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

Reserved on: 18th May, 2026
Pronounced on: 11th August, 2026

\# **CNR No. DLHC01246283201**

\+ RFA 741/2016 & CM APPLs. 57489/2023, 63392/2023, 48255/2025 & 20928/2026

SUBHASH CHAND JINDAL .....Appellant

Through: Ms. Vibha Mahajan, Senior Advocate with Mr. Akhil Sachar, Ms. Sunanda Tulysan, Ms. Shweta Pattnaik, Ms. Babita Rawat and Mr. Vidhit Verma, Advocates.
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versus

VIJAY GUPTA .....Respondent

Through: Mr. S.P. Jha with Ms. AkanshaYadav, Advocates.
(M): 9811009625

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

A. INTRODUCTION

1. The present appeal has been filed seeking to set aside the impugned order and decree dated 06th August, 2016, passed by the Additional District Judge-04 (North West), Rohini District Courts, Delhi **("Trial Court")** in the suit bearing *CS No. 342/2016 (new Case No. 575327/2016)*, titled as *"Vijay*

Gupta Versus Subhash Chand Jindal".

2. The suit in question was filed by the respondent/plaintiff, i.e., Vijay Kumar, against the appellant/defendant, i.e., Subhash Chand Jindal, for possession, recovery of damages, and permanent injunction with respect to the property bearing *No. A-137/1, Group Wazirpur Industrial Area, Delhi – 110052*, admeasuring 334.4 square meters **("suit property")**. The Trial Court *vide* the impugned order allowed the application filed on behalf of the respondent/plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 **("CPC")**, while holding that the respondent is entitled to the possession of the suit property, and thereby, directed the appellant to hand over the peaceful and vacant possession of the suit property. The suit in question is now proceeding only for determination of use and occupation charges/*mesne* profits, and is at the stage of defendant's evidence.

3. At the outset, this Court notes that *vide* order dated 11th November, 2016 in the present appeal, subject to the appellant maintaining *status quo* with regard to the title and possession of the suit property, and the appellant paying Rs. 1.80 Lacs per month to the respondent towards use and occupation charges, during the pendency of the appeal from the date of institution of the suit, on or before the seventh (07th) day of each month, the operation of the impugned judgment was stayed. Further, the arrears were to be cleared within eight weeks from the date of said order.

4. The said order dated 11th November, 2016 was challenged by the appellant, and *vide* order dated 20th January, 2017, in *Special Leave to Appeal (Civil) bearing No. 1276-1277s/2017*, the Supreme Court refused to interfere with the order dated 11th November, 2016. However, the time period for compliance was extended by one month. Liberty was also granted

to the appellant herein to seek imposition of a condition of withdrawal of the amount on furnishing security by the respondent.

5. Consequently, the order dated 11th November, 2016 was modified *vide* order dated 08th February, 2017 passed in the present appeal, and the amount was directed to be deposited in the Registry, to be placed in a Fixed Deposit Receipt **("FDR")**, instead of being paid to the respondent.

6. By way of a detailed order dated 07th December, 2023, this Court did not *prima facie* agree with the inference drawn by the Trial Court that title of the respondent over the suit property was established from the unregistered and insufficiently stamped License Deed, and that inference of title from the License Deed was a "collateral purpose". The Court observed that the Trial Court appeared to have overlooked as to whether, and if so how, title in the suit property passed from the appellant to the respondent, in the first place. The Court was also of the view that the finding of the Trial Court that the respondent has been able to establish from the record that he is owner of the suit property in question required re-consideration. Thus, the Court directed that the further proceedings scheduled for 08th December, 2023 in the suit in question be deferred by the Trial Court to a date after the next date before this Court.

7. The respondent, aggrieved by this, filed *Special Leave to Appeal (Civil) bearing No. 2421/2024*, and the Supreme Court *vide* order dated 02nd February, 2024, declined to interfere with the order dated 07th December, 2023, but granted liberty to the respondent herein to seek variation of the said order in accordance with law.

8. By way of order dated 17th February, 2025, the Court was of the view that no prejudice will be caused to either party if the proceedings are

allowed to continue before the Trial Court. However, the Trial Court was directed to await the order of this Court before passing judgment.

9. On hearing dated 06th October, 2025, the counsel for the appellant informed the Court that the suit in question is at the stage of defendant's evidence. The Court directed that the Trial Court shall defer the matter to a next date beyond the date when the matter is listed before this Court, i.e., 14th November, 2025.

10. It is also pertinent to note that by way of order dated 09th July, 2024, the Court had directed that *CM APPL. 57489/2023* would be considered at the time of hearing of the instant appeal. The said application has been filed by the applicants under Order I Rule 10 (2), read with Section 151 of the CPC, seeking impleadment as appellants in the present appeal, on the ground that they are the coparceners in respect of the suit property, which is claimed to be a joint family property of the Subhash Chand Jindal Hindu Undivided Family **("HUF")**, with the appellant as its *Karta*.

B. BRIEF FACTS

11. The respondent/plaintiff filed the suit for possession, recovery of damages and permanent injunction with respect to the suit property.

I. Case set up by the respondent herein in the plaint:

12. The case canvassed by the respondent herein, in his plaint filed before the Trial Court, is as follows:

12.1. The respondent herein is the owner in respect of the entire suit property.

12.2. License Deed dated 09th November, 2001 was executed between the respondent/licensor and the appellant/licensee, for a tenure of eleven (11) months, at a license fee of Rs. 60,000/- per month, and payment of water and electricity charges by the licensee directly to the concerned authorities.

12.3. The appellant was put in possession of the suit property as a licensee.

12.4. The License Deed was terminated on the midnight of 08th October, 2002 by efflux of time, and was not extended further. However, despite request by the respondent, the appellant neglected to vacate the suit property, on one pretext or the other.

12.5. The appellant failed to pay use and occupation charges with respect to the suit property, and is liable to pay a sum of Rs. 21,60,000/-, along with interest. The respondent herein is restricting his claim in this regard to the last three (03) years only.

II. Defense set up by the appellant herein in his written statement:

13. The defense, set up by the appellant herein in his written statement filed before the Trial Court, is as follows:

13.1. The respondent herein is not the owner/licensor of the suit property, and rather, the appellant is the owner and has been in continuous and interrupted possession of the suit property.

13.2. The original allottees of the suit property were Ram Kumar, Jag Mohan, Ishwar Chand and Kailash Chand. On the basis of the registered Relinquishment Deed executed by all the aforesaid co-allottees in favor of Kailash Chand, the appellant purchased the suit property from Kailash Chand by way of Agreement to Sell dated 23rd March, 1998 and a registered General Power of Attorney **("GPA")** dated 23rd March, 1998.

13.3. The appellant established his industry in the suit property, in the name and style of M/s. Mohit Industries, and is operating the same as the owner for the work of steel fabrication, as per the requisite license in this regard. Moreover, the appellant is regularly paying electricity and water charges as well as property and income tax, since the year 1997.

