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2026:DHC:10313

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

% ***Reserved on: 09th September, 2026***
Pronounced on: 20th November, 2026
Uploaded on: 20th November, 2026

CNR No. DLHC010425362026

\+ **RSA 166/2026, CM APPL. 60972/2026, CM APPL. 60973/2026, CM APPL. 60974/2026, CM APPL. 60975/2026, CM APPL. 60976/2026, CM APPL. 60977/2026**

PAYAL
D/o Sh. Sunder Lal,
R/o Room No.406, P.G. Girl, U-204,
Fourth Floor, Shakarpur, Delhi, 110092

.....Appellant

Through: Mr. Pulkit Prakash, Mr. Arjun Mohan, Ms. Nabira Farman, Ms. Arushi Sharma, Ms. Ankita Sinha, Advs.

versus

POOJA GUPTA
W/o Sh. Gaurav Singhal,
R/o G-33-B, Near Arjun Park,
Shakarpur, Delhi -110092 ....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Present Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been preferred

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by the Defendant/Appellant, Payal, *against the Judgment and Decree dated 15.04.2026*, whereby the Regular First Appeal was dismissed, thereby affirming the Order dated 14.05.2025 ***whereby, the Suit for possession was decreed under Order XII Rule 6 of the CPC, in favour of the Plaintiff/Respondent, Pooja Gupta.***

2. The Plaintiff/Respondent had instituted *Civil Suit No. 162/2023* for *Possession, recovery of arrears of rent, Damages and Mandatory Injunction* in respect of Room No. 406 situated at property bearing No. U-204, Shakarpur, Delhi (*herein referred to as "suit property").*

3. **The *facts in brief*, as narrated in the Plaint, are** that the Plaintiff, Pooja Gupta, was running a Paying Guest Accommodation (*hereinafter referred to as the 'PG*') at the suit property for girls who were either students or working women. Each room comprised of two beds, with one bed allotted to each resident.

4. The Plaintiff averred that the Defendant had previously resided in the PG for five months, from July to mid-November, 2020. At that time, the Defendant was unmarried; she then got married to Davinder Singh on 25.11.2020, and during the subsequent divorce proceedings instituted by her husband, communications issued by the Court were served at the address of the PG.

5. In November 2021, i.e., after about one year, the Defendant again returned to the PG and was allotted one bed in room no. 403. It was stated that, as per the rules and conditions of the PG, every resident was required to furnish their identity proof, address proof, along with photographs for police verification. The Plaintiff and her staff had maintained a Register regarding the security deposit made by the Defendant. Upon being asked to furnish the

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documents, the Defendant stated that she had earlier resided in the PG and would provide the documents within a week, but failed to do so.

6. The Plaintiff further alleged that the Defendant did not permit another girl to occupy the second bed in Room No. 403 and frequently quarrelled with other residents. The Defendant, by misusing the law and in connivance with the police, entered Room No. 406 and threatened the Plaintiff that she would implicate her and her husband in false cases, as she claimed to have a good approach at Police Station Shakarpur.

7. In September 2022, the Defendant quarrelled with the other residents as well as the Plaintiff's representatives. She also broke the CCTV camera of the PG with a wooden stick (danda), causing a loss of Rs. 40,000/- to the plaintiff. Some other residents also sustained injuries. The Defendant intentionally blocked the hole of the washroom and latrine, for which the Plaintiff had to incur monetary loss towards clearing the blockage on a regular basis.

8. The Plaintiff had called the police, but neither the PCR nor the local police took any action against the Defendant. In September, 2022, the Defendant gave a written assurance at Police Station Shakarpur that she would vacate the PG within two months and pay the arrears of rent. However, the Defendant neither vacated the room nor paid the rent.

9. The Plaintiff alleged that the Defendant had paid rent for only three months, i.e., October to December 2022, through electronic mode, but took back the rent for December 2022 in cash, by threatening the Plaintiff's representative. It was further alleged that the Defendant demanded ₹50,000/- for vacating the room and stopped paying rent from January 2023.

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10. The Plaintiff further stated that complaints had been lodged against the Defendant with the police on 06.12.2022 to the SHO, PS Shakarpur; and on 12.12.2022 to the ACP, Preet Vihar. On 17.12.2022, the Plaintiff, as well as other residents of the PG, gave written complaints to the SHO, PS Shakarpur. However, no action was taken on the said complaints.

11. The Plaintiff also alleged that the Defendant had filed false cases and complaints against the Plaintiff, her husband and her representative, which were pending before the Courts. The Plaintiff stated that FIR No. 539/2022, Police Station Shakarpur, was lodged against the Defendant for usurping the room.

12. A Civil Suit for Recovery and Permanent Injunction titled *"Payal v. Gaurav Singhal & Ors.," was* instituted by the Defendant against the Plaintiff, her husband Gaurav Singhal and others, before the learned ASCJ, East, Karkardooma Courts.

13. The Plaintiff stated that left with no alternative, she issued a Legal Notice dated *29.12.2022* to the Defendant, terminating her tenancy and requesting her to vacate the bed and hand over vacant possession of the suit premises. However, despite repeated requests and the said Notice, the Defendant failed to vacate the room or pay rent from January, 2023.

14. The Plaintiff further stated that, on 07.02.2023, she lodged another written complaint against the Defendant with the SHO, Police Station Shakarpur, DCP (East) and the ACP concerned, but no action was taken.

15. ***Aggrieved, the Plaintiff filed the Suit seeking a decree of possession, recovery of arrears of rent @ ₹5,500/- per month from December, 2022 till delivery of Possession, Damages of ₹40,000/- till vacation of the premises and a decree of Mandatory Injunction.***

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16. The Defendant, Payal, in her **Written Statement,** took the *preliminary objection* that the Plaintiff was neither the owner of the suit property nor had she placed on record any original documents to establish her ownership. It was further contended that *there was no privity of contract* between the parties and that the Defendant had never paid rent to the Plaintiff. The Defendant alleged that the Suit was based on false and fabricated facts, was *without any cause of action*, and was liable to be rejected under Order VII Rule 11 CPC. She also alleged that the Plaintiff *had approached the Court with unclean hands*, as she had already filed Suit No. 1019/ 2022 against the Plaintiff, which is pending for trial.

