(2019) 04 SC CK 0095

Supreme Court Of India

Case No: Civil Appeal No. 4265 Of 2019

Hari Steel and General Industries Ltd. & Anr		APPELLANT
	Vs	
Daljit Singh & Ors		RESPONDENT

Date of Decision: April 24, 2019

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 6 Rule 1, Order 12 Rule 1, Order 12 Rule 6, Order 8 Rule 10
- Code Of Criminal Procedure, 1973 - Section 195(1)(b), 340
- Specific Relief Act, 1963 - Section 16, 16(c)
- Indian Penal Code, 1860 - Section 120B, 420
- Delhi High Court Act, 1966 - Section 10

Citation: AIR 2019 SC 4796 : (2019) 5 JT 70 : (2019) 6 Scale 817 : (2019) 2 Civcc 641 : (2019) 2 ACJ 288 : (2020) 1 ALD 260 : (2019) 136 ALR 746 : (2019) 4 MLJ 100 : (2019) 3 RCR(Civil) 1 : (2020) 146 RD 103

Hon'ble Judges: R. Banumathi, J; R. Subhash Reddy, J

Bench: Division Bench

Advocate: Dr. Vipin Gupta, Kaveeta Wadia, Ashish Dholakia, P. S. Sudheer, Rohan Chawla, Rishi Maheshwari, Anne Mathew, Bharat Sood, Shruti Jose

Judgement

R. Subhash Reddy, J

1. Leave granted.

2. This Civil Appeal is filed by the defendant Nos. 1 and 2 in the Suit in CS(OS) No.2046 of 2006, aggrieved by the judgment dated 2nd August, 2018,

in FAO (OS) No.268 of 2017, passed by the High Court of Delhi at New Delhi. By the aforesaid judgment, the Division Bench of the High Court, by

setting aside the judgment dated 24.7.2017 passed in IA No.1557 of 2007 in CS (OS) No.2046 of 2006, has allowed the interlocutory application and

consequential prayers of the respondents-plaintiffs and decreed the suit with the following directions:-

Ã¢â‚¬Å“(i) The order dated 24th July, 2017 passed by the ld. Single Judge on I.A. No.1557/2007 in CS(OS) No.2046/2006 is hereby set aside and

quashed.

(ii)I.A.No.1557/2007 is hereby allowed and consequently the prayers of the plaintiffs in the suit, as prayed for,are decreed.

(iii) The Registry shall draw up a decree sheet accordingly.

(iv) The appellants shall pay the balance amount of Rs. 50.50 Crores to the defendant no.1 within a period of three months and 15 days from today.

(v) Upon receipt of the amount, the respondents shall forthwith execute the sale deed in favour of the appellants as well as any other documents, as

may be required. It shall be the responsibility of the respondent no.2 to complete the formalities including obtaining permissions, if any, from any

authority of department and ensure execution of the registered sale deed forthwith in favour of the appellants.

(vi) In case the respondents do not accept the payment of the amount from the appellants, the amount shall be deposited by the appellants in

CS(OS)No.2046/2006 by way of cheque in the name of Registrar General of this court. Upon the deposit, the said cheque shall be encashed by the

Registry and the amount thereof shall be kept in a Fixed Deposit Receipt initially for a period of six months to be kept renewed till further orders of the

ld. Single Judge in the suit proceedings.

(vii) In such eventuality, the appellants shall be entitled to seek appropriate remedy for execution of the judgment and decree by appropriate

proceedings by the ld. Single Judge.

(viii) Given the delay caused by the respondents in the adjudication of the matter and their conduct before the court, the respondents shall pay costs to

the appellants at the rate of Rs. 1 Lac for each year of the litigation w.e.f. 1st November, 2006 to July, 2018 being a total of Rs. 11,50,000/- for the

period of 11 1/2 years.

