KARAN KAPOOR

v.

MADHURI KUMAR

(Civil Appeal No. 4645 of 2022)

JULY 06, 2022

[INDIRA BANERJEE AND J. K. MAHESHWARI, JJ.]

Code of Civil Procedure, 1908 – Or.12, r.6 – Judgment on Admission – Appellant was a tenant in the residential property owned by respondent – Respondent-landlord entered into lease agreement with appellant from 07.08.2011 to 07.08.2013 – Thereafter, lease deed was extended for subsequent term of 11 months on 07.08.2013 –Appellant did not pay rent after expiry of lease agreement on 07.07.2014 – Legal notice by respondent to appellant to vacate the property –Respondent-plaintiff filed suit for recovery of possession, rent, mesne profit, pendent lite *and interest –Appellant-defendant filed written statement contending that after expiry of lease agreement dated 07.08.2013, respondent had approached him to sell suit property, in furtherance of which agreement to sell (ATS-I) was executed between the parties for Rs.3.60 crores and the rent accrued for the year 2014-2017 be adjusted in the said ATS-I – Also, another agreement to sell (ATS-II) was entered for a plot situated at Amloh for Rs. 15 lakhs –Respondent-plaintiff filed application u/Or.12, r.6 –Trial Court relying upon the admission made in the written statement, passed judgment and decree u/Or.12, r.6 for delivery of possession in favour of respondent – High Court dismissed the Regular First Appeal – On appeal, held: In view of the contents of the agreements and terms specified therein, the defense as taken by the appellant/defendant is plausible or not is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties –There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked into by the Court and there is need to decide justiciability of defense by full-fledged trial – For the purpose of Or.12, r.6, the said admission is not clear and categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by the defendant –Therefore, judgment and decree passed by the trial Court as confirmed by the High Court is set aside.*

A **Allowing the appeal, the Court**

HELD: 1. As per the pleadings, there may be admission to the extent of execution of the Lease Agreement, rate of rent and monthly payment but simultaneously the defense taken by the Defendant is also based on ATS-I, II and III. In view of the
B **contents of those agreements and terms specified therein, the defense as taken by the Appellant/Defendant is plausible or not is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked**
C **into by the Court and there is need to decide justiciability of defense by the full-fledged trial. In view of this Court, for the purpose of Order XII Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by Defendant. As this court is**
D **conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defense as taken by the Defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under Order XII Rule 6 of CPC is based on clear and categorical admission.**
E **In view of this Court, the facts of the case in hand and the judgment in *S.M. Asif* are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case. Consequently, the judgment and decree passed by the Trial Court, as confirmed by the High Court, only on admission of fact**
F **without considering the defense in exercise of power under Order XII Rule 6 of CPC is hereby set-aside. The matter is remitted back to the Trial Court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the Court on merit. [Para 22][691-A-F]**

G *Shrimant Rao Suryavanshi v. Prahlad Bhairoba Suryavanshi* **(2002) 3 SCC 676 : [2002] 1SCR 393;** *Hari Steel and General Industries Limited and Another v. Daljit Singhand Others* **(2019) 20 SCC 425;** *Himani Alloys Ltd. v. Tata Steel Ltd* **(2011) 15 SCC 273 : [2011]**

H

7 SCR 60; R. *Kanthimathi v. Beatrice Xavier* **(2000) 9 SCC 339;** *Nagindas Ramdas v. Dalptram Iccharam* **(1974) 1 SCC 242 : [1974] 2 SCR 544;** *S.M. Asif v. Virendar Kumar Bajaj* – **(2015) 9 SCC 287 : [2015] 9 SCR 179 – referred to.**

Case Law Reference

[2002] 1 SCR 393	**referred to**	**Para 12**
(2019) 20 SCC 425	**referred to**	**Para 13**
[2011] 7 SCR 60	**referred to**	**Para 13**
[2000] 9 SCC 339	**referred to**	**Para 13**
[1974] 2 SCR 544	**referred to**	**Para 14**
[2015] 9 SCR 179	**referred to**	**Para 18**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4645 of 2022.

