

to capacity of the petitioner, then onus shifts upon the petitioner-husband to prove that he does not have sufficient means to provide maintenance. The petitioner has not brought on record income-tax returns and has not rebutted the averments and this is a case of bare denial. The contention of learned counsel for the petitioner is that respondent No.1-wife is able to maintain herself and she is not entitled to maintenance. It is only if wife is unable to maintain herself, then maintenance can be provided. The said contention is not sustainable, as an estranged wife and minor child cannot be reduced to destitute before deciding a main petition seeking maintenance for herself and her child. In the present case, categorical averments have been made in the application moved before the trial Court, but the petitioner-husband even did not bother to argue the case despite eight opportunities provided by the Court before awarding interim maintenance. As an interim measure, interim maintenance has been awarded and if the Court comes to the finding that income of the petitioner-husband was lesser, the same can be adjusted towards final maintenance that may be awarded. There is no evidence on record that respondent No.1-wife has any independent source of income.

11. In any event, I am of the opinion that the impugned order dated 05.09.2014 passed by the Judicial Magistrate Ist Class, Jalandhar and order dated 21.01.2015 passed by the Additional Sessions Judge, Jalandhar are neither in excess of jurisdiction nor do the same suffer from any material irregularity. Consequently, the impugned orders do not call for any interference in this petition though filed under Section 482 of the Code but virtually it is second revision. Resultant, the petition is dismissed.

**Petition dismissed.**

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### **SUPREME COURT OF INDIA**

**Before: T.S. Thakur, V. Gopala Gowda & R. Banumathi, JJ.**

Civil Appeal Nos. 6106-6108 of 2015

Decided on: 12.08.2015

(Arising out of SLP (C) Nos. 4987-4989 of 2015)

S.M. Asif

Appellant

Versus

Virender Kumar Bajaj

Respondent

**A. Code of Civil Procedure, 1908 (V of 1908), Order 12, Rule 6 -- Judgment on admission -- Words in Order XII Rule 6 CPC "may" and "make such order..." show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right -- Judgment on admission is not a matter of right and rather is a matter of discretion of the Court.**

**(Para 9)**

**B. Transfer of Property Act, 1882 (4 of 1882), Section 106 -- Code of Civil Procedure, 1908 (V of 1908), Order 12, Rule 6 -- Notice for eviction -- Judgment on admission -- In the suit for eviction filed by the landlord, tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted claim by setting up a defence plea of agreement**

to sale and that he paid an advance of Rs.82.50 lakhs for which tenant filed suit for specific performance – When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC -- Matter remitted back to Trial Court for a fresh hearing, however, subject to the condition that the appellant should pay the arrears of rent within a period of eight weeks -- Further the tenant shall pay Rs.1,00,000/- per month to the landlord as compensation for use and occupation of the suit premises with effect from 01.08.2015 – Payment of rent and sum of Rs.1,00,000/- per month would also be subject to the final outcome of the eviction suit as well as the suit for specific performance.

(Para 9, 10)

### JUDGMENT

**R. BANUMATHI, J. –**

Leave granted.

2. Challenge in these appeals is the correctness of the orders dated 16.10.2014 and 27.10.2014 passed by the High Court of Delhi in RFA No.505/2014, whereby the High Court disposed of the appeal observing that the appellant having not pressed the appeal and by changing their counsel cannot be allowed to plead for adjournment to argue the appeal. Review Petition No.499/2014 also came to be dismissed by the High Court vide order dated 19.11.2014 which is also under challenge in these appeals.

3. Brief facts which led to filing of these appeals are as under:- Respondent-landlord is the owner of the disputed premises which is a built up area of entire second floor with terrace/roof of the property bearing No.R-849 situated at New Rajinder Nagar, New Delhi admeasuring 200 sq. yards. The appellant-tenant contended that the respondent-landlord entered into a registered agreement for lease at a monthly rent of Rs.37,500/- for a period of twenty two months i.e. from 15.03.2008 to 14.01.2010. After the expiry of first lease, another registered lease was entered into between the parties for two years i.e. from 15.01.2010 to 14.01.2012 on monthly rent which was fixed at Rs.44,000/-. According to the appellant, during the subsistence of the second lease, as the respondent-landlord was in financial crisis, the respondent-landlord and the appellant-tenant entered into an agreement of sale in respect of the same tenancy premises for an amount of Rs.1.56 crores. The appellant-tenant is said to have advanced a sum of Rs.82.50 lakhs vide six payments viz.:-

Rs.15,00,000/- on 16.01.2010;

Rs.12,50,000/- on 24.04.2010;

Rs.18,00,000/- on 15.09.2010;

Rs. 7,00,000/- on 01.11.2010;

Rs.15,00,000/- on 12.02.2011 and

Rs.15,00,000/- on 19.08.2011

For the above payments the respondent-landlord is said to have issued six

receipts acknowledging the receipts of money. Agreement of sale was executed between the parties on 19.08.2011.