17. The Defendant asserted that she was the lawful owner of the suit property and that the Plaintiff had no ownership, land lordship or other legal right, title or interest therein. The Defendant further asserted that the Electricity Connection situated on the top floor of the suit property was in the joint names of Mrs. Savitri Devi and Amar Chand, for which she referred to the correspondence details, including the mobile number and an email address reflected in the electricity bill issued by BSES Yamuna Power Limited. It was further stated that the GST registration at the said address was in the name of Vinod Thakur.

18. The Defendant further referred to online listings showing the name of Umesh Kumar at the address of the suit property and a listing on Just-dial showing the name Shree Radha Krishna Girl PG, at the address of the suit property.

19. The Defendant claimed that she had entered into an oral rental arrangement with Mr. Umesh Kumar in April, 2018, at a monthly rent @ ₹2,800/- and had paid a security deposit of ₹20,000/- to him and his wife,

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Mrs. Shashi. She claimed that the rent was regularly paid to Mr. Umesh Kumar till January 2023. She asserted that Mr. Umesh Kumar borrowed a sum of Rs. 50,000/- in cash from the Defendant, citing an urgent need for funds. However, despite repeated attempts, she was unable to contact him thereafter, as he did not respond to her calls and blocked her number.

20. The Defendant had lodged **FIR No. 539** dated 17.12.2022 under Sections 448 and 34 of the IPC, and **FIR No. 542** dated 18.12.2022, under Sections 147,149, 186 and 353 IPC for various alleged offenses, against the Plaintiff and her associates.

21. The Defendant further asserted that she had paid a sum of ₹2,00,000/- to the Plaintiff, *on the understanding that she would execute a Sale Deed in respect of Rooms No. 403 and 406, along with two bathrooms, in her favour.* The Plaintiff had signed an Agreement dated 23.02.2023 on plain paper; a copy of which was handed over to the Defendant, while the original was retained by the Plaintiff. The said Agreement was a legally binding Agreement for sale and was supported by documents provided by the Plaintiff herself. However, the Plaintiff had neither produced the ownership documents nor transferred the property in her favour.

22. The Defendant further asserted that ***in Suit No. 1019/2022,*** an interim Order had been passed restraining the Plaintiff and her associates from dispossessing her of the suit property, except by due process of law. They were also restrained from entering the suit property, except upon a written request from the Defendant for maintenance work.

23. The Defendant alleged that the said Order had been deliberately violated by the Plaintiff and her associates, who entered the suit property on 10.05.2023,

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25.09.2023 and 16.11.2023, disconnected the electricity supply and locked her room from outside while she was inside.

24. The Defendant further alleged that the Plaintiff and her associates had threatened her with consequences if she failed to comply with their demand for higher rent or vacate the suit property. She asserted that the Plaintiff had no right, title or interest to interfere with her peaceful possession and occupation of the Suit Property.

25. ***On merits,*** the Defendant denied the Plaintiff's averments regarding the nature and functioning of the PG. She asserted that the accommodation was being run for non-working women and students, and that married women, children and their parents were also residing in the accommodation. The Defendant denied receiving any Legal Notice from the Plaintiff on 29.12.2022. She further stated that all the police Complaints allegedly made by the Plaintiff were based on a false and concocted story. All the other allegations of the Plaintiff were denied.

26. It was, therefore, submitted that the suit of the Plaintiff was liable to be dismissed.

27. The **learned Trial Court, in the Order dated 14.05.2025,** *on the* consideration of rival assertions of the Plaintiff and the Defendant, observed that the *statement of the Defendant had been recorded on oath under Section 165 of the Indian Evidence Act,* 1872 on 12.08.2024, wherein she had stated that she had paid Rs. 2,00,000/- to the Plaintiff towards the purchase of Room Nos. 403 and 406 of the suit property, though she could not recollect the year of payment. She had further stated that she had paid Rs.20,000/- or Rs.30,000/- to Mr. Gaurav, husband of the Plaintiff, towards rent. However, she stated that she did not know the Plaintiff or her husband, Gaurav, and

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was unaware of the owners of Room Nos. 403 and 406, prior to entering into an Agreement to purchase the property.

28. The Trial Court also referred to the pleadings of the Defendant/Appellant in CS No.1019/2022, wherein she had described the Plaintiff and her husband as owners/landlords of the suit property and herself as a tenant, paying rent of Rs. 2,800/- per month. Reliance was also placed upon the Order dated 08.07.2024 in the said proceedings, which recorded the aforesaid statement of the Defendant/Appellant.

29. The *learned Trial Court* further observed that the suit property was being used as a Paying Guest Accommodation and that such an arrangement was essentially in the nature of a licence, rather than a lease. It also noted that the Plaintiff had clarified in her Written Submissions that the room had been allotted to the Defendant/Appellant as a licensee. *Accordingly, it held that the Defendant/Appellant was not entitled to protection under the Delhi Rent Control Act.*

30. The learned Trial Court also considered the plain-paper Agreement dated 23.02.2023 relied upon by the Defendant/Appellant, allegedly acknowledging receipt of Rs. 2,00,000/- by the Plaintiff/Respondent towards the sale of Room Nos. 403 and 406. It was observed that the said document did not confer any right, title or interest in the suit property upon the Defendant/Appellant, as the transfer of immovable property could only be effected through a registered instrument.

31. Further, it was observed that the amounts allegedly paid by the Defendant/Appellant to Umesh Kumar, the caretaker of the Plaintiff/Respondent, and his failure to repay the same, would give rise to a separate cause of action.

