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

% **Reserved on: 7th July, 2021**

Pronounced on: 3rd August, 2021

\+ **CM (M) 412/2020, CM APPLs.18635/2020 (for interim relief) & 3384/2021 (for seeking release of amount)**

M/S BDR DEVELOPERS PVT LTD. .....Petitioner
Through: Mr. Akhil Sachar, Advocate
Versus
NARSINGH SHAH alias NARSINGH SAH .....Respondent
Through: Mr. Ashwin Vaish, Advocate

\+ **CM (M) 413/2020**

M/S BDR DEVELOPERS PVT LTD. .....Petitioner
Through: Mr. Akhil Sachar, Advocate
Versus
SHIKHA SHAH .....Respondent
Through: Mr. Ashwin Vaish, Advocate

\+ **CM (M) 415/2020, CM APPL.18756/2020 (for interim relief)**

M/S BDR DEVELOPERS PVT LTD. .....Petitioner
Through: Mr. Akhil Sachar, Advocate
Versus
SHIKHA SHAH .....Respondent
Through: Mr. Ashwin Vaish, Advocate

\+ **CM (M) 416/2020, CM APPL.18758/2020 (for interim relief)**

M/S BDR DEVELOPERS PVT LTD. .....Petitioner
Through: Mr. Akhil Sachar, Advocate
Versus
NARSINGH SHAH alias NARSINGH SAH .....Respondent
Through: Mr. Ashwin Vaish, Advocate

\+ **CM (M) 417/2020, CM APPL.18794/2020 (for interim relief)**

M/S BDR DEVELOPERS PVT LTD. .....Petitioner

Through: Mr. Akhil Sachar, Advocate

Versus

SHIKHA SHAH .....Respondent

Through: Mr. Ashwin Vaish, Advocate

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. These five petitions have been filed by M/s. BDR Developers Private Limited ("the petitioner", for short) challenging the orders dated 4th August, 2020, passed in five suits that were filed by the petitioner/plaintiff against various persons, named as defendants in the said suits. Vide the said orders dated 4th August, 2020, separately passed in each of the suits, the learned Trial Court had listed the cases for arguments on the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 ("**CPC**", for short). The petitioner/plaintiff seeks the setting aside of the said orders primarily on the ground that the cases had been fixed on 4th August, 2020 for passing orders on the applications that the petitioner/plaintiff had filed under Order XII Rule 6 of CPC and under Order XV-A of CPC, however, the learned Trial Court adjourned the matter for arguments to be heard on the application filed by the respondents under Order VI Rule 17 of CPC. Since the issues involved are the same in all these petitions, they are being disposed of vide this common order.

2. The petitioner/plaintiff claimed to be the landlord of premises No.

F-419 admeasuring 200 square yards, part of Khasra No. 814; No. F-15, ad-measuring 244 Sq. yds. part of Khasra No.811, 813/2 and 814; No. P-80B, ad-measuring 163 Sq. Yds. part of Khasra No.812/2; No. A-25, ad-measuring 396 Sq. Yds., (92+304) and 342 Sq. Yds. (196+146); and, No.464, ad-measuring 283 Sq. Yds. part of Khasra No.782, all situated at Molarband, Post Office, Badarpur Road, New Delhi. By means of the respective Registered Lease Deeds dated 13th June, 2018 and 11th June, 2018, the petitioner/plaintiff claimed that it had inducted the respondents/defendants as tenants in the said properties at a monthly rent of Rs.50,000/-. The civil suits were filed on 25th May, 2019 being CS DJ/471/2019, CS DJ/467/2019, CS DJ/474/2019, CS DJ/469/2019 and CS DJ/473/2019 respectively, for eviction, recovery of arrears of rent and mesne profits against the respondents/defendants on the ground that they had defaulted in paying the monthly rent for more than two months consecutively. Written statements had been filed in all the suits by the respondents/defendants and thereafter, the petitioner/plaintiff filed applications under Order XII Rule 6 of CPC seeking judgment on admissions, pointing out that the respondents/defendants had admitted the execution of the respective Registered Lease Deeds dated 13th June, 2018 and 11th June, 2018.

