HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE FOURTEENTH DAY OF JUNE

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

CIVIL REVISION PETITION NO: 3316 OF 2019

Between:

1. MUSUNURU APPARAO S/o. Late Narayanappa,
   Aged about 80 years, Plot No. MIG-24 86 25,
   North Extension Layout, Seethammadhara, Visakhapatnam.
   Now residing at Flat No.602, Balaji Dolphin Heights,
   North Extension Layout, Seethammadhara, Visakhapatnam.

...PETITIONER(S)

AND:

1. USHODAYA ENTERPRISES PRIVATE LIMITED COMPANY
   Incorporated under the Indian Companies Act, 1956. Rep.by its Managing Director Sri Ch.Kiron, S/o. Ch.Ramoji Rao,
   Aged about 48 years, having its registered office at D.No.6-3-659/3,
   Eenadu Complex, Soajuguda, Hyderabad and its Branch Office
   At D.No.40-1-88/A, Pataata Lanka, Vijayawada.
2. Sri Valluru Venkata Ramakrishna, S/o. Late Venkateswara Rao, Aged about 51 years, D.No.40-24-17/2, Patamata Lanka, Vijayawada.

...RESPONDENTS

Counsel for the Petitioner(s): V V RAVI PRASAD

Counsel for the Respondents: M R K CHAKRAVARTHY

The Court made the following: ORDER

2023:APHC:18726

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+ CIVIL REVISION PETITION No.3316 of 2019

Between:

Musunuru Appa Rao, S/o Late Narayanappa

... Petitioner

And

$ Ushodaya Enterprises Private Limited Company
Incorporated under the Indian Companies Act, 1956
Rep. by its Managing Director Sri Ch.Kiron,
S/o. Ch. Ramoji Rao and another.

.... Respondents

JUDGMENT PRONOUNCED ON **14.06.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes –

DR.JUSTICE K. MANMADHA RAO

2023:APHC:18726

* **THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

+ CIVIL REVISION PETITION No.3316 of 2019

% 14.06.2023

Musunuru Appa Rao, S/o Late Narayanappa

... Petitioner

And

$ Ushodaya Enterprises Private Limited Company
Incorporated under the Indian Companies Act, 1956
Rep. by its Managing Director Sri Ch.Kiron,
S/o. Ch. Ramoji Rao and another.

.... Respondents

! **Counsel for the Petitioner** : Sri O. Manohar Reddy

^Counsel for Respondent: Sri M.V.V. Durga Prasad
Sri M.R.K. Chakravarthy

<Gist :

>Head Note:

? Cases referred:

1. (2012) 11 Supreme Court Cases 405
2. (2015) 8 Supreme Court Cases 428
3. (2010) 4 Supreme Court Cases 753
4. 2021 SCC OnLine Del 2785
5. (2010) 6 Supreme Court Cases 601
6. (2021) 1 Supreme Court Cases 414

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION No.3316 of 2019

ORDER:

This Civil Revision Petition is preferred against order, dated 30.09.2019 passed in I.A.No.724 of 2018 in O.S.No.409 of 2015 on the file of VII Additional District & Sessions Judge, Vijayawada (for short "the Court below").

2. Heard Sri O. Manohar Reddy, learned counsel appearing for the petitioner and Sri M.V.V.Durga Prasad, learned Senior Counsel representing Sri M.R.K. Chankravarthy, learned counsel appearing for the respondents.

3. Originally the suit in O.S.No.409 of 2015 was filed by the petitioner/plaintiff against the 1st respondent for grant of eviction from the suit schedule property and for damages. The present impugned I.A. No.724 of 2018 was filed by the petitioner/plaintiff under Order 12 Rule 6 CPC seeking to pass decree and judgment in favour of the petitioner granting relief of eviction of 1st respondent, who is the 1st defendant from the suit schedule

property. The 1st respondent was inducted under unregistered lease deed dated 1.5.1975 executed by the petitioner herein in favour of the 1st respondent mentioning the period of lease as 33 years. It is further stated that under the Law, the tenancy was from year to year, hence, the same was terminatable by giving six months notice expiring with the end of year of tenancy in the terms of Section 106 of Transfer of Property Act (for short "the T.P.Act"). It is also stated that in terms of mandate of Section 106 of T.P. Act, the petitioner got a legal notice which was issued on 24.4.2008 to 1st respondent calling upon it to vacate the schedule property. Even though received notice, the 1st respondent did not vacate and continue to hold the property in its possession illegally. It is stated that after waiting for long time after termination of tenancy the petitioner filed a suit on 1.10.2015 thus the petitioner complied with mandatory requirements of Section 106 of T.P. Act before he filed suit. The 1st respondent admitted in his written statement about receipt of legal notice dated 24.4.2008 sent by the petitioner in compliance of Section 106 of T.P. Act terminating the tenancy by giving six months' notice and 1st respondent did not dispute the validity of notice under Section 106 of T.P. Act on any ground.