4. The respondent-landlord alleges that under Section 106 of the Transfer of Property Act terminating the lease, he sent a legal notice through speed post on 26.12.2011; however, the appellant-tenant denied having received any such notice. As the defendant-tenant was not vacating the premises, the respondent-landlord filed a Suit No.256/13 for recovery of possession, mesne profits and injunction in the Court of Additional District Judge, Tis Hazari, Delhi. During the pendency of the suit, an application under Order XII Rule 6 CPC read with Section 151 CPC was filed by the respondent-landlord and the trial court vide its order dated 25.08.2014 allowed the said application and directed the appellant-tenant to vacate and handover physical possession of the suit premises to the respondent-landlord.

5. Aggrieved by the Order, the appellant-tenant preferred RFA No.505/2014 in the High Court of Delhi. As per the order of the High Court, on the date of preliminary hearing i.e. 16.10.2014, the learned counsel for the appellant-tenant is said to have submitted that the *"appeal is not pressed on merits and he prays for grant of time to vacate the suit premises. Limited on the point of grant of time matter is listed for 24.10.2014...."*. On 27.10.2014, the appellant-tenant changed his counsel and requested that the appeal may be heard and sought for an adjournment. The learned Single Judge declined the request for adjournment and disposed of the appeal observing that notice was issued to the respondent-landlord limited only to the point of grant of time to vacate the premises. Aggrieved by the said order, the appellant-tenant filed a Review Petition No.499/2014 which also came to be dismissed by an order dated 19.11.2014. These appeals assail the correctness of the said orders passed in the appeal as well as the Review Petition.

6. Learned counsel for the appellant-tenant submitted that the appellant is an accredited journalist with good reputation and has paid a huge sum of Rs. 82.50 lakhs under an agreement of sale and while so, the trial court erred in passing decree for eviction under Order XII Rule 6 CPC. It was submitted that the trial court vide its order dated 30.09.2013, while directing the payment to be made during the pendency of the suit at Rs.44,000/- per month has stipulated a condition that in the event of the appellant-tenant succeeding, the monthly amount paid would be adjusted against the balance sale consideration amount under the agreement for sale dated 19.08.2011. It was further submitted that having regard to the defence taken by the appellant-tenant, the trial court ought to have adjudicated the matter and erred in passing a decree for eviction without trial. It was also submitted that when the matter came up before the High Court of Delhi on 16.10.2014, the appellant-tenant was not present in the Court and his counsel sought time to take instructions and according to the appellant-tenant, his counsel did not make the statement *'not pressing the appeal'*. It is contended that even assuming that the counsel for the appellant-tenant has made such a statement, the learned Single Judge can certainly permit a party to resile from the concession.

7. Per contra, learned counsel for the respondent-landlord submitted that it is clear from the order that the advocate appearing for the appellant in High Court had only sought for time to vacate the premises and did not press the appeal on merits. Contention at the hands of the respondent is that it is quite

unbelievable that the appellant has paid a huge sum of Rs.82.50 lakhs by cash and the alleged agreement of sale is a fabricated one and since the appellant does not have a substantial defence, the trial court rightly passed the decree under Order XII Rule 6 CPC and the impugned orders do not suffer from any infirmity warranting interference.

8. We have carefully considered the rival contentions and perused the impugned orders and material on record.

9. The words in Order XII Rule 6 CPC “may” and “make such order...” show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim. In the suit for eviction filed by the respondent-landlord, appellant-tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted respondent-plaintiff's claim by setting up a defence plea of agreement to sale and that he paid an advance of Rs.82.50 lakhs, which of course is stoutly denied by the respondent-landlord. The appellant-defendant also filed the Suit for Specific Performance, which of course is contested by the respondent-landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC.

10. Having regard to the stand taken by the parties, in our view, an opportunity has to be afforded to the appellant to put forth his defence and contest the suit and therefore, the matter is to be remitted to the trial court for a fresh hearing, however, subject to the condition that the appellant should pay the arrears of rent at the rate of Rs.44,000/- per month within a period of eight weeks. Further the appellant shall pay Rs.1,00,000/- per month to the respondent-landlord as compensation for use and occupation of the suit premises with effect from 01.08.2015 and the respondent-landlord shall issue necessary receipt/acknowledgment for having received the same. The trial court vide its order dated 30.09.2013 while directing the payment of Rs. 44,000/- per month has stipulated a condition that in the event of the appellant succeeding, the said amount would be adjusted against the balance sale consideration amount under the agreement for sale dated 19.08.2011. Having regard to the said order passed by the trial court, payment of sum of Rs.1,00,000/- per month would also be subject to the final outcome of the eviction suit as well as the suit for specific performance.

11. The impugned orders are set aside and the matter is remitted back to the Rent Controller for consideration of the matter afresh and the appeals are allowed on the above terms. The rent controller shall dispose of the matter as expeditiously as possible. We make it clear that we have not expressed any opinion on the merits of the matter. No order as to costs.

**Appeals allowed.**

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