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

Date of Decision: 04.04.2025

\+ **C.R.P. 100/2025 & CM APPL. 20080-20082/2025**

MANISHA DHAWAN .....Petitioner

Through: Mr. Anurag Bindal, Mr. Vaibhav Gupta & Mr. Mohd. Uwaiz, Advocates.

versus

MOHAMMAD ALI .....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 20081/2025 ***[Seeking condonation of delay in re-filing]***

1. This is an Application filed on behalf of the Petitioner seeking condonation of delay of 16 days in re-filing the present Petition.

2. For the reasons as stated in the Application, the delay is condoned.

3. The Application stands disposed of.

CM APPL. 20080/2025 ***[Seeking condonation of delay in filing]***

4. This is an Application filed on behalf of the Petitioner seeking condonation of delay of 8 days in filing the present Petition.

5. For the reasons as stated in the Application, the delay is condoned.

6. The Application stands disposed of.

CM APPL. 20083/2025 ***[Exemption]***

7. Allowed, subject to just exceptions.

8. The Application stands disposed of.

C.R.P. 100/2025

9. 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 05.11.2024 passed by learned District Judge-08, Central 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.

10. Learned Counsel for the Petitioner submits that the Petitioner has filed a suit for possession, injunction, recovery of arrears of rent and mesne profits against the Respondent in respect of a shop situated on the ground floor bearing No.3759, Sadar Bazar Main Road, Pahari Dhiraj, Delhi-110006, as shown in red colour in the site plan annexed with the plaint [hereinafter referred to as "subject premises"]. It is submitted that the Petitioner is the owner and landlady of the of the subject premises which was rented out to the Respondent.

11. It is the case of the Petitioner that in his Application under Order XII Rule 6 of the CPC, the three ingredients that are requisite in such case i.e., (a) Existence of landlord and tenant relationship; (b) Tenancy not protected by the Delhi Rent Control Act, 1958; and (c) Termination of tenancy, all stand satisfied. Learned Counsel for the Petitioner seeks to rely upon the

written statement, more specifically paragraph 6 of the Preliminary Objections in the written submissions, in this behalf.

12. Learned Counsel for the Petitioner further submits that the Respondent has admitted to being a tenant and he has also admitted to making payment of Rs.30,000/- per month, although, it is the case of the Petitioner that the rental at present is Rs.65,000/- per month.

12.1 It is apposite to extract paragraph 6 of the written statement filed by the Respondent/ Defendant, which is set out below:

> *"That initially the shop at the ground floor was let out by the plaintiff to the defendant on monthly rent of Rs. 30,000/- per month· excluding of electricity and other charges and the defendant regularly paying the rent to the plaintiff on time and has never gave chance to complaint her"*

13. In addition, learned Counsel for the Petitioner submits that so far as concerns the aspect of termination of tenancy, reliance is placed on the judgment of the Supreme Court in the case of ***Nopany Investments (P) Ltd. v. Santokh Singh (HUF)[1],*** wherein it is stated that the filing of the suit should be considered as termination of tenancy.

14. The learned Trial Court, in the Impugned Order, after examining the provisions of Order XII Rule 6 of the CPC, has set out that the tenancy is admitted and that rate of rent as Rs.30,000/- per month excluding electricity and other charges, also stand admitted. However, the learned Trial Court then discusses the aspect of the fact that there is an issue of return of amounts paid for construction. The learned Trial Court also gave a finding that the construction on and above the subject premises has not been

[1] (2008) 2 SCC 728

admitted, and thus, in this scenario how the Respondent was allowed to raise construction creates a suspicion and for the purposes of an admission under Order XII Rule 6, the categorical and unequivocal admission is not there. The finding of the learned Trial Court is set out below:

> *"**If we look at the written statement the defendant has admitted to be a tenant of the plaintiff. He has also admitted rate of rent i.e. @ Rs.30,000/- per month excluding electricity and other charges**. The main contention raised by the defendant is that the plaintiff approached him for construction upon property in question and the plaintiff and her husband assured the defendant that they shall return the expenses of the construction to the defendant. Thereafter, on the request of the plaintiff, the defendant constructed the mezzanine floor, kitchen and bathroom and second floor and after that defendant also constructed one flat at third floor alongwith one room on fourth floor which cost him Rs.39,88,939/-. **It has been further stated that the plaintiff and her husband had assured the defendant that if they shall not return the construction expenses then the defendant has right to stop the payment of rent to the plaintiff of the property in question. The defendant has also filed a counter claim seeking the recovery of the above said amount**.*
>
> *No rejoinder was filed to the written statement of the defendant by the plaintiff. The construction on and above the tenanted premises has never been denied by the plaintiff. In these scenario of facts, the question arises as to how come the defendant was allowed to raise the construction on the said property of the plaintiff. **This fact really creates a suspicion. For the purpose of admission under Order 12 Rule 6 CPC, that has to be categorical, unequivocal and clear which is apparently not the case herein**."*
>
> [Emphasis supplied]

15. 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.

16. The Supreme Court in ***Payal Vision Ltd. v. Radhika Choudhary***[2], 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: (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****:*
>
> > *"**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***

[2] (2012) 11 SCC 405

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]

17. As stated above, in the present case it is admitted that the Respondent is the tenant of the Petitioner and is paying rent of more than Rs.3,500/- per month.

18. On the aspect of notice of termination of tenancy, it is settled law that filing of an eviction suit itself is a notice to quit on the tenant. Reliance is placed on the ***Nopany Investments (P) Ltd. case.*** The relevant extract is reproduced below:

> *"**22.** ... **Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V. Dhanapal Chettiar v. Yesodai Ammal** [(1979) 4 SCC 214 : AIR 1979 SC 1745] .*

[Emphasis Supplied]

19. Clearly, in view of the admissions of the Respondent, the prayer for

ejectment no longer survives.

20. In view of the clear and apparent error, this Court does not deem it apposite to issue Notice in the matter. In view thereof, the Application under Order XII Rule 6 is allowed and the Impugned Order is set aside.

21. However, it is clarified that on the aspects raised by the Respondent on construction and the amounts owed, the trial shall proceed in view of the fact that the remaining prayers in the plaint are on recovery of arrears of rent and mesne profits.

22. The rights and contentions of the parties are left open in this regard.

23. The Petition is disposed of in the aforegoing terms.

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

TARA VITASTA GANJU, J

APRIL 4, 2025/ *ha*

Click here to check corrigendum, if any