



2025:DHC:4769



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

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Date of Decision: 23.05.2025+ **C.R.P. 198/2024 & CM Appl. 37332/2024**

MOHD. SHAMIM

.....Petitioner

Through: Mr. Vineet Jain, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondents

Through: Ms. Harish Narang, Adv. for R-2.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] impugning the order dated 29.04.2024 [hereinafter referred to as "Impugned Order"] passed by the learned ASCJ, Central, Delhi. By the Impugned Order, the Application under Section 151 of the CPC filed by Respondent No. 2/Defendant (before the learned Trial Court) has been allowed and the learned Trial Court has dismissed the suit based on this Application.

2. Learned Counsel for the Petitioner submits that the Petitioner (Plaintiff before the learned Trial Court) filed a suit for possession, permanent and mandatory injunctions in respect of shop no. 5156, situated on 3rd floor, with roof, Rui Mandi, Sadar Bazar, Delhi-110006.

3. The learned Trial Court examined the plaint and found that the Petitioner has stated that Defendant No. 2, who is the Respondent No.2, is in



possession of the third floor and as per the Petitioner, the Respondent No. 2 is in illegal occupation, however, the suit has been filed seeking relief of injunction simpliciter. Relying on the *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs & Ors.*¹, the learned Trial Court has dismissed the suit filed by the Petitioner.

4. A perusal of the plaint shows that a suit for possession, permanent and mandatory injunction has been filed by the Petitioner. A prayer seeking recovery of possession has been raised by the Petitioner as one of its prayers in the plaint. It is apposite to extract the prayers in the plaint below:

*“It is, therefore, respectfully prayed that the Hon'ble Court be pleased to **pass a Decree for possession in favour of the plaintiff** and against the defendant No. 2 thereby directing him to handover the vacant and peaceful possession of **the Shop No. 5156, IIIrd Floor, Rui Mandi, Sadar Bazar, Delhi-110006** clearly shown in Red colour in the site plan attached herewith to the plaintiff, in the interest of justice.*

*It is further prayed that the Hon'ble Court be **pleased to pass a decree of Permanent Injunction in favour of the plaintiff** and against the defendant No.1 thereby restraining him, his Agents, Attorneys, Relatives, Masson and Labor etc. etc. from raising any construction over the roof of the third floor of the Shop No. 5156, IIIrd Floor, Rui Mandi, Sadar Bazar, Delhi-110006, in the interest of justice.*

*It is further prayed that the Hon'ble Court **be pleased to pass a decree of mandatory injunction in favour of the plaintiff and** against the defendants thereby mandate and direct the defendants to demolish any construction if raised by the defendant No. 1 over the roof of the third floor of the Shop Ne. 5156, IIIrd Floor, Rui Mandi, Sadar Bazar, Delhi- 110006 which is clearly shown in red colour in the site plan attached herewith, in the interest of justice.”*

[Emphasis supplied]

5. Another aspect which has to be adverted to is that the learned Trial Court has given a finding that even though the present Application has been

¹ AIR 2008 SC 2033



filed under Section 151 of the CPC in effect it is actually filed under Order XII Rule 6 of the CPC for dismissal of the suit. The learned Trial Court further held that merely because a wrong provision has been invoked, the Application cannot be dismissed. The relevant extract of the Impugned Order in this behalf is set out below:

“Even though, the present application is moved under section 151 CPC, in effect it is actually filed under order 12 Rule 6 CPC and dismissal of the suit is sought on the basis of the admitted facts. Merely because wrong provision of law is mentioned, the application cannot be thrown out on this ground alone. It is pertinent to mention the observation of Hon'ble Delhi High Court in Preet Inder Singh Vs. Gursharna Kaur & Anr., RFA No. 747/2010, dated 19.10.2011.

...
*In light of the admitted facts brought on record, the present suit is liable to be **dismissed under order 12 Rule 6 CPC.** Accordingly, the present suit is dismissed under order 12 Rule 6 CPC with the costs of Rs.2 Lacs to be paid by the plaintiff to defendant No.1 and 2 in equal proportions.”*

[Emphasis supplied]

5.1 However, as can be seen from the Impugned Order, there is no assertion or averment by either party that an incorrect provision of law has been invoked.

6. As stated above, the Petitioner has filed a suit for Possession, Permanent & Mandatory Injunction. It is the case of the Petitioner that the Petitioner is the owner of the suit property on the basis of the following documents:

- (i) Registered Will dated 13.01.1983 and registered Gift Deed dated 13.02.1984 executed by the father of the Petitioner late Sh. Shaikh Mohd. Yunus;
- (ii) Settlement between the Petitioner and her two sisters by way of



Mediation Settlement dated 18.01.2016;

(iii) Order dated 23.03.2016 passed in RFA 37/2014 captioned ***Mohd. Shamim v. Aman Jamal & Ors.*** passed by a Coordinate Bench of this Court.

7. The Respondent No.2 has however in his Written Statement stated that he is the owner of the suit property having purchased the same by a registered sale deed. It is further contended that this fact is specifically in the knowledge of the Petitioner. In addition, it is contended that this averment has not been denied by the Petitioner in his Replication filed before the learned Trial Court.

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 Kumar***² in this behalf. 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,

² (2022) 10 SCC 496



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. The Supreme Court in the case of *Hari Steel & General Industries Ltd. v. Daljit Singh*³, 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 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**

³ (2019) 20 SCC 425



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. As stated above, an examination by the Court has shown that there is no clear and unambiguous admission by the Petitioner qua Respondent’s ownership of the suit property. In fact, the Petitioner has maintained the stance that the Petitioner is the owner of the suit property. In addition, the objections as 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.

11. In view of the foregoing, the Impugned Order is set aside. The suit of the Petitioner is restored. It is, however, clarified that the Petitioner is at



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liberty to agitate all his contentions before the learned Trial Court in accordance with law. All rights and contentions of the parties are left open in this regard.

12. List before the learned Trial Court on 06.06.2025.

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

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

TARA VITASTA GANJU, J

MAY 23, 2025/r/pa

Click here to check corrigendum, if any