

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

% Date of decision: 19 April, 2022

+ RFA 293/2021, CM APPLs. 26906/2021 & 26908/2021

SH. DINESH SHARMA

..... Appellant

Through: Mr. Rajiv Raheja, Adv.

versus

MRS. KRISHNA KAINTH

..... Respondent

Through: Mr. Ravi Dev Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 26908/2021 (by the appellant for condonation of 81 days delay)

This is an application under Section 151 of CPC, 1908 seeking condonation of 81 days delay in the refilling of the present Regular First Appeal. For the reasons stated in the application, the delay of 81 days in refilling the appeal is condoned. The application is disposed of.

RFA 293/2021

1. The present appeal has been filed with the following prayers:

“The Appellant/Defendant, therefore, most respectfully prayed that this Hon’ble Court may be graciously pleased to:

A. Set aside the impugned judgment and decree (Preliminary) passed by the Ld. Court of Shri Vijay Kumar Jha, ADJ-02 (East). Karkardooma Courts, Delhi, dated 04-03-2021 thereby passing preliminary judgment and decree on admission under O 12 Rule 6 of CPC in Civil Suit No. 532/2019 titled as ‘Krishna Kainth Vs. Dinesh Sharma’.

B. Award Cost of this appeal in favour of the Appellant, and

C. Pass such other and further orders in favour of Appellant/Defendant which may be deemed fit and proper in the facts and circumstances of the case.”

2. It is a case wherein according to facts stated in Civil Suit No. 532/2019 (for short, ‘CS No. 532/2019’), the respondent / plaintiff is the owner of the property bearing House No. 37, Second Floor, Block F, Gali No.12, Laxmi Nagar, Delhi (for short, ‘Suit Property’).

3. In the month of November 2016, the appellant / defendant approached the husband of the respondent / plaintiff for the purpose of acquiring the suit property on rent. The respondent / plaintiff agreed to give the said property on lease to the appellant / defendant at a monthly rent of ₹9200/- per month exclusive of electricity charges from the month of November 2016.

4. The appellant / defendant initially paid the rent on time, however, after a few months started delaying rent payments, and on being asked about such delay the appellant / defendant did not give any satisfactory answer. The appellant / defendant lastly paid the rent for February 2018 on March 07, 2018. Furthermore, it is alleged that the appellant / defendant never paid the electricity bill raised by BSES, and due to the non-payment of the electricity bills, the concerned authority had disconnected the electricity connection in the suit property.

5. The appellant / defendant filed his written statement in CS No. 532/2019 wherein he stated that the suit property was let out to him and for security / mortgage purposes he has paid an amount of ₹5,00,000/- to the respondent / plaintiff. It is further submitted that the respondent / plaintiff had agreed to sell the suit property to the appellant / defendant for a total consideration of ₹13,00,000/-. However, the mortgage documents and other

documents were stolen from the custody of the appellant / defendant on April 14, 2019, meaning thereby that there were some documents executed by the respondent / plaintiff.

6. It is the contention of Mr. Rajiv Raheja, learned counsel appearing on behalf of the appellant / defendant that the Trial Court had listed the matter on arguments, without the filing of a formal application by the respondent / plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 (for short, 'CPC').

7. That apart, it is his contention that the Trial Court erred in passing the judgment / order by failing to appreciate that there are disputed questions of facts involved in the matter and the same cannot be decided without a trial.

8. Mr. Raheja submitted that the Trial Court in paragraph 12 of the impugned judgment observed that: *"From the averments in the written statement it is not clear exactly what is the status of the defendant vis-à-vis the suit property under which the defendant came in possession of the suit property on 05/05/2012"*. In this regard, he contended that the said observation of the Trial Court clearly depicts that the Trial Court was not even sure what is the status of the appellant / defendant in the suit property and thus it cannot be said that there is an 'admission' on the basis of which the judgment and decree could have been passed.

9. That apart, the Trial Court in paragraph 12 of the impugned judgment has also held that: *"if the plaintiff mortgaged the suit property for Rs. 5,00,000/- to the plaintiff and the defendant was put into possession of the suit property as security for repayment of the said amount by the plaintiff, the status of the defendant qua the suit property would be that of mortgagee and the plaintiff would be mortgagor"*. In this regard, Mr. Raheja contended

that the Trial Court is not sure as to whether the suit property was given to the appellant / defendant as security for repayment of the amount and / or whether the appellant / defendant is in possession of suit property as a mortgagee. Further, it clearly shows that there was no 'admission' and the Trial Court has passed the impugned judgment and preliminary decree in a confused state of mind.