(ix) Costs of Rs. 1,00,000/- each are directed to be paid to the Delhi High Court Legal Services Committee; Delhi High Court Mediation and

Conciliation Centre and the Delhi International Arbitration Centre, which shall be paid by the respondents within 15 days from today and proof of

deposit shall be filed with the Registry. The copy of the receipts shall be made available to the appellants through counsel immediately upon the

deposit.

(x) In case the respondents fail to deposit the costs as at S.no.(viii) & (ix) above, as directed, the appellants shall be entitled to deduct the amount of

costs out of the balance sale consideration and to deposit the costs of Rs. 1 lakh with each of the DHCLSC, DHCMCC & the DIAC. Proof of

deposit shall be sent to the defendants.

(xi) In view of the order we are passing regarding payment up to date costs in the suit, we are refraining from imposing further costs on the

respondents in the present appeal.

(xii) The appeal is allowed in the above terms.Ã¢â‚¬‹

3. The learned Single Judge has dismissed the application in I.A. No.1557 in the aforesaid suit, filed under Order XII Rule 6 of the Civil Procedure

Code. The respondent Nos. 1 and 2 Ã¢â‚¬" plaintiffs, have filed the aforesaid application for judgment, on admissions claimed by them in the suit. The

order of learned Single Judge is reversed by the Division Bench on appeal, filed by the plaintiffs, by granting reliefs as referred above.

4. The respondents-plaintiffs have filed the above said suit praying for decree for specific performance of agreement to sell, concluded on 7.4.2005

and further recorded on 3.5.2005 between the respondents-plaintiffs and the appellants in respect of property bearing No.A-22, Mohan Cooperative

Industrial Estate, Mathura Road, New Delhi. The plaintiffs also sought a decree of permanent injunction against the appellants-defendants and others

to restrain them from selling, transferring or encumbering the suit property to third party and a permanent injunction against defendant Nos. 2 to 6

from transferring or encumbering their share holdings of 10 lakh shares in the appellant No.1/defendant No.1 company. It was the case of the

plaintiffs, that the appellant No.2 herein, as a Managing Director and principal share holder of the appellant No.1 company, approached the

respondents-plaintiffs for sale of suit property and the business carried in the name and style of Ã¢â‚¬ËœSouth Delhi ToyotaÃ¢â‚¬â„¢ including the goodwill of

the business. It is their case that on 7.4.2005, the respondent Nos. 1 and 2 Ã¢â‚¬" plaintiffs and the first appellant company through its Managing

Director/2nd appellant have arrived at a concluded agreement for sale of the suit schedule property, transfer of the goodwill and franchisee rights in

respect of the running business of Ã¢â‚¬ËœSouth Delhi ToyotaÃ¢â‚¬â„¢ for a total consideration of Rs.55.50 crores. It is their further case that pursuant to the

said concluded contract on 7.4.2005, the respondents-plaintiffs have paid an amount of Rs.2 crores, i.e, Rs.1 crore in cash and Rs.1 crore by cheque

and the said amount was acknowledged by the appellant No.2. It is their further case that they have entered into writtenagreement to sell on 3.5.2005,

in pursuance of an understanding/agreement dated 7.4.2005. The breakup of the total consideration disclosed in the agreement is as follows:-

(i) Rs.49 crores for the purchase of the land and building bearing No.A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi.

(ii) Rs.6 crore fifty lacs for the purchase of running business of the franchisee dealership of Toyata Kirloskar Motors Private Limited carried on in the

name and style of Ã¢â‚¬ËœSouth Delhi ToyotaÃ¢â‚¬â„¢.

(iii) The difference in value of the assets and liabilities of the running business, on the basis of the balance sheet agreed to be furnished on 15.6.2005.

