Dinesh Kumar Singhania Vs Calcutta Stock Exchange Association Limited

Court: Calcutta High Court

Date of Decision: Feb. 18, 2003

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 12 Rule 6, Order 27 Rule 3, Order 32 Rule 6, Order 8 Rule 3, Order 8 Rule 4
Negotiable Instruments Act, 1881 (NI) â€" Section 138

Citation: (2005) 2 CHN 601

Hon'ble Judges: Debiprasad Sengupta, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Pratap Chatterjee and J. Saha, for the Appellant;Ajoy Krishna Chatterjee and S. Sen, for the Respondent

Judgement

Asok Kumar Ganguly, J.
Since the matter has been argued before us at length by both the parties, we, with consent of the parties, treat

the appeal on the day''s list and dispose of the same by the following judgment.

2. There shall be an order in terms of prayer(a) of the petition.

3. This appeal arises out of an order dated 20.09.2002 by which the learned Judge of the first Court directed the defendant/appellant to furnish

security within three weeks from the date and, in default, directed that the decree should be drawn up for a sum of Rs. 5,82,61,191.15p. along

with interim interest @ 6% per annum and interest on judgment @ 12% per annum. It was made clear in the said order that in the event of failure

on the part of the defendant to furnish security, decree and consequential order will follow and the suit will stand disposed of.

4. Prior to the aforesaid order, another order dated 11.09.2002 was passed by the learned Judge recording therein that the suit was filed by the

plaintiff for recovery of a sum of Rs. 5,82,61,191.15p. with the interim interest and interest on judgment. The plaintiff disclosed an account

showing that the aforesaid sum is receivable from the defendant. It was also recorded that in order to arrive at the aforesaid sum the plaintiff had

shown several ''Pay-in-Liability'' aggregating to a sum of Rs. 91,45,79,817,60p. and as against the aforesaid sum, the plaintiff showed an

adjustment of Rs. 85,18,663.45p. The learned Judge recorded that the defendant in its affidavit has admitted all the three items showing ''Pay-in-

Liability". It was also recorded that after admitting the said liability, the defendant has failed to show how the said sum was paid to the plaintiff and,

as such, the learned Judge of the first Court was of the view that the money claimed by the plaintiff "prima facie appears to be payable". After

coming to the said finding, the learned Judge of the first Court directed the defendant to secure the aforesaid sum by way of a Bank Guarantee or

Cash Security or by immovable property and, thereafter, adjourned the matter to enable the learned Counsel for the defendant to take instruction.

It appears that as the defendant failed to furnish the security on the adjourned day, i.e. on 20.12.2002, the decree for the aforesaid sum of Rs.

5,82,61,191.15p. was passed.

5. It is obvious from the reading of those two orders that the learned Judge of the first Court passed a judgment upon admission on the basis of the

pleadings between the parties.

6. The plaintiff/respondent, an existing company, regulating dealing in security in the stock exchange, filed a suit, out of which the present appeal

arises, for a decree for a sum of Rs. 5,82,61,191.15p. with interest. The defendant/appellant is a stock broker and a member of the

plaintiff/respondent with a membership code. At the material time, defendant/appellant was a director of the plaintiff/respondent.

7. Now looking at the pleadings, this Court finds that at page 26 para 30 of the petition Hied by the plaintiff/respondent before the learned Judge

of the first Court, the following averments have been made:

The petitioner states that the said respondent has clearly admitted and/or unequivocally acknowledged that the aforesaid sums are due and

payable on account of margin money. The said respondent, however, failed and neglected to pay the aforesaid sums. The petitioner states that

having regard to such admission the petitioner is entitled to a judgment upon admission for the aforesaid sums of Rs. 5,82,61,191.15p. together

with interest @ 0.9% from 8th March, 2001 till repayment.

