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

% **Date of order: 9th May, 2024**

\+ RFA 558/2022

BRILLIANCE EDUCATIONAL SOCIETY AND ORS. ... Appellants

Through: Mr.Nishit Kush, Mr.Amit Chadha, Ms.Mercy Hussain, Ms.Smriti Shrivastava, Ms.Aeshana Singh, Ms.Kirti Singh and Mr.Rohit, Advocates.

versus

KARAMVIR SINGH ..... Respondent

Through: Mr.Brijendra Chahar, Senior Advocate with Mr.Yashpal Rangi, Advocate.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The captioned regular first appeal has been filed on behalf of the appellants under Section 96 of the Code of Civil Procedure, 1908 (hereinafter "CPC") assailing the impugned judgment and order dated 14th July, 2022 passed by the learned ADJ-05, South-West District, Dwarka Court, New Delhi ('Court below' hereinafter), in Civil Suit bearing no.260/20.

2. The appellant no. 1, namely, Brilliance Education Society (defendant no. 1 before the Trial Court) is a society constituted for the purpose of

running a school situated at RZ-23/24 X Block, New Roshan Pura, Najafgarh, New Delhi. The appellant no. 2 is the president of the said society (defendant no. 2 before the Trial Court) and the appellant no. 3 is the father-in-law of the appellant no. 2 (defendant no. 3 before the Trial Court).

3. For the purpose of taking the adjacent property i.e., land admeasuring 230 sq. yards situated at khasra no. 343, village Roshanpura, Najafgarh ('suit property' hereinafter), the appellant no. 2 and 3 had entered into a common rent agreement dated 20th April, 2016 for a monthly rent of Rs.18,000/- to be paid to the respondents for 5 years from 1st March, 2016 to 28th February, 2021, however, it is stated that the said lease could not be registered.

4. Due to the alleged default in payment of the above said rent, the respondent no. 1/plaintiff issued a legal notice dated 29th February, 2020 to the appellants/defendants terminating the above said rent agreement and asked them to vacate the suit property. Upon failure of the appellants to vacate the suit property, the respondent filed a civil suit bearing CS no. 260/2020 before the learned Court below seeking recovery of possession of the suit property, outstanding rent etc.

5. Pursuant to the above, the respondent herein filed an application under Order XII Rule 6 of the CPC seeking judgment in their favour on the basis of admissions made on behalf of the appellants.

6. The above said application was allowed and the judgment dated 14th July, 2022 ('impugned judgment' hereinafter) was passed in favour of the respondent herein.

7. Aggrieved by the same, the appellants have filed the instant regular

first appeal.

8. Learned counsel appearing on behalf of the appellants submitted that there was no clear, unequivocal, or specific admission, neither in the written statement; nor in any of the documents filed either by the respondent or by the appellants.

9. It is submitted that the learned Court below failed to appreciate that the appellants had served a legal notice dated 18th January, 2021 to the respondent stating that they had paid Rs.1,00,000/- as token money and subsequently paid a sum of Rs.5,50,000/- to the respondent on different occasions for the purchase of the suit property.

10. It is submitted that apart from the above said amount, the appellants had also paid Rs.6,40,000/- and the remaining amount was agreed to be paid to the respondent after execution of the sale deed.

11. It is submitted that the learned Court below erred in not appreciating that the respondent failed to establish their ownership rights and title over the suit property as no such documents were brought on record by them.

12. It is submitted that the learned Court below failed to take into consideration that passing of the impugned judgment is a violation of the principles of natural justice and a gross misuse of the process of law as the appellants did not have any opportunity to defend the case.

13. It is also submitted that the learned Trial Court failed to take into account that the notice of termination of the rent agreement alleged to be served upon the appellants by the respondent was not a valid notice as per the provisions of Transfer of Property Act, 1882, and the said notice was

never served to the appellants at any point of time.

14. It is further submitted that the learned Court below failed to appreciate that the respondent had made different claims, therefore, the plaint was vague, ambiguous, unspecific and frivolous.

15. Learned counsel for the appellants contended that the passing of the impugned judgment, solely on the alleged admissions of relationship of tenant and landlord is in violation of the settled principles of law, and therefore, the impugned judgment suffers from illegality.

16. In view of the foregoing submissions, the learned counsel for the appellants submitted that the present petition may be allowed and reliefs be granted as prayed.

17. *Per Contra*, Mr. Chahar, learned senior counsel appearing on behalf of the respondent vehemently opposed the present appeal submitting to the effect that the learned Court below duly considered the admissions made on behalf of the appellants, therefore, rightly passed the impugned judgment.