4. Learned counsel for the petitioner mainly submits that the petitioner/plaintiff and the 2nd defendant are owners of the land admeasuring an extent of Ac 0.92 cents and Ac 1.47 cents in

NTS/142, Block No.6, Ward No.2, Patamatalanka, Vijayawada. Both the plots are distinct and separate in their identity and contiguous. The petitioner/plaintiff and 2nd defendant have executed an unregistered sale deed in favour of the 1st defendant/1st respondent for a period of 33 years and rent fixed was at Rs.725/-. He further submits that the 1st defendant got issued notices to the petitioner/plaintiff and 2nd defendant exercising its option to extend the lease under clause No.13 of the aforesaid unregistered lease agreement dated 1.5.1975 for a further period of 33 years. He further submits that both the petitioner and 2nd defendant gave reply notice repudiated the said option of lease exercised by the 1st defendant by repudiating and refusing to accept the proposal of the 1st defendant for extension of lease, terminated its tenancy and directed to vacate the suit schedule property by giving six months' notice. The period expired by October 2008. Learned counsel further contended that the trial Court ought to have seen that there should be controversial issues between the parties to the suit for the court to take up trial and in the absence of the same, the court can dispense with trial and ought to have decreed the suit and the trial Court ought to have seen that the earlier suit filed by the 1st defendant claiming specific performance on the basis of reneweal clause in the unregistered lease deed was dismissed and the petitioner cannot seek protection

under Section 53 A of the T.P Act. Hence, the revision petition is filed.

5. In support of his contention, learned counsel for the petitioner has relied upon a catena of decisions reported in :

(1). **Payal vision Limited Versus Radhika Choudhary**[1], wherein the Hon'ble Supreme Court held that:

> In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the CPC, which reads as under:
>
> "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 upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."
>
> 7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission.
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> In reply, the defendant has not denied the service of a notice upon the defendant. Instead para 6 is entirely dedicated to the defendant's claim that the whole structure standing on the site today has been

[1] (2012) 11 Supreme Court Cases 405

constructed by her out of her own money. The defendant has not chosen to deny even impliedly leave alone specifically that notice dated 17th March 2003 was not served upon her. In para 6 of the preliminary objections raised in the written statement she has simply disputed the validity of the notice on the ground that that the same is not in accordance with Section 106 of the Transfer of Property Act. Para 6, reads as under:

"That the alleged notice dated 17th March, 2003 is not as per the provisions of Section 106 of Transfer of Property Act. It is settled law that notice for termination of lease has to be in mandatory terms so specified in Section 106 of Transfer of Property Act."

In the light of the above, the trial Court was, in our view, perfectly justified in decreeing the suit for possession filed by the appellant by invoking its powers under Order XII Rule 6 of the Code of Civil Procedure. Inasmuch as the High Court took a different view ignoring the pleadings and the effect thereof, it committed a mistake.

(2). In **Raveesh Chand Jain versus Raj Rani Jain**[2] , wherein the Apex court held that :

We have heard learned counsel for the parties. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, assailed the order passed by the High Court manly on the ground that the High Court exceeded its jurisdiction under Section 115 of the Code of Civil Procedure. According to the learned senior counsel there is categorical denial that the appellant's possession in the suit property is not that of a trespasser but on the basis of his own right. Learned senior counsel submitted that for passing a judgment under Order XII Rule 6 CPC there must be unequivocal admission by the defendant in the pleading. According to the learned counsel judgment should not have been passed by applying the principles of res judicata inasmuch as the issue of res judicata does not arise in a case of judgment passed under Order XII Rule 6, CPC.

Indisputably, the plaintiff/respondent filed the suit for following relief:-

i) A decree for possession of the suit property;

ii) A decree for recovery of Rs.5,55,000/- and future damages @ Rs.15,000/- per month against the defendant.