8. While dealing with the said averments, the defendant, in para 35 and at page 19 of the affidavit-in-opposition filed before the learned first Court,

denied the claim made in para 30 of the petition. The assertions made in para 35 of the affidavit are set out below:

With reference to para 30 of the petition, it is denied and disputed that the respondent has admitted or acknowledged that the aforesaid sums are

due or payable on account of margin money as alleged or at all. It is denied and disputed that there is any admission on the part of the respondent

or that the petitioner is entitled to any judgment upon admission for a sum of Rs. 5,82,61,191.15p. or any other amount together with interest at

the rate of 0.09% or any other rate from 8th March, 2001 or any other date as alleged or at all. In such circumstances, there is no question of any

failure or neglect on the part of the respondent to pay the sums.

9. It also appears that in para 4 of the affidavit-in-opposition filed by the defendant, there is a clear challenge thrown to the settlement mentioned

by the plaintiff/respondent in its petition filed before the learned Judge of the first Court.

10. Apart from taking the stand in the affidavit-in-opposition, the entire case of the plaintiff/respondent has been denied by the defendant/appellant.

11. In the course of hearing before us, the learned Counsel of the plaintiff/respondent was asked by us to point out the admission of the

defendant/appellant. The learned Counsel has drawn the attention of this Court to a letter dated 08.03.2001 written by the Indusland Bank

Limited, Kolkata Branch, Kolkata to the Manager of the Calcutta Stock-exchange Association Limited, the plaintiff/respondent, to the effect that a

cheque given by the defendant/appellant was returned on account of insufficient balance standing in its account. It also appears that after the said

letter of the Banker, the learned Advocate of the plaintiff/respondent wrote a letter dated 17.03.2001 to the defendant/appellant giving notice u/s

138(b) of the Negotiable Instruments Act about the institution of the proceedings under the said Act. The attention of this Court was also drawn to

Annexure ''B'' of the petition filed by the plaintiff/respondent showing therein the settlement of liability and adjustment showing therein that the

amount of Rs. 5,82,61,191.15p. is due and payable by the defendant/appellant. But, it is to be noted that the said settlement does not contain any

admission of the defendant/appellant and the said settlement was admittedly prepared by the plaintiff/respondent. The attention of this Court was

also drawn to Annexure ''B'' to the affidavit filed by the defendant/appellant in the first Court. But, the said statement does not contain any

admission by the defendant/appellant. The said Annexure ''B'' is a part of a letter dated 15.03.2001 by the Bank of Rajasthan Ltd. to the

defendant/appellant stating therein that the Bank guarantee has been invoked by the plaintiff/respondent.

12. The learned Counsel, appearing for the defendant/appellant submitted that several sums of money have been paid by his client and in support

of the said contentions, the attention of this Court was drawn to the several letters dated 10.03.2001. The attention of this Court was also drawn

to para 48 of the affidavit filed by the defendant/appellant before the first Court raising therein a counter-claim.

13. This is the nature of pleadings between the parties and on the basis of the aforesaid pleadings, it is very difficult for us to come to the

conclusion that there is any clear admission by the defendant/appellant to enable the learned Judge of the first Court to pass judgment on the same

in accordance with the provisions of Order 12 Rule 6 of the Civil Procedure Code.

14. From a perusal of the provisions under Order 12 Rule 6 of the Code, it appears that the scope of the rule is that in a case where admission of

fact has been made by either of the parties in pleadings whether orally or in writing, or otherwise, the judgment to the extent of admission can be

given by the Court on its own motion or on the application of any party.

15. In this case, the plaintiff/respondent has restricted its case for getting judgment only on the pleadings between the parties. Therefore, we need

not go into the question what is meant by "otherwise" in Order 12 Rule 6 of the Code. It has also been urged before us by the learned Counsel for

the plaintiff/respondent that admission may be either express or it may be constructive. We are of the view that, in the instant case, the pleadings as

referred to above, do not show either any express or constructive admission. Cases of constructive admission are those where admission is to be

inferred or implied from the pleadings in view of the form of pleadings adopted between the parties. Reference in this connection may be made to

the provisions of Order 8 Rules 3, 4 and 5 of the Code. In case of evasive denial and non-specific denial by defendant/appellant of the

plaintiff/respondent''s case there can be constructive admission. But, in the instant case, there is no scope of application of Rules 3, 4 and 5 of

Order 8 of the Code as the allegation relating to the claim of the plaintiff, which has been specifically dealt with in the affidavit filed before the first

Court by the defendant/appellant.