From the Judgment and Order dated 08.04.2021 of the High Court of Delhi at New Delhi in RFA No. 218/2021.

Tanmaya Mehta, Ms. Rupali Sharma, Lalit Valecha, Rahul Malik, Advs. for the Appellant.

Ms. Meenakshi Arora, Sr. Adv., Ms. Mallika Joshi, Vaibhav Joshi, Advs. for the Respondent.

The Judgment of the Court was delivered by

J. K. MAHESHWARI, J.

Leave granted.

2. This appeal arises out of the Judgment dated 08.04.2021, passed by the High Court of Delhi in Regular First Appeal No.218 of 2021 (hereinafter referred as 'RFA No.218 of 2021') preferred by the Appellant, whereby the said RFA was dismissed and the High Court thereby upheld the Order dated 01.12.2020 passed in Civil Suit No.867 of 2018 and Review Order dated 17.02.2021 in Civil Suit No.867 of 2018 passed by ADJ-O7, Saket Court, (South East), New Delhi.

3. The brief facts of the matter are that Appellant was a tenant in the Residential Property owned by Respondent bearing No. B-228,

Ground Floor, Greater Kailash-1, New Delhi-110048, including the built-up area in the stilt portion of the building (hereinafter referred as the 'Suit Property'), which comprises of drawing room, dining room, a foyer, four bedrooms with attached bathrooms, kitchen, lounge, service area and a servant quarter with common bathroom and parking for two cars. The Respondent-Landlord entered into a Lease Agreement dated 07.08.2011 with proprietorship concern of the Appellant, namely M/s. Fantasy Lights, at monthly rent of Rs.1,17,000/- for a period of 24 months starting from 07.08.2011 till 07.08.2013 and interest free security deposit of Rs.3,51,000/- (Three Lakhs Fifty – One Thousand Only) was paid by the Appellant at the time of the execution of the Lease Agreement. After the expiry of the Lease Agreement, an extended Lease Agreement for subsequent term of 11 months was executed on 07.08.2013 at the rate of Rent of Rs.1,50,000/- per month which was to expire on 06.07.2014. The Security Deposit paid earlier was retained as Interest Free Security Deposit towards Lease Agreement dated 07.08.2013 as well.

4. The Appellant tenant did not pay any rent after the expiry of the extended Lease Agreement dated 06.07.2014 with effect from 07.07.2014 and continued in occupation of the Suit Property. A Legal Notice dated 12.04.2018 was served by the Respondent landlord upon the Appellant calling him to vacate the Suit Property. However, even thereafter, neither the Suit Property was vacated, nor the rent was paid which led the Respondent/Plaintiff to file Civil Suit No.867 of 2018 for recovery of possession, arrears of rent, mesne profit, Pendent Lite, and interest before ADJ-O7, Saket Court, (South East), New Delhi. The Appellant/Defendant filed a Written Statement contending that after the expiry of the Lease Agreement dated 07.08.2013, the Respondent/ Plaintiff had approached to him and made the offer to sell the right, title and interest in the Suit Property, in furtherance of which Agreement to Sell dated 22.04.2017 (herein after referred as 'ATS-I') was executed between the parties for a sum of Rs.3,60,00,000/- (Three Crores and Sixty Lakhs Only) and it was allegedly agreed that the rent accrued for the year 2014-2017 be adjusted into the said Agreement to Sell. Appellant also contended that in addition to the execution of ATS-I, he also agreed to transfer its right, title and interest of a plot of land situated at Amloh in favor of Respondent for a consideration of Rs.15 Lakhs through Agreement to Sell ('ATS-II') which would partially satisfy the obligations of sale consideration of ATS-I. Further, it was averred in the Written

Statement that certain adjustments were made to the consideration payable for the subject property consequent to a new Agreement to Sell ('ATS-III') was executed.