3. Mr. Akhil Sachar, learned counsel for the petitioner/plaintiff has submitted that extensive arguments were heard on this application under Order XII Rule 6 of CPC and the learned Trial Court adjourned the matter for orders, firstly to 1st August, 2020 and thereafter, to 4th August, 2020. The learned counsel further submitted that the

respondents/defendants took several adjournments on the plea of ill health of their counsel and thereafter, changed the counsel twice. It was on 28th July, 2020, that the new counsel for the respondents/defendants filed written arguments and therefore, the learned Trial Court put the case 'for orders' on 1st August, 2020, on which date, due to a Court holiday, the matter was then taken up on 4th August, 2020. On 1th August, 2020, the new counsel engaged by the respondents/defendants sent an application requesting the court to adjourn the passing of the orders under Order XII Rule 6 of CPC, till the disposal of the application under Order VI Rule 17 of CPC, which was also being filed along with certain documents. The learned Trial Court mentioned this fact of the filing of the application under Order VI Rule 17 of CPC and passed the impugned order adjourning the matter for hearing on the application under Order VI Rule 17 of CPC.

4. Learned counsel for the petitioner/plaintiff submitted that the learned Trial Court, despite his objections, was unwilling to dispose of the application under Order XII Rule 6 of CPC and directed the hearing of both the applications together on the next date of hearing, which was fixed for 14th August, 2020. As the present petitions were filed, this Court directed the deferment of the hearing of the cases on 11th August, 2020. Thereafter, vide orders dated 1st September, 2020, this Court directed the respondents/defendants to make payment of the entire arrears @ Rs.50,000/- per month, whether it was to be described as "rent" or "interest", and without prejudice to the rights and contentions of the parties. This order has been complied with.

5. Learned counsel for the petitioner/plaintiff has placed reliance on the judgment of the Supreme Court in ***Arjun Singh v. Mohindra Kumar***, (1964) 5 SCR 946 to submit that the court when it reserves a judgment, it does so under Order XX Rule 1 of CPC, after the hearing is completed. In the present case, the record discloses that the arguments were heard and the written submissions were filed in respect of the application under Order XII Rule 6 of CPC, which sought a judgment on admission and thus, there was no hearing left and, it was not permissible to move any application during the interregnum, from the conclusion of the hearing till the pronouncement of the orders. Therefore, the learned Trial Court had erred in not first disposing of the application under Order XII Rule 6 of CPC, and rather accepting the application under Order VI Rule 17 of CPC, and further fixing the hearing on that application. Reliance has also been placed on this Court's judgment in ***Satya Bhushan Kaura v. Vijaya Myne***, 2006 SCC OnLine Del 1611.

6. Mr. Ashwin Vaish, learned counsel for the respondents/defendants however, argued that in none of the judgments relied upon by the learned counsel for the petitioner/plaintiff, has the inter-play between Order XII Rule 6 of CPC and Order VI Rule 17 of CPC been decided. Learned counsel submitted that Order VI Rule 17 of CPC is not akin to Order IX Rule 7 of CPC inasmuch as Order IX Rule 7 refers to a "hearing", whereas Order VI Rule 17 refers to "any stage of the proceedings". Learned counsel submitted that any stage would mean just that, and so, an application seeking amendment could be filed, even if the case has been reserved for judgment. Reliance has also been placed on ***Panchdeo***

Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594 [partly overruled in ***Ram Niranjan Kajaria v. Sheo Prakash Kajaria***, (2015) 10 SCC 203], ***Usha Balashaheb Swami v. Kiran Appaso Swami***, (2007) 5 SCC 602 and ***S.M. Asif v. Virender Kumar Bajaj***, (2015) 9 SCC 287, to submit that an application under Order VI Rule 17 of CPC for amendment could be moved at any stage.

7. It was submitted by learned counsel for the respondents/defendants that the mere reservation of the order on the application under Order XII Rule 6 of CPC could not be taken to mean that the application was to be allowed and the judgment was to follow. The learned Trial Court could have used its discretion to decline the relief and therefore, the learned Trial Court mentioned the words "orders" and not "judgment" in its order dated 28th July, 2020. That would also indicate that the hearing had not been concluded as required under Order XX Rule 1 of CPC, and this was not a case where judgment had been reserved. According to the learned counsel for the respondents/defendants, an application under Order XII Rule 6 of CPC would not prohibit the court from considering an application under Order VI Rule 17 of CPC. The petitioner/plaintiff cannot presume that the application under Order XII Rule 6 of CPC would have been decided and the suit decreed in its favour, to insist that the reservation of the matters "for orders" on the application could only mean "reservation for judgment".