18. It is submitted that the appellants have duly admitted the execution of the rent agreement dated 20th April, 2016 and have not challenged its genuineness in any manner except the allegation that the said agreement was executed only for the purpose of affiliation of the school before the concerned authorities.

19. It is submitted that the communication among the parties duly establish that the amount, as alleged to be paid as token money for sale of the suit property, was paid towards rent of the suit property and not towards the sale consideration.

20. It is submitted that the amount paid by the appellants were made only after duly deducting the TDS, therefore, the certificates issued in this regard by the authority clearly establishes the tenant-landlord relationship among the parties.

21. It is submitted that the appellants came in the possession of the suit property on the basis of the rent agreement dated 20th April, 2016 and the same has already ended due to the efflux of time, therefore, the respondent being the admitted owner of the suit property are entitled for possession of the same.

22. It is also submitted that the scope of Order XII Rule 6 of the CPC is vide enough to include reliefs not only in the cases of admission in pleadings, but also in the cases of admission *de hors* pleadings, therefore, the admissions *qua* the TDS certificates cannot be ignored and are sufficient to establish the tenant-landlord relationship among the parties.

23. In view of the foregoing submissions, the learned senior counsel for the respondent submitted that the present petition, being devoid of any merit, may be dismissed.

24. Heard the learned counsel for the parties and perused the records.

25. It is the case of the appellants that the impugned judgment has been wrongly passed in favour of the respondent on the basis of the alleged admission made by the appellants in the written statement, whereas, the rent agreement executed between the parties exist for the mere purpose of obtaining permissions from various Government Departments.

26. In rival submissions, the learned senior counsel appearing on behalf of

the respondent rebutted the above said contentions by stating that the impugned judgment was passed after duly noting the admissions of existence of the rent agreement executed between the parties, therefore, the lawful possession of the suit property was rightly granted to the respondent.

27. In light of the same, the question for adjudication before this Court is whether the learned Court below rightly appreciated the law and therefore, passed the decree of possession in favor of the respondents or not.

28. Before delving into the merits of the case, this Court deems it imperative to discuss the scope of powers conferred to this Court under the appellate jurisdiction.

29. Section 96 of the CPC provides for filing of a Regular First Appeal against the original decree passed by a Civil Court. The said provision reads as under:

> *"96. Appeal from original decree.—*
> *(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.*
> *(2) An appeal may lie from an original decree passed ex parte.*
> *(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*
> *[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 2 [ten thousand rupees.]].."*

30. The perusal of the above cited provision makes it clear that a party to

a suit is entitled to file an appeal against every decree passed by a Civil Court exercising original jurisdiction where evidence on the question of law can be appreciated by the appellate Court.

31. Now, adverting to the merits of the case, the appellants have argued that the judgment passed by the learned Court below suffers from illegality as the alleged admission was not unequivocal rather, disputed, therefore, the same cannot be construed as admissions, and the judgment passed on the basis of the said alleged admissions is not legally tenable.

32. The relevant part of the impugned judgment reads as under:

> *"8. As far as application of plaintiff under Order 12 Rule 6 CPC is concerned, it will be apposite to mention that for a decree of possession in a suit for recovery of possession of suit property on the basis of admission made by the defendants, the following ingredients are required to be fulfilled by the plaintiff:-*
>
> > *(i) existence of relationship of landlord and tenant*
> > *(ii) monthly rent exceeding Rs. 3500/- or the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) should not be applicable to the suit property; and*
> >
> > *(iii) termination of tenancy*
>
> *9. From the aforesaid pleadings, it is clear that rent agreement was executed between the parties, therefore, there was a relationship of tenant and landlord between the parties. In their reply and written statement of preliminary objections no. 4 & 5 and para no. 4 to 6 and 9 of reply on merits as well as reply to the application under Order 12 Rule 6 CPC, the defendants have admitted the execution of rent agreement. In para-4 of the written statement, defendant has stated that "; ... At that time,*

the defendants had paid Rs.I,OO,OOO/- in cash to the plaintiff as token money. In other hand, prior to execution of said so called rent agreement, defendants had paid Rs.l,OO,OOO/- as token money and after execution of so called rent agreement, defendant no.3 has paid Rs.2.5 lacs in the month of May 2017 in cash .... ".

