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

% **Date of decision: 21st May, 2019**

\+ **CS(OS) No.553/2016 & CC No.19/2017**

NIKITA GUPTA **.... Plaintiff**

Through: Ms. Sangeeta Chandra & Mr. Deepak Khadaria, Advs.

Versus

ALOK GUPTA & ORS. **...Defendants**

Through: Mr. Tanmaya Mehta, Mr. Saurabh Gupta, Mr. Puneet Yadav, Mr. Siddhanth K. Singh, Mr. Anurag Sahay, Mr. Raghav Wadhwa & Ms. Mallika Bhatia, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. IA.No.7334/2017 of the plaintiff under Order XII Rule 6 of the Code of Civil Procedure Code, 1908 (CPC), for decree of possession on admissions, is for consideration in this suit, on the basis of title, for recovery of possession of immovable property and Counter Claim for recovery of Rs.5,45,20,000/-. The counsels have been heard.

2. The plaintiff instituted this suit, pleading that (i) all the five defendants i.e. (a) Alok Gupta, (b) Satyawati Gupta, (c) Anita Gupta, (d) Reena Gupta, and, (e) Sheetal Gupta are the legal representatives of the maternal uncle of the husband of the plaintiff (Kapil Gupta); (ii) vide registered Partition Deed dated 29th January, 1999 Sh. Sant Raj Gupta became the sole and exclusive owner of an area measuring 91.50 sq. yds. along with construction thereon in property No.J-108-A, Rajouri Garden, New Delhi having a total area of 388.8 sq. yds.;

(iii) after the demise of Sh. Sant Raj Gupta, the defendants became co-owners of the said 91.50 sq.yds. of property having one-fifth share each; (iv) the defendant no.1 had taken huge cash loans from the husband of the plaintiff on various occasions and a sum of more than Rs.3,80,00,000/- was due from the defendant no.1 to the husband of the plaintiff and the defendant no.1 had acknowledged the said cash loan amounting to Rs.3,79,16,250/- in his own handwriting; (v) the defendant no.1 was avoiding to pay the said monies and when confronted, told the husband of the plaintiff that the amount would be paid as soon as he receives the money from his aforesaid portion admeasuring 91.50 sq.yds. of the property; (vi) the defendant no.1, in September, 2015 approached the husband of the plaintiff stating that he was interested in selling the aforesaid portion ad-measuring 91.50 sq.yds. of the property of which he along with other defendants was the owner; (vii) the relevant part of para no.4 of the plaint is as under:

> "4 ……. it was agreed that the entire property measuring 91.50 sq. yds. shall be transferred / sold in the name of the plaintiff for a total consideration of Rs.8,50,00,000/- (Rupees Eight Crores Fifty Lacs Only), out of which a sum of Rs.1.50 Crores was to be paid vide five cheques of Rs.30,00,000/- in the name of each of the defendants. Though, the total amount was settled at Rs.8.50 Crores for the entire property measuring 91.50 sq. yds., it was agreed that the cash loan amount of Rs.2.30 Crores was to be adjusted first. Accordingly, on 22.09.2015, a receipt was executed by the defendant No.1, whereby, the defendant No.1 had acknowledged the receipt of Rs.2,30,00,000/-

> from the plaintiff. Apart from this, five cheques of Rs.30,00,000/- each amounting to Rs.1,50,00,000/- were also mentioned in the said receipt dated 22.09.2015. It is not out of place to mention here that the amount of Rs.1,50,00,000/- was decided between the parties on the request of the defendant No.1 as he wanted to avoid the payment of tax on account of capital gain.";
>
> ***(emphasis added)***

(viii) the aforesaid portion of the property comprises of one shop on the ground floor, two room set on the first floor and second floor and one room on the third floor; (ix) an agreement was also executed by defendant no.1 and husband of the plaintiff on 22nd September, 2015 and possession of the third floor handed over to the husband of plaintiff in terms of the agreement and the defendant no.1 agreed to vacate the shop by 31st December, 2015; however since the only access to the third floor was through the shop, no locks of the husband of the plaintiff were put on the third floor; (x) paras no.6,7 and 9 of the plaint are as under:

> "6. That on 23.09.2015, the husband of the plaintiff went to the site to get the same measured, it was revealed by the defendant No.1 that he had already sold the back portion of the property to some third party and the area which was intended to be transferred to the plaintiff was about 62.0 sq. yds. consisting of one shop on the ground floor, two room set on the first floor and second floor and one room on the third floor. After detailed discussion, it was agreed that the consideration / purchase price would be reduced proportionately i.e. by 32% and thus, the entire sale

consideration amount of Rs.8.50 Crores was reduced by Rs.2.72 Crores and it was fixed at Rs.5.78 Crores.