DISCUSSION

8. In order to determine whether the order dated 28th July, 2020 was a "judgment" or not and was only an "interlocutory/intermediate" order, for

answering the question as to whether the application under Order VI Rule 17 of CPC could have been filed after the learned Trial Court had heard arguments on the application under Order XII Rule 6 of CPC, it would be useful to understand what is a "judgment" and what is an "order".

9. That "judgment" and "order" do not mean the same thing is obvious from the fact that the CPC itself defines them separately. "Judgment" has been defined under Section 2(9) of CPC as below:

> *" "judgment" means the statement given by the Judge of the grounds of a decree or order."*

while an "Order" has been defined under Section 2(14) of CPC as under: -

> *" "order" means the formal expression of any decision of a Civil Court which is not a decree."*

10. It is, therefore, clear that an "order" is something that does not result in a decree or, therefore, a final conclusion of a matter, though a "judgment" may include an "order". The term "judgment" indicates a judicial decision given on the merits of the disputes brought before the Court. It determines the rights of the parties finally. In contrast, an "order" may not be so but could be an interlocutory one, if it does not determine or decide the rights of the parties once and for all. Thus, there are, broadly speaking, two kinds of "orders", one, that is in the nature of a final order and the other not determining the main issue with any finality. If such orders have been passed to help with the progress of the case, they may dispose of a specific question finally, but without finally disposing

of the dispute. There is yet another category of "orders", which, if decided one way, would result in the determination of the rights of the parties finally, but, if determined in any other way, would result in the continuation of the proceedings. Such orders have been described as "intermediate" or "quasi final orders".

11. The Supreme Court in ***V.C. Shukla v. State through CBI***, 1980 Supp SCC 92, looked into several English cases to consider the nature and attributes of a "final order" and an "interlocutory order". It was observed that in general, a "judgment" or "order", which determines the principal matter in question, would be termed as final, and the others would be "interlocutory". The court summed it up in the following words:-

> ***"****24. To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment……..* ***"***

12. The observations and the tests proposed in ***V.C. Shukla (supra)*** to determine whether an "order" is a "final order" or an "interlocutory order" or an "intermediate order", were applied by the Supreme Court in ***Shah Babulal Khimji v. Jayaben D. Kania***, (1981) 4 SCC 8. Though the question before the court related to the maintainability of a Letters Patent Appeal, the court once again considered the meaning of *"judgment"*, *"interlocutory orders that would amount to judgment"* and *"interlocutory*

orders that would not amount to a judgment". A "judgment" which decided all the questions or issues in controversy and left nothing else to be decided was a "final judgment". There were two kinds of "preliminary judgments". One is where the trial judge dismisses the suit without going into the merits of it and only on a preliminary objection raised by the defendant. The second one is where these preliminary objections raised by the defendant are decided against him, and the suit proceeds further. These distinctions were no doubt, drawn in order to answer the question whether a Letters Patent Appeal would lie. The Supreme Court also discussed "intermediary" or "interlocutory" judgment and order, again in order to answer whether a Letters Patent Appeal was maintainable. Depending on the effect of the decision taken by the trial judge, the court held that if such an order vitally affected a valuable right of the defendant, "it would be treated as a judgment", such as, where leave to defend is declined. However, where the order, though affecting the plaintiff adversely, does not cause him direct or immediate prejudice, but only remote prejudice, or damage was of a minimal nature as his rights to prove his case and show the defence to be false still remained, the order would not partake of the characteristics of a "judgment".

13. It was further observed that not every "interlocutory order" can be regarded as a "judgment", as there were many orders that were routine in nature, such as, condonation of delay in filing the documents, orders refusing adjournment, orders refusing to summon additional witness, etc., which may involve exercise of jurisdiction in respect of a procedural matter against one party or the other.

