



2025:DHC:4457



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

Date of Decision: 08.05.2025

+ **C.R.P. 302/2023 & CM APPL. 54717/2023**

SMT. TEJINDER KAUR & ANR.Petitioners

Through: Mr. S.S. Panwar, Advocate.

versus

SHRI CHATTAR SINGHRespondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition seeks to challenge an order dated 14.08.2023 passed by the learned CJ-02 (West), Tis Hazari Courts, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order learned Trial Court has dismissed the Application filed by the Petitioner under Order XII Rule 6, Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"].

2. None appears for the Respondent.

3. Learned Counsel for the Petitioners submits that the challenge in the present Petition is to the decision in Application under Order XII Rule 6, which was filed by the Petitioner, seeking a judgement on the basis of admissions made by the Respondent.

4. Briefly the facts are that the Petitioners have filed a suit seeking permanent and mandatory injunction and damages in respect of a Plot



bearing No.362A, Ground Floor, Four Storeyed (Slum & JJ Flats), DDA, New Ranjeet Nagar, Delhi-110008 [hereinafter referred to as “subject premises”].

4.1 The Respondent/Defendant, on the other hand, averred in his Written Statement that the subject premises were purchased out of funds given by the fathers of the Petitioner/Plaintiff and the Respondent/Defendant and was to be registered in the joint names of the Petitioner/Plaintiff and Respondent/Defendant, but was not done so and a fraud was played on the Respondent/Defendant.

5. An Application under Order XII Rule 6, CPC as filed by the Petitioner sets out that there is no worthwhile defence taken by the Respondent/Defendant except that the Respondent/Defendant has become the owner of the suit property by way of adverse possession. It is further stated therein that the defence as raised by the Respondent/Defendant is not tenable in law. It is apposite to set out paragraph 4 of the Application under Order XII Rule 6, CPC filed by the Petitioner in this behalf, which is as follows:

“4. That the written statement filed on behalf of the defendant reveals no worthwhile defence except that the defendant has become the owner by way of adverse possession so much so that essential ingredients for asserting title through adverse possession have not been even pleaded nor it is pleaded as to when and in which manner the defendant has come into possession of the suit property, Moreover, there is no averment or assertion that the defendant was claiming ownership rights in the suit property and to the world at large and of the absence of any objection raised by the plaintiffs. Therefore, the defendant has no defence in answer to the plaintiff, so much so that the defence is only vague, baseless, concocted, moonshine, misconceived, vexatious, after thought and malafide but also do not inspire any confidence nor the same has been supported and substantiated by any documentary evidence. Therefore, the defence raised by the defendant is untenable in law and on facts of the case but the defendant is only aimed and motivated to pro-long



the matter being in unauthorised possession and use of the suit property, which is evident from the conduct of the defendant, who has been only interested to drag the matter on one pretext or the other.”

[Emphasis Supplied]

6. On a query put to the learned Counsel for the Petitioners as to the admission made by the Respondent/Defendant in the Written Statement, which is in terms of Order XII Rule 6, CPC, learned Counsel for the Petitioners is unable to show any.

7. The learned Trial Court after examining the matter has held that there was no admission as is requisite under the provisions of Order XII Rule 6, CPC. The learned Trial Court after examining the Written Statement as well as the Application under Order XII Rule 6, CPC has held that even if the defence as shown by the Respondent/Defendant is weak, yet whether or not plausible, can only be adjudicated upon once a trial has been held. The relevant extract of the Impugned Order is below:

“Even though for the sake of the arguments, the claim of the plaintiff that the defendant has a weak [sic: weak] defence is to be considered yet, it is a plausible defence which can be only determined after going through the evidences led on behalf of both the sides. Furthermore, the averment of the defendant in the WS on the basis of which the present application U/O 12 Rule 6 CPC has been filed is not a clear and unambiguous and unequivocal admission and is further coupled with the fact that the defendant may have a plausible defence and, therefore, in the interest of justice, defendant should be granted an opportunity to defend the present matter on merits as has also been held in a recent landmark judgment in the case of Karan Kapoor Vs. Madhuri Kumar (SLP (Civil) no. 13800/2021).”

