



2025:DHC:6830



\$~36

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 25.07.2025*+ **C.R.P. 212/2025 & CM APPL. 44673/2025**

MUKESH MARWAHA

.....Petitioner

Through: Mr. Shobhit Gupta, Adv.

versus

HARISH SHARMA

.....Respondent

Through:

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 44673/2025** *[Exemption from filing certified/typed copies]*

1. Allowed, subject to just exceptions.

2. The Application stands disposed of.

C.R.P. 212/2025

3. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 17.04.2025 passed by learned Senior Civil Judge, West District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order XII Rule 6 of the CPC has been dismissed by the learned Trial Court.

4. Learned Counsel for the Petitioner makes one submission. He submits that the Impugned Order has been wrongly passed as the admissions have been made which would entitle the Petitioner a judgment on the basis of admissions *qua* the decree for possession.

5. Briefly, the facts are that the Petitioner [Plaintiff before the learned



Trial Court] filed a suit for recovery of possession, arrears of rent and permanent and mandatory injunction. It is the case of the Petitioner that he is the owner of the property bearing No.WZ-11A, Main Road, Lajwanti Garden, New Delhi-110046 and that the Respondent [Defendant before the learned Trial Court] is a tenant of the Petitioner in respect of a shop bearing No.1 & 2 at Ground Floor, more specifically shown in red colour in the site plan filed before the learned Trial Court [hereinafter referred to as the “suit property”] at a monthly rental of Rs.13,000/- per month.

5.1 It is stated in the plaint that the Respondent is a chronic defaulter in the payment of rent and an amount of Rs. 44,000/- is pending as arrears in rent. It is also stated in the plaint that a legal notice dated 16.12.2023 has been sent for payment of the entire outstanding amount along with interest. Despite the receipt of the legal notice, the suit property has not been vacated, thus, the suit has been filed, seeking recovery, damages and arrears of rent.

5.2 The Petitioner filed an Application under Order XII Rule 6 of the CPC based on admissions made by the Respondent in its Written Statement. The Application sets out that the landlord-tenant relationship as well as the rent is admitted, and thus, all the ingredients for an order of eviction are present.

6. The learned Trial Court examined the Written Statement and by the Impugned Order gave a finding that there is a dispute as to whether the rent is Rs.10,000/- or Rs.13,000/- per month, and since the relationship rests on two difference agreements, a triable issue has arisen. Thus, the Application filed by the Petitioner has been dismissed with a finding by the learned Trial Court that the provisions of Order XII Rule 6 of the CPC are not attracted.



This relevant extract of the Impugned Order is set out below:

“7. Now, in the light of the law reproduced as above and applying the same to the facts of the case in hands, it is apposite to note, that the plaintiff has asserted his entire claim with respect to the possession, arrears of rent and mesne profit on the basis of the alleged rent agreement dated 25.08.2023, stated to be executed between the plaintiff and the defendant for the monthly rent of Rs. 13,000/-. However, the entire plaint of the plaintiff is absolutely silent with regard to the rent agreement that was initially averred to be executed between the plaintiff and the defendant as per the assertions of the defendant. As per the defence of the defendant, the only rent agreement that was ever executed between the plaintiff and defendant was the one dated 26.03.2014 for the monthly rent of Rs. 10,000/-.

8. Therefore, at the very outset, it is pertinent to mention, that the assertion of the plaintiff and defendant with regard to the landlord-tenant relationship between them primarily rests upon two different rent agreements and **the plaintiff has asserted his claim on the basis of the rent agreement dated 25.08.2023 executed between the plaintiff and the defendant for the monthly rental of Rs. 13,000/-**, but per contract, defendant has asserted his defence on the basis of the initial rent **agreement dated 26.03.2014 executed between the plaintiff and the defendant for the monthly rent of Rs. 10,000/-**. Further, the defendant has categorically denied the execution of any kind of rent agreement between him and the plaintiff on 01.08.2023 for the monthly rental of Rs. 1,3000/-.