14. On the other hand, "interlocutory orders" which would have the effect of depriving a party of a valuable right, though purely discretionary, may contain attributes and characteristics of finality and could be treated as a "judgment". The court referred to the exercise of discretion of the courts in respect of an application for amendment under Order VI Rule 17 of CPC to press home the point of what would constitute a "judgment" or an "interlocutory order in the nature of a judgment" or "an interlocutory order not in the nature of a judgment".

15. In the light of all what has been said by the Supreme Court, it would be useful to consider what is the nature of an application under Order XII Rule 6 of CPC and the nature of the order thereupon. Order XII relates to "admissions" and Rule 6 provides that the court may "at any stage" of the suit, either on the application of any party or on its own motion, without waiting for a determination of any other question between the parties, make such order or give such judgment as it may think fit. Where a judgment is pronounced, a decree is to be drawn up. In other words, Order XII Rule 6 of CPC does not *per se* provide for a final determination of the rights between the parties, though it may result in such a final determination.

16. Unlike Order IX Rule 7 of CPC, which was being discussed by the Supreme Court in ***Arjun Singh (supra)***, where the word used was "hearing", which would indicate that the suit is still to be finally disposed of, Order XII Rule 6 of CPC refers to the "stage" of a suit. The "stage" of a suit and the "hearing" of a suit do not connote the same thing. The suit progresses through various stages. For instance, the stage for filing of

documents, stage for admission/denial of documents, the stage for framing of issues, the stage for leading of evidence, and so on and so forth. Hearings would take place at each stage, multiple times. There may be several dates of hearing during the course of recording of evidence as it may involve the examination of the witnesses. During multiple hearings when the witnesses are being examined, the "stage" for the recording of evidence would remain the same. A party who absents during a date of hearing can join the proceedings if the stage of the case allows it, that is, arguments had not been heard finally and only judgment remains to be pronounced.

17. The exercise of powers under Order XII Rule 6 of CPC being "at any stage" of the proceedings is, therefore, not dependent on "hearing" as much as on the "stage". *Ipso facto,* therefore, the judgment of ***Arjun Singh (supra)*** cannot be applied to the disposal of an application under Order XII Rule 6 of CPC. The "hearing" may conclude once the "judgment" is reserved. But, the pronouncement of judgment is also a stage, just as on the filing of an appeal, that would also be a stage in the life of a suit.

18. It is, therefore, not possible to accept the contention of the learned counsel for the petitioner/plaintiff that when the learned Trial Court reserved orders on the application under Order XII Rule 6 of CPC, the hearing had come to an end and therefore, as held in ***Arjun Singh (supra)***, there was no scope left for the respondents/defendants to file an application under Order VI Rule 17 of CPC.

19. The learned counsel for the petitioner/plaintiff relied upon the

judgment of this Court in ***Satya Bhushan Kaura (supra)*** to contend that "reservation of orders" on the application under Order XII Rule 6 of CPC would amount to "reservation of a judgment" and "cessation of hearing". A perusal of the said judgment would reveal that this court had actually disposed of, on merits, the application moved under Section 151 CPC to bring to the notice of the court the filing of another suit, after it had heard arguments on the application under Order XII Rule 6 of CPC and reserved the orders thereon. While doing so, the court merely noted the objections raised by the learned counsel for the plaintiff as to the maintainability of that application on the ground that there was no hiatus between the stages of "reservation of judgment" and "pronouncement of the same in open court". Therefore, it cannot be said that this decision had finally determined that after hearing arguments on an application under Order XII Rule 6 of CPC, no application under Order VI Rule 17 of CPC could be filed.

20. It cannot be lost sight of that the court exercises an absolute discretion when it deals with an application under Order XII Rule 6 of CPC. The courts have repeatedly held that "judgments on admissions" should not be passed lightly and that even if there is an unequivocal admission by a party, judgment on admission may be declined, if the court is of the opinion that passing such a judgment would work injustice to the party making such an admission. This has been reiterated in ***S.M. Asif (supra)*** that the exercise of powers under Order XII Rule 6 of CPC cannot be claimed as a matter of right. The Rule is only an "enabling provision" and "discretion" has to be used judiciously. This discretion

should not be exercised in any manner to deny a valuable right to the defendant to contest the claim.

