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

% *Date of Decision: 30.01.2025*

\+ **RFA 229/2023 & CM APPL.13493/2023**

SIMMI WALIA .....Appellant

Through: Ms. Gyan Mitra, Advocate.

versus

RAKESH ARORA .....Respondent

Through: Mr. Harish Malhotra, Senior Advocate with Mr. Sunil Ahuja, Advocate.

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. The appellant has assailed judgment and decree dated 04.01.2023 passed under Order XII Rule 6 CPC by the learned Additional District Judge, Shahdara, Karkardooma Courts, Delhi, whereby the appellant tenant was directed to restore possession of the tenanted property to the respondent landlord in view of admissions made in the pleadings. On the basis of advance intimation, the respondent landlord entered appearance through counsel. I have heard learned counsel for both sides and have examined the digitized record of the trial court.

2. The present respondent had filed suit for recovery of possession of the third floor of premises bearing no.162, Ram Vihar, Delhi as well as for

injunction and recovery of arrears of rent with interest and of *mesne* profits. In his plaint, the present respondent pleaded that the appellant was inducted as a tenant in respect of two bedrooms, drawing cum dining room, one kitchen, toilet/bathroom and balcony at third floor of the premises no.162, Ram Vihar, Delhi by virtue of registered lease deed dated 22.08.2019, rate of rent being Rs.34,000/- per month exclusive of other charges; that the tenancy expired with efflux of time on 20.07.2020 but on account of Covid pandemic, at request of appellant, more time was granted to her to vacate the subject property by 20.01.2021; that the appellant paid rent till 20.01.2021 but thereafter, neither paid any rent nor vacated the subject property despite repeated requests of the respondent, so in order to avoid any technicalities, though the lease stood expired with efflux of time, the respondent issued quit notice dated 26.03.2021, thereby terminating the tenancy by the midnight of 20.04.2021, to which the appellant sent a reply dated 31.03.2021 and opted not to vacate the subject property.

3. In her written statement, the appellant admitted relationship of tenancy between the parties and pleaded that after she paid a cash amount of Rs. 5,00,000/-, parties orally agreed that the rate of rent be reduced from Rs. 34,000/- per month to Rs. 24,000/- per month with effect from 01.03.2021. Further, the appellant resisted the suit, pleading that according to the registered lease deed, the tenanted premises were top floor and not third floor of premises no.162, Ram Vihar, Delhi. For this reason, the appellant pleaded that the suit is liable to be dismissed.

4. On the basis of rival pleadings, the present respondent filed an application under Order XII Rule 6 CPC, to which a reply was filed by the appellant, reiterating her stand taken in the written statement. After hearing both sides, the learned trial court allowed the application under Order XII Rule 6 CPC, thereby directing restoration of possession of the subject property to the respondent landlord.

5. Hence, the present appeal.

6. During arguments today, learned counsel for appellant submits that the top floor, as mentioned in the lease deed was the fourth floor and not the third floor of premises no.162, Ram Vihar, Delhi. Learned counsel for appellant elucidates that since the site plan filed with the plaint was of top floor, the quit notice pertained to the top floor and even the lease deed was of the top floor, it is not a case of unambiguous admission, so the trial court ought to have taken the suit through full dress trial instead of writing the judgment on admissions. In response to a specific query, learned counsel for appellant admits that the appellant is in possession of only the third floor and not of the fourth floor.

7. On the other hand, learned senior counsel for respondent takes me through records, including the amended plaint to buttress his argument that parties were always under the impression that third floor is the top floor

insofar as the fourth floor is not a completely built up floor. In this regard, learned senior counsel also takes me through appellant's own reply to the quit notice.