xxx

xxx

xxx

11. Now, it is crucial to note, that the defendant has only admitted to the extent that he was an old tenant of the plaintiff on the basis of the rent agreement dated 01.08.2023, but the combined reading of the complete para no. 3 of the written statement clearly reveals, that the defendant has specifically **denied the execution of any kind of rent agreement dated 01.08.2023 for the monthly rental of Rs. 13,000/- and therefore, in the event of specific denial of the alleged rent agreement dated 25.08.2023 forming the basis of the plaintiff's case,** by no stretch of imagination the admission of the defendant with respect to the fact that he was the old tenant of the plaintiff on the basis of the rent agreement dated 01.08.2023, can be said to be an unequivocal, unambiguous and unconditional admission as the defendant has further subsequently mentioned in the said para no. 3 itself that at the time of inception of the **tenancy vide Rent Agreement dated 26.03.2014, the suit property was given on rent by the plaintiff for the commercial purpose @ Rs.10,000/- per month for a period of 11 months which comes to end on 31.05.2015 but after the expiry of the said period,** the tenancy of the defendant continued and the



*plaintiff extended the tenancy of the defendant on receiving the rent regularly in cash but he never issued any rent receipt to the defendant. Thus, the issues raised in the present suit are contesting and **require adjudication pursuant to the advancement of evidences by the respective stakeholders.***”

[Emphasis Supplied]

7. It is no longer *res integra* that for an Application to be allowed under Order XII Rule 6 of CPC for the recovery of possession of a tenanted premises, a landlord is required to fulfil only three parameters:

- (i) The relationship of landlord and tenant must be admitted;
- (ii) The tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958; and
- (iii) The tenancy has been terminated and the Respondent tenant has failed to hand over possession.

7.1 The Supreme Court in *Payal Vision Ltd. v. Radhika Choudhary*¹, has held that in order for a suit for recovery of possession of a tenant, where the tenant is not protected under the provisions of the Delhi Rent Control Act, 1958, three admissions are necessary for an order under Order 12 Rule 6 of the CPC: (a) Admission of landlord-tenant relationship; (b) That the rent is more than Rs.3,500/-; and (c) That the tenancy has been terminated. The relevant extract of the *Payal Vision* case is reproduced below:

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC, which reads as under:

¹ (2012) 11 SCC 405



“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.

8. The above sufficiently empowers the court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the court under Order 12 Rule 6 CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd.* [(2010) 6 SCC 601: (2010) 2 SCC (Civ) 745] relied upon by the High Court where this Court has observed: (SCC p. 604, para 10)

*“10. ... Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi* [(2010) 4 SCC 753: (2010) 2 SCC (Civ) 262] may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”*

[Emphasis Supplied]

8. The record reflects that the notice of motion, dated 10.07.2025, as filed by the Petitioner also sets out that the Petition alongwith applications is likely to be listed on 23.07.2025. Thus, the advance service in accordance



with the Rules and Practice Directions of the High Court in Civil Revision Petitions issued by this Court *vide* Notification No. 69/Rules/DHC/2019 dated 05.12.2019 have been complied with by the Petitioner. The relevant extract of these directions is set out below:

"1. Advance Service of Petition: -

*(a) In a Civil Miscellaneous (Main) Petition under Article 227 of the Constitution of India or Civil Revision Petition under Section 115 of the **Code of Civil Procedure, 1908 arising from an order in a pending proceeding before a Court subordinate** to the High Court, an advance copy of the paper book shall **be served upon each opposite party or their counsel (if any) who appeared last for such opposite party in the Trial Court.***

Provided that the requirement of service of advance copy of the paper book is dispensed with in respect of such opposite parties who have been proceeded ex parte before the Trial Court.

(b) In the event, the opposite party is the Union of India; a State Government, a Statutory Authority, a Public Sector Undertaking, or a Government Department etc., who may have nominated Senior / Standing Counsel; Nominated Counsel; or Empanelled Counsel, such advance copy shall be served directly upon such Counsel (other than a Senior Advocate), under written endorsement of service, and not directly served upon Union of India / State Government / the concerned department, as the case may be.