[Emphasis Supplied]

8. 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 Kumar¹ in this regard. The relevant extract of the **Karan Kapoor** case is set out below:

“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]

9. In the case of **Hari Steel & General Industries Ltd. & Anr. v. Daljit Singh & Ors.**², the Supreme Court has held 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

¹ (2022) 10 SCC 496

² (2019) 20 SCC 425



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 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]

10. It is apposite to point out that the dispute *inter se* the parties is between the siblings and is in respect of a Plot bearing No.362A, Ground



Floor, Four Storeyed (Slum & JJ Flats), DDA, New Ranjeet Nagar, Delhi-110008. It is the case of the Petitioners that the subject premises is self-acquired property of the Petitioners/Plaintiffs. While it is the case of the Respondent that the subject property was acquired from funds which were available after the sale of ancestral property (one plot at Notice of the father of the plaintiff and defendant No.1). It is further the case of the Respondent/Defendant that a fraud was played upon the defendant in getting the documents individually solely in the name of the Petitioners.

11. A perusal of the Written Statement as filed by the Respondent before the learned Trial Court further reflects that it is the case of the Respondent/Defendant that the Petitioner/Plaintiff has filed a Suit for recovery of possession in the garb of a suit for mandatory and permanent injunction. It is further averred that the Respondent is the owner of the subject property by virtue of adverse possession and also that the Suit is barred by limitation. The relevant extract of the Written Statement is reproduced below:

“PRELIMINARY SUBMISSION:-

It is submitted that the father of the plaintiff and defendant no. 1 sold one plot at Noida, Uttar Pradesh, for a consideration of 2,00,000/- and the said amount was given to the plaintiff and the suit property was to be purchased in the name of both the defendant and the plaintiff however the plaintiff played fraud upon the defendant and clearly got executed the title document in her own name and the name of the plaintiff no. 2 somewhere in the month of April 2007 the defendant paid a sum of Rs. 2,00,000/- to the plaintiff and requested them to execute the sale documents with respect to the suit property in the name of the defendant but the plaintiff avoided the same on one pretext or the other keeping in view the conduct of the plaintiff the defendant even wrote one letter to the plaintiffs claiming himself as the owner of the suit property. Knowing the status and facts the plaintiffs did not reply to the said letter and therefore the defendant has become the owner of the suit property by way of adverse possession and the plaintiffs are stopped from claiming any right therein.



PRELIMINARY OBJECTION

1. *That the plaintiff has filed the above noted suit for permanent and mandatory injunction & Damages against the defendant and the same is pending before this Hon'ble Court.*
2. *That the suit of the plaintiff is barred by law of limitation.*
3. *That the plaint of the plaintiff is not maintainable as the plaintiff herself has failed to establish her own case and the present suit is barred by law as per the provisions of order 7 rule 11 (D) CPC.*
4. **That the suit filed by the plaintiff is not maintainable in its present form and is liable to be dismissed. The defendant is the owner of the suit property by virtue of adverse possession.**
5. *That the plaintiff has not come to this Hon'ble Court with clean hands and has suppressed material facts apart from misrepresenting certain facts..."*

[Emphasis Supplied]

12. As stated above, an examination by the Court has shown that there is no clear and unambiguous admission by the Respondent. In fact, the Respondent specifically denied the allegations of the plaint.

12.1 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.

13. 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.

13.1 The Supreme Court in the case of ***Ambadas Khanduji Shinde v.***



Ashok Sadashiv Mamurka & Ors.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 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]

14. 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.

15. In view of the foregoing, the Petition is dismissed. All pending Applications also stand closed.

16. However, this order shall not preclude the Petitioners from raising its defences before the learned Trial Court at the time of the trial. All rights and contentions of the parties are left upon in this behalf.

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

TARA VITASTA GANJU, J

MAY 8, 2025/ ha

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

³ (2017) 14 SCC 132