5. In view of the averments made in Written Statement filed by the Appellant/Defendant in Civil Suit No.867 of 2018, the Respondent/Plaintiff filed an Application under Order XII Rule 6 and another application under Order XXXIX Rule 10 of the Code of Civil Procedure (in short 'CPC') with a prayer to pass a judgment on admission of facts made in Written Statement and to draw a decree accordingly.

6. The contention of the Respondent/Plaintiff before the Trial Court was that looking to the admissions made with respect to the Landlord-Tenant relationship, rate of rent and the defense taken by the Appellant/Defendant in Written Statement is sham, as no consideration was exchanged. While on the other side, the Appellant/Defendant contended that the Respondent/Plaintiff has concealed the material facts regarding existence of ATS-I, II and III, though the two Lease Agreement dated 07.08.2011 and dated 07.08.2013 were not denied. It was said only on the expiry of the term of the extended Lease Agreement, the Respondent/Plaintiff approached the Appellant/Defendant and offered to sell the Suit Property. Further it was contended that, no demand to the accrued rent was made as it was agreed between the parties that the amount of rent shall be adjusted in ATS. In furtherance of which ATS-I dated 22.04.2017 was executed by the Respondent/Plaintiff in favor of Appellant/Defendant with respect to Suit Property where Appellant agreed to pay Rs.3,60,00,000/- as consideration. It was also contended by the Appellant/Defendant before the Trial Court that earlier Rs.4.7 Cr. was agreed towards consideration, however, after the payment of enormous earnest money to the Respondent before signing ATS-I, the consideration was reduced to Rs.3.6 Cr. Subsequently, Second Agreement to Sell dated 22.05.2017 was signed to transfer Appellant's rights, title and interest in the property situated in Amloh to representatives of Respondent for a sum of Rs.15,00,000/- (Fifteen Lakhs Only) which was to be adjusted towards the consideration of Rs.3.6 Cr. payable to the Respondent. Further, Third Agreement to Sell dated 30.12.2017 was executed between the parties consequent to the aforesaid adjustments. The Appellant/Defendant also argued before the Trial Court to have approached the Allahabad Bank for loan amounting to Rs.1.7 Cr. to purchase the Suit Property, but the Respondent/Plaintiff refused to

A execute the subject Sale Deed. Lastly, it was submitted that there is no clear and categorical admission from his side and the Written Statement filed by him and the suit has to be read as a whole and not in isolation. Moreover, the present Suit involves adjudication of facts and serious questions of law which is possible only after leading oral evidence and on appreciating it, therefore, no decree under Order XII Rule 6 can be
B passed on the pleadings of the parties.

7. The Trial Court perused the material on record and in Para 17 of the order dated 01.12.2020 recorded that there are certain undisputed facts. Those are: (a) The Plaintiff being absolute owner of the suit property is not disputed; (b) The identity of the suit property is not disputed;
C (c) Execution of the Lease Agreement dated 07.08.2011 between the Plaintiff and M/s Fantasy Lights @ Rs.1,17,000/- per month for the period of two years is not disputed; (d) Interests free security deposit of Rs.3,50,000/- paid by the Defendant to Plaintiff is not disputed; (e) The execution of Lease Agreement dated 07.08.2013 between the Plaintiff
D and Defendant for 11 months @ Rs.1,50,000/- per month is also not disputed; (f) It is not disputed that no rent has been paid since July 2014 though certain defenses have been taken with respect to payment of the said rent; (g) The issuance and receipt of the legal notice dated 12.04.2018 calling upon the Defendant to hand over the possession is also not disputed.

E

8. Apart from dealing with the aforementioned admissions, the Trial Court also dealt with each defense taken by the Appellant in the written statement and observed: (i) Appellant/Respondent did not mention any amount which has been paid by him as *'Bayana'* in lieu of the ATS-I dated 22.04.2017. It is beyond the comprehension of the Court as to
F what stopped the Appellant from mentioning the exact figures of the amount paid by the Appellant as *'Bayana'*; (ii) No document was placed before the Court by Appellant/Defendant to show the quantum of amount paid as consideration thus ATS-I executed without any consideration has no significance; (iii) ATS-II with respect to the *Amloh* Property has
G also been filed and the same cannot be relied upon for the aforesaid reasons; (iv) None of the original Agreements to Sell have been filed; (v) It is a settled proposition of law that even if the consideration has been exchanged the purchaser does not become the owner of the property till the time the registered Sale Deed is executed in his favor and the Tenant-Landlord relationship cannot come to an end on the execution of
H the Agreement to Sell.

