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

\+ **C.R.P. 84/2021**

AMRIT PAL SINGH ..... Petitioner

Through: Mr. Praveen Suri with Ms. Komal Chhibber, Advocates.

versus

KAWALJEET SINGH ..... Respondent

Through: Mr. Vishal Chaudhary with Mr. Aman Yadav, Advocates.

% *Date of Decision: 25th May, 2022.*

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

C.R.P. 84/2021& CM APPL.41568/2021 (filed on behalf of petitioner for directions)

1. Present revision petition has been filed challenging the impugned order dated 25.10.2021, whereby an application under Order XII Rule 6 CPC has been dismissed by the learned Trial Court holding *inter alia* as under:-

> *"10. The present case of the plaintiff is that of seeking refund of the money under the agreement to sell dated 12.08.2012. In the present case the defendant has raised triable issue relating to the matter of possession not taken due to non-arrangement of the balance amount. The defendant has also alleged that the plaintiff does not want to complete the deal. The defendant has not denied the agreement to sale and its Legal Notice but it*

cannot be said that the defendant has admitted the entire case of the plaintiff unequivocally and absolutely. The defendant has raised plausible defence and the same shall subject to the evidence at the appropriate stage."

2. Petitioner has challenged the impugned order primarily on the ground that the learned Trial Court has not appreciated the pleadings of the parties in proper perspective and has also failed to appreciate the ratio laid down by the Hon'ble Supreme Court of India in ***Kailash Nath Associates vs. DDA:*** (2015) 4 SCC 136.

3. It has been submitted that in *Kailash Nath Associates* (supra), it was clarified that the forfeiture of an earnest money necessarily falls under Section 74 of the Contract Act i.e. before forfeiture can take place it must be necessary that loss must be caused to the respondent and the same must be pleaded by the respondent in his pleadings. It has further been submitted that the respondent himself has admitted to have received a sum of Rs.55 lakhs and there is no forfeiture clause in the Agreement to Sell dated 12.08.2012. The impugned order has also been challenged on the ground that the learned Trial Court has also not followed the law laid down in ***Mohan Buildmart Pvt. Ltd. Vs. Hitesh Kumar:*** 2019 SCC Online Del 6886. It has further been stated that the learned Trial Court has also committed a material irregularity by not appreciating that even if the issues have been framed and the evidence affidavit of the petitioner has been filed, still this court can pass a decree under Order XII Rule 6 CPC as the framing of the issues and the initiation of the evidence is not a bar in decreeing the suit of the petitioner under Order XII Rule 6 CPC.

4. Reliance has been placed by the learned counsel for the petitioner on

the judgment in ***Mera Baba Infrastructure Pvt. Ltd. vs. Chailu*** through LRs. bearing CS(OS) No.400/2016. Reliance has also been placed on the judgment of this Court in ***Versatile Commotrade Pvt. Ltd. vs. Kesar Devi and Ors***.: 2019 SCC Online Del 8182.

5. Petitioner has stated that the respondent has taken the only defence that the amount given by the petitioner has been forfeited. It has been submitted that this Court in the judgment of ***Rajbir Singh & Anr. vs. Jaswant Yadav,*** RFA 404/2018 has held that if the respondent has not pleaded or proved any loss caused to them on account of any alleged breach of the agreement to sell, then the amount paid cannot be forfeited.

6. The impugned order has been challenged on the ground that the learned Trial Court has failed to exercise the jurisdiction vested in it and therefore there is jurisdictional error having been committed and therefore the impugned order is liable to be set aside. Per contra the case of the respondent is that the petitioner had filed a false and frivolous application under Order XII Rule 6 CPC after the lapse of 7 or 8 years of filing of the suit and the application has rightly been dismissed by the learned Trial Court. It has been submitted that the suit is liable to be dismissed under Order VII Rule 11 CPC. The case of the respondent is that in fact Sh. Inder Pal Singh Chadha s/o. S. Onkar Singh Chadha, Director of Sukhmani Solutions Pvt. Ltd. was the owner of property bearing No.102, area measuring 133.3 sq. Yards with all its roof/terrace rights and structure situated at Chand Nagar, New Delhi. Respondent purchased the upper ground floor of the aforesaid property from Sh. Inder Pal Singh Chadha for a total consideration amount of Rs.77 lakhs vide Agreement to Sell dated

07.03.2012. In the month of August, 2012, the petitioner agreed to purchase the same property from the respondent for a total consideration amount of Rs.87 lakhs and the respondent also agreed to sell the same. The Agreement to Sell dated 12.08.2012 was executed and it was agreed that the petitioner shall pay the amount in the following manner:-

(i) Rs.20,00,000/- will be paid on 13.08.2012

(ii)Rs. 10,00,000/- on second lenter

(iii) Rs.20,00,000/- after second lenter

(iv) Rest of 32,00,000/- on completion or in April 2013.