10. In para-5 of the written statement, defendants have stated that, " .... the defendant no.3 is the Treasurer of the defendant no.1. It is pertinent to mention that the alleged rent agreement dated 20.04.2016 is not valid in eyes of law as the said rent agreement has been executed for five years and simply notarized document, which is clear violation of Registration Act". In its reply on merits defendants have stated in para 4,5,6, 9 that " .. the so called rent agreement was executed with the mutual consent of the parties only to fulfill the purpose of functioning of school and submitting the same to the concerned department without producing the sale documents which was yet to be executed. "

11. Thus, from the WS and reply filed on behalf of the defendants, it is clear that a false, moonshine and evasive defence has been taken by the defendants just in order to defeat the legal rights of the plaintiff.

12. As regards the contention of the defendants that the plaintiff had· agreed to sell the suit property to the defendants for a total consideration amount of Rs.35 lacs (but due to shortage of time, plaintiff had executed a formal rent agreement for the purpose of fulfilling, the mandatory requirement of affiliation of school and that they had paid certain amount to the plaintiff as a part payment of the sale consideration), the copies of itrs and TDS form falsifies the same. The whatsapp chats and the ITR and TDS forms filed by the plaintiff shows that the defendants were paying rent irregularly after deducting TDS. TDS certificates in the shape of Form 26AS for the period

*from30.06.2016 to 31.03.2019 shows that the defendant no.1 had deposited TDS on the rent paid to the plaintiff. The nature of payment was specifically mentioned as rent which contradict the theory of purchase of suit property. In this regard plaintiff has placed reliance on "**Firstcorp International Limited Vs. Kuljit Singh Bhutalia (RFA No. 1512013)** wherein it is held in para 13 that ('Even otherwise, the plea of oral Agreement to Sell taken by the appellant is of no consequence in the present suit for possession".*

13. Further, the plaintiff has also placed reliance on Praveen Saini (supra), wherein it is held in para 15 (ii) that, " ..... ,this agreement to sell does not give a right to a prospective purchaser to on that basis stay in the suit premises unless the agreement to sell encompasses the doctrine of part performance contained in Section 53A of the Transfer of Property Act, 1882. With effect from 24.9.2001 Section 53A of the Transfer of Property Act was amended whereby an agreement to sell in the nature of part performance will only be looked into if there is a written agreement which not only should be duly registered but it should be stamped with the stamp duty of 90% value of the sale consideration. Admittedly, this Court does not have before it any registered agreement to sell falling within the scope of Section 53A of the Transfer of Property Act for the appellant/defendant to claim benefit of continuing to remain in the possession of the suit premises. Trial court could have admittedly decreed the suit· for possession because even if the appellant/defendant for the sake of arguments is taken not to be a tenant, yet the appellant/defendant still would have no legal right, title or interest to continue in the suit property. Of course I hasten to add that the appellant/defendant is a tenant under the registered lease agreement dated 14.7.2014 and that appellant/defendant cannot dishonestly shy away from this fact, and as stated in the discussion hereinafter".

14. As far as the objection of the defendants regarding the validity of the lease deed is concerned, it would be appropriate to refer the law laid down by the Hon'ble Delhi High Court titled as ***Assocham Vs. Y.N.Bhargava, 2011 SC Online Del 2880: (2011) 185 DLT 296: (2012) 110 AIC 643****, wherein it is held that*

"5. A resume of the aforesaid facts show that:-

..... (ii) The Lease deed between the parties dated 10.7.1995 is an un- registered lease deed. Section 49 of the Indian Registration Act, 1908 bars this Court from looking into the terms and conditions of an un- registered lease deed. Once the lease deed is unregistered, the tenancy in law would be a monthly tenancy. Once the lease deed is not registered, the period stated therein viz .the lease being of 27 years plus 7 years will also not come into operation and the tenancy would be a month-to-month tenancy under Section 107 of the Transfer of Property Act, 1882. As per Section 106 of the Transfer of Property Act, 1882, unless there is a contract to the contrary, a lease (except a lease for manufacturing or agricultural purposes) is a month-to-month lease. The language of Section 106(1) of the Transfer of Property Act, 1882 being "in the absence of a contract ... to the contrary ... "

indicates that there can be a contract to the contrary, however such a contract would have to be a legal contract, i.e. if a contractual period contained in the lease deed is of the period of more than a year, then, the lease deed can only be looked into if the same is registered since the registration is mandatory in terms of Section 17(1)(b), 17(1)(d) of the 1ndian Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882 ..... ".

15. The judgment of ***Suraj Lamp (supra)*** *as relied upon by the defendants is not applicable to the facts of this case as the same*

relates to the validity of the unregistered sale documents like, agreement to sell, GPA, Will, etc.