13.4. The respondent approached the appellant in the year 2001 and proposed a scheme to arrange easy liquidated money, which could be utilized by both the appellant and respondent for their businesses. For the said loan scheme, the appellant executed necessary documents, like unregistered Agreement to Sell, Receipt, and Possession Letter dated 15th September, 2001, and registered GPA and Will dated 06th November, 2001, at a nominal consideration of Rs. 10 Lacs in favor of the respondent. The respondent obtained a loan by depositing the said title deeds with a private financer.

13.5. As regards surety against this mere paper transaction, the appellant returned the consideration amount so received back to the respondent, in the name of the respondent's company M/s. Polo Plastic Limited, and requisite shareholding of equal amount in the said company was allotted to the appellant.

13.6. All cash transactions were recorded by the respondent and the appellant in their diaries, however, on a representation made by the respondent, the appellant abandoned the same.

13.7. Disputes arose between the parties in the year 2013 as the respondent demanded an unreasonable amount of Rs. 50 Lacs to cancel the Agreement to Sell, GPA, and other documents, even though all the dues had been squared up.

13.8. It is only after receiving the copy of the plaint filed in the suit in question, the appellant became aware of the fact that the respondent had fraudulently obtained a Conveyance Deed dated 23rd April, 2014 in his favor from the Delhi Development Authority **("DDA")** on the basis of Agreement to Sell, GPA, and other documents, obtained by the respondent.

13.9. The officials of DDA connived with the respondent and the suit property was converted into freehold, even though the respondent has never been in possession of any portion of the suit property. Furthermore, no notice was sent by the DDA to the appellant before execution of the Conveyance Deed, which was executed in a record time of 20 days.

13.10. The appellant filed an application dated 27th August, 2014 with the DDA, followed by an appeal dated 28th October, 2014, under the Right to Information Act, 2005 **("RTI Act")**, seeking necessary information, however, no response was received.

13.11. Therefore, no option was left to the appellant, other than filing the written statement, while reserving his right to file counter claim or a separate suit, seeking cancellation of the unregistered Agreement to Sell, Receipt, and Possession Letter dated 15th September, 2001, and registered GPA and Will dated 06th November, 2001, along with the License Deed dated 09th November, 2001 as well as the GPA dated 08th November, 2001, executed by the father of the respondent, as the attorney-holder of the appellant, in favor of the wife of the respondent.

13.12. All the said documents were executed without any consideration for oblique purposes and not for transfer of the suit property. Even the License Deed was obtained fraudulently, on false pretext/representation by the respondent, as being part of a mere paper transaction to obtain loan from the private financer.

13.13. It is categorically denied that the respondent is a licensor and the appellant is the licensee, in respect of the suit property. There was no occasion for the appellant to use the suit property on license basis, when it was his own property.

13.14. The appellant was never under any obligation to pay a sum of Rs. 60,000/- or any amount as license fee, and the License Deed cannot be read into the plaint on account of being void.

III. Application filed by the respondent herein under Order XII Rule 6 of the CPC:

14. The respondent herein filed the application being *I.A. 1239/2015* in the suit in question under Order XII Rule 6 of the CPC, seeking decree of possession in respect of the suit property, on the following count:

14.1. The appellant admitted to the execution of the Agreement to Sell, Receipt, Possession Letter dated 15th September, 2001, registered GPA and Will dated 06th November, 2001, and Conveyance Deed dated 23rd April, 2014, which established the respondent's title over the suit property.

14.2. The appellant, by admitting the execution of the License Deed dated 09th November, 2001, had admitted to the jural relationship of licensor and licensee. Thus, after termination of License Deed, the appellant was required to handover the possession of the suit property, which does not fall within the purview of the Delhi Rent Control Act, 1958 **("DRC Act")**, and the respondent had established a case for ejectment of the tenant, i.e., the appellant.

14.3. The contention of the appellant that the documents of the year 2001 were sham documents and were vitiated on account of misrepresentation and fraud, is impermissible in law, as the appellant had not challenged the said documents in any legal proceedings, and the said documents had become unimpeachable.

IV. Findings of the Trial Court:

15. The appellant neither filed any counter claim nor took any objection by filing any complaint against the respondent, with regard to the alleged title deeds of the year 2001. Thus, the defense of the appellant herein that the said documents were forged and fabricated is not tenable, and the said documents are presumed to be *prima facie* correct, and the respondent is the owner of the suit property.

15.1 The appellant herein has not disputed the execution of the License Deed as he has not disputed his signatures, nor has he furnished any reason as to what prompted him to execute the License Deed dated 09th November, 2001, when he had already repaid the alleged loan.

15.2 Further, the appellant has not challenged the License Deed by filing any counter claim. The appellant has also not explained as to when the loan of Rs. 10 Lacs was repaid, and if the loan was repaid, why did he not demand the original title deeds back.

15.3 Since the appellant herein owned 36% shares in M/s. Polo Plastic Limited, as opposed to the 01% share owned by the respondent, the appellant had the opportunity to manage the internal affairs of the said entity, and manipulate any documents.

15.4 From a perusal of the License Deed, particularly paragraph 6 therein, it is clear that the possession of the suit property was earlier with the respondent, and by virtue of the same, the possession was handed over to the appellant herein.

15.5 No evidence as to any loan agreement, which is stated to have been an oral agreement, has been placed by the appellant. The facts pertaining to the loan agreement and in whose presence it was executed, have not been explained. Further, the facts pertaining to the defense of the License Deed, having been obtained by misrepresentation and fraud have not been explained. Thus, the said plea of misrepresentation and fraud is not tenable in law and the denial of the facts stated in the plaint appear to be an evasive denial.

15.6 The appellant has not explained the purpose of the loan, the circumstances in which, it was taken, how it was returned on the next date and the purpose for which it was utilized, and if the loan amount was repaid, then how was it procured. Thus, the appellant, although has taken the defense of the loan transaction, has been unable to explain the necessary circumstances surrounding the loan transaction.

15.7 The relationship between the parties, i.e., landlord/licensor-tenant/licensee has been established.

15.8 The signatures on the License Deed are not disputed, which *prima facie* appear to be similar to the signatures of the title deeds, put by one and same person, therefore, the defense of the loan transaction between the parties is not tenable.

15.9 Without going into the question of the License Deed being unregistered or not being properly stamped, the same could be looked into for *"collateral purposes"*.

15.10 Hence, the relationship of landlord and tenant stands established and the respondent has established that the License Deed has not been extended any further and stands determined by the efflux of time. Thus, all the essential elements of Order XII Rule 6 of the CPC stand established.

15.11 The Trial Court, therefore, allowed the application under Order XII Rule 6 of the CPC and held the respondent herein entitled to possession of the suit property and directed the appellant herein to handover the peaceful and vacant possession of the suit property.