21. It is the considered view of this court, therefore, that given the nature of the powers vested in the court under Order XII Rule 6 of CPC, while a decision thereon may be treated as a "judgment" for purposes of entertaining an appeal under the Letters Patent [as held in ***Shah Babulal Khimji (supra)***], at the stage when the case is reserved for orders, it is still at a stage that would be at best, intermediate. It could lead to the conclusion of the suit on account of complete determination of the rights of the parties on the basis of admissions and the decree could follow. It could equally result in the continuation of the suit, wholly or in part, on account of the rejection of the application seeking judgment on the basis of admissions. Therefore also, this Court concludes that there was nothing to preclude the learned Trial Court from hearing the application under Order VI Rule 17 of CPC, which was filed by the respondents/ defendants, even after the hearing on the application under Order XII Rule 6 of CPC filed by the petitioner/plaintiff was concluded.

22. It would also be useful to refer to Order VI Rule 17 of CPC. This, again refers to a *"stage of the proceedings"* and not the *"hearing"*, as in Order IX Rule 7 of CPC. Thus, an application for amendment may be filed by either party *"at any stage of the proceedings"*. Of course, if the trial has commenced, the court may not allow such amendments, unless there was due diligence. As noticed hereinbefore, the "stage" of the case can be at the time of pronouncement as well as beyond, in the form of an appeal. Thus, an application for amendment can be filed upto the

pronouncement of judgment and even after filing the appeal.

23. A similar view has been taken by the Allahabad High Court and the Bombay High Court (Nagpur Bench). In ***Om Rice Mill v. Banaras State Bank Ltd***., 1999 SCC OnLine All 966, the High Court of Allahabad, while relying on the judgments in ***Roe v. Davies***, (1876) 2 Ch D 729, 733**,** ***Baker Ltd.*** **v.** ***Medway & Co***., (1958) 1 WLR 1216 (CA), ***Badri*** **v.** ***S. Kripal***, AIR 1981 Madh Pra 228 and ***B.N. Das*** **v.** ***Bijaya***, AIR 1982 Orissa 145, observed that the expression used in Order IX Rule 7 of CPC and that in Order VI Rule 17 of CPC are completely different and no analogy could be drawn in order to interpret the term "at any stage" occurring in Order VI Rule 17 of CPC on the basis of an interpretation of Order IX Rule 7 of CPC.

24. In ***Laxman Marotirao Paunikar v. Keshaorao Rambhau Paunikar***, 2000 SCC OnLine Bom 169, the Bombay High Court (Nagpur Bench) opined that the wording of Order VI Rule 17 of CPC was clear and that amendment could be effected "at any stage of the proceedings" irrespective of the fact that the hearing was complete, as amendment can be sought even at the stage of appeal.

25. It is the considered view of this Court that since the purpose of Order VI Rule 17 of CPC is to allow either party, at any stage, to alter or amend their pleadings in such manner as are necessary for the purpose of determining the real questions/controversies between the parties, subject to satisfying the court of due diligence, and in view of the fact that the power of the court under Order XII Rule 6 of CPC is discretionary, and could result in the final disposal of the matter, permanently debarring the

defendant from exercising his right to defend such a suit, the application under Order VI Rule 17 of CPC should be considered on merits before the power under Order XII Rule 6 of CPC is exercised by the Trial Courts.

26. It may be noted that the decisions relied upon by the learned counsel for the respondents/defendants, namely, ***Usha Balashaheb Swami (supra)*** and ***Panchdeo Narain Srivastava (supra)*** relate to the disposal on merits of applications seeking amendments to pleadings with which this Court is not presently concerned.

27. This Court finds no error in the decision of the learned Trial Court to take up the application under Order VI Rule 17 of CPC for hearing and disposal despite having already heard the parties on the application under Order XII Rule 6 of CPC. Needless to add that it would be for the learned Trial Court to consider both the applications on merits.

28. The petitions being devoid of merits are accordingly dismissed along with the pending applications. It is made clear that nothing contained in this order shall be a reflection on the merits of the application under Order VI Rule 17 of CPC or under Order XII Rule 6 of CPC, which the learned Trial Court shall dispose of in accordance with law.

29. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 03, 2021/s