9. The Trial Court relying upon the admissions as aforementioned, passed the judgment and decree allowing the application under Order XII Rule 6 of CPC for delivery of possession with respect to the Suit Property in favor of the Respondent/Plaintiff. Aggrieved Appellant/ Defendant sought review of the Order dated 01.12.2020 wherein the Trial Court was pleased to dismiss the same vide order dated 17.02.2021.

10. The Appellant preferred Regular First Appeal No.218 of 2021 before the High Court of Delhi challenging both the orders i.e. order dated 01.12.2020 passed by Trial Court and review order dated 17.02.2021. It was the case of the Appellant before the High Court that a Suit for specific performance in relation to aforementioned three Agreements to Sell is pending, in which the High Court has issued notice, but nowhere the Trial Court has considered the same in the impugned judgment. Further, Appellant also contended that no categoric admission was made in the Written Statement to pass judgment granting decree of possession to the Respondent in exercise of discretion under Order XII Rule 6 of CPC. Lastly, it was argued that the Sale Deed is not required to be registered in view of Section 17(2) of the Registration Act.

11. The High Court vide impugned order dated 08.04.2021 rejected the Appeal with observations that the Trial Court in its order dated 17.02.2021 has noted that there has been clear admission with regard to relationship of Landlord-Tenant and the rent paid by the Appellant. Further, the Appellate Court upheld the Trial Court's findings qua admission of the facts. The High Court also noted that the findings qua admissions is not challenged by the Appellant which is sufficient to grant the decree for possession of suit property. Further, High Court observed that it is settled in law that the suit for specific performance filed by the Appellant is of no impediment for the Trial Court to proceed with or decide the Suit for possession based on Landlord-Tenant relationship. Lastly, an ATS of immovable property where the possession of premises is delivered in part performance can only be possible by registered document after paying the requisite stamp duty. The High Court dismissed the Regular First Appeal with the said observations, which is challenged by the Appellant by filing instant appeal.

12. Appellant has argued before this Court that he is well within his rights to defend his possession in the suit property having satisfied the conditions enunciated by this Court in ***Shrimant Rao Suryavanshi v. Prahlad Bhairoba Suryavanshi*** **- 2002 (3) SCC 676**. As there is

an ATS for transfer of rights in the suit property in favor of the Appellant, which has not been disputed to have been signed by Respondent. The covenants therefore expressly construes the intention of parties towards the sale and purchase of the suit property. It is further argued by the Appellant that the issues put before the Trial Court were triable issues and in such a scenario the Trial Court should not dismiss the suit *in limine* and pass a decree under Order XII Rule 6 of CPC when only the truth can be revealed by a full-fledged trial. Appellant also argues that when Seller-Landlord accepted the earnest money she actually acted under the agreement. This acceptance provided by the ATS ended the relationship of lessor and lessee and the tenancy ceases.

13. Appellant has placed reliance on **Hari Steel and General Industries Limited and Another v. Daljit Singh and Others – (2019) 20 SCC 425** and ***Himani Alloys Ltd. v. Tata Steel Ltd*** **reported in - 2011 (15) SCC 273** to contend that the Trial Court should have refrained from exercising its jurisdiction by decreeing the suit of Respondent/ Plaintiff under Order XII Rule 6 keeping in mind that the judgment on admission is judgment without trial which permanently denies any remedy to the Appellant on merit. Further, by referring to the case of ***R. Kanthimathi v. Beatrice Xavier*** **reported in - 2000 (9) SCC 339** the Appellant argued that by accepting the earnest money, the Landlord-Seller has actually acted under the agreement and thus the relationship of landlord and tenant has ceased to exist.