7. Respondent has stated that the petitioner has filed a receipt Ex-PW1/4 dated 20.02.2013**,** whereby a sum of Rs.20 lakhs has been received by Sh. Inder Pal Singh Chadha. The plea of the respondent is that the petitioner has paid a sum of Rs.30 lakhs to S. Inder Pal Singh and has merely paid a sum of Rs.25 lakhs to the respondent.

8. Further case of the respondent is that the floor was ready for possession and was ready to be handed over in the month of April 2013. But the petitioner was unable to pay the remaining sum of Rs.32 lakhs despite repeated requests of the respondent. It has been stated that in fact since the price of the property had declined, the petitioner was not interested in buying the property. Respondent had also served a notice dated 17.09.2014 calling upon the petitioner to pay the remaining balance amount and asking him to execute the documents. It has been stated that for this reason, the petitioner is entitled to recovery of the earnest money.

9. Respondent has placed reliance upon the judgment in ***Satish Batra vs.***

Sudhir Rawal in Civil Appeal No.7588/2012 arising out of SLP (Civil) No.4605/2012. It has been submitted that in view of the judgment in ***Satish Batra*** (supra), the seller/respondent was entitled to forfeit the amount.

10. Respondent has also argued that it is a settled preposition that in order to exercise jurisdiction under Order XII Rule 6 CPC unequivocal and unqualified admission in the written statement should be taken as a whole and not in part. The plea of the respondent is that unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a respondent to contest the claim.

11. I have heard Mr. Praveen Suri, learned counsel for the petitioner and Mr. Vishal Chaudhary, learned counsel for the respondent.

12. It is an admitted case that an Agreement to Sell dated 12.08.2012 was executed between the parties which is reproduced herein as under:-

> *"AGREEMENT TO SELL (BAYANA)*
>
> *This Deed of Agreement for Earnest money (Bayana) is hereby executed on 12/08/2012 at Delhi between Sh. Kawaljeet Singh S/O Shri Amarjeet Singh R/O plot no.-72, Phase-VI, Mohali, Punjab.*
>
> *AND*
>
> *Shri Amri Pal Singh S/O Shri Sohan Singh R/O 24/41A, Tilak Nagar, New Delhi – 110018.*
>
> *Whereas the Party No.1 is the owner and in possession of Built up property, bearing Plot No.-102, Chand Nagar, Tilak Nagar, New Deilhi-110018 area measuring 133Sq. Yds./Sq. Upper Ground Floor, Three Side Corner With Lift, With Car*

Parking, Tilak Nagar, New Delhi-110018

And whereas the Party No.1 has agreed to sell the aforesaid property duly described above a sum of Rs.87,00,000/- (Rupees Eighty Seven Lakh Only). The Party No.2 has agreed to purchase the same the Party No.1 with following terms and conditions:

(1) That the Party No.1 has received a sum of Rs.5,00,000 as a Bayana amount from the Party No.2 on Dated 12/08/2012 in presence of the Marginal Witnesses. Part Payment sum of Rs.20,00,000 (Rupees Twenty Lakh Only) will be paid on 13/08/12 and Rs.10,00,000 (Rupees Ten Lakh Only) will be paid on 2nd lenter and Rs.20,00,000 (Rupees Twenty Lakh Onlu) will be paid after 5th lenter. Rest Rs.32,00,000 (Rupees Thirty Two Lakh Only) will be paid on the completion or in April 2013. There is one Month relaxation plus minus in construction.

(2) That the said property is free from all sorts of encumbrances.

(3) That the First Party will be responsible all previous documents and if any previous will be found in short or wrong or duplicate then the First Party shall be responsible of the said short paper/wrong paper/duplicate paper and First Party shall be bounded to complete the all previous documents to the Second Party/Purchaser at the time of execution of the property documents.