C. SUBMISSIONS OF THE PARTIES HEREIN

I. Contentions raised by the appellant:

16. Submissions made by the appellant herein before this Court, are as follows:

16.1. The appellant is the owner of the suit property, having purchased the same from Kailash Chand by way of the Agreement to Sell dated 23rd March, 1998 and GPA dated 23rd March, 1998 registered in the office of Sub-Registrar, Delhi. The appellant has been in continuous and uninterrupted possession of the suit property, in the capacity of *Karta* of HUF, and is running an industry in the style of M/s. Mohit Industries and regularly paying electricity and water charges, as well as property and income tax.

16.2. The documents of the year 2001 had been executed in favor of the respondent in *lieu* of a scheme for obtaining a loan from a private financer. Thus, the said documents were merely paper transactions and possession of the suit property was never handed over to the respondent at any point of time as the documents of the year 2001 were not document for transfer of title, but had only been signed for the purpose of security against the loan.

16.3. There was never a relationship of landlord or tenant between the parties and the respondent obtained the Conveyance Deed dated 23rd April, 2014 in his favor, and got the suit property converted into freehold in a frivolous manner, as the respondent was never in possession of the suit property.

16.4. During the pendency of the suit in question, directions were passed on

19th December, 2014 and 20th July, 2017 to the respondent to submit the original documents. However, the same has not been done till date.

16.5. The Trial Court wrongly recorded that the title deed, i.e., Conveyance Deed dated 23rd April, 2014 and other executed documents had not been challenged by the appellant and were, thus, *prima facie* correct and duly executed.

16.6. The Trial Court erroneously recorded that the appellant had not filed any counter claim or taken any objection against the respondent with regard to the alleged title deeds of the year 2001, thereby, ignoring the fact that the appellant had already filed the suit bearing *CS 578044/2016,* against the respondent seeking cancellation of the registered Conveyance Deed dated 23rd April, 2014 and declaration of the documents of the year 2001 as being null and void. The said suit was always listed alongside the suit in question.

16.7. Thus, the said suit is pending before the same Court and application under Order VII Rule 11 of the CPC was dismissed by the same Judge of the Trial Court, *vide* order dated 05th July, 2016 on merits, i.e., prior to the date of impugned order. Even otherwise, said finding of the Trial Court is erroneous, as the appellant had taken the plea that the documents executed by him are sham and bogus, and the Conveyance Deed was fraudulently obtained. Hence, there was no need to file a separate suit for cancellation/declaration, particularly when, some of these documents were not even registered.

16.8. In the aforesaid suit filed by the appellant herein, i.e., *CS 578044/2016,* the DDA has filed a written statement stating that they have already taken steps for cancellation of the Conveyance Deed. DDA, in its internal noting, has mentioned that they have decided to wait for the outcome of the aforesaid case. Thus, in view of the pending proceedings and the stand taken by the DDA, suit for possession could not have been decreed, on the basis of the said documents. The respondent has no right/title on the suit property by virtue of the GPA, Agreement to Sell, etc. of the year 2001.

16.9. The respondent is denying the ownership of appellant, and seeking to orally argue a case, contrary to its pleadings. The respondent has taken a contradictory stand that under the Agreement to Sell dated 15th September, 2001, he paid Rs. 10 Lacs to Kailash Chand. However, the respondent in its replication to the plaint has admitted that his alleged ownership of the suit property stems from the title documents, executed in his favor by the appellant. The GPA dated 06th November, 2001 was the only document which was registered and it merely empowered the respondent to manage, control and supervise the suit property or sell it on behalf of the appellant, however, it never described the respondent as the owner of the suit property.

16.10. The appellant's possession is even otherwise entitled to be protected under Section 53-A of the Transfer of Property Act, 1882 **("TP Act")**.

16.11. Under Order XII Rule 6 of the CPC, the admission needs to be unequivocal, categorical, deliberate, unambiguous and unqualified, failing which the Court cannot exercise its discretion to decree the suit. The appellant never admitted that the respondent was the owner of the suit property and has strongly objected to the documents relied upon by the respondent, which need to be proved by leading evidence during trial.

16.12. The explanation provided in the written statement as to the transactions which led to execution of certain documents show that there was no admission by the appellant. The discretion of the Court, while dealing with an application under Order XII Rule 6 of the CPC, should not be exercised to deny the valuable right of a defendant to contest a claim, unless the admission is clear, unambiguous and unconditional.

16.13. The Trial Court failed to appreciate that the respondent neither claimed nor received any license fee from the appellant since the year 2001 till the filing of the suit in the year 2014, clearly showing that the License Deed was a sham document and no relationship of licensor-licensee was sought to be created. The documents like Agreement to Sell, GPA, Will, etc. were executed showing a nominal consideration of Rs. 10 Lacs when in fact, the market price at the relevant time was Rs. 50 Lacs.

16.14. Further, the sum of Rs. 10 Lacs, which was received by the respondent, was invested back by way of two cheques of Rs. 05 Lacs each, in M/s. Polo Plastic Limited, an entity promoted by the respondent. Thus, the said documents were executed without any consideration.

16.15. Further, the License Deed was for a period of eleven (11) months, and expired on 08th October, 2002, by efflux of time.

16.16. No plea of fraud and misrepresentation was alleged with respect to the License Deed, rather the plea of the appellant was that the parties never intended to act upon or be bound by the documents executed in the year 2001, and therefore, filing of the present suit for possession, on the basis of these documents, shows that there was fraud and misrepresentation played by the respondent on the appellant.

16.17. The reliance placed by the Trial Court on the decision of this Court in ***Karan Madaan and Others Versus Nageshwar Pandey, 2014 SCC OnLine Del 1277***, was misconceived as the present case is distinguishable on facts. In the present case, no registered document had been executed by the appellant in favor of the respondent, and the appellant is not a party to the Conveyance Deed dated 23rd April, 2014. Further, all the documents, including, the License Deed were mere paper transactions and never intended to be acted upon, and had been executed without any consideration. Thus, the case of the appellant herein would fall within the *proviso* (1) of Section 92 of the Indian Evidence Act, 1872 **("Evidence Act")**. The said judgment has also been distinguished in other cases.

16.18. No declaration was required to be sought by the appellant with respect to the License Deed 09th November, 2001, as the said document is fraudulent, sham and bogus, and therefore, is *void ab initio*.

16.19. The Trial Court erred in decreeing the suit without affording an opportunity to the appellant to lead evidence as the defense raised by the appellant is plausible and requires adjudication. Whether such defense is acceptable or not, is a matter of trial, and therefore, the appellant has the right to lead evidence.

16.20. No admission has been made by the appellant on the crucial aspect of whether the respondent was a licensor or the owner of the suit property. Rather the appellant has strongly denied the landlord-tenant relationship alleged in the plaint.

16.21. Admission as to the execution of a documents does not tantamount to admission of the facts of the documents, particularly, when a party has explained the facts and circumstances of the execution.

II. Submissions of the respondent:

17. Pithily put, the contentions raised by the respondent, are as under:

17.1. The claim of the respondent over the suit property is based on the Agreement to Sell, Receipt, Possession Letter dated 15th September, 2001, registered GPA and Will dated 06th November, 2001 as well as the License Deed dated 09th November, 2001. The Agreement to Sell was executed by the HUF through its *Karta*, i.e., appellant in favor of the respondent. The appellant in his written statement has agreed to the execution of the aforementioned documents, thereby, admitting to the ownership and title of the respondent over the suit property.