8. For ready reference, the provision under Order XII Rule 6 CPC is extracted below:

> ***"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."*

8.1 No law expects any litigant to undergo rigmaroles of protracted trials and litigations where there is no dispute on the relevant aspects. Where the defendant does not dispute claim of the plaintiff in whole or in part, it would be counterproductive for the justice dispensing machinery to make the plaintiff undergo full dress trial. Where the defendant admits the entire or part of the claim raised by the plaintiff, it would be fair and reasonable for the court to allow the claim of the plaintiff to the extent of admissions. The provisions under Order XII Rule 6 CPC were enacted to give the parties a speedy judgment where there is no controversy. Earlier, the provision under Order XII Rule 6 CPC stipulated that any party may at any stage of a suit, where admissions of facts have been made either on pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he

may be entitled to, without waiting for the determination of any other question between the parties and the court may upon such application make such order or judgment as the court may think just. The Law Commission of India in its 54th report suggested an amendment in the said provision in order to enable the court deliver a judgment not only on the application of a party but on its own motion as well. Accordingly, the provision was amended in order to further the ends of justice and to widen the scope of the provision by empowering the judges to use it *ex debito justitiae* (an obligation of justice). Reading the provision under Order XII Rule 6 CPC as its stands, in an appropriate case, a party to the *lis* on the basis of admissions of the rival party can press for judgment as a matter of legal right. However, the court always retains discretion in the matter of pronouncing the judgment. The expressions "admission of fact" and "either in the pleading or otherwise, whether orally or in writing" used in Order XII Rule 6 CPC show the wide expanse of the provision to the extent that the admissions in question can be inferred from facts and circumstances of the case also.

8.2 A Division Bench of this court in the case of ***Bhartia Industries Ltd. vs Rajiv Saluja***, 112 (2004) DLT 82 DB, upheld the judgment of the learned Single Judge, whereby the suit was decreed under Order XII Rule 6 CPC in view of admission of facts in regard to the relationship of landlord and tenant, termination of tenancy by efflux of time or in any case by way of quit notice which was duly served on defendant.

8.3 In the case of ***National Radio and Electronic Company Ltd. vs Motion Picture Association***, 122 (2005) DLT 629 DB, a Division Bench of this court upheld the decree passed by the trial court under Order XII Rule 6 CPC in view of admission of relationship of tenancy, rate of rent being more than Rs. 3,500/- per month and service of quit notice by the defendant.

8.4 In the case of ***Karam Kapahi vs Lal Chand***, 168 (2010) DLT 501 SC, the Hon'ble Supreme Court held thus:

> *"46. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about 'which there is no controversy' [See the dictum of Lord Jessel, the Master of Rolls, in Thorp versus Holdsworth in (1876) 3 Chancery Division 637 at 640]. In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976.*
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> *47. Prior to amendment the Rule read thus:- "6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."*
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> *48. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it ex debito justitiae, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.*

49. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider in as much as the provision of order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact.....either in the pleading or otherwise, whether orally or in writing'.

50. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [See Charanjit Lal Mehra and others v. Kamal Saroj Mahajan (Smt.) and another, (2005) 11 SCC 279 at page 285 (para 8)]. Admissions in answer to interrogatories are also covered under this Rule [See Mullas's commentary on the Code, 16th Edition, Volume II, page 2177].

51. In the case of Uttam Singh Duggal & Co. Ltd., v. United Bank of India and others, (2000) 7 SCC 120, this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment".

8.5 In the case of ***National Textile Corporation vs Ashval Vaderaa,*** 167(2010) DLT 602, this court reiterated thus:

"17. ***It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour****. In order to invoke the provisions of Order XII Rule 6 CPC, admissions de hors pleadings may also be considered as is evident from the use of the word "otherwise" in the said provision. [See Shikharchand vs. Mst. Bari Bai, AIR 1974 MP 75; K. Kishore vs. Allahabad Bank, 1997 (41) DRJ 698; Uttam Singh Dugal vs. UBI, (2000) 7 SCC 120; Rajiv Srivastava vs. Sanjiv Tuli, 119 (2005) DLT 202; Rama Ghei vs. U.P. State Handlom Corpn., 91 (2001) DLT 386 and R.N. Sachdeva vs. R.L. Mahajan Charitable Trust, 1997 (41) DRJ 698]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements*