In witnesses whereof the both parties has signed on this Agreement to Sell (Bayana) on the day, month and years first above written.

Witnesses.

First Party Seller

Second Party Purchaser"

13. Initially a notice dated 17.09.2014 was served by the respondent to the petitioner wherein in para 6 and 7 it was stated as under:-

> *"6. That on 13.08.2012, you the noticee also paid Rs. 20,00,000/- ((Twenty Lacs) to my client.*
> *7. That thereafter you the noticee paid Rs. 30,00,000/- in two installments of Rs.10,00,000/- and Rs. 20,00,000/- to S. Inder Pal Singh Chadha. In this way you the noticee paid Rs. 55,00,000/- (Fifty Five lacs) and Rs. 32,00,000/- is remaining against you."*

14. Respondent called upon the petitioner to pay the remaining sum of Rs.32 lakhs within three months. It was further stated that if the petitioner failed to pay the remaining balance of Rs.32 lakhs within three months and that even *Bayana* and part payment of Rs.55 lakhs shall be forfeited and the Agreement to Sell dated 12.08.2012 shall automatically stand cancelled.

15. This notice was duly replied by the petitioner vide communication dated 11.10.2014 whereby the petitioner asked for the copy of the title documents, copy of the sanction plan and copy of the documents pertaining to the installation of the lift along with licence of operation of the lift and photographs showing the car parking place in the building. Petitioner further stated that in case the documents are not supplied, he would be entitled to receive back Rs.55 lakhs along with interest @18% per annum. Respondent sent a rejoinder vide communication dated 05.11.2014 further calling upon to pay the remaining sum of Rs.32 lakhs and also to supply a copy of the title documents and sanction plan.

16. The petitioner thereafter filed the suit for recovery of Rs.71,50,000/- against the respondent bearing CS(OS) No.4041/2014 praying for a decree in the sum of Rs.71,50,000/- to be passed in favour of the petitioner and against the respondent with cost and interest @12% per annum both pendente lite and future till realization of the whole decretal amount.

Respondent filed a written statement. In the written statement, a plea was taken that out of Rs.55 lakhs, 30 lakhs was paid to Sh. Inder Pal Singh. It was further stated that the floor was ready for possession and it was the petitioner who failed to take possession of the same and also failed to pay back the sum of Rs.32 lakhs despite notice dated 17.09.2014.

17. While the matter rested**,** an application under Order XII Rule 6 CPC was filed by the petitioner on 19.10.2020 whereby it was stated that since there was a categorical admission on the part of the respondent to have received a sum of Rs.55 lakhs and since there was no forfeiture clause in the Agreement to Sell dated 12.08.2012, a decree is liable to be passed under Order XII Rule 6 CPC. However, this application did not find favour of the learned Trial Court and the same was dismissed.

18. Order XII Rule 6 CPC reads as under:-

> *"(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*
> *(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

19. It is a settled preposition that the intention of the legislature behind enacting Order XII Rule 6 CPC is to ensure expeditious trial as laid down in the judgment in ***Charanjit Kaur Nagi vs. Govt. of NCT of Delhi & Ors.*** (2005) 11 SCC 279.

20. It is to be kept in mind that the purpose of Order XII Rule 6 CPC is to confer upon the plaintiff a right to speedy judgment. The Courts have to ensure that in an appropriate case, a party on the admission of other party can press for judgment as a matter of legal right. The Courts should not allow a dishonest litigant to prolong the trial on the flimsy ground. The scope of Order XII Rule 6 was also discussed in detail by this Court in ***Vinay Kumar Aggarwal vs. Radha Rani Aggarwal***: 2018 SCC Online Del 6534, wherein, it was *inter alia* held as under:-