17.2. The appellant by admitting to the execution of the License Deed dated 09th November, 2001 has admitted to the existence of the jural relationship of licensor-licensee between the appellant and respondent. The allegation that the amount of Rs. 10 Lacs taken as consideration for the execution of the documents of the year 2001 was returned to the respondent by purchasing shares in M/s. Polo Plastic Limited is erroneous, as the same is an investment by the appellant in the said entity, whereby, the appellant owns 36% shares, while the respondent has only 01% shares. The shareholding pattern of M/s. Polo Plastics Limited shows that the respondent is a minor shareholder of the said entity.

17.3. The appellant has taken a sham defense in his written statement with respect to an alleged loan transaction. The said defense is vague, cryptic and without any documents on record, and is hit by the principles of Section 91 and 92 of the Evidence Act.

17.4. The contention of the appellant that the alleged transaction was a loan transaction falls flat in view of the fact that if the appellant had allegedly repaid the loan amount on the next date, he would not have executed the License Deed dated 09th November, 2001.

17.5. Further, had the alleged loan been repaid, the appellant would not have waited for more than 15 years to seek cancellation of the document executed in favor of the respondent in the year 2001.

17.6. The defense raised by the appellant herein before the Trial Court is extremely vague, opaque and ambiguous, and therefore, it is the duty of the Court to turn down the said defense and pass a judgment on the basis of admitted documents.

17.7. The suit property is an industrial plot and was a leasehold property. On 29th October, 1995, the three allottees relinquished their shares in the suit property in favor of Kailash Chand, whereby, he became the absolute owner of the suit property. Kailash Chand executed an Agreement to Sell dated 23rd March, 1998, in favor of the HUF, and the same was signed by the appellant as the *Karta* of the HUF. On 23rd March, 1998, Kailash Chand also executed a registered GPA in favor of the appellant. On the basis of the aforesaid documents, no title of the suit property has been transferred in favor of the appellant or the HUF. Thus, the objection of the appellant that since he is the owner of the suit property, he cannot be a licensee in his own property, is misplaced. Rather, the respondent is the owner of the suit property on account of the registered Conveyance Deed dated 23rd April, 2014.

17.8. On 15th September, 2006, the tripartite Agreement to Sell was executed between Kailash Chand, HUF and the respondent, and was signed by the appellant herein as the attorney of Kailash Chand and as *Karta* of the HUF. The sale price of Rs. 10 Lacs was paid by the respondent to Kailash Chand *vide* account-payee cheque, and possession of the suit property was delivered to the respondent, as acknowledged in the Possession Letter dated 15th September, 2001.

17.9. On 06th November, 2001, appellant executed a registered GPA in favor of Satya Narain Gupta, i.e., the father of the respondent, whereby, he was authorized to do all the necessary formalities to get the suit property transferred in favor of the respondent in the records of the DDA. On the same date, a registered Will was also executed in favor of the respondent.

17.10. On 09th November, 2001, a License Deed on a stamp paper of Rs. 10/- was executed between the parties, whereunder, the appellant admitted the respondent to be the absolute owner of the suit property. Furthermore, under the License Deed, the appellant was to pay all the expenses and bear all the maintenance cost till his occupancy.

17.11. On 23rd April, 2014, the DDA converted the suit property from leasehold to freehold and a registered Conveyance Deed was executed in favor of the respondent, after payment of the unearned increase amount. Thus, at the time of filing of the suit, the respondent was the absolute owner and licensor of the suit property.

17.12. The respondent filed the application under Order XII Rule 6 of the CPC before the Trial Court, on the basis of the admission by the appellant with respect to the relationship of landlord and tenant between the parties.

17.13. Although the appellant has submitted during the course of arguments before the Trial Court that he had returned the consideration of Rs. 10 Lacs on the very next date, however, the appellant failed to explain how the loan was taken, why the documents dated 15th September, 2001 were not demanded back when the alleged amount had been returned, and why no complaint in this regard was ever filed.

17.14. Till date, no challenge has been made to the notarized License Deed dated 09th November, 2001.

17.15. It is settled law that under Section 52 of the Indian Easements Act, 1882 **("Easements Act")**, a License Deed does not create an interest in the property and it remains a personal grant, which can be revoked at any point of time. The legal and actual control and possession over the licensed property always remains with the licensor, and upon cancellation/recall of the License Deed, the licensee is bound to restore the possession of the licensed property to the owner/licensor.

17.16. Further, a licensee has no legal right to object to his eviction as a License Deed is only a permission to occupy the property, and in the absence of such permission, such occupancy would be without legal basis. Once the License Deed is admitted, the licensee cannot question the title of the licensor.

17.17. The registered Conveyance Deed cannot be challenged by the HUF, as at no point of time, any title ever passed in favor of the HUF on the basis of the unregistered Agreement to Sell dated 23rd March, 1998, and the suit property always remained in the name of Kailash Chand, in the records of DDA, until the registration of the Conveyance Deed dated 23rd April, 2014 in favor of the respondent.

17.18. The decision in the suit bearing *CS No. 578044/2016* filed by the HUF against the respondent herein challenging the Conveyance Deed, would have no effect on the impugned order and decree of possession, which was passed on the basis of termination of the License Deed and possession of the suit property was taken from Subhash Chand Jindal, in his individual capacity. No suit challenging the said License Deed has been filed by the appellant herein, i.e., Subash Chand Jindal. Thus, the Trial Court rightly did not direct the parties for trial, as the same would not alter the legal position.

17.19. During the pendency of the suit in question, neither the appellant nor the HUF ever mentioned the pendency of the suit bearing *CS No. 578044/2016*. No application was filed for clubbing the two suits together. Thus, the appellant was clear that the pendency of one suit would have no effect on the other.

17.20. The written statement of the appellant before the Trial Court is conspicuously silent on the illegality of the License Deed, and the reason for its execution on 09th November, 2001, particularly, when the Agreement to Sell and other documents had been executed on 15th September, 2001. The bald objections taken by the appellant herein that the License Deed is forged and fabricated, are barred under Sections 91 and 92 of the Evidence Act. Thus, the defense taken by the appellant did not require any trial.

17.21. The contention of the appellant that after the execution of the Agreement to Sell dated 23rd March, 1998, the HUF started operating the business of M/s Mohit Industries in the suit property is contrary to the record of the Municipal Corporation of Delhi **("MCD")**, as per which, the license for running the industry was issued in the name of the appellant on 07th May, 1997.

17.22. Further, the contention of the appellant that the HUF paid the property tax for the suit property is not borne out of the records, as the three property tax receipts are in the name of Kailash Chand, and not the HUF.

17.23. No defense is available to the respondent under Section 53-A of the TP Act on the basis of the Agreement to Sell dated 23rd March, 1998, as *vide* documents dated 15th September, 2001, the HUF became the seller of the suit property, and the defense under Section 53-A of the TP Act is only available to the purchaser, and not the owner/transferor.