10. It is further stated that the Trial Court has failed to appreciate the fact that the appellant / defendant has clearly denied and refuted the relation of landlord and tenant, as alleged by the respondent / plaintiff. Thus, there was / is no admission on the basis of which judgment could have been passed.

11. Mr. Raheja stated that the Trial Court has failed to appreciate that passing a judgment on 'admission' under Order XII Rule 6 of the CPC is neither mandatory nor peremptory but discretionary. A party to the suit cannot ask for the passing of a decree as a matter of right even if any 'admission' is there of the other party. It is also a settled principle of law that the discretion conferred under Order XII Rule 6 of the CPC is to be exercised judiciously and not arbitrarily. Furthermore, it is submitted that the Trial Court has failed to appreciate that to constitute a clear, unequivocal, unambiguous, and unconditional admission the Trial Court has to see the overall effect of pleadings and documents. In this regard, Mr. Raheja has relied upon the following cases:

- i. S.M. Asif vs. Virendra Kumar Bajaj, (2015) 9 SCC 287;*
- ii. Amit Kumar Chopra vs. Narain Cold Storage & Allied Industries Pvt. Ltd., I.A. No. 16458/2011 in CS (OS) No. 2293/2010;*

- iii. *Manisha Commercial Ltd. vs. N. R. Dongre & Anr., (2000) 52 DRJ;*
- iv. *Preeti Satija vs. Raj Kumari, 2014 DRJ (141) 295;*
- v. *Krishna Kumari vs. Sunil Kumar Goel and Anr., I.A. No. 21109/2013 in CS (OS) No. 560/2012;*
- vi. *Indu Singh vs. Surender Kamnoj & Ors., FAO (OS) 51/2020;*
- vii. *Balraj Taneja and another vs. Sunil Madan and Anr., (1999) 8 SCC 396;*
- viii. *Karam Kapahi & Ors. vs. M/S Lal Chand Public Charitable Trust & Anr., Civil Appeal No. 3048/2010 and*
- ix. *Himani Alloys Ltd. vs. Tata Steel Ltd., Civil Appeal No. 5077/2011.*

12. That apart, Mr. Raheja has also placed reliance upon the judgment in the case of *Razia Begum vs. Sahebzadi Anwar Begum & Others, AIR 1958 SC 886*, wherein the Court has held that Order XII Rule 6 of the CPC has to be read along with the proviso of Rule 5 of Order VIII of the CPC. In this regard, he stated that notwithstanding the admission made by the appellant / defendant in his pleading the Court may still require the respondent / plaintiff to prove the facts pleaded by him in the plaint.

13. It is further contended that the Trial Court erred in passing the impugned judgment as it failed to state and explain how the appellant / defendant was / is in occupation and possession of the suit property since May 05, 2012, without vacating and handing back the possession of the same, and how and on what terms and conditions the alleged oral tenancy, if any, was created from the month of November 2016, as alleged and claimed by the respondent / plaintiff. In this regard, Mr. Raheja further stated that in

view of the said discrepancy in the date as well as in the status regarding occupation and possession of the appellant / defendant, it cannot be said that there was an 'admission' on the part of the appellant / defendant. Moreover, the respondent / plaintiff has also failed to establish the tenancy, as not even a single document of the tenancy has been produced by the respondent / plaintiff.

14. It is further submitted that the Trial Court has also failed to appreciate that if the status and possession of the appellant / defendant in the suit property was / is that of a mortgagee, then the suit for 'ejectment' as framed and filed by the respondent / plaintiff was / is not maintainable. The appropriate remedy was either to file a suit for possession or to go for foreclosure of the mortgage. Therefore, the suit as framed and filed by the respondent / plaintiff on the alleged relationship of landlord and tenant is not maintainable and ought to have been dismissed.

15. The written statement has to be read and constructed as a composite document and the Court cannot pick up a single line or fact and treat the same as an 'admission' out of context. Hence, the said issue of admission and defence taken by the appellant / defendant can only be proved by leading evidence and then decided. Such an issue cannot be decided summarily. In this regard, Mr. Raheja relied upon the judgment in the case of *Indu Singh (supra)*.