[2] (2015) 8 Supreme Court cases 428

(3). **Karam Kapahi and others Versus Lal chand Public Charitable Trust and another**[3], wherein the Hon'ble Apex Court held that ;

> The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about `which there is no controversy' [See the dictum of Lord Jessel, the Master of Rolls, in Thorp versus Holdsworth in (1876) 3 Chancery Division 637 at 640]. In this connection, it may be noted that order 12 Rule 6 was amended by the Amendment Act of 1976.
>
> Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of Madhya Pradesh High Court in the case of Shikharchand and others Vs. Mst. Bari Bai and others reported in AIR 1974 Madhya Pradesh
>
> 75. Justice G.P. Singh (as His Lordship then was) in a concurring judgment explained the aforesaid rule, if we may say so, very authoritatively at page 79 of the report. His Lordship held:-
>
> "... I will only add a few words of my own. Rule 6 of Order 12 of the Code of civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now rule 3 of Order 27, and is almost identically worded (see Annual Practice 1965 edition Part I. p. 569). The Supreme Court Rule came up for consideration in Ellis v. Allen (1914) Ch 904. In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting.
>
> Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word `pleading' under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word `pleading' has been suffixed by the expression `or otherwise'. Therefore, a wider interpretation of the word `pleading' is warranted in understanding the implication of this rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing judgment on admission under Order 12 Rule 6 in view of clear words `pleading or otherwise' used therein especially when that petition was in the suit filed by the Trust.
>
> 59. However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word "may" has been used.

[3] (2010) 4 Supreme Court Cases 753

60. But in the given situation, as in the instant case, the said provision can be applied in rendering the judgment.

From the pleadings between the parties in this case the following things are admitted:

(a) the Club has admitted in its written statement that the Trust is its Lessor;
(b) the Club has also admitted that it has not paid the lease rent;
(c) the Club has also admitted that the lease rent is more than Rs.3500/- per month in its reply to the Trust's petition under Order 12 Rule 6;
(d) the Club has also admitted the receipt of notice of termination of lease issued by the Trust on the ground of non-payment of lease rent.
72. The Suit filed by the Club questioning the title of the Trust as its Lessor has been dismissed and nothing has been shown to this Court that it has been restored as on date. Such a plea is prima facie not acceptable in view of the provisions under Section 116 of the Evidence Act. However, in support of its case that the Club is not estopped under Section 116 of the Evidence Act to challenge the title of the lessor, learned Counsel for the Club relied on a judgment of this Court in D. Satyanarayana Vs. P. Jagadish - (1987) 4 SCC 424. The principle laid down in that decision is not attracted in the facts of this case.

(4). In **Ashok Kumar Bagga Versus Rajvinder Kaur**[4], wherein the Hon'ble Apex Court held that :

Facts of the present case are in a narrow compass and are encapsulated as follows:

a. Respondent filed a suit against the Appellant for possession, recovery of arrears of rent and mesne profits qua the suit property being shop No. 4, Ground Floor, J-5/121, Rajouri Garden, New Delhi-110027 (hereinafter referred to as suit property).

b. ....x x x

xxx

xx

xxxx

On the basis of the alleged admissions by the Appellant, Respondent filed an Application under Order XII Rule 6 CPC, praying for a decree of possession, arrears of rent and mesne profits.

[4] 2021 SCC OnLine Del 2785

Assailing the judgment and decree of the learned Trial Court, learned counsel for the Petitioner argued that there were no clear, unequivocal and unambiguous admissions on part of the Appellant and therefore the Trial Court erred in partially decreeing the suit on an application under Order XII Rule 6 CPC. Mere admitting the factual position does not attract the provisions of Order XII Rule 6 CPC. It is contended that the Appellant had disputed the termination of tenancy and had averred that the Respondent had orally extended the lease by accepting the enhanced rent beyond the alleged expiry of the lease period under the Lease Agreement dated 12.10.2015. Having accepted the enhanced rent, Respondent was disentitled to a decree of possession on the basis of alleged admissions. To support this contention, learned Counsel has relied upon the decisions of Supreme Court in Jeevan Diesel & Electricals Ltd. vs. Jasbir Singh Chahdha, AIR 2010 SC 1890; Payal Vision Ltd. vs. Radhika Chaudhary, (2012) 11 SCC 405 and Hari Steel and General Industries & Anr. vs. Daljit Singh & Ors., 2019 (3) CLJ 472 (S.C.).