5. It is the further case of the plaintiffs that they have paid further amount of Rs.3 crores on the date of written agreement of sale dated 3.5.2005 to

the appellant No.1 company. In the agreement dated 3.5.2005, the aspect of payment of part consideration is recorded as follows:

Ã¢â‚¬Å“2(a) That out of the total consideration of Rs.55.50,00,000/- (Rs.Fifty five Crores Fifty Lacs only) the purchasers have paid to the vendor a sum

of Rs.5,00,00,000/- (Rs.Five Crores only) as part consideration; at the time of execution of this Agreement to Sell in the following manner:

a) Cheque no.840711 dt 7.4.2005 drawn on ICICI Bank, Punjabi Bagh West, New Delhi Ã¢â‚¬" Rs.1,00,00,000/- (Rs. One Crore only)

b) Cheque no. 840633 dt 28.4.2005 drawn on ICICI Bank, Punjabi Bagh West, New Delhi Ã¢â‚¬" Rs. 1,00,00,000/-

c) Cash Ã¢â‚¬" Rs.3,00,00,000/- (Rs. Three Crores only)

The receipt of which the vendor hereby acknowledges.Ã¢â‚¬â€‹

6. The appellants-defendants in the suit, have filed their written statement on 25.01.2007.

7. In the written statement filed, the appellants have raised preliminary objections stating that respondents-plaintiffs have forged/fabricated, the

agreement to sell dated 3.5.2005, by forging the signatures of Director of the appellant No.1, namely, Mr. Ram Dilawari, as such, they are liable for

prosecution under Section 195(1)(b) of the Criminal Procedure Code. Further objection is also raised questioning the very maintainability of the suit, in

view of the proceedings initiated by them in I.A.No.61 of 2006 in CS (OS)No.1508 of 2005 under Section 340 of the Criminal Procedure Code,

wherein they have challenged the genuineness of the agreement dated 3.5.2005. They also pleaded that the suit is barred by Section 16 of the Specific

Relief Act, 1963, in absence of any plea of readiness and willingness, to perform the contract on their part.

8. While opposing the reliefs as prayed for in the suit, the appellants-defendants have pleaded that although an agreement was entered into with the

respondents-plaintiffs for sale of land ad-measuring 19074.69 sq. yards bearing no. A-22, Mohan Co-operative Industrial Estate, Mathura Road, New

Delhi, but the said contract was never crystallized, as the nature, extent and various clauses were yet to be finalized. It is pleaded that the same is

evident from the fact that all the necessary columns in the agreement dated 03.05.2005 were left blank and were to be filled, after mutual agreement

only. Specific averment is made, stating that respondents-plaintiffs in connivance with Mr.T.R. Arya i.e. 3rd defendant have fabricated facts and

figures including the signatures on the agreement. The appellants-defendants have disputed receipt of Rs.3 crores, which amount is allegedly paid by

the respondents by way of cash. It is pleaded that the respondents-plaintiffs have fraudulently incorporated the payment of Rs.3 crores, pertinently in

cash, while only the payment of Rs.2 crores was made by cheque. In the written statement specific allegation is made stating that, Mr. T.R. Arya

(defendant No.3) has abused his position in appellant No.1 company, in connivance with the plaintiffs and indulged in a fraud. In the written statement

appellants have disputed the signatures on page nos. 3 and 4 of the agreement dated 3.5.2005. While denying the various allegations made by the

plaintiffs, the appellant-defendants while stating that in absence of any finalized agreement to sell the property and in absence of any cause of action

suit is filed for specific performance and same is not maintainable and is liable to be dismissed.

9. After filing of the written statement on 25.01.2007, in which specific averment is made to the effect that the respondents-plaintiffs were not ready

and willing to perform the contract, the respondents-plaintiffs have filed I.A.No.3370 of 2007 on 20th March, 2007 for amendment of the plaint, to

incorporate the plea of their willingness and readiness, and the same is allowed by order dated 16th April, 2007.