17.24. The document, i.e., the License Deed dated 09th November, 2001, which is alleged to be void or voidable, is to be adjudicated by the Court in a proceeding initiated under Section 31 of Specific Relief Act, 1963 **("Specific Relief Act")**.

III. Submissions made on behalf of the applicants in *CM APPL. 57489/2023*:

18. The submissions made by the applicants, are as follows:

18.1. The applicants have filed the application bearing *CM APPL. 57489/2023* under Order I Rule 10 (2), read with Section 151 of the CPC, to implead themselves as appellant nos. 2 to 5 in the present appeal, as the coparceners of the HUF.

18.2. It is the case of the applicants that their coparcenary, proprietary and equitable rights in the suit property are being affected, including, their right to possession and enjoyment. The applicants are the son and daughters of the appellant, and are coparceners by birth in the HUF, and are therefore in law, recognized as co-owners and co-sharers of the HUF property.

18.3. The applicants hold an inherent and legally enforceable stake in the suit property, and their right cannot be curtailed or diluted, except in strict accordance with established principles of Hindu Law.

18.4. Kailash Chand had entered into an Agreement to Sell dated 23rd March, 1998 with the HUF, represented through its *Karta*, i.e., appellant for a consideration of Rs. 9 Lacs. Further, the appellant established M/s. Mohit Industries in the year 1998 for and on behalf of the HUF, on the suit property, being an HUF property.

18.5. On 15th September, 2001, the appellant unauthorizedly alienated the HUF property to the respondent by execution of the Agreement to Sell. The respondent allegedly claims to have obtained actual, physical and vacant possession of the HUF property on the same day, however, at no point of time was the possession, in any form, whatsoever, was ever transferred to the respondent.

18.6. Likewise, the appellant in his individual capacity executed the GPA in favor of Satya Narain Gupta, i.e., the father of the respondent, as well as a Will dated 06th November, 2001 in favor of the respondent even though the suit property is an HUF property, and the applicant's coparcenary rights cannot be excluded.

18.7. The appellant in his individual capacity filed a suit bearing *CS No. 578044/16* before the District Court. The said suit was amended by the appellant herein, and the HUF became the plaintiff therein.

18.8. All the facts regarding alienation of the suit property, as well as the proceedings of the suit in question, were concealed from the applicants, who became aware of the same upon publication of the Public Notice dated 28th July, 2023, whereupon, the applicants issued a Legal Notice dated 17th August, 2023, seeking the complete details of all the proceedings and transactions relating to the HUF property, and the said details were received on 31st August, 2023.

18.9. The applicants have also filed *CS(OS) 605/2023*, seeking declaration of the Agreement to Sell and GPA dated 15th September, 2001, as null and void. The applicants have also sought partition and injunctions in the said case, which is at the stage of completion of pleadings.

18.10. An alienation in respect of the HUF property is legally valid only if the transaction is compelled by legal necessity, or undertaken for the benefit of the estate, or is affected with the informed consent of all coparceners. An alienation made *de hors* these established exceptions is voidable at the instance of the non-consenting coparceners and does not bind their undivided share in the joint family property.

18.11. A plain reading of the recitals in the Agreement to Sell dated 15th September, 2001, demonstrates a complete absence of any disclosure regarding the underlying justification for the said transaction.

18.12. Furthermore, the burden of proving the existence of the aforesaid three exceptions rests upon the purchasers, i.e., the respondent, which he has utterly failed to discharge.

D. ANALYSIS AND FINDING

19. This Court has heard the learned counsels for the parties, and has perused the pleadings and documents on record.

20. To appreciate the controversy in question in the present appeal, it is essential to take note of Order 12 Rule 6 of the CPC, which reads as under:

> *"xxx xxx xxx*
>
> ***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.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

21. Order XII Rule 6 of the CPC provides that where admissions of fact have been made either in the pleading or otherwise, the Court may at any stage of the suit, 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. It is settled law that the power under Order XII Rule 6 of the CPC is discretionary, and must be exercised by the Courts only when the admission is clear, unambiguous and unconditional.

22. Thus, in the case of ***Himani Alloys Limited Versus Tata Steel Limited, (2011) 15 SCC 273****,* the Supreme Court held that Order XII Rule 6 of CPC is an enabling provision and 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. The admission should be categorical and should be a conscious and deliberate act of the party making it, showing an intention to be bound by it.

23. Similarly, in the case of ***Karan Kapoor Versus Madhuri Kumar, (2022) 10 SCC 496****,* the Supreme Court held that the use of the words "may" and "as it thinks fit" in Order XII Rule 6 of CPC show that the power under the said provision is discretionary in nature, which should only be exercised when specific, clear and categorical admission of facts and documents are on record. In the said case, even though there was admission to the extent of

execution of lease agreement, rate of rent and monthly payment, the Supreme Court while noting the simultaneous defense of ownership taken by the defendant therein on the basis of certain agreements to sell, held that the defense was required to be looked into by the Trial Court in a full-fledged trial. The plausibility of the defense taken by the defendant was a matter of trial, to be appreciated by the Court after leading of evidence by the parties. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***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.*
>
> *xxx xxx xxx*
>
> ***26.*** *On the issue of discretion of Court to pass judgment on admission, a three-Judge Bench of this Court in S.M. Asif v. Virender Kumar Bajaj [S.M. Asif v. Virender Kumar Bajaj,*

(2015) 9 SCC 287: (2015) 4 SCC (Civ) 589] made the ***<u>legislative intent clear to use the word "may" which clearly stipulates that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right.</u>*** *In the said case, the suit for eviction was filed by the respondent landlord against the appellant tenant. The relationship of tenancy was admitted including the period of lease agreement. The plaintiffs' claim was resisted by the defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs 82,50,000 was paid.*

27. <u>The defendant in course of taking the defence stoutly denied that the respondent-plaintiff has continued to be the landlord after entering into agreement to sell. The suit for specific performance was also filed which of course was contested by the plaintiff. In the said case, this Court was of the view that deciding such issues requires appreciation of evidence. Mere relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 CPC.</u> *Resultantly, this Court by setting aside the judgment [S.M. Asif v. Virender Kumar Bajaj, 2014 SCC OnLine Del 7564] , [S.M. Asif v. Virender Kumar Bajaj, 2014 SCC OnLine Del 7563] passed by the High Court remitted the matter back to the trial court subject to deposit of the arrears of the rent and the compensation for use of occupation of the suit premises. Such deposit was subject to final outcome of the eviction as well as suit for specific performance.*

xxx xxx xxx

33. <u>Be that as it may, the arguments advanced by both the sides, in our view can be appreciated by the trial court by affording opportunity to them to lead evidence. As per the pleadings, there may be admission to the extent of execution of the lease agreement, rate of rent and monthly payment but simultaneously the defence taken by the defendant is also based on ATS-I, II and III. In view of the contents of those agreements and terms specified therein, the defence as taken by the appellant-defendant is plausible or not is a matter of trial which may be appreciated by the court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defence as taken is also required to be</u>

looked into by the court and there is need to decide justiciability of defence by the full-fledged trial.