Learned counsel for Respondent further supports the impugned judgment of the learned Trial Court by relying upon para 7 of Payal Vision Limited (supra) and judgment of Co-ordinate bench of this Court in CRP No. 175/2019 titled as Geeta Devi vs. Mohd. Raza & Anr., decided on 14.11.2019, wherein the Courts have clearly held that in a suit for possession/ejectment a Plaintiff is required to establish: (a) relationship of landlord-tenant; (b) tenancy not protected under Delhi Rent Control Act, 1958 and (c) tenancy has been terminated.

The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in Jeevan Diesels & Electricals Ltd. (supra) relied upon by the High Court where this Court has observed:
"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. The 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 (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation."
15. In the present case, the Appellant in his written statement filed in the present suit as well as in the suit filed in the earlier round of

litigation has admitted the landlord-tenant relationship between the parties. It was also admitted that the Lease Agreement dated 12.10.2015 executed between the parties was registered. The rate of rent is also admitted, which is clearly more than Rs. 3,500/- and thus the Appellant is not covered by the protection of the Delhi Rent Control Act, 1958. The tenancy according to the Respondent came to an end on expiry of two years under the Agreement dated 10.10.2017, by efflux of time.

In view of the above conspectus of law, the question that arises is whether the admissions by the Appellant were unequivocal and unambiguous to entitle the Respondent to a partial decree on admission. This question would have to be answered in the background of the judgment of the Supreme Court in Jeevan Diesel (supra) where the Court has laid down the parameters of admission required in a suit for possession/ejectment by a landlord against the tenant. As noted aforesaid, the Appellant has admitted the relationship of landlord-tenant between the parties as also the rate of rent of the suit property, which is more than Rs. 3,500/- per month, so as to take the suit property outside the ambit of the Delhi Rent Control Act, 1958. The Lease Agreement executed on 12.10.2015 as well as the subsequent two Lease Agreements are also admitted by the Appellant. The only issue therefore that remains to be seen is regarding the termination of the lease. While as per the Respondent the lease got terminated by efflux of time on 10.10.2017, as per the Appellant there was an oral agreement between the parties extending the lease for two years beyond 10.10.2017. Appellant supports this contention by the fact that the cheques were tendered towards the rent, post this date and were accepted by the Respondent. In my view the plea of the Appellant on this Court deserves to be rejected. The Agreement dated 12.10.2015 admittedly contains Clause 27(A) which required that extension of the lease would be by a mutual agreement and that too in writing and signed by the parties. Appellant has not placed on record any agreement in writing signed by the parties extending the lease beyond 10.10.2017 as the entire case of the Appellant was that it was an oral agreement. Secondly, the Respondent vide her reply dated 09.10.2017 to the notice of the Appellant dated 26.09.2017, requesting for extension, clearly declined the request and had called upon the Appellant to vacate the suit property by 10.10.2017. Therefore, the plea of oral agreement set up by the Appellant, overriding the Clauses of the Registered Lease Agreements and the notices sent by the Respondent and duly received by the Appellant is not tenable. In any event, the Respondent had sent a legal notice terminating the tenancy under Section 106 of the Transfer of Property Act, 1882 which was admittedly served on the Appellant and thus the termination in accordance with law, is also admitted.

20. Section 106 of the Transfer of Property Act, 1882 reads as follows:-

"Section 106. Duration of certain leases in absence of written contract or local usage:-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.
(2) Notwithstanding anything contained in any other law for the time being in force, the period of mentioned in sub- section (1) shall commence from the date of receipt of notice.
(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of the period mentioned in that sub-section.

I may also note here that while in this case, receipt of the termination notice is admitted, but even otherwise the law as laid by the Supreme Court is that mere filing of a suit is itself a notice on the tenant to quit.

In my view, there is a clear admission by the Appellant on all the four aspects required to be established by a Plaintiff/landlord in a suit for possession/ejectment and there is no error in the order of the Trial Court, partially decreeing the suit, by passing a judgment on admissions under Order XII Rule 6 CPC.