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32. It was thus, concluded that the Defendant/Appellant was estopped from disputing the title of the Plaintiff/Respondent. **Hence, the Suit was accordingly decreed for Possession under Order XII Rule 6 CPC, *vide* judgment dated 14.05.2025.**

33. ***Aggrieved, the Defendant/Appellant preferred RCA No. 57 of 2025 to challenge the judgment on possession dated 14.05.2025***.

34. The **Learned District Judge,** while dismissing the Application for condonation of delay, observed that the Defendant/Appellant had failed to explain the delay of 51 days in filing the Appeal, despite having received the certified copy of the impugned judgment on 30.07.2025.

35. Further, **on independent appreciation of the record,** it was observed that the Defendant/Appellant had failed to produce any reliable documentary evidence in support of the alleged payment of Rs. 2,00,000/- or any Written Agreement for purchase of the rooms. It was held that even if such payment had been made, it would not confer any right, title or interest in the Suit Property. The Court also rejected the contention that the premises were being used for commercial purposes, observing that the room had been allotted for residential accommodation, as a Paying Guest. Consequently, it was held that the Suit of the Plaintiff for possession **has been rightly granted under Order XII Rule 6 CPC. The Appeal was accordingly, dismissed.**

36. The **Regular Second Appeal has been filed under Section 100 CPC, by the Defendant/Appellant.**

37. The ***grounds of challenge*** are that the procedure adopted by the Courts below has deprived the Appellant of her right to a fair trial. Reliance is placed on *Sheodan Singh v. Smt. Daryao Kunwar*, (AIR 1966 SC 1332),

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wherein it has been reiterated that a decision on merits amounts to hearing the matter and finally deciding it on merits. It is contended that the Learned First Appellate Court, having held the Regular Appeal to be barred by Limitation, proceeded to consider the merits and confirmed the impugned judgment passed by the trial court. The present Regular Second Appeal is accordingly stated to be maintainable in regard to the findings on merits.

38. Further, it is contended that Order XII Rule 6 CPC, providing for a judgment on admissions, is an enabling, discretionary, and permissive procedure and is not mandatory, obligatory or peremptory. *A judicial discretion is vested in the Court, which cannot be claimed as a matter of right.* Reliance is placed on *Himani Alloys Limited v. Tata Steel Limited*, (2011) 15 SCC 273.

39. Further, reliance is placed on *Balraj Taneja v. Sunil Madan*, (1999) 8 SCC 396, wherein it was held *that the Court can, at an interlocutory stage, pass a judgment on the basis of admissions, but only after the admissions are shown to be unequivocal, clear and positive.*

40. Further, it is contended that the Appellant had raised objections, which go to the root of the case, and it was not appropriate to exercise discretion under Order 12 Rule 6 CPC. Reliance is also placed on *S.M. Asif v. Virender Kumar Bajaj*, (2015) 9 SCC 287, wherein it was observed that mere admission of a landlord-tenant relationship cannot be considered an unequivocal admission, warranting a decree under Order XII Rule 6 CPC.

41. It was submitted that in the present case, the Appellant did not deny making some payments, but had denied that Ms. Pooja Gupta was the lawful owner. Moreover, the payment of Rs.2,00,000/- had been made as the purchase consideration. Therefore, Order 12 Rule 6 CPC was inapplicable.

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Reliance is also placed on *Hari Steel and General Industries v. Daljit Singh*, (2019) 20 SCC 425 and *Pushpa and Ors.v. Dayawati and Ors.*, 2026 INSC 603, reiterating that the decree under Order 12 Rule 6 CPC is not automatic.

42. Further, it is contended that the Application under Order VII Rule 11 CPC filed by the Respondent was dismissed, by observing that there were "*effectively triable issues".* There was thus a judicial finding in the present Suit that the defence disclosed triable issues. There was no amended pleading, new material or fresh admission after the said Order. Yet, on 14.05.2025, the Court passed a decree under Order XII Rule 6 CPC, which is legally impermissible.

43. Further, it is contended that the learned Trial Court relied upon the statement under Section 165 of the Indian Evidence Act, recorded on 12.08.2024. However, there were *three aspects to the statement*: *firstly*, that ₹2,00,000/- was paid to the Respondent for the purchase of Room Nos. 403 and 406; *secondly*, ₹20,000/- or ₹30,000/- was paid to Mr. Gaurav, husband of the Respondent; and *thirdly*, that she did not know who owned the rooms, before purchasing them.

44. These statements cannot simultaneously be termed unequivocal admissions, as they required interpretation, inferential reasoning and examination of surrounding circumstances, as observed in the case of *Pushpa (supra)*. It is contended that the learned Trial Court read parts of the statement in isolation, and ignored other parts thereof and the categorical denial of the Respondent's title.

45. The learned Trial Court had observed that the Appellant's defence was *"such as to make it impossible for her to succeed and, therefore, is a ground to accept the defence as admission*." However, the Judgment under Order 12

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Rule 6 CPC can be passed only on clear, categorical and unequivocal admissions and not merely because the defence is held to be weak or unlikely to substitute. Therefore, the statutory requirement of unequivocal admission of the party, has been substituted with the own assessment of the merits of defence, which is wholly impermissible in law.

46. Further, it is contended that the learned First Appellate Court mechanically affirmed the findings of the Trial Court, without considering the legal contradictions arising from the Order dated 03.03.2025, vide which the Application under Order VII Rule 11 CPC was rejected, and the Suit was decreed under Order XII Rule 6 CPC.

47. Further, it is contended that in the impugned Appellate judgment, the payment of ₹2,00,000/- was held to establish that the Appellant recognised the Respondent as a competent person to transfer the suit property. It is contended that failure of the Appellate Court to consider the settled principles of law constitutes a substantial error in law, warranting interference by this Court.