16. It is further stated that the Trial Court has failed to consider the fact that all original documents and chain of the title documents of the property were with the appellant / defendant and it did not happen in the normal course. It is also submitted that a landlord will not give a tenant his power and possession of all complete chain of the title documents in original.

Therefore, the appellant / defendant having in his power and possession of the said title documents in original clearly proves the disputed facts in the present case. However, there are certainly other disputed issues and facts between the parties which need to be proven by leading trial and evidence. In this regard, Mr. Raheja relied upon the judgment in the case of ***Krishna Kumari (supra)***.

17. Mr. Raheja further contended that the Trial Court has failed to appreciate that the respondent / plaintiff has not filed any application seeking judgment on admission, under Order XII Rule 6 of the CPC. However, the Trial Court *suo motu* without asking for any reply / objections from the appellant / defendant passed the impugned judgment and decree, which is against the principle of natural justice and equity. That apart, the Trial Court had decreed the partial claim of the respondent / plaintiff even without framing issues and without even considering the terms and conditions and scope of Order XII Rule 6 of the CPC and passed the decree which is liable to be set aside in the present appeal.

18. The Trial Court also failed to appreciate the fact that the respondent / plaintiff herself has not signed the plaint and has not instituted the suit herself, as required, but the same has been signed and verified by an authorised person (Sh. JS Kainth), without any Power of Attorney. The same has been filed on the basis of an alleged Letter of Authority which is neither stamped, nor registered and attested, and hence it is not a document in the eyes of the law. Furthermore, the Letter of Authority does not give any power or authority to institute the suit, therefore, in absence of any such power to institute the suit, the person filing the same has no power or authority to institute it. Thus, the suit itself is not maintainable. In this

regard, Mr. Raheja relied upon the judgment in the case of *T. Arivandandam vs. T. V. Satyapal & Anr.*, (1978) 1 SCR 742, wherein it has been categorically held that if on a meaningful and not formal reading of the plaint it is manifestly clear that the clever drafting has created the illusion of a proper plaint, the same should be nipped in the bud at the first hearing.

19. Mr. Raheja submitted that the appellant / defendant had given complete details of payment made to the respondent / plaintiff in compliance with the oral agreement as to how and when the appellant / defendant had made the payment. In this regard, it is submitted that the record has already been placed on record by the appellant / defendant before the Court clarifying the payment of ₹10,68,400/- made by the appellant / defendant to the respondent / plaintiff, and in case the opportunity to lead evidence would be given the appellant would be able to prove his case. That apart, the respondent / plaintiff failed to disclose that there was a rent agreement between the parties for a sum of ₹9200/- per month as only one payment made by the appellant / defendant would not establish the tenancy in odd six years.

20. In addition, the respondent / plaintiff also failed to disclose how the chain of documents came into the possession of the appellant / defendant. Moreover, the respondent / plaintiff has further failed to establish why any case under Section 138 of the Negotiable Instruments Act, 1881 is not filed despite the dishonor of several Cheques as alleged by the respondent / plaintiff. Hence the present appeal.

21. Mr. Ravi Dev Sharma learned counsel appearing on behalf of the respondent / plaintiff submitted that it is a case wherein the tenant after becoming dishonest, stopped paying rent and on the basis of a false deal /

mortgage / agreement to sell and by making false submissions regarding payments made in cash tries to gain time to stay in the property for as long as possible without paying any rent and exit at last by enjoying the property without paying rent. He further stated that it has been observed by this Court in several cases that the tenants who illegally continue to occupy the tenanted premises by raising frivolous defences should be appropriately burdened with penal costs.

22. Mr. Sharma submitted that the claim of the appellant / defendant that the original chain of the document is in possession of the appellant / defendant and he has filed it along with the written statement is totally false. That apart, the appellant / defendant has failed to raise any triable issue / defence, and therefore the Trial Court has rightly granted the relief under Order XII Rule 6 of the CPC.