> *"20. Due to the pendency of the present appeal, the Plaintiff has not executed the decree as yet.*
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> *21. The legal position on Order XII Rule 6 is well settled. Trial is not compulsory in every suit. If from the documents and pleadings, it is clear that there is no need for a trial and that the case of a party stands admitted, the court can pronounce judgement, as held by a Division Bench of this Court in Seema Thakur v. Union of India (dated 29th February 2016 in RFA(OS) 97/2015), where it was stated that:*
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> > *"16. The Court a facial reading of the provision show - has discretion, depending upon the facts of a case whether or not to decree a suit under Order XII Rule 6 CPC. If the admissions render a trial unnecessary, a Court is entitled to pass a decree without requiring further trial....."*
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> *22. This position was upheld by this Court in Baljit Kaur Kalra (supra).*
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> *20. Further it is also a settled position that the admission need not be in the pleadings of the same case but can be in any other form, including in unconnected proceedings. This is supported by the findings of the Supreme Court in Nagindas Ramdas (supra) wherein it was categorically held as under:*
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> *"27. From a conspectus of the cases cited at the bar, the*

principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves not conclusive. The can be shown to be wrong."

24. There has also been a clear attempt to delay the proceedings before the Trial court. It is a settled position that Order XII Rule 6 can be invoked at any time, either on an application or suo moto by the Court. A Division Bench of this Court in Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra AIR 2000 Del 349 has also upheld this position and held as under:

> *9. Bare perusal of the above rule shows, that it confers very wide powers on the court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission*

> *firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying trial being barred by the section 91 and 92 of Evidence Act or other statutory provisions, can be ignored. These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in Dudh Nath Pandey (dead by L.R's) Vs. Suresh Chandra Bhattasali (dead by L.R's) (1986)3 SCC 360: AIR 1986 SC 1509; Atma Ram Properties Pvt. Ltd. vs Air India 65 (1997) DLT 533; Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd. 1997 2 AD (Del) 518; Abdul Hamid Vs. Charanjit Lal & Ors. 1998 2 DLT 476 and Lakshmikant Shreekant Vs. M N Dastur & Co. 71 (1998) DLT 564.*
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> *10. The use of the expression "any stage" in the said rule itself shows that the legislature's intent is to give it widest possible meaning. Thus, merely because issues are framed cannot by itself deter the court to pass the judgment on admission under order 12 rule 6, CPC...*

21. In ***Mera Baba Infrastructure Pvt. Ltd.*** (supra), while a suit for recovery was pending and issues had been framed, an application under Order XII Rule 6 CPC was filed. The petitioner in that case had contended (i) that there was no clause in the agreement to sell entitling the defendant to forfeit the monies received as advance from the plaintiff ; (ii) that the defendant has not made any counter-claim for any loss or compensation suffered on account of breach of the agreement to sell, even if any by the plaintiff; (iii) that the plaintiff in accordance with the dicta of the Supreme Court in ***Kailash Nath Associates vs. Delhi Development Authority & Anr.*** (2015) 4 SCC 136 is entitled to a decree for refund forthwith with interest at such rate as may be awarded by the Court. In ***Mera Baba Infrastructure Pvt. Ltd.*** (supra), this Court noted that in the written statement there was no plea of any loss suffered by the LRs and there was only a plea of forfeiture

of earnest money on breach by the plaintiff.

22. Reliance was placed upon the judgments in ***Poorna Radiology Services Pvt. Ltd.* v. *Philips Electronics India Ltd.:*** 2007 SCC Online Del 1163 (copy para 17), ***Lalit Kumar Bagla* v. *Karam Chand Thapar & Bros. (CS) Ltd.***, 204 (2013) DLT 392 and ***Mahendra Verma* v. *Suresh T. Kilachand***, 2010 SCC Online Del 1522 to emphaisze that without a Counterclaim for recovery of compensation for loss alleged to be suffered, mere plea in the written statement of the defendant for breach of agreement to sell by the plaintiff having suffered a loss is of no avail.

23. The Court after taking the same into account and despite the issues having been framed, allowed the application under Order XII Rule 6 CPC and passed a decree in favour of the petitioner along with interest pendente lite @6% per annum and future interest @ 9% per annum.