16. It is well known that the aforesaid rule for delivering judgment upon admission has been introduced in order to eliminate delay in the matter of

deciding disputes between the parties. The said rule as an enabling provision confers discretion on the Court in delivering a quick judgment on

admission and to the extent of the claim admitted by one of the parties of his opponent''s claim.

17. The provisions of Order 12 Rule 6 of the Code are virtually modelled on identical provisions in the Supreme Court Practice. Reference in this

connection may be made to Order 27 Rule 3 of Rules of the Supreme Court. Those rules are set out below:

Judgment on admission of facts (0.27, r.3).

Where admissions of facts are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter

may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any

other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks fit.

An application for an order under this rule may be made by motions or summons.

18. Those rules came up for consideration in Ellis v. Allen, reported in 1914 (1) Chancery Division 904. At that relevant point of time when the

judgment in Ellis was rendered, the rules figured as Order 32, Rule 6 of the Rules of the Supreme Court, 1883, In Ellis, Sargant J. explained the

scope of the Rule by holding that:

The object of the rule was to enable a party to obtain speedy judgment where the other party has made a plain admission entitling the former to

succeed. I do not think Rule 6 should be confined as suggested. In my judgment it applies wherever there is a clear admission of facts in the face of

which it is impossible for the party making it to succeed.

19. The aforesaid enunciation of the principles as the purport of the Rule has been accepted by the Division Bench of the Calcutta High Court

(Coram: Sir Ashutosh Mookherjee and George Rankin JJ.) in the case of J.C. Galstaun Vs. E.D. Sassoon and Co., Ltd., . The observations of

Sargant J. in Ellis were quoted with the approval at page 192 of the report in Galastaun.

20. Justice G.P. Singh (as His Lordship then was) in a Division Bench of Madhya Pradesh High Court in the case of Shikharchand and Others Vs.

Mst. Bari Bai and Others, also quoted the judgment of Sargant J. as properly interpreting the purport of the said Rule. (See para 18 and page 79

of the report). Recently the Apex Court in the case of Uttam Singh Duggal & Co. Ltd. v. United Bank of India, reported in 2003(7) SCC 120,

reiterated the same principle in para 12 of the judgment.

21. From a perusal of the aforesaid decisions and the dictum of Sargant J. in Ellis, it is clear that in order to found a judgment upon admission, the

Court must find that the admission is clear and unequivocal. Any admission which admits of two interpretations or some arguments cannot be the

basis of a judgment within the meaning of this rule. An admission which is clear, specific, and puts an end to any adjudication enables the Court to

give a quick judgment to the party in whose favour the admission has been made and the judgment must be limited to that extent of the admitted

claim which may not be the whole of the claim. Even then no party can, as a matter of right, claim a judgment upon admission. The discretion lies

with the Court whether or not to give such a judgment in the facts of the case.

22. The pleading between the parties in the instant case has not made out a case of clear admission on the part of the defendant/appellant of the

claim of the plaintiff/respondent and, as such, the judgment under appeal cannot be sustained and is quashed.

23. The learned Counsel for the plaintiff/respondent very much relied on the decision of the Apex Court in Uttam Singh in support of his argument

that the learned Judge of the first Court is right. But the facts in Uttam Singh are totally different. In para 3 of the judgment, the Apex Court has

quoted the minutes of the meeting of the defendant/appellant to show that there is a clear acceptance of its liability to the Bank. The Apex Court

also noted that the said resolution was sent to the Bank and in view of those facts containing a clear admission dismissed the appeal of the

company.

24. The factual position on pleading in this case is totally different and following the ratio of Uttam Singh in para 12, as noted above, we cannot but

allow this appeal.

25. This Court, however, makes it clear that whether the stand of the parties taken in the pleadings is right or wrong or correct or incorrect has not

been considered by us in this appeal.

26. However, for the reasons aforesaid, this Court is unable to agree with the view taken by the learned Judge of the first Court. The appeal

succeeds. The order dated 20.09.2002 is set aside. The suit is expedited.

27. There will, however, no order as to costs.

Debiprasad Sengupta, J.

28. I agree.