Therefore, out of the total consideration amount of Rs.5.78 Crores, a sum of Rs.3.80 Crores stands paid / adjusted as mentioned in the receipt dated 22.09.2015 leaving behind a balance of Rs.1.98 Crores, for the suit property measuring 62.0 sq. yds. in the premises bearing No.J-108-A, Rajouri Garden, Village Bassai Darapur, New Delhi as shown in the red colour in the site plan.

7. That it was further agreed on 23.09.2015 that the remaining cash loan transaction between the defendant No.1 and the husband of the plaintiff amounting to Rs.1.50 Crores was also to be adjusted in the balance sale price of Rs.1.98 Crores. Thus, after deducting Rs.1.50 Crores from the balance sale price of Rs.1.98 Crores, a sum of Rs.48,00,000/- (Rupees Forty Eight Lacs Only) was left as balance sale consideration. The said amount was acknowledged by both the parties i.e. Mr. Kapil Gupta, on behalf of the plaintiff on the one hand and the defendant No.1 on his behalf and on behalf of the other defendants, on the other hand.

9. That however, since the goods of the defendant No.1 were lying for a long time in the said portion of the property to be handed over to the plaintiff, defendant No.1 requested Mr. Kapil Gupta to permit him to deliver the possession of the shop after 2-3 months. Keeping in mind the close relations between the parties, the plaintiff agreed for the same and it was decided that the Sale Deed would be executed on 24.09.2015, upon the receipt of entire sale consideration,

> however, the cheques would be deposited by the defendants only after the delivery of the vacant and physical possession.";
>
> ***(emphasis added)***

(xi) a Sale Deed was executed and registered by the defendants in favour of plaintiff on 24th September, 2015 and the plaintiff paid the balance amount of Rs.48,00,000/- in cash to defendant no.1 and cheques for Rs.30,00,000/- in favour of each of the five defendants and a cheque for Rs.1,50,000/- towards TDS amount; (xii) the Sale Deed disclosed actual physical vacant possession of the property sold, to have been delivered to the plaintiff, and the defendants being left with no claim, title or interest in the property sold; (xiii) para no.13 of the plaint is as under:

> "13. That however, it is pertinent to mention here that though, it was stated in the Sale Deed that the possession of the property in question was delivered to the plaintiff on the spot, actually physical possession was not given as the goods of the plaintiff have been lying in the shop and as per the agreed terms, the possession of the suit property was to be given to the plaintiff at the time of presentation of all the five cheques by the defendants in their bank account.";

(xiv) the cheques were debited from the bank account of the plaintiff on 9th November, 2015 and 12th November, 2015. The plaintiff on 13th November, 2015 contacted the defendant no.1 for delivery of possession but the defendant no.1 avoided delivery of possession on some pretext or the other; (xv) ultimately legal notice dated 12th

December, 2015 was got served by the plaintiff and in response whereto the defendants took a stand that the balance amount of Rs.4,70,00,000/- had not been paid by the plaintiff to the defendants; it was not disclosed in the reply, that the sale consideration amount was reduced to Rs.5,78,00,000/- and a sum of Rs.1,50,00,000/- was adjusted against cash loan transaction between the husband of the plaintiff and the defendant no.1; and, (xvi) the plaintiff sent a rejoinder but possession was not delivered.

3. The suit was filed in the District Court but upon finding the valuation of the suit to be above the maximum pecuniary jurisdiction of the Court of the Additional District Judge, the plaint was returned to the plaintiff and re-filed in this Court.