10. In the aforesaid suit, statement of the appellant No.2/defendant No.2 was recorded on 21.9.2007. Thereafter, one Mr. Praveen Kumar Jolly who

claimed earlier agreement in his favour for half portion of suit property, also filed I.A.No.5422 of 2007 for his impleadment in the suit and same was

allowed on 8.12.2008. He has also filed written statement subsequently. In view of the contest for all the reliefs sought in the suit, issues and additional

issues were framed on 02.02.2010 and 05.05.2010. The issues and additional issues framed in the suit read as under:-

Ã¢â‚¬Å“Issues framed:

1. Whether the Plaintiffs are entitled to a decree for specific performance of the agreement to sell dated 03.05.2005 if so, to what effect? OPP

2. Whether pages 3 and 4 of the agreement to sell dated 03.05.2005 have been executed by the defendant no.2 or not, if so to what effect? OPD-1 to

6

3. Whether the receipt dated 07.04.2005 is forged and fabricated? OPD-1 to 6

4. Relief.

Additional issues:

1. Whether there is a concluded contract between the parties? OPP

2. Whether there have been insertion/interpolations in the agreement relied upon by the Plaintiffs, consequently rendering that agreement to sell

enforceable? OPD.Ã¢â‚¬â€‹

11. After filing written statement in the suit, respondent Nos. 1 and 2/plaintiffs have filed I.A.No.1557 of 2007 under Order XII Rule 6 of CPC,

praying for judgment based on certain claimed admissions. A copy of the application filed in I.A.No.1557 of 2007 is placed on record. The aforesaid

application is filed mainly claiming that the appellants in bail application nos.4109-4110 of 2006 seeking anticipatory bail in connection with the crime

registered on complaint filed by impleaded 4th respondent, have categorically admitted their readiness and willingness to execute a sale deed in their

favour, in terms of the agreement dated 3.5.2005. The bail applications referred above were filed in connection with the crime registered in FIR

No.517 of 2006 on the file of Police Station Sarita Vihar, which was registered on the complaint filed by Sri Praveen Kumar Jolly (First Buyer)

registered for offences under Sections 420 and 120B IPC. The aforesaid complainant, Sri Praveen Kumar Jolly has alleged that during the subsistence

of MOU entered in their favour on 24.5.2003, for a portion of the schedule property have entered into another agreement with the respondent Nos. 1

and 2 on 3.5.2005. Thus, it is pleaded that the appellants herein by entering into multiple agreements have committed the offence of cheating. Except

claimed admissions alleged to have been made by the appellants-defendantsÃ¢â‚¬â„¢ counsel during the hearing of the anticipatory bail application, no

other admissions are claimed in the application. The said interlocutory application is contested by appellants and other defendants who have seriously

disputed the genuineness of the agreement dated 3.5.2005 alleging that pages 3 and 4 of the agreement have been replaced and substituted by pages

which bear forged signatures of the defendant No.2. Further they also disputed stating that, all throughout the case of the appellants is only admitting

receipt of Rs.Two crores but not Rs.Five crores as claimed by the plaintiffs. Further, the relief sought in the interlocutory application is opposed by the

appellants pleading that the forgery and fabrication of the agreement dated 3.5.2005 came to light when the said agreement was produced by the

plaintiffs in CS(OS) No. 1508 of 2005 filed by Sri Praveen Kumar Jolly and immediately on receipt of copy of the agreement dated 3.5.2005, they also

filed an application in I.A. No.61 of 2006 in CS(OS) No.1508 of 2005 under Section 340 of Cr.P.C., challenging the genuineness of the agreement

dated 3.5.2005. Thus, it is pleaded that unless genuineness of the agreement dated 3.5.2005 is decided finally, no decree for specific performance can

be claimed.

12. The learned Single Judge, by recording that there is a serious dispute with regard to payment of Rs.Five crores as per the agreement entered into

by the appellants, and the alleged forgery of signatures on pages 3 and 4 of the agreement as claimed by the appellants-defendants, has held that such

issues are to be resolved only post trial, after the parties adduce oral and documentary evidence. Further the learned Single Judge was of the view that

to claim a decree on admissions it is essential that admissions should be clear and unequivocal. With the aforesaid findings, the learned Single Judge,

by an order dated 24.7.2017, dismissed the application in I.A.No.1557 of 2007 by imposing a cost of Rs.50,000/- on the respondents-plaintiffs.