16. As per the rent agreement, the monthly rent of the suit property was Rs.18,000/- per month. Vide legal notice dated 29.02.2020, plaintiff terminated the lease deed of the suit premises. Defendant no. 1 and 2 are stated to have received the said legal notice on 03.03.2020. Postal/courier tracking report are also filed alongwith the suit. The same establishes that the defendant no. 1 and 2 were duly served with the legal notice dated 29.02.2020.

17. Even otherwise law is well settled that filing of an eviction suit under the General Law is itself a notice to quit on the tenant. Reliance in this regard has been placed upon by this court on the judgment of Hon'ble Apex Court passed in ***Nopany Investments (P) Ltd. v. Santokh (HUF) AIR 2008 SC 673 and "Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha, (HUF) reported as 183(2011)DLT 712****."*

18. In ***Jindal Dyechem Industries Pvt. Ltd. Vs. Pahwa International Pvt. Ltd****., (2010) ILK 1 Delhi 245, the Hon'ble Delhi High Court held that a notice dispatched to the defendant by registered post is presumed to be served under Section 27 of the General Clauses Act and a denial of the said notice by the defendant has no value. The Hon'ble Court was pleased to pass a decree for possession under Order XII Rule 6 of CPC. The findings of the Hon'ble Court are reproduced hereunder:- CS no.260/20*

"8 .... The only fact, which is disputed by the defendant, is about the service of termination Notice.

9. The moot question which arises for consideration in this application is whether notice dated 09.10.2007 would amount to be served upon the defendant/non applicants or not?

10. Learned Counsel of the defendant has denied the service of notice of termination of tenancy, it is contended by the defendant that the AD card that has been produced by the plaintiff does not bear any signature of the receiver. Further with respect to the notice dated 27.07.2007, no AD card has been filed by the plaintiff. Ld. Counsel has further contended that in terms of Section 270f the General Clauses Act, 1897 the presumption of service by registered post is a rebuttable presumption. To support his contention he has relied upon the judgment of ***Tele Tube Electronics Ud. vs. Delhi Sales Tax****" 2002 (101) DLT 337 (D.B) and Ram Murthi v. Bhola Nath,1982 (22) DLT 426 and further contended that the defendant has discharged the initial burden of proof by denying the receipt of the notice in its written statement, accompanied by an affidavit, the burden to prove the valid service and the receipt of notice now shifts on the plaintiff. which can only be discharged by leading evidence in this regard.*

11. In support of proof of service of Notice of termination of tenancy plaintiff has placed on record the copy of notice dated 09.10.2007, original postal receipt in respect of the notice dated 09.10.07, original AD. Copy of the letter dated 24.10.07, original postal receipts in respect of the above letter. I have perused the record and found that all the documents placed on record are bearing correct address of the defendant.

12. In view of the record placed by the plaintiff and in light of the fact that the notice was dispatched to the defendant's correct address through registered post and the AD card was also received back from the defendant. the denial in respect the said notice by the defendant has no value*. The rebuttal in this case, does not go beyond a bald and interested denial of service of the notice by the defendant, which does not displace the onus to rebut the presumption of service. I am unable to accept the arguments advanced by the defendant before this court that by merely saying the AD card bears somebody else's*

signature, they have discharged the initial burden to rebut the presumption.

13. In my considered view all the requirement of Order XII Rule VI C.P.C are satisfied. as far as the factum oflandlord and the tenant relationship; and ·the factum of amount of rent is above Rs. 3,500/- both is undisputedly admitted by the defendant and in view of the documents placed on record by the plaintiff, the denial of service of termination of notice is sham and false denial. it was observed by this court that such kind of' bald denial should be ignored in such kind of circumstances ...

14. In any case, the documentary evidence assembled by the plaintiff is sufficient to raise a strong presumption of Section 27 of General Clauses Act that notice had been properly served by the applicant ... "

(Emphasis supplied)

19. Now, from the aforesaid discussion and observations of this court and as per the law laid down in ***Balraj Taneja & Anr. Vs. Sunil Madan & Anr****., dated 08.09.1999, it is crystal clear that evasive denial is admission of pleadings.*

20. In the aforesaid facts and circumstances of this case, trinity ingredients as required in a suit for ejectment as discussed above are made out. No triable issue is required to be adjudicated upon as far as the relief of possession claimed by the plaintiff is concerned. Accordingly, this suit is liable to be decreed on the basis of admission made by defendants in their written statement/reply.