48. It is further contended that the learned Trial Court had relied upon an interlocutory Order dated 08.07.2024 passed by the learned ACJ/CCJ/ARC in CS No. 1090/2022 in a separate Suit instituted by the Appellant, in the Court of the learned ACJ wherein it was observed that the Appellant had described the Respondent/Plaintiff and her husband as owner/landlords in the Plaint of that Suit. Treating those observations as admissions under Section 17 of the Bharatiya Sakshya Adhiniyam, 2023, the Suit has been decreed under 12 Rule 6 CPC. Such findings are contrary to the observation made by the Supreme Court in the case of *Pushpa & Ors*. (supra) and also in *Nagindas Ram Das v. Dalpatram Ichharam alias Brijram and others* (1974)

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1 SCC 242; *Umesh Aggarwal and Ors. v. Mahesh Aggarwal and Ors.*, (2013) SCC Online Sikk 60 and *Bharat Singh v. Mst. Bhagirathi*, (1965) INSC 165.

49. The Appellant has contended that the description of the Plaintiff/Respondent as owner-landlord in CS No. 1090/2022, was not based on personal knowledge of any registered title, but was made under a mistake of fact arising from the representations made to her. No registered Sale Deed, Property Tax Record or public document evidencing the Plaintiff's ownership was ever shown to the Appellant.

50. It is further asserted that Section 122 of B.S.A. (*erstwhile Section 116 of the Indian Evidence Act*) uses the term "*the landlord of such tenant*", which means the person who was actually inducted as the tenant, who was in possession. It assumes that the relationship is already established, and it does not provide for determination of who is the landlord, in the first place. Therefore, it does not prevent the tenant from disputing the identity or title of someone who merely claims to be the landlord but is not the person through whom the tenant has entered into the possession.

51. The Appellant's tenancy commenced in April, 2018 under Mr. Umesh Kumar, the admitted operating Caretaker of the paying guest accommodation. The Plaintiff herself, in her Replication, acknowledged Mr. Umesh Kumar as a caretaker. Also, the Delhi Police tenant registration dated 02.09.2022 identifies him as the operating Caretaker and primary point of contact for the PG. The agreed monthly rent of Rs.2800/- and the security deposit of Rs.20,000/-, was paid to Mr. Umesh Kumar and his wife, Mrs. Shashi. At no point did the Appellant enter into any oral or written tenancy Agreement with the Respondent, nor was there any relationship of landlord-

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tenant or any privity of contract with the Plaintiff, who is not the person through whom the Defendant/Appellant was inducted into possession.

52. In *Subhash Chandra v. Mohammad Sarif*, AIR 1990 SC 636, the Supreme Court held that the doctrine of estoppel ordinarily applies where the tenant has been let into possession by the Plaintiff. A tenant, who is already in possession, can challenge the Plaintiff's claim of derivative title by showing that the real owner is somebody else.

53. Similarly, reliance is placed on *Sheela v. Firm Prahlad Rai Prem Prakash*, (2002) 3 SCC 375.

54. In the present case, the Appellant merely required the Plaintiff to prove her title as claimed in the Written Statement, Application under Order 11 Rule 14, as well as, in the Written Submissions under Order 12 Rule 6 CPC. It is clear from the law that tenant may dispute the title of a person claiming through the original landlord, unless such person is acknowledged by the tenant either expressly or by paying rent.

55. The Appellant had applied for the certified copy of the impugned Trial Court Judgment on 28.05.2025, reflecting that she had a *bona fide* intention to pursue the statutory remedy of Appeal. The delay was neither deliberate nor actuated by any *mala fide* intention, but arose in the course of obtaining the certified copy and preparing the Appeal.

56. The discretion under Section 5 of the Limitation Act, has not been exercised in consonance with the principles enumerated in *Collector Land Acquisition Anantnag v. Mst. Katiji*, (1987) 2 SCC 107 and *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123. The *Bona fide* explanations have been furnished by the Appellant, to explain that the delay was not intentional. Instead, a technical approach was adopted by the learned

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Appellate Court in treating the period of delay itself as determinative and thereby, erroneously failed to exercise the judicial discretion under Section 5 of the Limitation Act.

57. The finding that the period between receipt of certified copy and the institution of the Appeal remained unexplained demonstrates that the learned Appellate Court examined the chronology of events, rather than the explanation given by the Appellant. The refusal to condone the delay without examining the explanation given therein amounts to improper exercise of jurisdiction. Hence, it is submitted that the impugned judgment of the learned Trial Court, which is affirmed by the Appellate Court, be set aside.

58. The learned counsel for the Appellant has addressed arguments on the Appeal, on the grounds similar to those which have been raised in the Second Appeal.

Submissions heard and Record perused.

59. The Suit for Possession has been decreed against the Defendant/Appellant under Order XII Rule 6 CPC, on the basis of her admissions, and the decree has been affirmed by the learned First Appellate Court. Two preliminary objections have been raised by the Defendant/Appellant, which may be considered first, before examining the case on merits.

60. The ***first preliminary objection*** taken by the Appellant is that while dismissing the Application under Order VII Rule 11 CPC, the learned Trial Court had observed that there were triable issues disclosed in the Written Statement. Once having held that there were triable issues, the Suit for

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Possession could not have been decreed on the basis of the admissions, without giving an opportunity to the Defendant/Appellant to lead her evidence.

61. The contention is completely fallacious for the simple reason that while deciding the Application under Order VII Rule 11 CPC, only the averments made in the Plaint are to be considered, to ascertain if it discloses any cause of action. The Written Statement or the defence of the Defendant is not considered at that stage. The learned Trial Court may have observed that there were triable issues, but that was only in the context of whether the Plaint disclosed a cause of action. The rejection of the Application under Order VII Rule 11 CPC is, *therefore, not an adjudication that the defence raises triable issues which require evidence.* The mere observation that there were triable issues is no ground to assert that the learned Trial Court had held that evidence was required to be recorded for determination of the facts.