13. Aggrieved by the order of the learned Single Judge, the respondents have preferred Appeal under Section 10 of the Delhi High Court Act, 1966.

The Division Bench, by the impugned judgment dated 2.8.2018, has set aside the order of the learned Single Judge dated 24.7.2017 and allowed

I.A.No.1557 of 2007 by granting consequential reliefs and permitted the respondents-plaintiffs to pay the balance amount of Rs.50.50 crores within a

period of three months and 15 days, from the date of the judgment. The Division Bench was of the view that the appellants have admitted, entering

into an agreement with the respondents-plaintiffs on 3.5.2005 and the receipt of Rs.Five crores is evident from the DirectorÃ¢â‚¬â„¢s Report and balance-

sheets of the company for the year ending on 31st March, 2005; 31st March, 2006 and 31st March, 2007. Further by holding that defence of the

appellants in the suit is not genuine and contrary to the pleadings on courtÃ¢â‚¬â„¢s record as well as statutory filings under Companies Act, and that there

is no genuine triable issue which could justify the trial in the suit, the Division Bench rendered judgment on claimed admissions.

14. Learned senior counsels Sri Ranjit Kumar and Sri P.S. Narsimha, appearing for the appellants have made the following submissions:

15. Though there are no categorical and unconditional admissions, as claimed by the respondents-plaintiffs, the Division Bench of the High Court went

beyond the scope of the application and allowed the same. The suit was filed in the year 2006, in which written statement is already filed by the

appellants. In view of the serious factual disputes raised by the appellants claiming forgery of their signatures on pages 3 and 4 of the agreement to

sell dated 3.5.2005 and the receipt of Rs.Five crores, specific issues are framed and findings on which can be arrived only after trial. It is stated that

the application filed under Order XII Rule 6 of CPC is kept pending for more than a decade and disposed of after trial is commenced in the suit;

Categorical and unconditional admissions alone can be considered for the purpose of grant of relief under Order XII Rule 6 of CPC. Certain

observations made in the criminal proceedings in connection with the bail application are misconstrued as admissions by the High Court for the

purpose of deciding the application filed under Order XII Rule 6 of CPC; The suit itself is for grant of specific performance of agreement, which is

discretionary and equitable relief, court can come to conclusions only after full fledged trial by answering several contentious issues in the suit. Even

the relief claimed under Order XII Rule 6 is also a discretionary one and no party can claim judgment as a matter of right. To support this plea,

learned counsel has placed reliance on the judgment in the case of S.M. Asif vs. Virender Kumar Bajaj (2015) 9 SCC 287. To substantiate his plea

that admission should be categorical and unconditional, relied on the judgment of this Court in the case of Himani Alloys Limited vs. Tata Steel Limited

(2011) 15 SCC 273. In support of the plea that in a suit filed for specific performance, it is mandatory to plead and prove readiness and willingness of

the plaintiff to perform his part of the contract, relied on the judgment in the case of Balraj Taneja and another vs. Sunil Madan and another (1999) 8

SCC 396. In support of the plea that in view of the tampering and fabrication of the agreement of sale, same cannot be considered as a valid and

concluded contract for grant of discretionary and equitable relief, learned counsel has placed reliance on the judgment of this Court in the case of

Kamal Kumar vs Premlata Joshi 2019 SCC Online SC 1 2and also the judgment of this Court in the case of Saradamani Kandappan vs. S.