23. Mr. Sharma has further retreated the respondent's / plaintiff's version of the case in the following manner:

- a) Respondent / plaintiff is a 70 years lady and contested the suit through her husband Sh. JS Kainth.
- b) The suit property was rented out to the appellant / defendant in the month of November 2016 for ₹9200/- per month exclusive of electricity / water charges etc.
- c) The appellant / defendant started delaying the rent payment and thereafter started defaulting in payments, and last paid the rent for February 2018 through NEFT into account of the husband of the respondent / plaintiff on March 07, 2018.
- d) The electricity was also disconnected due to non-payment of dues by the appellant / defendant. Upon asking by the husband of the

respondent / plaintiff, the appellant / defendant stated that now only a new connection has to be applied and therefore took a copy of the chain of property documents but he never got the electricity connection restored.

e) It is stated that some of the Cheques issued by the appellant / defendant towards the rent were also got dishonored e.g., a Cheque dated May 24, 2018, for ₹27,600/- (i.e., 3 months rent from March 2018 – May 2018). Moreover, Cheque No. 181533 for ₹25,000/- was also got dishonored. The appellant / defendant issued a Cheque No. 181534 for ₹25,000/- but instructed the husband of the plaintiff to not present. Thereafter, a Cheque No. 017203 for ₹40,000/- was issued towards part payment of the pending rent but the same was dishonored too.

f) Hence, the respondent / plaintiff filed the suit for ejection of the appellant / defendant from the suit premises along with recovery of ₹2,81,600/- towards unpaid rent, expenses, *mesne profit*, and compensation with *pendent-lite*, future rent, interest, etc.

24. That apart, Mr. Sharma submitted that the appellant's / defendant's stand has been duly considered by the Trial Court before granting the relief of possession under Order XII Rule 6 of the CPC to the respondent / plaintiff.

25. Mr. Sharma also submitted the stand of the appellant / defendant in the following manner:

a) The suit property was let out by the respondent / plaintiff which implies that the appellant / defendant was a tenant in the suit property.

b) The respondent / plaintiff let out the suit property on security / mortgage purpose for a total amount of ₹5 Lacs through dealer vide e-stamp paper bearing No. IN-DL1442N377128971Q. In this regard, Mr. Sharma stated that the appellant / defendant stating himself to be a mortgagee does not help the case of the appellant / defendant in the absence of any registered deed in view of Section 59 of The Transfer of Property Act, 1882 (for short, 'TPA Act'). Moreover, even the alleged e-stamp paper was also not placed on record.

c) The suit property was let out against the security / mortgage against the alleged payment of ₹5 Lacs by the appellant / defendant to the plaintiff (in absence of any registered deed in view of Section 59 of the TPA Act). In this regard, it is submitted that the said submission would mean that the appellant / defendant is a tenant, and even for the sake of argument, if not a tenant then the appellant / defendant would be a Licensee as the appellant / defendant admittedly got into the possession of the suit property with the permission of the respondent / plaintiff.

d) The appellant / defendant taking a stand that respondent / plaintiff let out the suit property on May 05, 2012, and not in November 2016 as stated by the respondent / plaintiff does not make a difference for the relief of possession granted by the Trial Court. According to Mr. Sharma, such a stand of the appellant / defendant is false and is only taken just to relate it to the cash withdrawal from his bank account to allege that he paid the amount to respondent / plaintiff.

e) The appellant / plaintiff has contended that the cash withdrawals from its account through SELF Cheque were all paid to respondent / plaintiff without any receipt and the Cheques amounting to ₹9,200/-, ₹27,600/- (which are multiples of the monthly rent of ₹9,200/-) were issued towards part payment of the alleged deal have no value in the eyes of law. The payment so stated also contradicts the appellant's / defendant's own version at several points. Therefore, the appeal filed by the appellant / plaintiff has no substance and deserves to be dismissed with cost.

26. Having heard the learned counsel for the parties, before I deal with the submissions made by them, it is important to examine the provisions of Order XII Rule 6 of the CPC. The said provision reads as under:-

“6. Judgment on admissions – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub- rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

27. The law with regard to the interpretation given to Order XII Rule 6 of the CPC is well settled in terms of the judgment of the Supreme Court in the case of *Himani Alloys (supra)*, and also in terms of the judgment by the Division Bench of this Court in the case of *Anupama Bansal vs. Suraj Bhan Bansal & Anr., RFA(OS) 46/2019*. The Division Bench of this Court has in paragraphs 20 to 24 held as under:-

“20. The law on the aspect as to what should constitute "pleadings or otherwise", the words used under Order XII Rule 6 CPC, for passing a judgment on admission, is well settled. There are a line of decisions rendered by the Supreme Court and the High Courts that if there is sufficient material on record including express/implied admissions, that can validate passing of a decree on the basis of such admissions, there is no impediment for the Court to accelerate the suit proceedings to a closure by passing a decree on admitted claims.