14. Per Contra, on behalf of Respondent, it has been argued that the Appellant came in the possession of suit premises by virtue of lease deed dated 07.08.2011 and extended lease deed dated 07.08.2013 and is continuing to be in possession without payment of rent from 2014 onwards, which makes out a classic case of abuse of due process of law. It was urged that Appellant has not put in possession in furtherance to the ATS, however without proving the contents of ATS his status would not change. It was further argued that once it is admitted that there is undisputed Landlord-Tenant relationship between parties; a termination notice under Section 106 has been issued prior to filing the suit followed by receipt of the rent. Thus, the Respondent have a *prima facie* case to decree the suit on admission under Order XII Rule 6. Further, it has been argued that the defense under Section 53-A of the Transfer of Property Act, 1882 can only be applicable when consideration has been exchanged which is not the case of the Appellant. Furthermore, learned senior counsel placing reliance on **Nagindas Ramdas v. Dalptram Iccharam**

- 1974 (1) SCC 242 argued that the admissions in pleadings or in proceedings of Court at the time of hearing of the case stand on higher footing and are admissible in evidence as per Section 58 of the Evidence Act, 1872. Thus, in light of the facts as discussed, the Respondent has a good case for a judgment on admission and the courts below have not committed any error while passing the judgment. A

15. Heard learned counsel for both the parties and perused the records. Prior to appreciating the arguments in the facts and looking to the controversy involved in the present case, it is required to know the object and the purport to introduce Order XII of CPC. The relevant provisions are reproduced hereinunder: B C

> *"1. Notice of admission of case.—Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.*
>
> *2. Notice to admit documents.—Either party may call upon the other party [to admit, within 7 [seven] days from the date of service of the notice any document,] saving all exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.* D E
>
> *[2A. Document to be deemed to be admitted if not denied after service of notice to admit documents.—(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability: Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission. (2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.]* F G H

A *3. Form of notice.—A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.*

[3A. Power of Court to record admission.—Notwithstanding that no notice to admit documents has been given under rule
B *2, the Court may, at any stage of the proceeding before it, of its own motion, call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document.]*

4. Notice to admit acts.—Any party may, by notice in writing,
C *at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such*
D *further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and*
E *not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice.*

5. Form of admissions. —A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be
F *in Form No. 11 in Appendix C, with such variations as circumstances may require.*

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,
G *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*
H

and the decree shall bear the date on which the judgment was pronounced"

Thus, the scheme of Order XII Rule 1 prescribes that any party to a suit may give notice, by his pleading, or otherwise in writing that he admits the truth of whole or any part of the case to other party. As per Rule 2 of Order XII notice to admit the documents may be given by either party to the other party within the specified time for admission of a document and in case of refusal or admission of the document after the notice, the cost of proving such document shall be borne by the party who neglects or refuse, which shall be based on the discretion of the Court. Rule 2A enables the deemed admission if after notice the document has not been denied. The said notice is required to be given in Form No.9 of Appendix 'C' of CPC. Rule 3A confers overriding powers to the Court, that even in absence of a notice to admit a document under Rule 2, the Court may record such admission on its own motion or by calling upon a party. The Court also have a power to record whether the party admits or refuses or neglect to admit such document. Rule 4 of Order XII relates to notice to admit the facts. Any party may by a notice in writing at any time not later than 9 days before the day fixed for the hearing, call upon any other party to admit for the purposes of suit only, any specific fact or facts, mentioned in such notice that is required to be answered within a specified time or within such further time as directed by the Court in case of refusal or neglect to admit the same, the cost of proving such fact or facts be paid by the parties as directed. By adding a proviso, it was made clear that the admission, if any, made in a proceeding would be relating to the same proceeding not for any other proceedings. The notice under Rule 4 is required to be given in Form No.10 of Appendix 'C' of CPC as prescribed in Rule 5. Rule 6 confers discretionary power to a Court who 'may' at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

16. Thus, legislative intent is clear by using the word 'may' and 'as it may think fit' to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said

A provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the Court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the Court a decree be drawn accordingly and parties to the case is not required to go for trial.