4. The defendants have contested the suit by filing a joint written statement *inter alia* pleading that, (i) though the sale consideration agreed was Rs.8,50,00,000/- but the Sale Deed relying whereon the suit had been filed was under valued at Rs.1,50,00,000/- and is liable to be impounded and inadmissible in evidence; (ii) the plaintiff, out of the agreed sale consideration of Rs.8,50,00,000/-, has paid only a sum of Rs.1,50,00,000/- by five cheques of Rs.30,00,000/- each and Rs.2,30,00,000/- in cash, leaving a balance of Rs.4,70,00,000/- towards sale consideration and which has not been paid; the plaintiff has thus not acquired any right in the property; (iii) in the notice preceding the suit got sent by the plaintiff, the plaintiff had categorically stated that portion ad-measuring 62 sq. yds. of the property was offered to be sold and the case set up in the plaint, of

entire 91.50 sq. yds. being offered to be sold is contrary to the case in the legal notice preceding the suit; (iv) Sant Raj Gupta, being the predecessor of the defendants, in his lifetime, on 5th December, 2002 had sold a portion ad-measuring 30-31 sq. yds. out of his 91.50 sq. yds. portion of the property and the purchasers were in possession thereof; upon sale of the said portion, Sant Raj Gupta was left with an area of 62 sq. yds. and the defendants, on demise of Sant Raj Gupta, inherited the said 62 sq. yds. portion only of the property; (v) no cash loans were given by the husband of the plaintiff to the defendant no.1 and no amount least more than Rs.3,80,00,000/- crores, was due from the defendant no.1 to the plaintiff and no acknowledgement of any such liability was ever made by the defendant no.1 to the husband of the plaintiff; (vi) the defendants had offered to sell only the portion ad-measuring 62 sq. yds. of the property, of which they were the owner, to the plaintiff and the plaintiff, after perusing all title documents in favour of the defendants, had agreed to purchase the same for a total sale consideration of Rs.8,50,00,000/- cores; (vii) there is no two room set on the first and second floors of the said portion; (viii) the receipt dated 22nd September, 2015 filed by the plaintiff herself before this Court, is with respect to receipt of Rs.2,30,00,000/- in cash and Rs.1,50,00,000/- in cheque and also mentions the balance remaining of Rs.4,70,00,000/-; (ix) the plaintiff, on 26th September, 2015 purchased stamp paper for the Sale Deed according to Circle Rate of the portion ad-measuring 62 sq. yds. only; however in the plaint it is pleaded that the plaintiff discovered the area to be 62 sq. yds. instead of 91.50 sq. yds., only on 23rd September, 2015, showing that the

plaintiff, even prior thereto was aware that the area of the property was 62 sq. yds. and not 91.50 sq. yds.; (x) the sale consideration was never reduced from Rs.8,50,00,000/- to Rs.5,78,00,000/-; (xi) possession of the property sold was not given, because the sale was not complete just on execution of the Sale Deed and sale transaction was to be completed only on payment of the entire agreed sale consideration of Rs.8,50,00,000/-; (xii) though the plaintiff on the date of execution of the Sale Deed i.e. 24th September, 2015 had issued five cheques of Rs.30,00,000/- each but there were no money in the account of the plaintiff on which the cheques were issued, to honour the said cheques, and the plaintiff made arrangement of money in her bank account only in second week of November, 2015 and whereafter asked the defendants to present the cheques; (xiii) the plaintiff, as per her own averments, has paid a sum of Rs.3,80,00,000/- only out of Rs.8,50,00,000/- and having not fulfilled her part of the contract of sale, is not entitled to possession; (xiv) as per own averments of the plaintiff, possession was not delivered to the plaintiff and as such the clause in the Sale Deed, of delivery of possession is of no avail; and, (xv) possession was to be handed over to the plaintiff only on payment of entire agreed sale consideration and which has not been paid.

5. The defendants, on the same averments, have filed the Counter Claim for recovery of Rs.4,70,00,000/- with interest at 12% per annum with effect from 24th September, 2015 till institution of the suit i.e. for a total sum of Rs.5,45,20,000/-.

6. Need to refer to the replication in the suit or to the written statement and replication in the Counter Claim is not felt.

7. The counsel for the plaintiff, in her arguments, has drawn attention to the clauses of the Sale Deed dated 24th September, 2015, where the defendants are described as "VENDOR(S)" and the plaintiff is described as "VENDEE(S)", as under:

> *"AND WHEREAS the VENDOR(S) for his/her/their bonafide legal needs and requirements and in the best interest has agreed to sell convey transfer all his/her/their rights, titles, interests in respect of Free Hold built up Property Bearing No. J-108-A, Portion of Property Bearing No. J-108, Area measuring 62 Sq. Yards, consisting of One Shop on Ground Floor, two room set on First Floor and, Second Floor, situated in the area of Village Bassai Darapur and the Colony Known as Rajouri Garden, New Delhi, along with ownership rights in the underneath land, with all rights, title fitting & fixtures, with separate electricity and water meter/connection & sewer connection in running condition, (hearinafter called the said property) conveyed to the VENDEE(S) and the VENDEE(S) has agreed to purchase the same for a total sale price RS.1,50,00,000/- (Rs. One Crore Fifty Lakh only) on the following terms and conditions of this SALE DEED.*
>
> *2. That the said VENDOR(S) do hereby absolutely assign, sell, convey and transfer all his/her/their rights of the ownership, title and interest in the said immovable property under sale, together with all ways, paths, passages, rights, benefits, easements, options, privileges and appurtenances thereto to the said VENDEE(S) who shall hereinafter become the absolute owner of the said immovable property and shall enjoy all the absolute and exclusive rights of ownership, title and interest of the said property without any interruption, disturbance and demand whatsoever from the VENDOR(S) or his/her/their heirs, successors, administrators, survivors and assignees etc.*

3. That the VENDOR(S), his/her/their legal heirs, successors, survivors and assignees shall have no claim, title and interest in the said property and the VENDEE(S) shall hereinafter hold, use, enjoy or sell as he/she/they like/s or construct the same or make some additions and alteration in the aforesaid property as his/her/their own personal property without any hinderance, interruption, claim or demand whatsoever from the VENDOR(S) or anyone of the heirs, successors, survivors, administrators and assignees etc. of the VENDOR(S).

4. That the VENDEE(S) is/are fully entitled and authorized to get the aforesaid immovable property mutated/transferred/substituted in his/her/their own name/s in the relevant records of Municipal Corporation of Delhi or any other appropriate Govt./Local authorities concerned by presenting this SALE DEED or its certified true copy in the office of the appropriate authorities concerned.

11. That all the dues, demands, taxes, charges, duties, liabilities and out goings if any, relating to the above mentioned property payable to the MUNICIPAL CORPORATION OF DELHI, B.S.E.S. RAJDHANI/NDPL/TPDDL and Delhi Jal Board in the form of House Tax Bills, Electric Consumption Bills and water Consumption Bills or any other Bills or charges shall be paid by the VENDOR(S) up to the date of handing over the peaceful vacant physical possession of the said property to VENDEE(S) and thereafter the same shall be paid by the VENDEE(S).

13. That no amount whatsoever now remains due from the VENDEE(S) to the VENDOR(S) and he/she/they (THE VENDOR(S) has/have received the full and final consideration of the said Property from the VENDEE(S) and the VENDOR(S) has/have hereinafter no interest left in the said property hereby conveyed.

14. That the actual, physical and exclusive possession of the said property has/have been delivered to the VENDEE(S) on the spot and the VENDEE(S) as such has taken the possession thereof and the VENDEE(S)is fully entitled to use and utilize the

said property in any manner whatsoever he/she/they may likes and to transfer the same to any person and to hand over the possession of the same and/or to part with its possession in any manner he/she/they may likes."

and has relied on ***Karan Madaan Vs. Nageshwar Pandey*** 209 (2014) DLT 241 and my judgment ***Shashi Garg Vs. Shitiz Metals Ltd.*** 2014 SCC OnLine Del 2730.

8. Per contra, the counsel for the defendants has contended that the defendants have no quarrel with the proposition of law laid down in ***Karan Madaan*** and ***Shashi Garg*** supra and has rather drawn attention to my judgment in ***Om Prakash Vs. IOCL Officers Welfare Society*** 2019 SCC OnLine Del 6719 on the same lines. It is however his contention that in view of the admissions of the plaintiff in the plaint, of

(i) the Agreement to Sell being for a total sale consideration of Rs.8,50,00,000/-; and,

(ii) the parties having agreed to delivery of possession at the time of payment of the entire sale consideration,

notwithstanding anything to the contrary contained in the registered Sale Deed, Section 92 of the Evidence Act, 1872, on the basis whereof the judgments aforesaid have been pronounced, would have no application. Attention is invited to Section 58 of the Evidence Act as under:

"**58. Facts admitted need not be proved. —**No fact need to be proved in any proceeding which the parties thereto or their agents

> agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

and it is contended that in view of admissions aforesaid of the plaintiff in the plaint, there is no need for the defendants to prove any such agreement of delivery of possession to the plaintiff only upon receipt of entire sale consideration and evidence in support of which would have been prohibited by Section 92 of the Evidence Act. Reliance is placed on ***G.P. Mallappa Vs. Matum Nagu Chetty*** AIR 1919 Mad 833 (FB) laying down as under:

> "A subsequent agreement to take less than is due under a registered mortgage is clearly an agreement modifying the terms of a written contract; and if it has to be proved, oral evidence is inadmissible under the fourth proviso to Section 92 of the Indian Evidence Act, which is designed to protect parties to registered instruments from false cases of subsequent modification of the original contract being set up and supported by oral evidence. If the subsequent agreement in this case has to be proved, oral evidence is clearly inadmissible. The contention, however, is that it has not to be proved, as it is admitted in the pleadings. Part II of the Evidence Act deals with proof, and Chapter III, which is the first chapter of Part II, with "facts which need not be proved." Under Section 58 of this chapter, among the facts which need not be proved, are facts admitted in the pleadings, such as the

> subsequent agreement now in question. Evidence is tendered in proof of facts in issue; and no question of the admissibility of evidence, oral or documentary, arises when proof is dispensed with in consequence of an admission in the pleadings, either under Section 58 or under the provisions of the Code of Civil Procedure."

It is contended that the aforesaid dicta was followed by a Division Bench of the High Court of Jammu & Kashmir in ***Mushtaq Ahmad Mashki Vs. Mohd. Shafi Bhat*** AIR 1983 J&K 44, also holding that owing to admission, no evidence was required to be led by the defendants in that case, to give an occasion to Section 92 of the Evidence Act to come in their way.

9. The counsel for the defendants has also drawn attention to the order dated 6th October, 2016 of the Collector of Stamps on a complaint made by the defendant No.1 of under-valuation in the matter of the aforesaid Sale Deed and which order records, that the plaintiff had admitted that the actual consideration price of the property was Rs.5,78,00,000/- and agreed to pay the deficit stamp duty. It is argued, that once the plaintiff herself has admitted the sale consideration to be Rs.5,78,00,000/- instead of Rs.1,50,00,000/- as mentioned in the registered Sale Deed, on the basis whereof decree on admissions is claimed, it is quite evident that even the said consideration of Rs.5,78,00,000/- has not been paid by the plaintiff. It is argued that the plea of the plaintiff, of monies being due from the defendant no.1 to the husband of the plaintiff and being adjusted towards sale consideration, are still to be proved. It is yet further

argued that it is also to be proved by the plaintiff that the sale consideration stood reduced, from that agreed on Rs.8,50,00,000/- as also admitted in the plaint itself, to Rs.5,78,00,000/-.

10. The counsel for the defendant alternatively has contended that the third proviso to Section 92 of the Evidence Act which permits proof of existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, is also attracted to the facts of the present case especially when the plaintiff herself in the plaint has admitted oral agreement, of delivery of possession only on payment of entire sale consideration, notwithstanding the registered Sale Deed recording delivery of possession.

11. Attention is also drawn to the notice got issued by the plaintiff preceding the institution of the suit, where the plaintiff did not claim initial agreement to be with respect to 91.50 sq. yds. and modification thereof to that for 62 sq. yds.

12. The counsel for the plaintiff, in rejoinder has contended that the defendants have denied the receipt recording the total sale consideration as Rs.8,50,00,000/- and now cannot rely on the said receipt.

13. I have considered the rival contentions.

14. In ***Karan Madaan, Shashi Garg*** and ***Om Prakash*** supra, decree under Order XII Rule 6 of the CPC was passed and / or plaint rejected holding that evidence of oral agreement, to adduce which trial was sought, being inadmissible in evidence, there was no need to put such

claim or defence which was contrary to or in variance of or adding to or subtracting from its terms, contrary to the terms of any contract grant or other disposition of property reduced to the form of document. In none of the said judgments, the Court was faced with a situation as in the present case, of the party seeking judgment on admissions, itself in its pleadings admitting a contract contrary of the written document. The counsel for the defendant to the said extent is right in contending that the judgments supra would not apply.

15. Section 92 of the Evidence Act provides when the terms of any contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to Section 91 by proving the said document, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives, for the purpose of contradicting, varying, adding to or subtracting from its terms.

16. Owing to the bar contained in the aforesaid Section, the defendants are barred from leading any evidence to prove that (i) the sale consideration agreed was of Rs.8,50,00,000/- and which evidence would contradict the registered Sale Deed showing the sale consideration to be of Rs.1,50,00,000/-; and, (ii) the possession of the property sold was to be delivered against the payment of the entire sale consideration and which evidence would contradict the registered sale deed recording that the possession of the property sold had been delivered.