62. *Pertinently, the scope of the Applications under Order VII Rule 11 and Order XII Rule 6 CPC is absolutely distinct*. At the stage of Order XII Rule 6 CPC, the rival contentions of the parties are to be considered to ascertain if the facts are admitted and, therefore, do not require any evidence. Merely because it was observed while disposing of the Application under Order VII Rule 11 CPC that there were triable issues, it does not imply that the Application under Order XII Rule 6 CPC could not be considered, after the filing of the Written Statement by the Appellant.

63. The ***second preliminary objection*** of the Appellant is that the learned Appellate Court had declined to condone the delay of 51 days in filing the Appeal, by observing that the delay was not sufficiently explained. The

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Appellant has asserted that the sole ground for dismissing the Application was the length of the delay, without adverting to the sufficiency of the reasons.

64. The Appellant had disclosed in her Application seeking condonation of Delay in filing the Appeal, that she had applied for the certified copy of the Judgment dated 14.05.2025, on 28.05.2025, and had collected the same on 30.07.2025.

65. The learned District Judge has observed that the certified copy had been prepared by the Copying Agency on 09.06.2025, though it was collected by the Appellant only on 30.07.2025. The Appellant had given *absolutely no explanation for collection of the certified copy after almost two months of its preparation*. Furthermore, even as per the showing of the Appellant that she received the copy on 30.07.2025, she filed the Appeal only on 19.08.2025, for which again there was no explanation.

66. The objective of the Limitation Act is to prevent stale claims from being agitated after a lapse of time. It also addresses the delay and laches on the part of a party. However, in the present case, it cannot be overlooked that a substantive right of Appeal was under consideration, and it is settled law that *substantive rights must not be defeated on technical grounds.* Though the learned District Judge has observed that there was no explanation forthcoming for non-collection of the certified copy from 09.06.2025 till 30.07.2025, it cannot be overlooked that there was summer vacation in the month of June, 2025. Moreover, the Appeal has been filed within 17 days of getting the certified copy. Some time is evidently required to prepare an Appeal, and 17 days taken for preparing and filing it cannot be said to be an inordinate delay, which could not have been condoned.

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67. In view of the foregoing discussion, the learned Appellate Court should have condoned the delay of 51 days in filing the Appeal. ***The Order dismissing the Application for condonation of delay is, hereby, set aside.***

68. It may be noted that even though the condonation Application had been dismissed, the learned Appellate Court had still proceeded to consider the Appeal on merits. *Those findings on merits are, therefore, considered in the present Second Appeal.*

69. The case may now be considered on merits to ascertain the validity of the impugned Judgment of possession under Order XII Rule 6 CPC. It is a settled principle that a decree on admissions may be passed where the admissions are *clear, categorical, unequivocal and unambiguous.* In light of this principle, the facts of the case may be considered, to ascertain if the Judgment of Possession has been rightly passed, based on admissions of the parties.

70. The present Suit *is one for recovery of Possession*, filed by the Plaintiff/Respondent asserting herself to be the owner of the suit property and the Defendant/Appellant to be a tenant therein. It is not a case of determination of title, but of examining whether the Plaintiff/Respondent has better proprietary rights in the suit property. *It is, therefore, pertinent to consider whether the Defendant/Appellant had come into the suit property through the Plaintiff/Respondent.*

71. At the outset, it may be noted that the Written Statement of the Defendant/Appellant was directed to be taken on record subject to payment of Rs.1500/- *vide* Order dated 03.03.2025. Though the costs were not paid, the Respondent submitted that the Written Statement may nevertheless be

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considered while deciding the submissions under Order XII Rule 6. The Learned Trial Court accordingly considered the Written Statement while examining the rival stands of the parties.

72. Now considering the case on merits, the case of the Plaintiff/Respondent was that she was the lawful owner of the suit property, where she was running a Paying Guest Accommodation for girls. The defendant/ Appellant had initially taken a Room in the PG accommodation, but she left in November, 2020 as she got married.

73. However, in November 2021, i.e. after about one year, the Defendant again returned to the PG and was allotted one bed in room no. 403. However, she had paid the rent till December, 2022, though she forcibly, by extending threats, took back the rent for the month of December, 2022, and stopped making payment of the monthly charges from January, 2023.

74. It was further alleged that the Defendant/Appellant had quarrelled with other residents and had given an assurance before the Police Station, Shakarpur, in September 2022, to vacate the premises within two months, but had failed to do so. The Defendant had filed a Civil Suit for Permanent Injunction, which is pending trial, and had also got a FIR No. 539/2022 registered against the Plaintiff.

75. The Defendant/Appellant, in her Written Statement, **disputed the ownership of the Plaintiff/Respondent,** relying upon the electricity connection standing in the names of Ms. Savitri Devi and Mr. Amar Chand and the GST registration in the name of Mr. Vinod Kumar.

76. She also relied upon the interim Order passed in *Civil Suit No. 1019/2022*, whereby the Plaintiff/Respondent was restrained from dispossessing her except in accordance with due process of law.

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77. The Defendant/Appellant further asserted that she had entered into an *oral Rent Arrangement in respect of the premises,* ***with one Mr. Umesh Kumar in April 2018****, at a monthly rent of Rs.2,800/-*. She admitted having paid Rs.20,000/- as security to Mr. Umesh Kumar and his wife, Smt. Shashi, and claimed to have regularly paid rent to them till January, 2023. She also alleged that Mr. Umesh Kumar had borrowed Rs.50,000/- from her, which he had failed to repay.

78. She further asserted that she had paid a sum of Rs.2,00,000/- to the Plaintiff/Respondent, Ms. Pooja Gupta, towards the purchase of Room Nos. 403 and 406, along with two bathrooms, pursuant to an agreement dated 23.02.2023 executed on plain paper.

79. Thus, the *defence* of the Defendant/Appellant was that she had initially entered the premises through Mr. Umesh Kumar under an oral rental arrangement, but had subsequently agreed to purchase Room Nos. 403 and 406 from the Plaintiff/Respondent, for a consideration of Rs.2,00,000/-, allegedly recorded in the above-mentioned document/plain paper.