C 17. Some special provisions have been made in Rules 7, 8 and 9 regarding affidavit of signature, notice to produce documents and also to the cost which may not have much relevance to the facts of the present case hence, not being discussed elaborately in this judgment.

18. On the issue of discretion of Court to pass judgment on D admission, a three-Judge Bench of this Court in the case of **S.M. Asif v. Virendar Kumar Bajaj – (2015) 9 SCC 287** made the legislative intent clear to use the word 'may' which clearly stipulates that the power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right. In the said case, the suit for eviction was filed by the E Respondent-Landlord against the Appellant-Tenant. The relationship of tenancy was admitted including the period of Lease Agreement. The Plaintiffs' claim was resisted by the Defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs. 82,50,000/- was paid. The Defendant in course of taking the defense stoutly denied that Respondent/Plaintiff has continued to be F the landlord after entering into Agreement to Sell. The suit for specific performance was also filed which of course was contested by the Plaintiff. In the said case, this Court was of the view that deciding such issues requires appreciation of evidence. Mere relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the G suit under Order XII Rule 6 of CPC. Resultantly, this Court by setting aside the judgment passed by the High Court remitted the matter back to the Trial Court subject to deposit of the arrears of the rent and the compensation for use of occupation of the suit premises. Such deposit was subject to final outcome of the eviction as well as suit for specific performance.

H

19. In the context of the said legal position, reverting to the facts of the present case, it is apparent that the first Lease Agreement was executed on 07.08.2011 on a monthly rent of Rs.1,17,000/- of a suit premises. The said Lease Agreement was for a period of 02 years ending in July 2013. By the consent of the parties extended Lease Agreement dated 07.08.2013 was executed for a further period of 11 months for a monthly rent of Rs.1,50,000/- with approximate increase in rent amount by 30% for the next one year. Admittedly, the notice for eviction was issued terminating the lease due to non-payment of the rent after the expiry of the extended lease period which is due for payment by the Defendant. The suit for eviction was filed on 18.05.2018 for possession (based on Landlord-Tenant relationship), arrears of rent, *mesne profit* and *pendente lite*. The said suit was contested by the Defendant in which the ownership was not denied. The execution of first Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013 was also not denied. The monthly tenancy and payment of rent in terms of Lease Agreement is also not denied by the Defendant. The Defendant has taken a defense that the property belonging to him in *Amloh* was agreed to be sold to the Plaintiff to which effect ATS-II dated 25.05.2017 was executed. Further the Defendant has contended that, ATS-III dated 30.12.2017 was executed after some adjustments in consideration was made. Hence, the Defendant argued that on account of execution of the three Agreements to Sell with respect to the suit property for a sum of Rs. 3,60,00,000/-, the relationship of Landlord-Tenant ceased to exist and the Defendant acquired the status of the owner as he has already parted with the possession of the property under the Lease Agreement.

20. Learned counsel for the Appellant has placed heavy reliance on a judgment of **R. Kanthimathi (supra)**. In the said case, this Court has specified that any jural relationship between two persons could be created through an agreement and similarly could be changed through an agreement subject to the limitations under the law. However, it is urged that the relationship of the Appellant has now been changed to purchaser on signing the ATS-I by landlord subsequent to lease agreement, therefore the relationship of landlord and tenant extinguishes. Reliance has also been placed on the judgment of **Himani Alloys Limited (supra)** and it has been urged by Appellant that in case the admission is not of the amount as alleged and not categoric and clear, the decree under Order XII Rule 6 cannot be directed. The case of **Hari Steel (supra)**

A has also been relied upon to contend that the relief under Order XII Rule 6 is discretionary and the Court should not deny the valuable right of the Defendant to contest the suit, meaning thereby, the discretion should be used only when there is a clear, categorical and unconditional admission and such right should not be exercised to deny valuable right of a Defendant to contest the claim based on defense taken. Further, relying upon the judgment of **Shrimant Shanrao Suryavanshi (supra)**, it has been contended that when a possession is with the Appellant by virtue of a part performance of agreement to sell as prescribed under Section 53 of the Transfer of Property Act, 1882, he has right to defend or protect his possession.

