. The son of the Petitioner, Mr. Ajit Kumar Rohella, passed away on 08.04.2018. Thereafter a suit for possession, damages/mesne profits and permanent prohibitory injunction was filed by the Petitioner against Respondent *qua* second floor of property bearing No. RZF- 946, Raj Nagar-II, Palam Colony, Near Heera Devi Model Public School, New Delhi [hereinafter referred to as “suit property”]. It is not disputed between the parties that after the death of the son of the Petitioner, there are *inter se*



disputes pending between the Petitioner (mother) and the Respondent (daughter in law) which include criminal complaints filed by the parties against each other. The details of these complaints and litigations are set out in Paragraph 9 of the Impugned Order.

3. It is the case of the Petitioner that the Respondent is not the legally wedded wife of the son of the Petitioner and by notice dated 02.05.2018, the Petitioner being the absolute owner of the suit property, has revoked the permission of the Respondent to reside in the suit property.

4. Written Statement was filed by the Respondent, and thereafter the Application was filed by the Petitioner *inter alia* to state that the suit of the Petitioner be disposed of on the basis of the admissions made by the Respondent.

5. The learned Trial Court has examined the issue and has found that there is no challenge to the title of the Petitioner. However, it is the case of the Respondent that her late husband had contributed towards purchase and construction of the suit property. Thus, the learned Trial Court has held that a trial for proper adjudication of the disputes between the parties is required. It is apposite to set out Paragraph 7 of the Impugned Order in this behalf which is set out below:

“7. Thus, this Court has not gone into detail to the aspect that, whether essential rituals performed for the valid marriage of defendant and late son of plaintiff. But, on the point that, whether all three components i.e. relationship between the parties, ownership and possession thereof is duly admitted by defendant. It is well settled law that, suit for possession, the ownership must not be disputed and even otherwise the person claiming possession shall for the better title against defendant. Although, in the present matter defendant duly admitted the ownership of plaintiff qua the suit property but, same alone may not be suffice for exercising the discretion under order XII rule 6 CPC as defendant claimed that her late



husband of defendant has contributed towards the purchase/construction of suit property. Thus, trial is required for proper adjudication of all dispute between the parties.”

[Emphasis supplied]

6. As stated above, the learned Trial Court has thereafter also sets out the various matters *inter se* the parties which are pending disposal and has also examined the orders passed by the different Courts in these matters.

7. The learned Trial Court found that by an order dated 03.07.2019 passed by the learned Metropolitan Magistrate, Dwarka Courts, New Delhi, the Respondent has obtained protection from forcible dispossession from the suit property.

8. Thus, the learned Trial Court in essence examined the pleadings as well as the *inter se* litigation between the parties and has found that without appreciating the evidence and giving an opportunity to the Respondent to prove her defence the judgment on admissions cannot be passed.

9. This Court has perused the Application filed by the Petitioner. A perusal of the Application shows that the Application does not in fact set out specifically what admissions have been made by the Respondent. It states that the Respondent/Defendant was allowed to live with the elder son of the Petitioner as a gratuitous licensee and as the Petitioner has revoked the license by notice dated 09.05.2018, therefore a decree for possession in respect of suit property be passed in favour of Petitioner. Thus, the Application states that there is an admission on the part of the Respondent without specifically setting out what the admission is. In addition, it states that the defense of the Plaintiff has already been adjudicated. Paragraph nos. 9 to 11 of the Application which are stated to reproduce these admissions are



set out below:

“9. That admittedly, as the defendant was allowed to live with the elder son of the plaintiff and she is a gratuitous licensee and as the plaintiff has revoked her license vide notice dated 9.5.2018, therefore, her right to live in the property is no more alive and therefore, a decree for possession in respect of the part of the second floor as shown in red colour in the site plan be passed in favour of the plaintiff and against the defendant.

10. That it is submitted that even otherwise, the defence of the plaintiff with regard to the documents has already been adjudicated and the Hon'ble High Court of Delhi in 'Baljeet Singh Kalra' has held that any defence which is barred by law cannot be taken and the Court can pass a decree under Order 12, Rule 6 CPC.