1. In Union of India v. K.C. Sharma (supra), the land in question belonged to Gaon Sabha, which was acquired by the Government under the Land Acquisition Act and an award had been published under Section 6 of the said Act. In the proceedings relating to the Award, Respondents claimed compensation on the ground that the land was given to them on lease by Gaon Sabha and on this count they had invested huge sums of money, making the land fit for cultivation and continued in possession for over 30 years. In proceedings under Sections 30 & 31 of the Act, the Civil Court passed a decree declaring them entitled for compensation. Some other parties in the village subsequently filed a suit seeking declaration that the decree had been obtained by fraud. The said suit was decreed and in appeal, the High Court held that the revenue records supported the plea of the Respondent who had succeeded in getting a judgment in their favour for compensation. This order was challenged in appeal and the Supreme Court, in that context observed that defence under Section 53-A of the Transfer of Property Act, 1882 is available to a person who has agreement of lease in his favour, though no lease had been executed and registered. In the present case, the benefit of Section 53-A is not available to the Appellant inasmuch as in the present case the tenancy has come to an end by efflux of time and the Lease Agreement between the parties clearly stipulated that any renewal of the lease will be by a mutual agreement of the parties, duly evidenced by writing and signatures of the parties. It is also admitted by the Appellant that the initial agreements were executed in writing and duly registered.
2. I may reiterate that in Payal Vision (supra) Supreme Court held that Order XII Rule 6 CPC sufficiently empowers the Court trying the suit

> to deliver judgment based on admissions, whenever such admissions are sufficient for grant of relief prayed for. In a suit for recovery of possession from a tenant, whose tenancy is not protected under the provisions of Delhi Rent Control Act, 1958 all that is required to be established by the Plaintiff/landlord is the existence of jural relationship of landlord and tenant between the parties and the termination of tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act, 1882. So long as these two aspects are not in dispute, Court can pass a decree in terms of Order XII Rule 6 CPC.

6. Learned counsel for the petitioner while relying upon the citations referred to above, submits that, the above citations are directly applicable to the present facts of the case, but however, the trial Court erred in dismissing the application and also erred in law in holding that the judgments relied upon by the counsel for the petitioner are not helpful to the facts of the case of the petitioner and no reasons have been given for such a finding. Therefore, learned counsel request this Court to pass appropriate orders by setting aside the impugned order.

7. *Per contra*, learned counsel appearing for the respondents while denying all the allegations made by the learned counsel for the petitioner, contended that the petitioner was Managing Director at the time of entering into lease deed on 1.5.1975 and he acted on behalf of the 1st respondent company also in the transaction and he is in fiduciary capacity in relation to the 1st respondent in respect of said transaction. He further contended that the petitioner knew the requirement of long lease for proposed industry

convinced the company to accept lease in view of the renewal clause and petitioner is responsible for not registering lease deed and the 1st respondent is in possession of the property in part performance of agreement and he is entitled to protection under Section 53A of T.P Act. He further contended that the legal notice dated 24.4.2008 is illegal and untenable to say that the petitioner complied with mandatory requirements under Section 106 of T.P.Act. He further contended that the contentions of the petitioner are not at all maintainable and that the conduct of the petitioner operates as estoppel against the respondent and the effect of the automatic extension clause and other pleas constitute core of the defence and those issues can be decided only after full-fledged trial in the suit. Hence prayed to dismiss the petition, as there are no merits in the petition.

8. This Court, vide order, dated 16.03.2020, granted stay of all further proceedings in O.S.No.409 of 2015 on the file of VII Additional District Judge, Vijayawada for a period of eight weeks and the same is extended from time to time.

9. Learned counsel for the respondents has also relied upon a catena decision of Hon'ble Supreme Court reported in :

(1). **Jeevan Diesels and Electricals Limited Versus Jasbir Singh Chadha (HUF) and another**[5], wherein the Hon'ble Apex Court held that :

> In the written statement, which was filed by the appellant, para 5 and 6 of the plaint have been dealt with in Paras 5 and 6 of the written statement respectively. Those two paragraphs are set out below:
>
> "5. That the contents of Para 5 of the plaint are a matter of record. It is submitted that tenancy has neither expired by efflux of time nor has it been terminated.
>
> 6. That in reply to the contents of Para 6 of the plaint, it is submitted that the defendant is in possession of the premises. There has been no determination of tenancy."
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> In Uttam Singh Duggal & Co. Ltd. V. United Bank of India 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 the 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 respondents-plaintiffs under Order 12 Rule 6.
>
> It may be noted here that in this case parties have confined their case of admission to their pleadings only. The learned counsel for the respondent-plaintiff fairly stated before this Court that he is not invoking the case of admission "otherwise than on pleading". That being the position this Court finds that in the pleadings of the appellant there is no clear admission of the case of respondent-plaintiffs.
>
> For the reasons discussion above and in view of the facts of this case this Court cannot uphold the judgment of the High Court as well as of the Additional District Judge. Bot the judgments of the High Court and of the Additional District Judge are set aside. The matter is remanded to the trial Court for expeditious disposal of the suit as early as possible, preferably within a period of six months from the date of service of this order on the learned trial Court. It is made clear that this Court has not made any observation on the merits of the case.