Rajalakshmi and ors. (2011) 12 SCC 18. In support of his plea that inconsistent pleas are permissible in the written statement, reliance is placed on the

judgment in the case of Baldev Singh and Ors. vs. Manohar Singh and another (2006) 6 SCC 498 and also on the judgment in the case of Usha

Balashaheb Swami and ors. vs. Kiran Appaso Swami and ors. (2007) 5 SCC 602.

16. On the other hand Mr. Shyam Divan, learned senior counsel appearing for the first respondent-plaintiff has made the following submissions.

17. The impugned judgment is based on several admissions made by the appellants to perform their contract entered on 7.4.2005 and 3.5.2005; by

referring to the provision under Order XII Rule 6 of CPC 1908 as substituted by Act 104 of 1976, it is submitted that wide meaning is to be given to

the said provision; as per the amendment court is empowered to deliver judgment where admissions of fact have been made either in the pleadings or

otherwise, whether orally or in writing. The appellants have made clear admissions before the court for securing favourable orders, with regard to

their admission of entering into agreement to sell and also receipt of Rs.Five crores amount towards the part consideration; that balance-sheets and

statutory forms which are filed under the provisions of the Companies Act, 1956 on behalf of the first appellant company, also reveal admissions made

by the appellants; in the pleadings in the suit filed by Mr. Praveen Kumar Jolly, the appellants have admitted the acceptance of the agreement as

entered into, without any allegation of tampering and fabrication, without disputing receipt of Rs.Five crores, as such there are no grounds to interfere

with the impugned judgment.

18. In support of the plea that Order XII Rule 6 of CPC is to be interpreted widely and there is no need to narrow down the meaning contrary to its

objective, learned senior counsel placed reliance on the judgment in the case of Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors.

(2000) 7 SCC 120 and also in the case of Karam Kapahi & Ors. vs. Lal Chand Public Charitable Trust & Anr. (2010) 4 SCC 753.

19. In support of the plea that entries made in the balance-sheet and DirectorÃ¢â‚¬â„¢s report of the company are to be construed as admissions, reliance

is placed on the judgment in the case of Usha Rectifier Corporation (India) Limited vs. Commissioner of Central Excise, New Delhi (2011) 11 SCC

571.

20. In support of the plea that an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits,

reliance is placed on the judgment in the case of Basant Singh vs. Janki Singh & Ors. AIR 1967 SC 34.1 Reliance is also placed by the Division

Bench of the Delhi High Court on the judgment in the case of Vijaya Myne vs. Satya Bhushan Kaura 2007 (142) DLT 483 wherein the Division

Bench of the Delhi High Court has upheld the final order and judgment passed by the learned Single Judge wherein specific performance was ordered

relying on certain admissions made by the defendant.

21. Mr. Basant, learned senior counsel appearing for respondent No.2, by referring to Order XII Rule 6 of CPC has submitted that power conferred

as per the said provision is not only on application but court may, on its own, also deliver judgment based on admissions either in the pleadings or

otherwise. As such, it is submitted that wide meaning is to be given to the said provision, having regard to the object and the intendment of the Rule.

22. Mr. Dholakia, learned advocate appearing for respondent No.3 has submitted that, several admissions of the appellants are evident from the

balance-sheets filed before the Registrar of Companies. It is submitted that in the absence of any application for revision of balance-sheet, entries

made in such balance-sheets are rightly considered as admissions by the Division Bench in the impugned judgment. In support of the plea, learned

counsel has relied on the judgment in the case of Rajiv Srivastava vs. Sanjiv Tuli and another AIR 2005 Delhi 319 and also the judgment in the case of

Thimmappa Rai vs. Ramanna Rai and others (2007) 14 SCC 63 and the judgment in the case of Ultramatix Systems Pvt. Ltd. vs. State Bank of India

& Ors. (2007) 4 Mh.L.J. 847.