11. That with regard to the plea of her husband has contributed, this plea is also totally vague and in view of the provisions of Order 8, Rules, 3,4 & 5 CPC and the judgment of the Hon'ble Supreme Court of India in 'Jaspal Kaur Chima vs Industrial Trade Links', the Supreme Court of India has stated that the denial in the written statement should be categorical otherwise, an evasive denial would amount to an admission in the allegations made in the plaint in view of Order 8, Rules, 3,4 & 5 CPC.

In view of the above, the plaintiff is entitled for a decree of possession on the basis of admission, as stated above.”

10. In any event and is set out above, the prayers in the Application reads as follows:

“a) The Suit of the plaintiff can be disposed off on the basis of admission, as stated above.”

11. Order XII Rule 6 of the CPC confers discretionary power to the Court to pass a judgment on the admissions of a party without waiting for a determination of all issues between the parties. It is settled law that these powers are discretionary and cannot be claimed as a right. It is apposite to set out the judgment of the Supreme Court in the case of **Karan Kapoor v. Madhuri Kumar**¹ in this regard. The relevant extract of the **Karan Kapoor** case is set out below:

¹ (2022) 10 SCC 496



“23. Order 12 Rule 6 confers discretionary power to a court who “may” at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which 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 of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial.”

[Emphasis Supplied]

12. In the case of ***Hari Steel & General Industries Ltd. v. Daljit Singh***², the Supreme Court has held that that the discretion conferred under Order XII Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. It was further held that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 CPC. The relevant extract of the ***Hari Steel*** case is reproduced below:

“25. In the judgment in *Himani Alloys Ltd. v. Tata Steel Ltd.* [*Himani Alloys Ltd. v. Tata Steel Ltd.*, (2011) 15 SCC 273 : (2014) 2 SCC (Civ) 376], nature and scope of Order 12 Rule 6 has been considered by this Court. In the aforesaid judgment this Court has held that the discretion conferred under Order 12 Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial

² (2019) 20 SCC 425



which permanently denies any remedy to the defendant. Para 11 of the judgment read as under : (SCC pp. 276-77)

*“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. **The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon.** (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120] , Karam Kapahi v. Lal Chand Public Charitable Trust [Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha [Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha, (2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .) There is no such admission in this case.”*

26. In the judgment in S.M. Asif v. Virender Kumar Bajaj [S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287 : (2015) 4 SCC (Civ) 589] , this Court has held **that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order 12 Rule 6 CPC.** Para 8 of the judgment read as under : (SCC p. 291)

*“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.”*

[Emphasis Supplied]

13. As stated above, an examination by the Court as shown that there is no clear and unambiguous admission by the Respondent. In fact, the



Respondent specifically denied the allegations of the plaint. She has stated that she is the legally wedded wife of the son of the Petitioner and the marriage was performed on 01.01.2015 in accordance with the Hindu Rights and Customs. She has further stated that she is living in the suit property since the date of the marriage as a family member. The Respondent has also made averments in respect of contributions made by her husband in the maintenance, construction and affairs of the suit property.

13.1 Clearly, the objections raised by the Respondent go to the root of the matter and in these circumstances, it would not be appropriate to pass a judgment to exercise the discretion under Order XII Rule 6 of the CPC. The learned Trial Court has done just that.

14. The revisionary jurisdiction of this Court is limited. The Court is not required to examine the factual aspect of the matter, the Court only has power to see if the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material irregularity.

14.1 The Supreme Court in the case of **Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar**³; clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil

³ (2017) 14 SCC 132



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Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.

[Emphasis Supplied]

15. As is stated above, the examination by this Court shows that the Impugned Order does not suffer from any irregularity which would merit interference by this Court.

16. Accordingly, the Petition is dismissed. The pending Applications also stand closed.

16.1 The Respondent is entitled to costs in the sum of Rs.10,000/- to be paid by the Petitioner in four weeks. The proof of costs shall be filed by the Petitioner before the learned Trial Court.

17. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 17, 2025/pa/r

[Click here to check corrigendum, if any](#)