*(c) **The petitioner shall intimate all opposite parties in the matter about the filing and likely date of listing of the said petition. The petition shall be accompanied by written proof of such intimation and** their respective service, besides indicating name (s) of all opposite parties in the matter. **Once the petition has been cleared for listing by the Registry, the date of listing of the petition shall be intimated by the counsel for the petitioner to each opposite party or their counsel (if any) by phone / SMS/ email. The counsel for the petitioner shall give an undertaking to this effect in his application for urgent listing of the petition.***

[Emphasis supplied]

8.1 None appears for the Respondents despite advance service.

9. A perusal of the Written Statement filed by the Respondent/Defendant, which forms part of the record, show that the three ingredients for the relief of possession stand satisfied. The Petitioner has in



his Application under Order XII Rule 6 of the CPC relied on paragraph 3 of the Reply on Merits, to the Written Statement of the Respondent to contend that the relationship of landlord and tenant has been admitted by the Respondent as well as the fact that the monthly rental is more than R3,500/- per month. It is apposite to set out the relevant extract of the Written Statement as well as the extract of the Application filed by the Petitioner, which is sought to be relied upon below:

“WRITTEN STATEMENT

REPLY ON MERITS

...

3. That the contents of para No.3 of the plaint is admitted to the extent that the answering defendant is an old tenant in respect of shop No.1 and 2 built on ground floor part of the property No. WZ-11A, Main Road, Lajwanti Garden, New Delhi-110046 @ Rs.10,000/- per month excluding other charges by the virtue of rent agreement dated 26.03.2014 executed between the plaintiff and the defendant. Rest of the para is wrong, false and denied. It is specifically denied that the answering defendant is tenant in respect of suit property since 01.08.2023 @ Rs.13,000/- per month. It is submitted that at the time of inception of the tenancy vide Rent Agreement dated 26.03.2014, the suit property was given on rent by the plaintiff for the commercial purpose @ Rs.10,000/- per month for a period of 11 months which comes to end on 31.05.2015 but after the expiry of the said period, the tenancy of the answering defendant remain continue and the plaintiff extended the tenancy of the answering defendant on receiving the rent from the answering defendant regularly in cash but he never issued any rent receipt the answering defendant inspite of repeated request and demand made by the answering defendant. It is submitted that at the time of inception of the tenancy, the answering defendant acknowledge the plaintiff as landlord only not acknowledge the owner of the suit property. The photo copy. of the Rent Agreement executed between the plaintiff and the defendant dated 26.03.2014 is attached herewith for the kind perusal of this Hon'ble Court.”

APPLICATION

...

5. That it is unambiguously, unequivocally and unconditionally admitted in para 3 & 4 of the reply on the merits of the written statement that the



defendant have paid a sum of Rs.10,000/-. This admission establishes that the complainant and the defendant had a landlord-tenant relationship as to which as the rent to the said property, this amount was transferred by the defendant.

6. That the Defendant admitted in para No.3 of reply on merits that "That the contents of para No. 3 of the plaint is admitted to extent that the answering Defendant is an old tenant in respect of shop No. 1 and 2 built on ground floor part of the property No. WZ-11A, Main Road, Lajwanti Garden, New Delhi @ Rs.10,000/- per month exclusive other charges by the virtue of rent agreement dated 26.03.2014 executed between the Plaintiff and the Defendant."

7. That the Defendant had admitted the aforesaid facts between the Plaintiff and the Defendant, hence the present suit is liable to be decreed in lieu of the admissions made by the Defendant in his written statement."

[Emphasis Supplied]

10. Thus, in the present case, it is admitted by the Respondent/Defendant that he is the tenant of the Petitioner and is paying rent of more than Rs.3,500/- per month. The Respondent/Defendant has also admitted that the rental is Rs. 10,000/- per month. The tenancy has also admittedly been terminated given that a suit for eviction has been filed by the Petitioner. So far as concerns the issue raised by the Respondent/Defendant as to whether the rental was Rs. 10,000/- or Rs. 13,000/-, the same would be relevant and only for the purposes of ascertaining mesne profits and not for the decree of Eviction.

11. Clearly, in the present case, all three ingredients for an order of eviction based on admissions under Order XII Rule 6 of the CPC, are available.

12. The Impugned Order is accordingly set aside.

13. The parties shall appear before the learned Trial Court on the date fixed, for further proceedings.



2025:DHC:6830



14. The Petition is disposed of in the foregoing terms. All pending Application also stands closed.

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

TARA VITASTA GANJU, J

JULY 25, 2025/r