[5] (2010) 6 Supreme Court Cases 601

(2). **Satish Chander Ahuja Versus Sneha Ahuja**[6], wherein the Hon'ble Apex Court held that :

> Both the issues being inter-connected are being taken together.
>
> 86. The question which is posed for the consideration is, whether the learned Trial Court was justified in passing the decree on alleged admission under Order XII Rule 6 of the CPC or not. What is required to be considered is what constitutes the admission warranting the judgment on admission in exercise of powers under Order XII Rule 6, CPC. This Court had occasion to consider above in decisions; Himani Alloys Limited Vs. Tata Steel Limited, (2011) 15 SCC 273 and S.M. Asif Vs. Virender Kumar Bajaj, (2015) 9 SCC 287.
>
> As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in Civil Courts also. In the present suit, it was defence of the defendant that the house being the shared household, she is entitled to reside in the house as per Section 17(1) of Act, 2005.
>
> In view of the ratio laid down by this court in the above case, the claim of the defendant that suit property is shared household and she has right to reside in the house ought to have been considered by the Trial Court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by Act, 2005.
>
> The power under Order XII Rule 6 is discretionary and cannot be claimed as a matter of right. In the facts of the present case, the Trial Court ought not to have given judgment under Order XII Rule 6 on the admission of the defendant as contained in her application filed under Section 12 of the D.V. Act. Thus, there are more than one reason for not approving the course of action adopted by Trial Court in passing the judgment under Order XII Rule 6. We, thus, concur with the view of the High Court that the judgment and decree of the Trial Court given under Order XII rule 6 is unsustainable.

10. In view of the above discussion, this Court observed that, admittedly, the father of the 2nd defendant way back in the year 1984 filed suit in OS No.427 of 1984 before the II Additional Senior civil Judge, Vijayawada for eviction of 1st defendant from the

[6] (2021) 1 Supreme Court cases 414

suit schedule property, showing the plaintiff as 2nd defendant therein. In the said suit the so called lease agreement which was the fulcrum on which the suit in O.S.No. 667 of 2008 was filed and held to be unenforceable for want of registration as per the decree and judgment in OS No.427 of 1984 dated 29.01.2008. however, the II Additional Senior Civil Judge, erroneously by sheer wrong application of Section 53-A of TP Act held that the 1st defendant was entitled to continue in possession of the suit schedule property herein and negative the relief of eviction. Insofar as lease agreement dated 1.5.1975 is concerned,

11. This Court further observed that, the 1st defendant/1st respondent herein has been in possession in part performance of the Lease Agreement and has been paying the rents regularly. Clause (13) of the Lease Agreement provided for extension of lease at the option of the lessee and accordingly the defendant exercised the option by sending letter dated 24.3.2008 to the petitioner and 2nd defendant respectively. It is settled law that even dismissal of suit for specific performance does not affect the right of part performance under Section 53-A of the T.P. Act.

12. On perusing the entire material available on record and the decisions relied upon by the learned counsel for the petitioner, this Court is of the view that the decisions are not helpful to the case of the petitioner. This Court observed that the 1st respondent

has denied several contentions made by the petitioner/plaintiff and also made several positive contentions. Therefore, this Court is of the opinion that unless the full fledged trial is conducted it is not possible to decide the merits of the suit.

13. In view of the foregoing discussion, this Court is of the view that the trial Court has rightly concluded and dismissed the petition, for which, warrants no interference by this Court. Hence, the present revision petition is liable to be dismissed.

14. Accordingly, the Civil Revision Petition is dismissed. Further, since the suit pertains to the year 2015, the trail Court is directed to dispose of the same as expeditiously as possible, preferably, within three (03) months from the date of receipt of a copy of this order. There shall be no order as to costs.

15. It is made clear that the interim order granted by this Court is hereby vacated.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 14 . 06.2023.

Note : L. R Copy to be marked.

(b/o)Gvl

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THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

C.R.P.No.3316 of 2019

Date: 14.06.2023.

Gvl