21. Hence, application as moved by the plaintiff u/o 12 rule 6 CPC is allowed and a decree of possession is passed in favour of the plaintiff and against the defendants qua suit property bearing no. RZ- 24, land measuring 230 sq. yards (size 30' x

69') out of Khasra no. 343, situated in the area of Village Roshanpura, Delhi State, Delhi, in colony known as New Roshanpura Extnx Block, Tehsil Najafgarh, New Delhi-l 10043.

22. Decree sheet be prepared accordingly…"

33. Upon perusal of the above reproduced extracts, it is made out that the learned Court below had decreed the afore mentioned civil suit in favor of the respondent on the basis of the admissions made by the appellants regarding the existence of a rent agreement between the parties.

34. The respondent herein had placed on record the certificates issued by the concerned authorities regarding the payment/deduction of TDS accrued on part of the appellant.

35. While adjudicating the suit, the learned Court below had referred to paragraph nos. 4 & 5 of the written statement, and reply to the application filed under Order XII Rule 6 of the CPC, and therefore, the learned Court below held that the appellants herein had accepted the existence of the rent agreement, ultimately leading to the conclusion that the parties had the relationship of tenant-landlord.

36. Furthermore, in paragraph 11 of the impugned judgment, the learned Court below gave a categorical finding that the appellants have claimed a false and evasive defense and the same has been done in order to defeat the legal rights of the plaintiff i.e. the respondent herein.

37. Therefore, in light of the foregoing discussion on law and facts, the learned Court below arrived at the conclusion that the claim of the plaintiff was legally tenable and in pursuance of the same, the learned Court below

passed the impugned judgment on the basis of admission by the appellants.

38. At this juncture, it is appropriate to discuss the settled position of law with regard to the provisions governing judgment on the basis of admissions in a civil suit. The rule regarding the same is provided under Order XII Rule 6 of the CPC which empowers the Courts to pass a judgment on the basis of admission by the party. The said provision reads as under:

> "*ORDER XII*
>
> *Admissions*
>
> ***[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.]*"

39. The interpretation of the above said provision has been done by the Hon'ble Supreme Court and this Court time and again where the rule regarding passing of the judgment on the basis of admission made by one of the parties has been settled. It is deliberated that Order XII Rule 6 of the CPC governs judgments on admission verbatim. The Courts have the power to pass a judgment in regard to any oral or written submission made by the parties at any stage of the proceedings and such admission may be

made in the pleading or otherwise.

40. In ***Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha*, (2010) 6 SCC 601,** the Hon'ble Supreme discussed the scope of passing of a judgment on admission and held as under:

> ***"10.*** *The learned counsel for the respondent-plaintiffs relied on a judgment of this Court in Karam Kapahi v. Lal Chand Public Charitable Trust [(2010) 4 SCC 753 : (2010) 3 Scale 569] and contended that in view of the principles laid down in that case this Court may affirm the judgment of the High Court in the instant case. This Court is unable to accept the aforesaid contention. In Karam Kapahi [(2010) 4 SCC 753 : (2010) 3 Scale 569] a Bench of this Court analysed the principles of Order 12 Rule 6 of the Code and held that in the facts of that case there was clear admission on the part of the lessee about non-payment of lease rent. The said admission was made by the lessee in several proceedings apart from its pleading in the suit. In view of such clear admission, the Court applied the principles of Order 12 Rule 6 in Karam Kapahi [(2010) 4 SCC 753 : (2010) 3 Scale 569] . The principles of law laid down in Karam Kapahi [(2010) 4 SCC 753: (2010) 3 Scale 569] can be followed in this case only if there is a clear and unequivocal admission of the case of the plaintiffs by the appellant. Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi [(2010) 4 SCC 753 : (2010) 3 Scale 569] may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.*
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> ***11.*** *In Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] the provision of Order 12 Rule 6 came up*

for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear "wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed" the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondent-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the application of the respondent-plaintiffs under Order 12 Rule 6."

41. In ***Saranpal Kaur Anand v. Praduman Singh Chandhok*, (2022) 8 SCC 401,** the Hon'b'le Supreme Court futher crystalized the principles regarding judgment under Order XII Rule 6 CPC and held as under:

"54. *Now, so far as pronouncing a judgment on admission under Order 12 Rule 6 is concerned, again the law is well settled that for an admission to qualify as a valid admission, it necessarily has to be an unequivocal, unambiguous and unconditional. Considering the Objects and Reasons for amending Order 12Rule 6, it has been held in Uttam Singh Duggal & Co. Ltd. v. United Bank of India [Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120] that : (SCC p. 126, para 12)*

"12. As to the object of 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 the 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."