80. The Statement of the Defendant/Appellant was recorded on oath by the learned Trial Court, on 12.08.2024. In the said statement, *she stated that she had paid a sum of Rs.20,000/- or Rs.30,000/- to the husband of the Plaintiff/ Respondent, towards rent. She also stated that she had paid Rs. 2,00,000/- to the Plaintiff/Respondent towards the purchase of Room Numbers 403 and 406, in the property in question.*

81. Though the Defendant/Appellant had asserted that the Plaintiff/Respondent was not the owner of the suit property on the ground that the electricity and water connections stood in the names of third parties, she herself claimed to have paid a sum of Rs.20,000/- or Rs.30,000/- to the

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husband of the Plaintiff/Respondent, towards rent. This clearly reflects that she had acknowledged the Plaintiff/Respondent's right in the suit property, by making payment of rent to her husband. Further, her own assertion that she had entered into an agreement to purchase the rooms from the Plaintiff/Respondent, ***also reflects her admission of the Plaintiff/Respondent's proprietary rights in the suit property.***

82. The Defendant/Appellant herself relied upon Civil Suit No.1019/2022, filed by her against the Plaintiff/Respondent for Permanent and Mandatory Injunction. In the plaint of the said Suit, she had stated as under:-

> "…..
>
> *2. That the Plaintiff is residing here and is paying the rent amount of Rs. 2800/- as per the agreement* ***between the Plaintiff and the caretaker of the P.G. i.e. the defendant no.5/Shashi and the defendant no.4/Umesh.***
>
> *3. That on 29.12.2021, at the time of taking room as a PG, the Plaintiff has given a security amount of Rs.20,000/- (Rs. Twenty Thousand). The Plaintiff is giving the rent of P.G. on time still both the care takers recently started to demand more money without any justified reasons."*
>
> *4. That when the Plaintiff told about the said unjustified increment in the rent to owners i.e. the defendant no.1/Gaurav Singhal and the defendant no.2/Pooja Gupta, they took no action against the defendant no.4 & 5 and instead asked the Plaintiff to give more money as rent or*

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vacate the P.G as soon as possible otherwise she would have to face dire consequences.

5. That the Plaintiff agreed to vacate the PG and demanded her security money of Rs.20,000/- from the ***defendant no.1/Gaurav Singhal and the defendant no.2/Pooja Gupta*** *but they flatly refused to return the same and asked the Plaintiff to vacate the PG as soon as possible.*

6. The Plaintiff had also informed the concerned police officials about the threatening being given to the Plaintiff by the defendants on 29.08.2022.

7. That on 01.09.2022 the care taker i.e. the defendant no.5/Shashi came to the room of the Plaintiff and asked her to vacate the P.G otherwise the luggage of the Plaintiff would be thrown out of the P.G. being threatened the Plaintiff called the police officials on 112 no. but they pacified the situation on call only.

8. That again on 02/09/22 both the care takers i.e. the defendant no.5/Shashi and the defendant no.4/Umesh came to the room of the Plaintiff and started shouting and quarrelling with the plaintiff. The defendant no.5/Shashi slapped and pulled the hair of the plaintiff and forcefully dragged the plaintiff on the floor to make her to vacate the P.G. Somehow the plaintiff saved herself and called the Police Officials on 112 no. but the police officials pacified the matter.

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> *9. That on* ***03/09/22, the owners i.e. the defendant no.1/Gaurav Singhal and the defendant no.2/Pooja Gupta came to the P.G at night and asked the plaintiff to vacate the P.G otherwise she has to face dire consequences****..”*

83. The pertinent question is, whether the admissions made by the Appellant outside the pleadings of this case, can be considered in this case.

84. This aspect was specifically considered recently, in the case of *Rajiv Ghosh v. Satya Narayan Jaiswal*, 2025 INSC 467, wherein the Supreme Court explained that the words *“or otherwise” in Order XII Rule 6 CPC* and observed that the words are ***wide enough to encompass admissions made outside the pleadings.*** However, such admissions must be clear and unequivocal and the pleadings have to be read as a whole.

85. In *Pushpa & Ors. v. Dayawati*, 2026 INSC 603, the Supreme Court reiterated that every statement made by a party does not automatically constitute an admission sufficient to pass a decree under Order XII Rule 6 CPC and that the admission must clearly establish the entitlement to the relief claimed.

86. The admissions made by the Defendant/Appellant in her earlier Civil Suit No.1019/2022, against the Plaintiff, can therefore, be considered in the present proceedings.

87. The pleadings in the earlier Suit as reproduced above, reflect that the Defendant/Appellant had ***repeatedly acknowledged the Plaintiff/ Respondent and her husband as the owners of the PG accommodation*** and that she had occupied the premises through the caretakers, Sh. Umesh and his wife, Shashi. These statements constitute admissions regarding the

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ownership claimed by the Plaintiff/Respondent. Also, it explains that the property was taken from Sh. Umesh, who was the caretaker of the Plaintiff; thereby implying that he was acting for and on behalf of the Plaintiff and had no independent title in the suit property.

88. Further, even if the Defendant/Appellant's allegation that Mr. Umesh Kumar, the caretaker, had borrowed Rs.50,000/- from her and failed to repay was to be accepted, the same would give rise to an independent cause of action against him, wholly unconnected with her occupation of the suit property. The Defendant/Appellant would be at liberty to pursue an appropriate remedy for recovery of the said amount from Mr. Umesh Kumar, but the alleged transaction cannot constitute a ground to continue occupying the suit property, as has been rightly observed by the learned Trial Court.