34. In our view, for the purpose of Order 12 Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the court without dealing with the defence as taken by defendant. *As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defence as taken by the defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under Order 12 Rule 6 CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in S.M. Asif [S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287: (2015) 4 SCC (Civ) 589] are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case.*

35. Consequently, the judgment and decree passed by the trial court, as confirmed by the High Court, only on admission of fact without considering the defence in exercise of power under Order 12 Rule 6 CPC is hereby set aside. The matter is remitted back to the trial court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the court on merit.

xxx xxx xxx"

(Emphasis Supplied)

24. While holding that Order XII Rule 6 of CPC is meant for speedy disposal of the suits, the Supreme Court in the case of ***Rajesh Mitra alias Rajesh Kumar Mitra and Another Versus Karnani Properties Ltd., 2024 SCC OnLine SC 2607****,* cautioned that unless there is a clear, unambiguous, unequivocal and unconditional admission, Courts should not exercise their discretion under the said Rule because judgment on admissions is without a trial, which may even preclude a party to challenge the matter on merits in the Court of appeal. It was held that it is for the Courts to see whether any statement in the pleadings or otherwise amounts to an admission of such a

nature as to inspire the confidence of the Court to pass judgment on admission under Order XII Rule 6 of CPC. It will depend upon the content and kind of statement/admission, which may vary from case to case. In other words, it would depend upon the totality of facts and circumstances of a particular given case.

25. It would also be fruitful to refer to the judgment of Supreme Court in the case of ***Vikrant Kapila and Another Versus Pankaja Panda and Others, 2023 SCC OnLine SC 1298***, wherein, the Supreme Court held that under Order XII Rule 6 of CPC, while ensuring judicial discretion, the Court should not avoid a trial on an issue where a trial is needed. The weighing of options or judicial discretion is dependent on the peculiar circumstances of the case or the nature of controversy that the Court is considering. Thus, it was held as under:

> *"xxx xxx xxx*
>
> ***32. Admission in pleadings means a statement made by a party to the legal proceedings, whether oral, documentary, or contained in an electronic form, and the said statement suggests an inference with respect to a fact in issue between the parties or a relevant fact. It is axiomatic that to constitute an admission, the said statement must be clear, unequivocal and ought not to entertain a different view.*** *Coming to admission in pleadings, these are averments made by a party in the pleading viz. plaint, written statement, etc. in a pending proceeding of admitting the factual matrix presented by the other side.* ***To constitute a valid admission in pleading, the said admission should be unequivocal, unconditional, and unambiguous, and the admission must be made with an intention to be bound by it. Admission must be valid without being proved by adducing evidence and enabling the opposite party to succeed without trial. A court, while pronouncing a judgment on admission, keeps in its perspective the requirements in Order 8 Rule 5, Order 12 Rule 6 and Order 15 Rules 1 and 2 CPC read with Sections 17, 58 and 68 of the Evidence Act.***

33. ***The logic behind such jurisprudential examination of an admission is that a judgment pronounced on admission, not only denies the right of trial on an issue but denies the remedy of appeal. Hence, discretion has to be exercised judiciously and objectively while making a judgment on admission in a pleading.*** *The existence of the power to pronounce a judgment on admission under Rule 6 of Order 12 [Order 12 Rule 6 "**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."] and Rules 1 and 2 of Order 15 [Order 15"**1. Parties not at issue**.— Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. **2. One of several defendants not at issue**.— [Renumbered as sub-rule (1) by Act 104 of 1976, S. 65.] [(1)] Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants. [Ins. by Act 104 of 1976, S. 65.] [(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.]"], is not an issue in the appeal but rather the issue is whether pronouncing judgment on alleged admission is valid and legal.*

34. *When the admissions are categorical and unequivocal, the remedies available against such a decree are limited. In a given case, as in the present appeal, if there is an argument on whether there is an admission of a fact or a document, before examining the merits of the matter, this Court ought to verify whether admission exists or not and also whether the circumstances relied upon by the learned Single Judge can be constituted as admission for rendering a judgment.*

xxx xxx xxx

39. *Further, this Court in Uttam Singh Duggal [Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120 : (2000) 102 Comp Cas 118] , while adverting to Section 17 of the Evidence Act, 1872, which provides for admissions through statements in oral, documentary and in electronic form, expanded the scope of admissions and recognised that "admissions are of many kinds: they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice". The case on hand considers an alleged admission in the pleading including the reply given on admission and denial of documents. The provisions under Rule 5 of Order 8 Rule 6 of Order 12, and Rules 1 and 2 of Order 15 CPC, enable a court to pronounce a judgment on admission.* ***The court is called upon to exercise judicial discretion conferred on it by the CPC and the Evidence Act, 1872. The judicial discretion shall always be in addition to the provisions covering the judgment on admission and guided by the best of wit and wisdom of the court in pronouncing a judgment on admission. The bottom line is that while ensuring judicial discretion, the court does not avoid a trial on an issue where a trial is needed, and findings recorded; alternatively, the court does not try an issue in which there is no contest between the parties. The weighing of options or judicial discretion is dependent on the peculiar circumstances of the case or the nature of the controversy that the court is considering.***

40. *In Himani Alloys Ltd. v. Tata Steel Ltd. [Himani Alloys Ltd. v. Tata Steel Ltd., (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376] it is held that* ***"Admissions" should be categorical and intentional, as Order 12 Rule 6 CPC allows discretion rather than obligation. Admissions result in judgments without trial which permanently deny 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 is not exercised to deny the valuable right of a defendant to contest the claim. Hence, discretion should be used only where there is a clear and unequivocal admission.*** *The relevant paragraphs read thus: (SCC pp. 276-77, para 11)*

> *"11. **<u>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.</u>** Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. **<u>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. There is no such admission in this case."</u>***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

26. In view of the aforesaid principles that guide the exercise of discretion of the Court under Order XII Rule 6 of the CPC, the question before this Court is whether the Trial Court was correct in exercising its discretion while passing the impugned judgment on admissions. This necessary entails a question as to whether the defendant, i.e., the appellant herein, had made clear, unambiguous and unconditional admissions, to warrant a judgment on admissions, without a trial.

27. The Trial Court has held that respondent/plaintiff has established from the record that he is the owner of the suit property. However, this Court is of the considered opinion that the ownership of the suit property remains a triable issue in view of the discussion hereinafter.

28. In the present facts and circumstances, this Court notes that the impugned judgment came to a finding that the ownership of the respondent

/plaintiff over the suit property stood established, as the appellant/defendant had admitted to the execution of the documents of the year 2001 in favor of the respondent/plaintiff, and had not challenged the said documents by way of any counter claim or suit.

29. However, a reading of the written statement as a whole, makes it evident that the appellant/defendant has nowhere admitted that the respondent/plaintiff is the owner of the suit property. Rather, the entire defense set up by the appellant/defendant is that he is the owner of the suit property, and the said documents of the year 2001 are sham documents, executed for the purpose of a loan transaction and were never intended to be acted upon by the parties.