55. *In Himani Alloys Ltd. v. Tata Steel Ltd. [Himani Alloys Ltd. v. Tata Steel Ltd., (2011) 15 SCC 273 : (2014) 2 SCC (Civ) 376 : (2011) 3 Civil Court Cases 721] , it has been categorically observed that the admission made by the party should be clear, unambiguous and unconditional and the court should exercise its judicial discretion on examination of facts and circumstances of the case. Para 11 thereof reads as under : (SCC pp. 276-77)*

"11. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear "admission" which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120] , Karam Kapahi v. Lal Chand Public Charitable Trust [Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha

[Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha, (2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .”

56. *Though the learned Senior Advocate Mr Patwalia for the respondents has placed heavy reliance on the decision in Karam Kapahi v. Lal Chand Public Charitable Trust [Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and in Charanjit Lal Mehra v. Kamal Saroj Mahajan [Charanjit Lal Mehra v. Kamal Saroj Mahajan, (2005) 11 SCC 279] , they are hardly helpful to the respondents. There cannot be any disagreement to the proposition of law laid down in the said judgments that the principle behind Order 12 Rule 6 is to give the plaintiff a right to speedy judgment. As such, under this Rule, either party may get rid of so much of the rival claims about which there is no controversy. Even the admissions made by the parties to the interrogatories and recorded by the court as contemplated in Order 10 CPC also could be taken into consideration, nonetheless Order 12 Rule 6 could be resorted to only when there is clear and unambiguous admission of facts, and not otherwise. The said Rule 6 also could not be invoked by the appellate court suo motu in the appeal, when the trial court had not dealt with such issue, and had rejected the plaint under Order 7 Rule 11(d)CPC.”*

42. Upon perusal of the relevant paragraphs of the above cited judgments, it is made out that an admission is a statement made by the parties to a dispute, which may be oral, documentary or contained in electronic form, and which suggests an inference with respect to any fact in issue. The provision contemplates that in case of a clear admission by which the Court cannot even entertain the possibility of a different view, a judgment on admission may be passed without trial.

43. It ensures that any fact which has been admitted during the hearing, or

in writing in the pleadings, would not be required to be proved by way of a trial. The said provision is an enabling provision, therefore, it is neither mandatory nor pre-emptory, however, the same **is** discretionary. Hence, the Court, on examination of such facts and circumstances, must exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial.

44. This Court is of the view that it is important to comprehend upon the aspects as to what admission is, what constitutes as a legal admission, in which situation such an admission may be made, and under what conditions a judgment under this provision may be rendered by the Court, notwithstanding how straightforward it may seem.

45. It is clear that Order XII Rule 6 of the CPC provides a mechanism to the parties to expedite the process of adjudication, and empowers the Courts to pass a judgment if an admission relevant to the dispute has been made by a party. Furthermore, the above discussed judicial dictum also clarifies that the said admission needs to be unambiguous, clear and categorical.

46. Therefore, the question for determination before this Court is whether the admission, as alleged by the respondent, was clear, unambiguous or not.

47. In order to determine the same, this Court deems it appropriate to examine the material referred by the learned Court below to arrive at the finding whereby it decreed the aforementioned civil suit.

48. In the impugned judgment, the learned Court below specifically referred to paragraph nos. 4 & 5 of the written statement as well as the reply filed by the appellants in response to the application filed under Order XII

Rule 6 of the CPC.

49. The paragraphs of the written statement reads as under:

> *"4.That the plaintiff has approached this Hon'ble Court with unclean hands and suppressed the true material facts from this Hon'ble Court. The true material facts are that, in 2015, the defendants have constitute Educational Society in the name of Brilliance Educational Society, for the purpose of running school named (Brilliance 'School) at RZ-23/24 X Block, New Roshan Pura, Najafgarh, Delhi, and at that time it was agreed between the parties that premises No.24 will be sold and transferred by the plaintiff in favour of defendants on total consideration Amount of Rs.35 Lakhs only and the plaintiff agreed and because of shortage of time, plaintiff execute a formal rent agreement only for the purpose of fulfill the mandatory requirement of affiliation of school as per the agreement between the plaintiff and defendants, defendants have fully entitled to start the functioning of School in the said premises. Accordingly, the said society has also been started as Brilliance School with the address of both premises i.e. premises of defendants and suit property. At that time, the defendants had paid Rs.1,00,000/- in cash to the plaintiff as Token Money. In other hand, prior to execution of said so called rent agreement, defendants had paid Rs.1,00,000/- as token 4 money and after execution of so called rent agreement, defendant No.3 has paid Rs.2,50,000/- in the month of May 2017 in cash and son of defendant No.3 has also paid Rs..3,00,000/- in the same month in cash to the plaintiff on behalf of defendant no.1, against the total consideration of suit property. In the continuation of consideration of the suit property, in the month of May2018 the plaintiff approached the son of defendant No.3 that he wants to purchase a plot in the same area nearby. The son of defendant No.3 asked one Mr. Kapil Kajla and Mr. Kapil Kajla has ready to sold out his plot*