> *recorded under Order X Rule 1 CPC.* ***Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been deliberately made in order to mislead the Court, or gathered from the non- traversal of specific averments made in the pleadings and documents.***
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> *18. It is the bane of the judicial system that with a view to protract and drag on the case, a litigant who is a wrong-doer often takes all sorts of false and legally untenable pleas. Such litigants should not be allowed to hijack the judicial process and to subvert the cause of justice.* ***Where it is palpably clear to the Court that the defence is with the sole purpose of protracting the proceedings to the advantage of the wrongdoer and the disadvantage of the aggrieved party, it becomes the bounden duty of the Court to save the latter from going through the rigmarole of a futile and expensive trial****. For this, the Court has been invested with sweeping powers by a number of provisions in various statutes, the most potent of which are the provisions of Order XII Rule 6 read with Order VIII Rules 3 and 4 CPC. Regrettably, the said provisions, though exploited by the Courts to the advantage of the judicial process, have yet to reach the optimum level of exploitation. It thus becomes imperative on this Court to use the powers reposed in it to prevent misuse of the judicial process, to cut short laws' delays and to save the aggrieved party from the travails of a long drawn out litigation, often outliving his life span itself and falling into the lap of his survivors."*
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> *(emphasis supplied)*

9. Falling back to the present case, evidently, a non issue is being tried to be coloured as an issue. It is nobody's case that the appellant is in possession of the top/fourth floor of premises no.162, Ram Vihar, Delhi. It is the admitted case of both sides that the appellant is in possession of only the third floor of the said premises as a tenant.

10. Paragraph 2 of the amended plaint (*pdf page 75*) specifically pleads

that the appellant is a tenant in respect of third floor of the said premises. In the corresponding paragraph of the amended written statement, there is no denial in that regard. In fact, in paragraph 1 of the amended written statement (*pdf page 84*), the appellant specifically pleaded that she is in possession of the third floor of the said premises as a tenant.

11. Therefore, the admitted position is that the appellant was a tenant under the respondent and the said tenancy was *qua* third floor of premises no.162, Ram Vihar, Delhi.

12. Similarly as regards the rate of rent, pleadings of the respondent are specific and clear that the rate of rent was Rs.34,000/- per month. The response pleadings of the appellant are that the said amount of rent was reduced to Rs. 24,000/- per month. Even if this stand of the appellant is assumed to be correct, rate of rent agreed between the parties was above Rs.3500/- per month, so the appellant is not entitled to protection from eviction under the Delhi Rent Control Act.

13. Coming to the quit notice, although the tenancy stood expired with efflux of time, as a matter of abundant precaution, the respondent issued quit notice, in response to which the appellant again stated that the tenanted premises are third floor and not the top floor. Besides, it is no longer *res integra* that filing of eviction suit in itself is a quit notice in such cases [Reference: ***M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh***

Chadha (HUF) & Anr., (2011) 182 DLT 402 and ***Gulshan Kumar vs. Indu Soni,*** 2024:DHC:9327].

14. The issue as to whether the tenanted premises are top floor or third floor is practically a non issue in the present case in view of above discussion. It is quite evident from record that both sides were always under the impression that third floor is the top floor, because the floor above that was not a completely built up floor. In any case, the appellant was admittedly inducted in the third floor and continues to be in occupation of the third floor and not above the third floor. Because of this, the description in the site plan, quit notice and even lease deed pales into insignificance. And pushing the parties to go through the rigmaroles of civil trial on these issues would be complete travesty of justice.

15. In view of above discussion, I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld and the present appeal and pending application are dismissed.

GIRISH KATHPALIA

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA
(JUDGE)

JANUARY 30, 2025/*ry*