21. The scope and ambit of Order XII Rule 6 CPC was discussed by the Supreme Court in the landmark case of Uttam Singh Duggal and Co. Ltd. Vs. Union Bank of India reported as AIR 2000 SC 2740, where it was observed as under:-

"12. As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that „where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed." (emphasis added)

22. In ITDC Ltd. Vs. M/s. Chander Pal Sood and Son reported in 84 (2000) DLT 337 DB, a Division Bench of this Court interpreted the provisions of Order XII Rule 6 CPC in the following words:-

"17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion

and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing...."

23. *Another Division Bench of this Court had the occasion to interpret the expression, 'otherwise' used in Order XII Rule 6 CPC in Rajiv Srivastava vs. Sanjiv Tuli and Anr. reported as 119 (2005) DLT 202 (DB) and observed as below:-*

"10. The use of the expression „otherwise" in the aforesaid context came to be interpreted by the Court. Considering the expression the Court had interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also de hors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties" statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein."

24. *In Delhi Jal Board vs. Surendra P. Malik reported as 104 (2003) DLT 151, a Division Bench of this Court had laid down the following tests for pronouncing a judgment on admission:-*

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are

inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment." (emphasis added)''

28. It is a settled law that Order XII Rule 6 of the CPC is an enabling provision that confers discretion to the Court for ensuring speedy justice on admission to the extent of the claim admitted by one of the parties of his opponent's claim. As noted above, such admissions can be in the form of pleadings or otherwise i.e., in the documents, correspondence, etc. placed on record. It can be oral or in writing; the admission can be constructive admission as well as without it being specific or expressive, which can be inferred from vague and evasive denials in the written statement while responding to specific pleas taken in the plaint. I must state that the appellant / defendant has relied upon the judgments which have been referred to above. There is no dispute with regard to the proposition laid down in the said judgments in as much as, (i) a judgment on admission under Order XII Rule 6 of the CPC is not a matter of right, rather is a matter of discretion of the Court; (ii) to constitute a clear, unequivocal, unambiguous and unconditional admission, the Trial Court has to see the overall effect of the pleadings and documents. For a judgment on admission to be passed under Order XII Rule 6 of the CPC, the Court has to see as to whether the admission of facts is plain, unambiguous, and unequivocal and go to the root of the matter, which would entitle the other party to succeed; (iii) if the issue raised, involve the mixed question of fact and law, the same has to be adjudicated by way of evidence; (iv) the discretion conferred under

Order XII Rule 6 of the CPC is to be exercised judiciously and not arbitrarily.

29. From the reading of the aforesaid judgments, it cannot be disputed that Order XII Rule 6 of the CPC can also be invoked when the objections raised against rendering a judgment are such, which goes to the root of the matter or whether the objections are inconsequential, making it impossible for the party to succeed, even if entertained. In the case in hand, the appellant / defendant in his written statement has clearly stated that the respondent / plaintiff had let out the property to him. The defence of the appellant / defendant is that he has paid an amount of ₹5,00,000/- for security / mortgage purposes. It was also his case that later on, the respondent / plaintiff had agreed to sell out the suit property to him for a total consideration of ₹13,00,000/- and the respondent / plaintiff had assured him, that whenever an amount of ₹10,00,000/- will be received from the appellant / defendant, the respondent / plaintiff shall execute the relevant documents of the suit property in favour of the appellant / defendant and in that regard he has paid, in total, a sum of approximately ₹10,68,400/- as against ₹13,00,000/-.

30. A reference is also made to the fact that the mortgaged documents and other documents were stolen for which the appellant / defendant has lodged an NCR dated April 14, 2019, with LR No.938895/2019. The stand of the appellant / defendant was also that he had waited for the respondent / plaintiff on September 31, 2019, the date when the documents were to be executed in the office of Sub-Registrar, Preet Vihar, Delhi, and took a cash receipt No. 11394. The respondent / plaintiff's stand was primarily that the suit property was let out on a monthly rent of ₹9,200/- exclusive of

electricity charges from the month of November 2016. The appellant / defendant deposited an amount of ₹9,200/- as an interest free security with the respondent / plaintiff. Initially, the appellant / defendant was regularly making payments of the rent, but later, the appellant / defendant started making defaults in payment of the rent. The last rent paid by the appellant / defendant was for the month of February 2018 which was paid through NEFT on March 07, 2018. It was also due to the non-payment of the electricity bills, the concerned Authority, disconnected the electricity connection of the suit property. It is on the insistence of the appellant / defendant for reconnection of electricity that he took an entire chain of documents from the husband of the respondent / plaintiff. But till date, the appellant / defendant has not taken electricity connection in the suit property.