bearing No.R2-47, arca measuring 100 Sq. Yds, situated in: 2 Block, Gali No.9, Phase-II, Gopal Nagar, Najafgarh, New Delhi to the plaintiff on the total consideration amount Rs.10 Lakhs. The plaintiff requested to the defendants to pay the consideration amount against the said property to Mr. Kapil Kajla and the same will be adjusted in the total consideration amount of suit property. Accordingly, the defendants had paid Rs. 10 Lakhs in cash. to Sh. Kapil Kajla and after payment the sale documents were executed by Mr. Kapil Kajla in favour of wife of the plaintiff, as the plaintiff was a Government Servant at that time and it will be very difficult for him to show the income as he requested for the same. But the documents were executed and shown. Rs.2 Lakhs only as per instructions of plaintiff to avoid the liability of taxes etc. The defendants have also paid Rs.6,40,000/- through, the bank to the plaintiff in his accounts till 2019. Thereafter, remaining balance amount against the total consideration amount of suit property is Rs.13,10,000/-.In the month of January2020, the defendants had approached the plaintiff to execute the sale documents in favour of defendants as the remaining balance amount has been arrange by them, but the plaintiff has started avoiding the, defendants by one pretext or to other, Thereafter in month of March 2020 Lockdown period has started due to spreading pandemic COVID-19 and plaintiff asked to defendants after the lockdown period definitely he will execute the sale documents in favour of defendants. The defendants have surprised when receive the court summons in the month of September 2020 and came to know that, the plaintiff has filed the present suit with his mala fide intention just to grab the paid amount of (defendants and to usurp the suit property as well as to extort extra money from the defendants. The defendants after receiving the summons by Dwarka Courts, the defendants immediately contact to the plaintiff, but plaintiff started avoid the defendants one pretext to other. The present suit is not maintainable because the same has been 'filed by the plaintiff

with malafide intention to avoid the performance of oral agreement/contract executed and promised by the plaintiff. Hence, the same has been liable to be dismissed with heavy cost.

5. That therefore, there is no relationship of land lord and tenant between the plaintiff and defendants as the defendant. No.3 is the owner of plot No 23, who is father-in-law of defendant No.2 and this fact has been admitted by the plaintiff in his plaint and therefore he made defendant No.3 as performa party in the present suit. The defendant, No.3 is the Treasurer of defendant No. 1. It is pertinent to mention here that the alleged rent agreement dated 20/04/2016 is not valid in eyes of law as the said rent agreement has been executed for five years and simply notarized document, which is clear violation of Registration Act. It is also mentioning that in the said agreement the property No. is also mentioned RZ-23/24, which shows that the property consist in one plot and even in the whole Rent Agreement, there has not been specifically mentioned that there are two separate plots or properties. Therefore, upon the plain reading of the rent agreement, it does not confer the relationship of landlord and tenant between the plaintiff and all defendants. Moreover, the defendant No.2 having no concern with defendant No.1 presently, although her father-in-law and others Society members ie. defendant No.3 has run the defendant No.1 society and defendant No.3 admittedly owner of Plot No.23, since the inception of Society i.e. defendant No. 1.:"

50. The relevant paragraphs of the reply filed to the application filed under Order XII Rule 6 of the CPC read as under:

"4. That it is further submitted that there is no relationship of land lord and tenant between the plaintiff and defendants as the defendant No.3 is the owner of plot No.23, who is father-in-law

of defendant No.2 and this fact has been admitted by the plaintiff in his plaint and therefore he made defendant No.3 as performa party in the present suit. The defendant no. 3 is the treasurer of defendant no. 1.