24. In the judgment of this Court in ***Versatile Commotrade Pvt. Ltd. vs Kesar Devi and Ors.***: 2019 SCC Online Del 8182, this Court relied upon the judgments in ***Kailash Nath Associates v. Delhi Development Authority & Anr***, 2015 4 SSC 136 and ***Mahanagar Telephone Nigam Ltd. vs. Tata Communications Ltd.*** Civil Appeal No.1766 of 2019, decided on 27th February 2019 and *inter alia* held as under:-

> *"9. The ratio of the aforesaid judgment thus makes it clear that forfeiture of the amount received under the Agreement to Sell is subject to loss being caused and appropriation thereof in pursuance to Section 74 of the Indian Contract Act. As noted above in absence of any pleadings raising the ground or contention of loss being caused along with necessary details in the written statement, the Defendants cannot appropriate the amount received under the Agreement to Sell as liquidated damages."*

25. Respondent has relied upon the judgment of the Supreme Court in ***Satish Batra*** (supra). The question which came up for consideration before the Supreme Court is that whether the seller was entitled to forfeit the earnest money deposit where the sale of an immovable property falls through by reason of the fault or failure of the purchaser.

26. If we go through the facts of this case as noted by the Supreme Court, the petitioner had instituted a suit for recovery of Rs.7,00,000/- from the seller defendant on the earnest money paid by him. The respondent had contested the suit stating that as per the agreement he was entitled to forfeit the amount of earnest money if there was a failure on the part of the purchaser plaintiff in paying the balance amount of Rs.63 lakhs. The Trial Court dismissed the suit holding that the respondent seller is entitled to retain the amount of earnest money since the plaintiff had failed to pay the balance amount of Rs.63 lakhs. This Court in this case placing reliance on the judgment in ***Fateh Chand vs. Balkishan Dass:*** AIR 1963 SC 1405, *inter alia*, held that seller can forfeit an amount of Rs.50,000/- out of the amount of Rs.7,00,000/- and he is bound to refund the balance amount of Rs.6,50,000/- to the purchaser. Aggrieved by this, seller invoked the jurisdiction of the Supreme Court wherein the Supreme Court noted the relevant clause of the Agreement to Sell dated 29.11.2005 and extracted the same:

> *"e) If the prospective purchaser fail to fulfill the above condition, the truncation shall stand cancelled and earnest money will be forfeited. In case I fail to complete the transaction as stipulated above, The purchaser will get the double amount of*

the earnest money. In the both condition, DEALER will get 4% Commission from the faulty party."

27. It is pertinent to mention that in the case before Supreme Court there was a forfeiture clause, whereas it is an admitted position that in the present case there is no forfeiture clause in the Agreement to Sell dated 12.08.2012. It is also an admitted case that a sum of Rs.55 lakhs has been paid by the petitioner. The only plea taken by the respondent is that out of Rs.55 lakhs, a sum of Rs.30 lakhs has been paid by the petitioner to one Sh. Inder Pal Singh Chadha. However, it is an admitted fact that payment has been made under the Agreement to Sell dated 12.08.2012 and even if the payment has been made to Sh. Inder Pal Singh Chadha that was being paid to the respondent and the same might have been received by Sh. Inder Pal Singh Chadha on his behalf, thus the petitioner cannot be asked to file separate proceedings for recovery of this amount from Sh. Inder Pal Singh Chadha.

28. It is also an admitted case that an application under Order 1 Rule 10 CPC was filed by the respondent for impleading Sh. Inder Pal Singh Chadha, which was dismissed by the learned Trial Court vide order dated 11.10.2018. On this point, learned counsel for the respondent submits that now he has filed CM(M) which is under scrutiny. However, I consider that filing of CM(M) should not make any difference as this Court is of the view that money was paid by the petitioner to the respondent under the Agreement to Sell dated 12.08.2012.

29. In the present case the plea of the petitioner is that he had paid Rs.55 lakhs against the Agreement to Sell dated 12.08.2012. The receipt of Rs.55 lakhs has duly been admitted by the respondent/defendant. The admission is

clearly reflected even in the notice sent by him dated 17.09.2014. It is also an admitted fact that there is no forfeiture clause in the Agreement to Sell dated 12.08.2012. It is also a matter of record that the defendant had not filed any counter-claim. This Court considers that these admissions are unequivocal and unambiguous and confers a jurisdiction on the Court to pass a judgment on admission while exercising the powers under Order XII Rule 6 CPC.

30. In view of the discussion hereinabove, the impugned order is liable to be set aside. Thus a decree of Rs.55 lakhs is passed in favour of the petitioner and against the respondent along with interest @6% per annum pendente lite and future interest @ 9% per annum.

31. The revision Petition along with the pending application stands disposed of.

DINESH KUMAR SHARMA, J

May 25, 2022
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