30. Thus, it cannot be said that the appellant/defendant had made unambiguous, unconditional and categorical admissions as to ownership of the respondent/plaintiff over the suit property, thereby, entitling the respondent/plaintiff to a decree under Order XII Rule 6 of CPC.

31. Further, this Court notes that the appellant/defendant herein, as the *Karta* of the HUF, has filed *CS(OS) No. 204/2016 (new CS No. 578044/2016*) titled as *"Subash Chand Jindal HUF Versus Vijay Kumar Gupta and Ors."*, seeking cancellation of Conveyance Deed dated 23rd April, 2014, and declaration of the documents dated 15th September, 2001 as being null and void. The said suit is pending before the Rohini Courts, Delhi and the question of title of the suit property remains *sub-judice*. Thus, while the said suit challenging the title of the respondent/plaintiff over the suit property remains pending, it cannot be said that on the basis of the same documents, the title of the respondent/plaintiff over the suit property stands established.

32. It is pertinent to note that an application under Order VII Rule 11 of CPC was dismissed in the said suit, i.e., *CS No. 578044/2016*, by way of order dated 05th July, 2016 by the same Presiding Judge who has passed the impugned order dated 06th August, 2016, later. While dismissing application under Order VII Rule 11 of CPC, the said Presiding Judge held that the matter involved mixed questions of fact and law, which required determination by way of trial. Thus, while in the suit filed by the respondent herein, the suit has been decreed on the basis of alleged admission by the appellant herein. On the other hand, in the suit filed by the appellant herein involving the same facts and documents, it has been held that the same are questions of law and facts, requiring trial.

33. Clearly, the defense raised by the appellant/defendant herein, when read as a whole, raises triable issues as to ownership of the suit property, which can only be determined by way of leading of evidence.

34. The Trial Court has further held that there is a duly executed License Deed dated 09th November, 2001 between the parties, and relationship of landlord-tenant stands established. It has been held that the appellant has not disputed execution of License Deed or his signatures therein. He has not challenged the License Deed by filing any counter claim. The signatures on the License Deed are not disputed, which *prima facie* appear to be similar to the signature on the title deeds, put by one and same person, therefore, the defense of the loan transaction between the parties is not tenable.

35. However, from the documents on record it is evident that the appellant/defendant has not admitted to the jural relationship of landlord-tenant in the present case. Although the defendant has admitted to executing the License Deed, the defense set up by the defendant in his written

statement is that the said License Deed was executed as a mere paper transaction, in view of a loan transaction between the parties.

36. Further, the appellant/defendant has contended that he has been in continuous and uninterrupted possession of the suit property since the year 1997/1998, and has been running an industry in the name of M/s. Mohit Industries therein. Thus, the case of the defendant/appellant herein is that he has been in possession of the suit property not as a licensee under the License Deed, but rather, as the owner of the suit property. Further, the appellant/defendant has contended that at no point of time was any license fee paid by the defendant to the plaintiff, nor any amount towards license fees was demanded by the respondent/plaintiff.

37. Significantly, the License Deed was for a period of eleven months. It is pertinent to note that as per the case of the respondent/plaintiff, the License Deed stood terminated by efflux of time on the midnight of 08th October, 2002. However, the suit in question was filed only in the year 2014, i.e., after a gap of approximately 12 years. Thus, the suit came to be filed by the respondent/plaintiff after lapse of a long time after the expiry of the duration of the License Deed.

38. Thus, by reading the written statement of the defendant as a whole, and in view of the defense set up by the defendant, it cannot be said that defendant has admitted to a licensor-licensee relationship.

39. Clearly, the defense set up by the appellant/defendant is that the License Deed has not been acted upon by the parties. All the aforementioned contentions cast a doubt on the case asserted by the respondent/plaintiff. There are conflicting claims and documents on record. Thus, all these issues

regarding the opposing claims by the parties, can essentially be decided only on the basis of evidence led by way of trial.

40. As a result, this Court is of the considered view that at the stage of Order XII Rule 6 of CPC, the Trial Court could not have given a decision on the plausibility of the defense step up by the appellant/defendant. The validity, purpose and genuineness of the License Deed can only be established in a trial, after leading of evidence. In this regard, reference may be made to the judgment of this Court in the case of ***Arrena Overseas Private Limited Versus Batra Art Press, 2022 SCC OnLine Del 3543***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***10. Reliance is placed on Karan Madan v. Nageshwar Pandey, (2014) 209 DLT 241 in support of the submission that the oral pleas which are contrary to the written document cannot be considered by the Court.***
>
> *xxx xxx xxx*
>
> ***14. The case set up by the plaintiff is that the plaintiff company is the owner of the suit property and the same was leased out to the defendant. The Lease Agreement was terminated by the plaintiff and upon the failure of the defendant to handover possession, the present suit was filed. On the other hand, the defendant firm disputed the validity of the Lease Deed and submitted that the same was a sham document created between family members and was never acted upon.***
>
> ***15. As per the Lease Agreement, a sum of Rs. 2,50,000/- per month was payable as rent. As per the defendant firm, from the time of execution of the aforesaid lease on 1st April, 2007, no rent was ever paid by the defendant firm to the plaintiff company. A perusal of the relevant extracts of the profit and loss account and balance sheets of the plaintiff company from the year 2007 to the year 2014 would only show that some amount of rental income was received/receivable by the***

plaintiff company. The only entries in respect of yearly "Lease Rent" in the various balance sheets of the plaintiff company reflect a maximum amount of Rs. 3,84,000/- for the year ending on 31st March, 2009 and which amount also progressively declined in the following years. Further, the accounts of the defendant firm that have been placed on record pertain to the years prior to execution of the Lease Agreement. Therefore, none of these documents show that any rent was being paid or was payable by the defendant firm to the plaintiff company under the Lease Agreement.

xxx xxx xxx

18. There is merit in the submission by the counsel for the defendant firm that if no rent was being paid by a tenant to a landlord from 2007, the landlord would not wait for eight years before filing a suit for possession. Further, no demand was ever raised for payment of rent during this period. Nor have any averments been made in the plaint in respect of the time period for which the defendant firm defaulted in payment of rent. Therefore, at this stage, it appears that the lease was nothing but an arrangement between the family members and was not a genuine lease deed. The validity and genuineness of the same can only be established in a trial. In fact, a specific issue has been framed by the Court with regard to the existence of a landlord and tenant relationship between the plaintiff company and the defendant firm.

xxx xxx xxx

29. In S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287, the Supreme Court has observed that a mere admission of the relationship of landlord and tenant cannot be said to be an unequivocal admission for decreeing a suit and relevant factors of each case have to be considered while exercising the discretion afforded to the Court under Order XII Rule 6 of the CPC. The present suit is not a simpliciter case of admission of the relationship of landlord and tenant on the basis of which a judgment on admissions can be granted to the plaintiff company. Therefore, the judgments cited on behalf of the plaintiff in this regard are of no relevance.