31. The respondent / plaintiff's case is also that the appellant / defendant had issued a Cheque bearing No. 163120 dated May 24, 2018, for a sum of ₹27,600/- in favour of husband of the respondent / plaintiff towards rent for the months from March 2018 to May 2018, but the same got dishonored. Similarly, a Cheque bearing No. 181534 dated December 28, 2018, for a sum of ₹25,000/- was also got dishonored. Similarly, a Cheque bearing No.017203 for a sum of ₹40,000/- also got dishonored.

32. Having noted the case of the parties before the Trial Court. I may state here, the Trial Court primarily granted the relief in favour of the respondent / plaintiff only on a finding that in the absence of any registered document in favour of the appellant / defendant, the legal status of the appellant / defendant in the suit property, at best is that of a tenant or at least as that of a licensee and in the absence of any registered document in favour of the

appellant / defendant, the jural relationship between the parties, having been terminated on service of summons on the suit, the appellant / defendant has no right to keep the possession of the suit property. In substance, the conclusion of the Trial Court is that the defence set up was such as to make it impossible for a party to succeed shall be ground enough to accept the defense as admission and grant possession of the suit property to the other party. I find, in this case though, the appellant / defendant has referred to certain payments having been made like ₹5,00,000/-, ₹10,68,400, but no evidence of such payments, having been made to the respondent / plaintiff has been placed on record. Rather, I find that the respondent / plaintiff has placed on record the passbook of his savings account wherein against entry dated June 28, 2017, a deposit of ₹9,200/- from M/S FIBE, which signifies the Fibre Glass Industries of the appellant / defendant. Similarly, a payment of ₹9,200/- is being shown against an entry dated September 01, 2017, from the same concern. A corresponding entry in the statement of account of the appellant / defendant against entry dated September 01, 2017, an amount of ₹9,200/- has been shown as withdrawal. This amount coincides with the credit column, in the savings account of the respondent / plaintiff.

33. That apart, the statement of account of the husband of the respondent / plaintiff also shows, an entry that a Cheque No. 181533 dated December 12, 2017, for ₹25,000/- has been returned back on December 13, 2017. The respondent / plaintiff has also placed on record, the cheques issued by the plaintiff / defendant of ₹25,000/-, and ₹27,600/- respectively. What is of relevance is, that the appellant / defendant has referred to the fact that he had given ₹5,00,000/- to the respondent / plaintiff as security for mortgage purposes at the time of letting out. But no document in support of the same

has been produced. The case of the appellant / defendant that he has filed an NCR with LR No. 938895/2019 on April 14, 2019, but that was with regard to the sale agreement paper of a house, Cheque Book, laptop, etc. The said NCR does not give the details of the property for which the sale agreement was executed. Rather, no copy of the sale agreement or mortgage deed has been placed on record. The aforesaid NCR is immediately after the husband of the respondent / plaintiff, in the month of March 2019, had asked the appellant / defendant to vacate the suit property and to clear the dues of rent till March 2019. In fact, it is the case of the respondent / plaintiff that the appellant / defendant had issued a Cheque of ₹40,000/- dated July 08, 2019, much after the NCR with regard to theft of the sale agreement was filed. It is not known why a person who was relying upon an agreement to sell and having lost the same, would give a Cheque of ₹40,000/- to the respondent / plaintiff. The Trial Court has primarily relied upon the provisions of Section 53A of the TPA and Section 17(1A) of The Registration Act, 1908 to demolish the defense of the appellant / defendant. The relevant paragraph is reproduced as under:

“15. For the defense of part performance as per Section 53-A of Transfer of Property Act after 24/09/2001 the documents containing contract to transfer for consideration i.e. an Agreement to Sell has to be registered in view of Section 17(1-A) of Indian Registration Act and the said Section also provides that if such documents are not registered then such document would have no effect for the purpose of Section 53-A of Transfer of Property Act. As per the defendant, the plaintiff agreed to sell the suit property either in the year 2012 or 2013; the Agreement to Sell had to be a registered document and as it is not the case of the defendant that between the plaintiff or the defendant any agreement to sell was executed which had been registered Section 17(1-A) of Indian Registration Act would have full force and even if it be assumed that the defendant was put into the

possession of the suit property pursuant to any written Agreement to Sell the defendant cannot take any defence of Section 53-A of Transfer of Property Act.”

