

(2014) 11 CAL CK 0011

Calcutta High Court

Case No: GA 2429 of 2013 and CS 278 of 2013

Utkarsh Tubes and
Pipes Ltd.

APPELLANT

Vs

Bharat Sanchar Nigam
Ltd.

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6

Citation: (2015) 1 CHN 335 : (2015) 4 WBLR 229

Hon'ble Judges: Arijit Banerjee, J

Bench: Single Bench

Advocate: Jishnu Chowdhury, Suddhasatva Banerjee, Chayan Gupta and Dwip Raj Basu,
Advocate for the Appellant; Gita Mukherjee, Advocate for the Respondent

Judgement

Arijit Banerjee, J.

This is an application for a judgment and decree on admission of a sum of Rs. 27,62,620/- along with interest at the rate of 24 per cent per annum.

The Petitioner's Case:

2. A notice inviting tender dated 1st September, 2007 for supply of USO Towers was issued by the respondent. The petitioner participated in the bid. The petitioner's bid for supply of the towers to various sites at Gopalgunj, Siwan, Saran, Vishali, Begusarai, Khagaria, Araria and Purnia aggregating 20 pieces of towers was accepted by the respondent. Pursuant to negotiation, in all, the petitioner has supplied 18 towers to the respondent and raised bills on the respondent.

3. Thereafter, there were certain disputes between the petitioner and the respondent. The respondent alleged that there was delay on the part of the petitioner to supply the towers and asked the petitioner to formally apply for

extension of time. The petitioner by letters requested for extension of time and the same was acceded to by the respondent.

4. Subsequently, there was reconciliation of accounts between the parties and by two undated documents signed by the Executive Engineer (Civil), Bharat Sanchar Nigam Limited, Civil Division, Hajipur, the respondent accepted that a sum of Rs. 26,27,844 was due and payable to the petitioner. Copies of the said two documents are Annexure "L" to the petition.

5. In the above factual matrix the petitioner has filed the present suit and has taken out the instant application for final judgment and decree on admission relying on the said two documents copies whereof are Annexure "L" to the petition.

The respondent's case:

6. The respondent contends that this Court has no territorial jurisdiction to entertain or try the present suit. The notice inviting tender in respect of supplying the towers at different places in Bihar was issued by the Executive Engineer (Civil), BSNL, Hajipur, under the Chief Engineer (Civil), Bihar Civil Zone, Patna within the territorial jurisdiction of the Chief General Manager, BSNL, Bihar Telecom Circle, Patna. The Executive Engineer (Civil), BSNL, Hajipur received all the tenders in question at Hajipur, Bihar. The necessary work orders were issued by and all correspondence in this regard, were entered into by the plaintiff with the Executive Engineer (Civil), BSNL, Hajipur, Bihar. The plaintiff has also received payments in respect of the towers from Civil Division, Hajipur, Bihar. Thus, the Chief General Manager, BSNL, West Bengal Circle, with its office at 1 Council House St. Kolkata-1, had no role to play in respect of the present case and everything took place with the geographical territory of the State of Bihar. No part of the plaintiff's alleged cause of action has arisen within the jurisdiction of this Court. As such, this Court has no territorial jurisdiction to entertain or try the present suit.

7. Pursuant to leave granted by this Court, the respondent has filed a supplementary affidavit annexing thereto voluminous documents to try and establish that BSNL, West Bengal Circular had nothing to do with the subject contract between the plaintiff and BSNL; that everything took place in Bihar and that the plaintiff has approached the wrong Court.

8. Apart from the point of territorial jurisdiction, no other point was urged on behalf of the defendant. No submission was made on the merits of the plaintiff's claim.

The Court's View:

9. Three issues arise for my consideration. The first of the issues was raised by me i.e. whether an admission made prior to filing of the suit would be sufficient ground for the Court to pass a judgment and decree on admission. The second issue is whether this Court has territorial jurisdiction to entertain and try the present suit. The third issue is whether there is a clear admission within the meaning of Order 12

Rule 6 of the Civil Procedure Code.

10. Taking the first issue first, I was initially and still am of the view that in order for party to succeed on an application for judgment on admission, the admission must be post-suit, i.e. the admission must be of the claim made in the action. A pre-suit admission may furnish a strong cause of action to the other party but cannot be the basis for a judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure. However, I have since come across a judgment passed by a Ld. Single Judge of this Court in the case of Peerless Abasan Finance Ltd. -vs.- Gagan Polymers (P) Ltd. reported in 2002(4) ICC 194 wherein His Lordship has held that an admission made even before filing of the suit would be a ground for passing a judgment and decree under Order 12 Rule 6 of the Code of Civil Procedure. I am bound by such judgment by the principle of precedents and stare decisis. Accordingly, the first issue is answered in favour of the petitioner.

11. As regards the second issue, Clause 12 of the Letters Patent 1865 provides, inter alia, that where a defendant carries on business within the territorial jurisdiction of a Court, that court will have jurisdiction to entertain and try a suit filed against the defendant. Arising of whole or part of cause of action within the territorial jurisdiction of a Court is another limb of Clause 12 of the Letters Patent but the same need not be adverted to if the defendant carries on business within the territorial jurisdiction of the Court in which the suit has been filed. The Ld. Counsel for the respondent has vehemently urged that BSNL, West Bengal Circular, is a separate entity from BSNL Patna Circular and the suit ought to have been filed in a court in Bihar. In my opinion, this contention is misconceived. BSNL is one corporate entity which carries on business in various parts of India. For the sake of argument even assuming that the entire cause of action of the plaintiff in the present suit has arisen in Bihar as contended by the defendant, the plaintiff has not invoked the jurisdiction of this Court on the basis of whole or part of cause of action having arisen within the territorial jurisdiction of this Court. This Court's jurisdiction has been invoked on the basis that BSNL has its Head Office and carries on business from 1 Council Houses St. Kolkata-01 within this Court's territorial jurisdiction. In my view, this is perfectly permissible. Hence, this issue is also decided in favour of the petitioner/plaintiff.

12. Coming to the third and final issue, there appears to be a clear, unconditional and unequivocal admission in the two documents copies whereof are Annexure "L" to the petition, that a sum of Rs. 26,27,844/- is due and payable to the plaintiff. In the affidavit-in-opposition or any other pre-suit correspondence this admission has not sought to be explained by the defendant. In fact, in the affidavit-in-opposition nothing is stated disputing this admission. In my view this case is squarely covered by Order 12 Rule 6 of the Code of Civil Procedure and there is no reason to relegate the plaintiff to trial for realising its claim which is admitted by the defendant.

13. In view of the aforesaid, there shall be a judgment and decree for Rs. 26,27,844/- in favour of the plaintiff. There shall be a decree for interim interest and interest on judgment at the rate of Rs. 12 per cent per annum from the date of filing of the suit till the repayment of the decretal amount. The defendant shall pay costs of this application to the plaintiff assessed at Rs. 20,000/-.

14. The application, thus, stands disposed of.