89. The Defendant/Appellant, having categorically admitted having come into possession of the suit property through Ms. Pooja, ***is estopped from questioning the title of Ms. Pooja, in terms of Section 122 of the Bharatiya Sakshya Adhiniyam, 2023 (erstwhile Section 116 of the Indian Evidence Act, 1872).***

90. Significantly, the Defendant/Appellant's own defence is that she had paid Rs.2,00,000/- to the Plaintiff/Respondent towards the purchase of Room Nos. 403 and 406, along with the bathrooms, for which she relied upon a document dated 23.02.2023 executed on plain paper. Her own plea of having entered into an agreement to purchase the said rooms from the Plaintiff/Respondent, is a clear and unequivocal admission and acknowledgment of the defendant about the ownership of the Plaintiff, in the suit property.

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91. The learned Trial Court, therefore, rightly observed that the Appellant, having come into the premises through the Plaintiff, cannot question the locus of the plaintiff to seek possession of the suit property. **It is a simpliciter Suit for Possession and,** ***as per the admissions of the Appellant herself, Ms. Pooja has a better proprietary right and the Defendant/Appellant cannot question her right to seek possession of the suit property.***

92. ***The next significant aspect for consideration is the nature of the Defendant/Appellant's occupation****, i.e. whether she was occupying the room as a tenant or as a licensee.*

93. The Plaintiff/Respondent had described the Defendant/Appellant in the Plaint as having been inducted into a room in the PG accommodation, at a monthly payment of Rs.2,800/-. However, the nature of the arrangement has to be determined from its substance and not merely from the terminology used by the parties. It is not disputed that the premises is a PG accommodation with several rooms, and each Room is occupied on a double-sharing basis. One bed in Room No.403 was allocated to her, but she, by her behaviour, did not permit the second person to share the room.

94. The distinction between a lease and a licence was considered by the Supreme Court in *Associated Hotels of India Ltd. v. R.N. Kapoor*, AIR 1959 SC 1262. The dispute concerned two cloakrooms in the Imperial Hotel that had been occupied by a hairdresser, under an Agreement framed in language appropriate to a licence. *K. Subba Rao, J.* observed that, ***although the document used phraseology appropriate to a licence, it was the substance***

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of the Agreement, and not its form, that mattered; otherwise, clever drafting could camouflage the real intention of the parties.

95. The propositions of law were thus, summarised as under:

> ***"****(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;*
> *(2) the real test is the intention of the parties - whether they intended to create a lease or a license and*
> *(3) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and*
> *(4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.****"***

96. It was observed in *Associated Hotels* (supra) that there was a marked *distinction between a lease and a licence.* Section 105 of the Transfer of Property Act, 1882 defines a lease of immovable property as a transfer of the right to enjoy the property for a specified time, in consideration of a price paid or promised. Under Section 108 of the Act, the lessee is entitled to be put in possession of the property. *A lease, therefore, transfers an interest in the property, and during the term of the lease, the lessee acquires the right to enjoy the property to the exclusion of the lessor.* On the other hand, Section 52 of the Indian Easements Act, 1882 defines a licence as under:

> *"Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in*

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> *or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."*

97. K. Subba Rao, J. explained that ***if a document gave a person only the right to use property in a particular way or on specified terms, while possession and control remained with the owner, the arrangement would amount to a licence.*** Legal possession would remain with the owner, and the licensee would be permitted to use the premises for a particular purpose. The licence would not create an estate or interest in the property. *It was further noted that exclusive possession had once been treated as conclusive proof of a lease, but the later approach treated it only as prima facie evidence of tenancy, subject to circumstances showing that the parties did not intend to create one.*

98. The tests to determine whether an arrangement is a lease or a licence were further explained by the Supreme Court in *Delta International Ltd. v. Shyam Sundar Ganeriwalla*, (1999) 4 SCC 545, as under:

> *"(1) To find out whether the document creates a lease or a license the real test is to find out* ***"the intention of the parties";*** *keeping in mind that in cases where exclusive possession is given, the line between a lease and a license is very thin.*
>
> *(2) The intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that the document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the*

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surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the relationship between the parties.

(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be the most relevant circumstances to arrive at the conclusion that the intention of the parties was to create a lease…"

99. Applying the aforesaid principles to the present case, it is not disputed that the property in question is being used as a PG containing various rooms. There is no denial that each room has two beds, which are shared by two residents who pay a fixed amount as licence fee for the occupation of a bed in the room.

100. Further, in the *Written Statement filed by the Plaintiff/Respondent* in the Civil Suit No. 1019/2022 instituted by the Defendant/Appellant, the ***Defendant/Appellant was described as a licensee.*** This circumstance also supports the finding of the learned Trial Court that the relationship between the parties was that of licensor and licensee and that the bar under the Delhi Rent Control Act was not attracted.

101. Therefore, a paying guest arrangement is closer to the concept of a license than a lease, since the occupant is permitted to use a particular room or space, while the overall management and control of the premises remains with the owner, as rightly observed by the learned Trial Court. ***The learned Trial Court, therefore, rightly held that the Defendant/Appellant was***

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occupying the room as a licensee and that the bar under the Delhi Rent Control Act, 1958 was not attracted.

102. Further, in the case of *Sant Lal Jain v. Avtar Singh*, (1985) 2 SCC 332, the Supreme Court held that a *licensee, upon termination of the licence, is under an obligation to surrender possession and pursue any independent remedy available to him separately.*

103. Therefore, the the Appellant, who as per her own admissions as discussed above, is a Licencee, who is under an obligation to vacate the suit property, once the Licence is terminated.

104. The Defendant/Appellant had ***also taken the defence that she had agreed to purchase Room Nos. 403 and 406, along with the bathrooms, for which she had paid Rs.2,00,000/- to the Plaintiff/Respondent***. However, even if the copy of the plain paper dated 23.02.2023, relied upon by the defendant, is treated as an Agreement to Sell, it does not, by itself, confer any right upon the Defendant/Appellant to continue in possession of the suit property, and the same by itself, does not confer any right upon her to continue in possession of the suit property.