***30.** In view of the above discussion and settled principles of law with regard to Order XII Rule 6 of the CPC, no case is made out*

for passing of a judgment on the basis of admission.
xxx xxx xxx"

(Emphasis Supplied)

41. This Court also notes that the case set up by the appellant/defendant in the present case *qua* the License Deed is that the same was a sham document, and was a mere paper transaction, which the parties never intended to be bound by. Thus, as per the appellant, where the challenge to the License Deed is on the ground of being a sham document, which was *void ab initio*, there was no obligation on the appellant/defendant to file a suit seeking a declaration that such License Deed was null and void.

42. The said submission made by the appellant/defendant cannot be disregarded and merits due consideration, especially, in view of the contention that none of the parties have complied with the terms and conditions of the said License Deed.

43. This assumes importance, coupled with the contention that the appellant/defendant continued with the possession of the suit property, without payment of any license fees, which was not objected by the respondent/plaintiff for a long period of time. Neither has any license fees ever been paid by the appellant/defendant on the basis of the said License Deed, nor such amount has been demanded by the respondent/plaintiff. Therefore, the events surrounding the execution and the credibility of the said License Deed, would remain a matter for trial.

44. It is well established law that in a given case where a defendant has taken a plea that the document in question was not intended to be acted upon by the parties, it is permissible to allow such defendant to lead oral evidence

in this regard. Thus, in the case of ***Roop Kumar Versus Mohan Thedani, (2003) 6 SCC 595***, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms.*** *Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.*
>
> ***20.*** *The two sections, however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only bilateral documents. (See: Bai Hira Devi v. Official Assignee of Bombay [AIR 1958 SC 448].) Both these provisions are based on "best-evidence rule". In Bacon's Maxim Regulation 23, Lord Bacon said "The law will not couple and mingle matters of speciality, which is of the higher account, with matter of averment which is of inferior account in law." It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.*
>
> ***21.*** *The grounds of exclusion of extrinsic evidence are: (i) to admit inferior evidence when law requires superior would amount to nullifying the law, and (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their*

intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.

22. <u>This Court in Gangabai v. Chhabubai [(1982) 1 SCC 4: AIR 1982 SC 20] and Ishwar Dass Jain v. Sohan Lal [(2000) 1 SCC 434: AIR 2000 SC 426] with reference to Section 92(1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon, but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties.</u>

xxx xxx xxx"

(Emphasis Supplied)

45. In the present case, the defense taken by the appellant/defendant is not evasive and the plausibility of his defense is a matter of trial.

46. The defendant has placed on record the copies of electricity bills, water bills, property tax receipts, as a well a license from MCD to contend that he had possession of the property. Further, the defendant has also placed on record the balance sheet, and profit and loss account of the HUF to contend that the suit property was declared as an asset by the HUF.

47. This Court is of the considered opinion that upon a reading of the written statement of the defendant as a whole, along with the documents relied therewith, it cannot at this stage be said that the defense of the defendant was evasive in any manner.

48. Since the appellant/defendant has contended that the loan agreement was oral in nature, the genuineness and validity of the same can only be assessed upon trial.

49. Furthermore, merely because the appellant has 36% shares in M/s. Polo Plastic Limited, it cannot be said that he manipulated any documents of the said entity. The said finding of the Trial Court is entirely unwarranted.

50. Accordingly, from the reading of the defense taken by the appellant/defendant before the learned Trial Court, it is apparent that he has taken a categorical plea that the respondent/plaintiff herein is not the owner of the suit property. Rather, the HUF is the owner of the suit property, having purchased the same from its erstwhile owner. The appellant/defendant has also submitted in categorical terms that he has been in continuous and uninterrupted possession of the suit property in his capacity as the *Karta* of HUF and running an industry in the name and style of M/s Mohit Industries since the year 1998. Thus, it is the categorical case of the appellant/defendant that he is neither a licensee nor a trespasser in the suit property. As noted hereinabove, the appellant/defendant in support of his case has placed on record the property tax receipts for the period from 1986 till the year 2013 to show the nature of his possession of the suit property since long.

51. Further, it is to be noted that there are no clear, definite or unequivocal admissions in the written statement by the appellant/defendant, which would warrant a judgment in favor of the respondent/plaintiff, under Order XII Rule 6 of CPC. The appellant/defendant has raised a plausible defense, which can be tested only through a trial.

52. Furthermore, as noted above, the defendant has also clearly disputed the relationship of licensor and licensee between the parties. Admittedly neither any rent was ever paid by the appellant/defendant since the year

2001, when the License Deed was executed, nor any rent was demanded by the respondent/plaintiff.

53. It is equally important to note that title documents, on the basis of which the respondent/plaintiff has asserted his ownership, have been challenged by the appellant in a separate suit, *CS No. 578044/2016,* which is still pending. In the said suit, the appellant has sought relief of declaration to declare the GPA, SPA, Agreement to Sell, etc., executed on 15th September, 2001, as well as Conveyance Deed dated 23rd April, 2014 in favor of the respondent/plaintiff executed by the DDA, as null and void. Further, it is also pertinent to note that the DDA in its written statement filed in the said suit, has stated that it has already taken steps for the cancellation of the aforesaid Conveyance Deed, and a show cause notice in this regard has also been issued to the respondent/plaintiff in the present case.

54. Thus, it is evident that the present suit is not a *simpliciter* case where the appellant/defendant admitted to the relationship of a landlord-tenant. Rather, the appellant/defendant has raised questions which go to the root of the matter, and all these issues would have to be determined in the trial. The appellant/defendant cannot be denied its right to contest the claim of the respondent/plaintiff when no clear, unambiguous and unconditional admissions have been made. When triable issued have been raised, the Trial Court erred in dismissing the suit in *limine* and passing a decree under Order XII Rule 6 of CPC.

E. <u>CONCLUSION</u>

55. Thus, the impugned judgment is set aside, and the matter is hereby remanded back to the Trial Court, for proceedings as per law.

56. It is made clear that this Court has not recorded any finding, nor expressed any opinion in regard to the merits of the case.

57. Since the present appeal is being allowed, and the matter is remanded back to the Trial Court, the application being *CM APPL. 57489/2023*, whereby, the applicants seek impleadment as appellants in the present appeal, on the ground that they are the coparceners in respect of the suit property, is rendered infructuous.

58. However, this Court notes that an application for impleadment of the coparceners of the HUF is pending before the Trial Court, and the matter is listed for reply and argument of the said application on 17th August, 2026. Thus, the said impleadment application shall be decided by the Trial Court, as per law.

59. As regards the amounts deposited by the appellant/defendant in this Court in terms of the order dated order dated 11th November, 2016, as modified *vide* order dated 08th February, 2017, the same shall continue to remain deposited in this Court in an interest-bearing account. The said amount shall be released to the appropriate party, subject to the outcome of the proceedings before the learned Trial Court.

60. The present appeal is allowed in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

AUGUST 11, 2026/AU/SK