
(2006) 12 DEL CK 0091

Delhi High Court

Case No: FAO (OS) 723-26 of 2006

Jasbir Sobti and Others

APPELLANT

Vs

Surender Singh

RESPONDENT

Date of Decision: Dec. 1, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 8 Rule 5

Citation: (2007) 1 ILR Delhi 1095

Hon'ble Judges: Mukul Mudgal, J; J.P. Singh, J

Bench: Division Bench

Advocate: D.P. Kaushik, for the Appellant;

Final Decision: Dismissed

Judgement

Mukul Mudgal, J.

CM 16278/2006 (delay in refiling) and CM 16277/06

1. For the reasons mentioned in the applications the applications are allowed and the delay in refiling the appeal and also in filing the appeal is condoned. The applications stand disposed of.

FAO(OS) 723-26/2006 and 16279/2006 (stay)

1. This appeal challenges the order dated 8th August 2006 passed by the learned Single Judge dismissing an application under Order XII Rule 6 CPC, filed by the appellant-plaintiff, claiming a decree upon admission by the respondent-defendant. The learned Single Judge has recorded the following findings:

(a) In the written statement the defendant has denied liability.

(b) On the contrary, the defendant has pleaded that since the plaintiff did not pay the balance sale consideration, his father forfeited the advance received.

(c) The learned Single Judge has noted that in reply to the averment in paragraph 5 of the plaint, the defendant had categorically denied that he made a breach of the agreement dated 8th April 2000.

2. Mr. Kaushik, the learned Counsel for the appellant has vehemently urged that in his order the learned Single Judge has wrongly held that the defendant had denied his liability. The learned Counsel for the appellant has further submitted that while denying his liability, appropriate rules of CPC have not been followed by the defendant.

3. The findings summarized above prima facie show that there is no clear admission of the pleas of the plaintiff. Having perused the plaint and the written statement, we are satisfied that far from there being an admission in fact there is a clear denial of the plaintiff/appellant's claim and certainly not a clear and unequivocal admission entitling the appellant to a decree under Order XII Rule 6. The relevant portions of the written statement are as follows:

1. It is further submitted that defendant was never involved in the said agreement to sell arrived at between the plaintiffs and Late Sh. Phool Singh. Late Sh. Phool Singh had executed the said agreement to sell with the plaintiffs voluntarily and of his own.

2. It is denied that Late Sh. Phool Singh accepted his having committed a fraud. It is also denied that Late Sh. Phool Singh had said that he had acted as advised by the defendant. It is also denied that Late Sh. Phool Singh agreed to repay the full amount of Rs. fifteen lacks (lakhs). It is also denied that late Sh. Phool Singh and the defendant both have agreed to refund the amount of earnest money to the plaintiffs. It is also denied that the defendant told to the plaintiffs that as the said amount of earnest money was spent by the defendant and defendant would repay the same if the plaintiffs agreed to extend some time to the defendant and his father. It is also denied that the defendant and his father promised to repay the earnest money with interest at the prevalent market rate in place of his father by the end of April 2000 on the condition that the plaintiff would not initiate any civil or criminal proceedings against the defendant and his father. It is also denied that the defendant and his father promised to repay the said amount if the plaintiff would not demand any interest for the period already gone by that time. It is also denied that the said earnest money would be treated as a personal debt of the defendant from the said date. It is also denied that as the defendant and his father had old acquaintance of the plaintiff No. 1 and so the plaintiff No. 1 did not doubt the bonafide of the defendant and agreed to his offer.-----

5. It is denied that the defendant made a breach in the agreement he entered into with the plaintiffs No. 1 on 8.4.2000. It is also denied that the plaintiffs many times along with the plaintiff No. 2 requested the defendant to repay the debt according to the agreement

dated 6.4.2000. It is denied that the defendant has avoided paying on the pretext that he has spent the money on the building of his house and was in a financial crunch.

4. In Black"s Law Dictionary, the word "admission" has been defined as follows:

Admission : Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true.

5. This Court in Charanjit Singh v. Kehar Singh RFA 724/2005, judgment delivered on 11th May 2006 held as follows:

6. The powers under Order XII rule 6 of the Code has to be exercised judicially on the facts and circumstances of each case. The admission on the basis of which the Court wishes to pass a decree has to be unambiguous, clear and unconditional. There is no doubt that in a suit there can be more than one decree passed at different stages and each decree being separate and independent is enforceable in accordance with law, was the principle stated by [Bai Chanchal and Others Vs. Syed Jalaluddin and Others](#), .

Admission understood in its common parlance still must be a specific admission. There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the later category.

...

8. It is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather is a matter of discretion of a Court. Where the defendant has raised objection which will go to the very root of the case, it would not be appropriate to exercise this discretion. The use of the words "May" and "make such orders" or "give such judgment" spells out that power under these rules are discretionary and use of discretion would have to be controlled in accordance with the known judicial cannone. The cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions. In the case of [Parivar Seva Sansthan Vs. Dr.\(Mrs.\) Veena Kalra and Others](#), , the Court examined at length the provisions and the need for an admission to be unequivocal and positive. The admission would obviously have the consequences of arriving at that conclusion without determination of any question and evidence. The Court while relying upon the case of [Balraj Taneja and Another Vs. Sunil Madan and Another](#), and [Dudh Nath Pandey \(Dead\) by Lrs Vs. Suresh Chandra Bhattasali \(Dead\) by Lrs](#), held as under:

In Razia Begum v. Sahebzadi Anwar Begum it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the Court may still require the plaintiff

to prove the facts pleaded by him in the plaint.

Thus, in spite of admission of a fact having been made by a party to the suit, the Court may still require the plaintiff to prove the fact which has been admitted by the defendant.

The Hon"ble Supreme Court in [Balraj Taneja and Another Vs. Sunil Madan and Another,](#) while laying down the position of law under Order XII Rule 6 CPC held as under:

23. Under this Rule, the Court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This Rule empowers the Court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.

6. In our view, the learned Single Judge rightly held that to succeed under Order XII Rule 6 CPC, the admission of the opposite party for securing a decree has to be clear and unequivocal. There is no unequivocal, clear and positive admission in the written statement. In fact there is clear denial of the defendant's liability.

7. In view of the above settled position of law and the pleadings in the present case, the learned Counsel for the appellant has been unable to satisfy us that this finding of the learned Single Judge requires to be interfered with. Appeal is accordingly, dismissed along with CM 16279/2006.