105. Section 54 of the Transfer of Property Act, 1882 provides that a sale of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. It further provides that a contract for the sale of immovable property *"does not, of itself, create any interest in or charge on such property."*

106. Thus, ownership of immovable property passes only on the execution of a registered Sale Deed. Till then, the prospective purchaser may, at best, seek specific performance of the Agreement to Sell. If a person is a tenant or

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a licensee, mere execution of an Agreement to Sell does not, by itself, create any ownership or proprietary interest in the property in her favour.

107. The Supreme Court in *Nazim Shaikh Hasan v. Nasir Mushtaq Shaikh & Ors.*, 2026 INSC 853, referring to *Suraj Lamp and Industries Pvt. Ltd. (2) v. State of Haryana*, (2012) 1 SCC 656 and *Narandas Karsondas v. S.A. Kamtam*, (1977) 3 SCC 247, reiterated that an ***"Agreement to Sell does not by itself confer any title or interest in the property, since only a registered conveyance transfers ownership, and "an agreement of sale, whether with possession or without possession, is not a conveyance."***

108. The Supreme Court in *Nazim Shaikh Hasan* (supra) distilled the law into the following propositions:

> ***"(i) the mere execution of an agreement to sell between a landlord and tenant does not ipso facto bring about a determination of the subsisting tenancy;***
> *(ii) it is only when the terms of the agreement or the unequivocal conduct of the parties, inconsistent with the continuance of the existing tenancy, disclose either an express or implied surrender within the meaning of Section 111(e) or (f) of the TP Act, that the lease can be said to have been determined;*
> *(iii) the continuous possession of a tenant even after the execution of an agreement to sell does not amount to part performance under Section 53A of the TP Act unless such possession is shown to be directly relatable to and flowing from the agreement to sell; and*
> ***(iv) any agreement to sell, not being a registered deed of conveyance, does not by itself confer any title or interest in the property."***

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109. It was further observed, relying upon *D.S. Parvathamma v. A. Srinivasan*, (2003) 4 SCC 705, that a person who was in possession as a tenant before the Agreement to Sell, and continues in possession thereafter, cannot be heard to say that by reason of the Agreement to Sell, her possession was no longer that of a tenant.

110. In the present case, the Defendant/Appellant came into possession of the room as a licensee in the PG accommodation, much prior to the alleged plain-paper document dated 23.02.2023. Neither does the said document record that the licence came to an end, nor that the possession was handed over to her in terms thereof. Her possession, therefore, is not relatable to the alleged Agreement to Sell and continues to be that of a licensee. The reliance of the Defendant/Appellant on *S.M. Asif v. Virender Kumar Bajaj* (supra) is also misplaced, since in that case a Suit for Specific Performance was pending, whereas no such Suit has been filed by the Defendant/Appellant.

111. ***Thus, the Defendant/Appellant may pursue her independent remedy, if any, in respect of the alleged Agreement to Sell, but the same, by itself, cannot constitute a ground to resist the Suit for Possession.***

112. *Another aspect* for consideration is ***whether the possession of the Defendant/Appellant is protected under Section 53A of the Transfer of Property Act, 1882,*** on the basis of this copy of the plain paper dated 23.02.2023, relied upon by the Defendant, even if it is treated as an Agreement to Sell.

113. In *Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar & Ors.*, (2018) 7 SCC 639, the Supreme Court held that an Agreement to transfer

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immovable property executed after Section 17(1A) of the Registration Act, 1908 which came into force *w.e.f.* 24.09.2001, is required to be registered to for the purposes of Section 53A of the Transfer of Property Act, 1882.

114. The document relied upon by the Defendant/Appellant, dated 23.02.2023, is an *unregistered Agreement* executed on plain paper. It, therefore, cannot protect the possession of the Defendant/Appellant under Section 53A of the Transfer of Property Act, 1882, even if its execution was to be assumed. The Defendant/Appellant cannot, therefore, claim a protected right to continue in possession of the suit property on the basis of the said Agreement, for which she is at liberty to pursue any independent remedy that may be available to her, in respect thereof.

115. In *Sant Lal Jain v. Avtar Singh*, (1985) 2 SCC 332, the Supreme Court held that a *licensee, upon termination of the licence, is under an obligation to surrender possession and pursue any independent remedy available to him separately.*

116. The Appellant had next contended that she was not served with the Legal Notice. The Plaintiff however, had stated that she terminated the license *vide* a Legal Notice dated 29.12.2022, asking the Defendant/ Appellant to vacate the premises and thereafter, had filed a Suit for seeking Possession.

117. Even if the contention of the Defendant is accepted, then too, filing of the Suit itself amounts to the notice of the intention of the Plaintiff to terminate the occupation rights and seek possession, as has been held in the case of *M/s. Nopany Investments (P) Ltd. v. Santokh Singh (HUF)*, (2008) 2 SCC 728.

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118. For a Decree of possession, the necessary factors that are required to be established are, *firstly*, the ownership/proprietary right of the Plaintiff; *secondly*, the occupation of the defendant as a licensee/tenant; *thirdly*, the valid termination of the right of occupation of the defendant; and *fourthly*, that the Suit is not barred under Delhi Rent Control Act.

119. All these factors are established from the Pleadings and there are specific admissions as discussed above. The learned Trial Court, as well as the First Appellate Court, have rightly considered the admissions made by the Defendant/Appellant in the various proceedings and have *held her to be a licensee in respect of the suit property*. **The decree for possession under Order XII Rule 6 CPC has, therefore, rightly been passed in favour of the Plaintiff/Respondent.**

Conclusion:

120. No substantial question of law arises in the present Second Appeal. The concurrent findings of the learned Trial Court and the learned First Appellate Court are based on the admissions of the Defendant/ Appellant herself, and are in accordance with the settled principles of law.

121. There is no merit in the present Second Regular Appeal, which is hereby, dismissed.

122. The pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 20, 2026/dss/RS