

**IN THE COURT OF SH. KISHOR KUMAR, DISTRICT
JUDGE-04, NORTH DISTRICT, ROHINI COURTS,
DELHI.**

CS No. 553/2023

CNR No: DLNT01-008533-2023

Sh Vijay Kumar Jain (senior citizen)

..... Plaintiff

VERSUS

Sh Manish Gupta

.....Defendant

Date of Institution of the case : 07.08.2023

Date of Order : 30.04.2024

ORDER/30.04.2024

1. Vide this order I shall dispose of the application under Order XII Rule 6 CPC, filed on behalf of the plaintiff.
2. The plaintiff has filed the present suit for possession, recovery of arrears of rent and for damages as well as electricity, PNG and other charges, damages and for permanent and mandatory injunction with respect to the property i.e. B-31, First Floor, CC Colony, Opposite Rana Pratap Bagh, Delhi 110007 (**hereinafter be referred to as the suit property**).

3. In nutshell for the present purpose, it is stated in the plaint that plaintiff is the owner of the suit property and defendant was inducted as tenant at a monthly rent of Rs.35,000/- excluding electricity, water, maintenance etc vide agreement registered on 24.11.2022 executed between the parties wherein it was agreed that in case defendant commits any breach of term of this agreement, the agreement automatically come to an end and defendant/tenant shall immediately vacate the suit property and security/deposit etc shall be forfeited.

4. In the written statement filed by the defendant, the defendant admitted that he is a tenant with respect to suit property. He also admitted the execution of rent and rate of rent. It is further contended that vide agreement dated 24.11.2022, the defendant had given a cheque bearing no. 662378 for Rs.70,000 as security to the plaintiff. However, in the said cheque name of the payee and date was not mentioned by the defendant on the pretext that plaintiff shall not encash the same and will return the same to the defendant after some time. Due to some quarrel between the parties, the plaintiff manipulated and forged the cheque and presented the same for its encashment which was bounced and thereafter, plaintiff filed the present suit as well as a case u/s 138 NI Act.

5. In view of the pleadings and admissions by the defendant side in the written statement, the plaintiff has moved present application under Order XII Rule 6 CPC wherein it is stated that defendant in his written statement clearly and unequivocally admitted the fact of landlord tenant relationship between the plaintiff and defendant, about letting out of suit property and execution of rent agreement. The plaintiff has prayed for passing a decree of possession on the basis of admissions made by defendant in the written statement.

6. In reply to the present application, it is stated by the defendant that he is residing at the suit property as lawful tenant vide registered lease agreement dated 24.11.2022 and has paid rent upto the month of July, 2023.

7. I have heard the learned counsels for the parties, and have carefully gone through the record.

8. At this stage, it would be fruitful to refer to Order XII Rule 6 of the Code of Civil Procedure which provides as under :-

“6. Judgment on admission. - (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 given 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.”

9. The main contention of the plaintiff is that defendant has admitted the landlord tenant relationship between him and the plaintiff and also admitted the registered rent agreement dated 01.12.2022 for a period of three years. It is contended that the defendant has breached Clause 30 of the rent agreement by not paying the rent for June and July, 2023 nor has placed any document on record for such payment. It is further the contention of plaintiff that lease stood determined due to breach in terms by the defendant.

10. The law relating to applicability of Order XII Rule 6 CPC is well settled that it is a discretionary relief and the Court has to exercise discretion in a judicious and circumspective manner. The Hon’ble Delhi High Court in **Joginder Singh Lakra Vs. BSES Rajdhani Power Ltd., in CRP 51/2023**, while referring to the judgment of the Hon’ble Supreme Court in **Hari Steel and General Industries Ltd. & Anr. Vs. Daljeet Singh & Ors., (2019)20 SCC 425**, held

“25. in the judgment in Himani Alloys Ltd. vs. Tata Steel Ltd., (2011) 15 SCC 273, nature and scope of Order XII Rule 6 CPC has been considered. In the aforesaid judgment this Court has held that the discretion under Order XII Rule 6 CPC is to be exercised judiciously,

keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of judgment read as under:

“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 XII Rule 6 CPC 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.”

11. Further in *Raj Kumar Chawla Vs. Lucas Indian Service*, (2006) 129 DLT 755, their Lordships held -

“it is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather a matter of discretion of a Court. Where a defendant raised a objection which will go very root of the case, it would not be appropriate to exercise this discretion. The use of the words ‘may’ and, ‘makes such orders’ or ‘give such judgment’ spells out that powers under these Rules are discretionary and use of discretion would have to be controlled in accordance with the non-judicial canons. The cases which involves questions to be decided upon the regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions.

12. Now adverting back to the facts of present case, plaintiff is relying on Clause 30 of rent agreement submitting that defendant has breached the terms of said clause of rent agreement by not paying rent for June and July 2023. Clause 30 of the rent agreement provides that “if second party commits any breach of any terms of this agreement or misuses the premises, the agreement shall come to an end.....”. The plaintiff has mentioned about non payment of rent for June and July 2023 as breach of terms of agreement.

13. After perusal of written statement filed on behalf of defendant, it is found that there is no such admission on the part of defendant. Further, in the written statement, it is the contention of defendant that he has duly paid the rent of the rented premises up to the month of July, 2023 whereas plaintiff has wrongly claimed the rent for June and July 2023. In these circumstances, it cannot be said that there is clear and unambiguous admission on the part of defendant regarding breach of terms of Clause 30 of rent agreement as alleged by the plaintiff, which is a conscious and deliberate act of the defendant and the objection raised by the defendant would go to the very root of the case.

14. It is pertinent to mention here that the plaintiff would get sufficient opportunity to adduce relevant evidence in support of his claim and would also get opportunity to cross examine the witnesses to be produced on behalf of the defendant on all material aspects including the contentions raised by way of present application. Thus, looking into the plea raised on behalf of the plaintiff and the reply thereof by the defendant, it cannot be considered as admission on the part of defendant and controversy in question requires trial by way of cogent evidence.

15. In view of my above discussion, the present application under Order XII Rule 6 CPC, filed on behalf of the plaintiff is hereby dismissed.

Announced in Open Court

On Dated 30.04.2024.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/30.04.2024