5. That it is pertinent to mention here that the alleged rent agreement dated 20/04/2016 is not valid in eyes of law as the said rent agreement has been executed for five years and same is a simply notarized document, which is clear violation of Registration Act. It is also mentioning that in the said agreement the property number is also, mentioned RZ-23/24, which shows that the property consist in one plot and even in the whole Rent Agreement, there has not been specifically mentioned that there are two separate plots or properties. Therefore, upon the plain reading of the rent agreement, it does not confer the relationship of landlord and tenant between the plaintiff and all defendants.

6. That it is also relevant to mention here that there was good family relation between plaintiff and defendant No.3 since last 20 years and due to the said relation the defendant No.3 started the defendant no. 1 society and executed so called agreement with the plaintiff and it was orally settled between the plaintiff and defendant no. 3 that Educational Institute would be started at the suit property and to comply the mandatory guidelines of the Education Department, the formal rent agreement was executed between them, only for the purpose to comply the guidelines of Education Department as the documents of the property has not been registered. It was also settled that the defendant No.3 would pay the amount or gave a plot in lieu of plot No.24. Accordingly, the defendant No.3 and other members of society, registered the defendant no. 1 society and started the construction over the suit property and presently, the property consists basement, ground floor, first floor, second floor and third floor over the suit property, which specifically shown in the site plan."

51. Upon perusal of the above reproduced relevant paragraphs of both the written statement as well as the reply to the application filed by the respondent under Order XII Rule 6 of the CPC, it is made out that the appellants had admitted the existence of the rent agreement dated 20th April, 2016 executed between them and the respondent, however, the same was stated to be only for the purpose of obtaining permissions from the government authorities.

52. Furthermore, in the said paragraphs, the appellants also alleged that the said agreement does not have any validity in the eyes of law as the same was not registered and merely notarized.

53. In response to the same, the learned Court below referred to the judgment passed by this Court in ***Assocham v. Y.N. Bhargava (2012) 110 AIC 643 (Del),*** whereby, this Court discussed the question of tenancy and held that an agreement can be examined if the same exceeds one year period. Therefore, the said contention of the appellant has already been answered.

54. The learned Court below also referred to the other material evidence, i.e., the TDS certificates issued upon payment of the rent to the respondents and the communications among the parties, depicting the conversations regarding the payment of rent to the respondent and, therefore, held that the claim of sale of the suit property is not legally tenable and the rent agreement was not a sham document.

55. On the basis of the said documents and statements made by the appellants, the learned Court below held that the defense put up by the appellants is sham and evasive and therefore, does not hold any water.

56. This Court has perused the relevant material placed on record. On the basis of the same, it is made out that the aforesaid rent agreement was not sham and bogus, rather the same was duly followed by the appellants and in consonance of the same, the appellants had made payment to the respondent for availing the suit premises as tenant.

57. On the validity of the rent agreement, even though the appellants have claimed that the validity of the same does not hold any significance, the corroborating evidence produced by the respondent clearly establishes that the parties shared a relationship of tenant and landlord.

58. This Court is of the view that unclear and ambiguous admissions cannot be taken into consideration in isolation without taking into account the objections of the appellants. Categorical and unconditional admissions are required for granting the relief under Order XII Rule 6 of the CPC.

59. The purpose of Order XII Rule 6 of the CPC is to avoid the pendency of a suit, when there is a clear, unequivocal, unambiguous and unconditional admission by the defendant in respect of the claim of the plaintiff and no such case is being inferred herein. With regard to the present case, it is observed that the appellants raised objections and the same have been rightly considered by the learned Court below.

60. Upon perusal of the contents of the written statement and the reply filed by the appellants, it is made out that there was clear, unambiguous and categorical admission on their part and the claims made with regard to sale of the suit property were mere an afterthought and the rent agreement was done in consonance with the agreement between the parties.

61. This Court is of the view that the learned Court below has rightly dealt with the application filed under Order XII Rule 6 of the CPC, and after taking into consideration the propositions put forth by the respondent, i.e., the plaintiff, this Court does not find any ground to exercise its appellate jurisdiction.

62. Therefore, the conclusion as arrived by the learned Court below on the basis of the admission made by the appellants in the written statement as well as the reply filed on the application filed under Order XII Rule 6 of the CPC does not warrant any interference from this Court.

63. In view of the same, this Court does not find any force in the arguments of the appellants and therefore, the impugned judgment dated 14th July, 2022 passed by the learned ADJ-05, South-West District, Dwarka Court, New Delhi in CS no. 260/2020 is hereby upheld.

64. Accordingly, the instant appeal stands dismissed.

65. Pending applications, if any, also stands dismissed.

66. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J
(JUDGE)

MAY 9, 2024
Rk/av/ryp