C 21. On the other hand, Ms. Meenakshi Arora, learned senior counsel, placed reliance on the judgment of **Nagindas Ramdas (supra)**, *inter alia*, contending that the admissions if true and clear are the best proof of the fact admitted, it is also stated the admissions in the pleadings or judicial admissions admissible under Section 58 of the Evidence Act, D 1872, made by the parties or their agents at or before hearing of the case stands on higher footings than evidentiary admissions. It is binding and constitute the waiver of proof. Learned senior counsel further submits that the judgment of **R. Kanthimathi (supra)** is distinguishable with the present case. In the said case, after referring the terms of the agreement E it reflected that the major amount of sale consideration was paid and only Rs.5,000/- was remaining to be paid. Also, by conveyance the possession of property was surrendered, therefore, Court said that the jural relationship between the persons were changed by way of subsequent agreement subject to the limitations under the law. While in the present case ATS-I was executed on 22.04.2017. In clause 2 of the said F agreement, it was specifically mentioned "*however, no advance – earnest money has been paid to the first party*". With respect to possession, it was mentioned that it shall be handed over on spot. Thus, out of the total sale consideration of Rs.3,60,00,000/- nothing was paid and the Appellant was in possession under the Lease Agreement as tenant. The document Annexure P-1 (Advance Receipt-cum Agreement G to Sale & Purchase) produced alongwith the paperbook of appeal is a document which has not been produced before the lower Court. Thus, vide order dated 07.10.2021, it was made clear by this Court that the said document be deleted from the paperbook of this case. In view of the said distinction drawn it was urged that judgment of **R. Kanthimathi H (supra)** is of no help to the Appellant.

22. Be that as it may, the arguments advanced by both the sides, in our view can be appreciated by the Trial Court by affording opportunity to them to lead evidence. As per the pleadings, there may be admission to the extent of execution of the Lease Agreement, rate of rent and monthly payment but simultaneously the defense taken by the Defendant is also based on ATS-I, II and III. In view of the contents of those agreements and terms specified therein, the defense as taken by the Appellant/Defendant is plausible or not is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked into by the Court and there is need to decide justiciability of defense by the full-fledged trial. In our view, for the purpose of Order XII Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by Defendant. As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defense as taken by the Defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under Order XII Rule 6 of CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in **S.M. Asif (supra)** are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case. Consequently, the judgment and decree passed by the Trial Court, as confirmed by the High Court, only on admission of fact without considering the defense in exercise of power under Order XII Rule 6 of CPC is hereby set-aside. The matter is remitted back to the Trial Court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the Court on merit.

23. In the present case, the tenant has not paid any amount of rent w.e.f. 07.07.2014. In a suit based on Landlord-Tenant relationship, the amount of rent and arrears thereof ought to be paid in terms of the order of the Court. The said view is fortified by the judgment of **S.M. Asif (supra)**. As the Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013, which are not in dispute and by the extended Lease Agreement, which was for one year, the rent was increased for the year 2013-2014 by 30%. The Defendant has not paid any rent till date though the period of more than 7 years has already

A passed. Therefore, we direct that in terms of the admitted fact by extended Lease Agreement and the increase in the percentage of rent, the Trial Court shall first decide the issue of payment of monthly rent applying the said increase on year to year basis and pass appropriate orders for payment of arrears as well as deposit of regular monthly rent. The said payment may be subject to outcome of the decision of the present suit as well as the suit for specific performance of the agreement filed by the Appellant.

B

24. Resultantly, this appeal is allowed to the extent indicated hereinabove and the order of High Court and Trial Court is set aside and the matter is remitted back to the Trial Court.

Ankit Gyan Appeal allowed.