34. I agree with the aforesaid conclusion of the Trial Court. Even assuming for a moment that a mortgage was created or agreement to sell was entered, the same having not been registered, no right would accrue in favour of the appellant / defendant to justify the possession of the suit property and the status of the appellant / defendant shall remain as that of a tenant. Hence, the defence that has been put forth by the appellant / defendant is not such a strong defence that will enable him to succeed in the suit, even after the matter is put on trial. In this regard, a reference is made to the judgment of this Court in the case of ***Joginder Tuli vs. State of NCT of Delhi & Ors., W.P.(CRL) 1006/2020***, wherein it has been held as under:

*“32. It is well settled that in order to give benefits of Section 53A of the Transfer of Property Act, the document relied upon must be a registered document. Any unregistered document cannot be looked into by the court and cannot be relied upon on or taken into evidence in view of Section 17(1A) read with Section 49 of the Registration Act. Thus, benefit of Section 53A could have been given to the respondent, if and only if the alleged Agreement to Sell cum receipt satisfied the provisions of Section 17(1) A of the Registration Act (Refer *Arun Kumar Tandon v. Akash Telecom Pvt. Ltd. & Anr. MANU/DE/0545/2010*).”*

35. That apart, a plea has been taken in the written statement, that the Trial Court could not have *suo moto* considered the issue of admission on the part of the appellant / defendant under Order XII Rule 6 of the CPC and decide the same in favour of the respondent / plaintiff. Suffice to state that the Trial Court has the power to consider the pleadings and exercise the power as available to it under Order XII Rule 6 of the CPC. In this regard, a

reference is made to the judgment of the Division Bench of this Court in the case of *Saranpal Kaur Anand vs. Praduman Singh Chandhok and Ors.*, *RFA(OS) 54/2015*, wherein it has been held as under:

“28. Even while dealing with an application under Order VII Rule 11 CPC, the Court can exercise power under order XII Rule 6 CPC to pass a judgment on admissions. A Division Bench of this Court in Keshav Chander Thakur(supra) held that though in an application under Order VII Rule 11 CPC only plaint and the documents filed along with the plaint can be looked into however given the nature of pleadings and admitted documents, the Court was well within its jurisdiction to exercise power under Order XII Rule 6 CPC and pass a judgment suo motu. It was held:

"38. We concur with the view of the learned Single Judge. However, we may like to note that the learned Single Judge has exercised powers under Order VII Rule 11 CPC while rejecting the plaint. The scope of exercise of powers under Order VII Rule 11 CPC is limited by the contours of the provision. While exercising those powers what has to be seen is only the averments in the plaint and the documents filed alongwith the plaint. The defence as taken in the written statement is not to be gone into for the said purpose. To that extent, the judgment of the learned Single Judge may suffer from an infirmity. However, in our view given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed herein, this was a fit case for the Court to exercise powers under Order XII Rule 6 CPC where the Court has powers to suo moto pass a judgment. There is no requirement in Order XII Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order XII Rule 6 CPC. Order XII Rule 6(i) CPC reads as follows:-

"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."

In our view based on the pleadings and documents placed on record by the parties there are clear admissions of fact which warrant passing of the order of dismissal of the plaint."

36. Insofar as the plea of the appellant / defendant that the suit has not been properly instituted is concerned, the suit has been instituted by the husband of the respondent / plaintiff on the basis of an authorization letter executed by the respondent / plaintiff in his favour which includes authority by the respondent / plaintiff to appear, plead, sign, file, verify, etc.

37. In the totality of the facts, this Court is of the view that no case has been made out, which requires interference by this Court. The appeal is dismissed.

CM No. 26906/2021 (Stay of Proceeding of Trial Court)

In view of the order passed in the appeal, the present application is dismissed.

 **V. KAMESWAR RAO, J**

APRIL 19, 2022/aky/ak