17. However there is no need for the defendants/Counter Claimants to lead aforesaid evidence because of the plaintiff herself in the plaint having admitted the aforesaid two facts. The bar of Section 92 is only to admissibility of evidence contradicting, varying, adding to, or subtracting from, the terms of the written document and once the said evidence is not to be led, the question of applicability of Section 92 and/or of the bar thereof, would not arise.

18. The Indian Evidence Act has been enacted to consolidate, define and amend the law of evidence only and Section 92 thereof lays down rule of admissibility/inadmissibility of evidence in proof of facts and else does not govern the substantive rights of the parties. Thus, once it is found that for determination of substantive rights Section 92 is not applicable, the judgments cited by the counsel for the plaintiff become inapplicable.

19. In the present case, the plaintiff has admitted the consideration to be other than that mentioned in the registered sale deed, not only in the plaint but also in the proceedings before the Collector of Stamps and in fact paid the excess stamp duty. However while according to the plaintiff the sale consideration, instead of as mentioned in the sale deed of 1,50,00,000/-, was of Rs.5,78,00,000/-, according to the defendants/Counter Claimants, it was of Rs.8,50,00,000/-. The said question cannot be decided without evidence and the question of the plaintiff being entitled to a decree on admissions under Order XII Rule 6 of the CPC does not arise.

20. I may in this context also record that though in the order aforesaid of the Collector of Stamps it is mentioned that the

defendants/Counter Claimants also had complained that the sale consideration was Rs.5.78 crores and which admission would have bound the defendants/Counter Claimants but the counsel for the defendants/Counter Claimants states that the said recording is incorrect and the counsel for the defendants/Counter Claimants has in Court produced a copy of the complaint filed by the defendants/Counter Claimants before the Collector of Stamps and in which the defendants/Counter Claimants have claimed the sale consideration to be Rs.8.50 crores. Thus the said recording in the order dated 6th October, 2016 of the Collector of Stamps appears to be erroneous.

21. Even the aforesaid difference in sale consideration would not have come in the way of the plaintiff getting possession in pursuance to the term in the registered sale deed of possession having been delivered, but the plaintiff in the plaint has herself admitted that though the sale deed so recorded but the agreement of the parties was that possession would be delivered only on payment of entire sale consideration. Thus, till it is proved whether the sale consideration was Rs.8.50 crores as pleaded by the defendants/Counter Claimants or Rs.5.78 crores as pleaded by the plaintiff and whether the same has been paid or not, the question of the plaintiff, as per her own admissions, being entitled to possession does not arise.

22. Having analyzed Section 92 and having found the bar therein to be only to prove and which evidence the defendants are not required to lead in view of admissions of the plaintiff, I have no reason to take a different view from that taken by the Full Bench of the High Court of

Madras and followed by the Division Bench of the High Court of Kashmir.

23. I also find Supreme Court in ***Nagindas Ramdas Vs. Dalpatram Ichharam*** (1974) 1 SCC 242 to have held that 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 rights of the parties; on the other hand evidentiary admissions which are receivable at trial as evidence, are by themselves not conclusive – they can be shown to be wrong. Again, in ***Avtar Singh Vs. Gurdial Singh*** (2006) 12 SCC 552 it was held that Section 58 postulates that things admitted, need not be proved. Mention may also be made of ***Gautam Sarup Vs. Leela Jetly*** (2008) 7 SCC 85, holding that an admission made in pleadings is not to be treated in the same manner as an admission in a document; and admission made by a party to a *lis* is admissible against him *proprio vigore*.

24. I deem it my duty to observe that though it was not necessary for the plaintiff to, for the relief of recovery of possession, plead as aforesaid, but the plaintiff is found to have nevertheless so pleaded and is a victim of her own non-essential verbosity. This is a classic textbook case of, how not to draft a plaint, which should be taught in law colleges and to young lawyers so that such bloopers in drafting of pleadings, damaging to one's own client, are avoided.

25. The plaintiff is thus not found entitled to a decree for possession on admissions. The application of the plaintiff is dismissed.

RAJIV SAHAI ENDLAW, J.

MAY 21, 2019
'gsr'/pp..
(corrected and released on 23rd July, 2019)