23. Sri Ranjit Kumar, learned senior counsel in rejoinder arguments has submitted that the admissions referred in the Order XII Rule 6 of CPC must

be in the same suit but no application can be entertained based on admissions alleged to have been made in another suit and also in criminal

proceedings. By referring to the definition of Ã¢â‚¬Å“pleadingsÃ¢â‚¬ as defined under Order VI Rule 1 of CPC has further submitted that the term

Ã¢â‚¬Å“otherwiseÃ¢â‚¬ referred to in Order XII Rule 6 of CPC is for the limited purpose of Ã¢â‚¬Ëœother than pleadingsÃ¢â‚¬â„¢ in the suit, but not to enlarge the

scope of the application by covering admissions in other suits and criminal proceedings.

24. Sri P.S. Narsimha, learned senior counsel appearing for the second appellant has submitted that as much as the suit is for specific performance of

the agreement and the same is a discretionary and equitable relief and in a given situation, the court may also refuse grant of decree of specific

performance, even if the agreement is held to be proved. Learned counsel has placed reliance on the judgment in the case of Aniglase Yohannan vs.

Ramlatha and Ors. (2005) 7 SCC 534.

25. Having heard the learned counsel for the parties, we have perused the impugned order and other materials placed on record. The impugned order

is passed on an application filed by the respondents-plaintiffs, under Order XII Rule 6 of CPC. The said provision under Order XII Rule 6 read as

under:

Ã¢â‚¬Å“6.Judgment on admissions.-(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the

Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other

question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the

date on which the judgment was pronounced.Ã¢â‚¬â€‹

26. The aforesaid Rule was amended by Act 104 of 1976, by which several amendments were made to the Code of Civil Procedure, 1908. Earlier to

1976 amendment, judgment on admissions was confined only on application in writing. By virtue of the amendment whether admissions are oral or in

writing, court is empowered at any stage of the suit to give judgment on such admissions.

27. In the case on hand, at first instance a Memorandum of Understanding was entered into by the appellants with the respondent No.4 i.e. Mr.

Praveen Kumar Jolly on 24.05.2003 with respect to half of the suit property. It is the case of the appellants that due to non-compliance of the terms of

MOU, by Mr. Praveen Kumar Jolly, the said MOU was terminated in August, 2004 and subsequently an arrangement/contract is entered into with

respondent nos.1 and 2 Ã¢â‚¬" plaintiffs on 7.4.2005 and subsequent agreement dated 3.5.2005. It is the specific case of the appellants that contractual

terms were not crystallized as such there were several blanks in the agreement dated 3.5.2005. While it is the case of the respondents-plaintiffs that

an amount of Rs. Five crores was paid, i.e. Rs. Two crores by way of cheque and Rs.Three crores by way of cash, the same is seriously disputed by

the appellants-plaintiffs stating that only an amount of Rs. Two Crores was paid and the payment of Rs. Three crores is a fabrication of the

agreement to sell dated 3.5.2005 on pages 3 and 4 of the document. Based on the earlier MOU by the appellants with Mr.Praveen Kumar Jolly i.e.

4th respondent herein, 4th respondent has filed a suit for specific performance of the agreement in CS(OS) No.1508 of 2005 in which conditional

order was passed. It is the case of the respondents-plaintiffs that, when such conditional interim order was notified in the newspaper, they have come

to know about the earlier agreement entered into by the appellants with respondent No.4 and they approached the 4th respondent and handed over the

original agreement dated 3.5.2005 and the receipt to the 4th respondent. It is the specific case of the appellants that when they have come to know

about the document dated 3.5.2005 in the suit filed by 4th respondent herein, they have come to know tampering and fabrication of the document, as

such they have filed I.A.No.61 of 2006 in CS(OS) No.1508 of 2005 under Section 340 of Cr.P.C., on 3.1.2006. The present suit in CS(OS) No.2046 is

filed by the respondents-plaintiffs, subsequently, on 1.11.2006. In the said suit, the appellants-defendants have filed written statement on 25.1.2007 by

raising specific preliminary objection that the agreement dated 3.5.2005 is forged and fabricated, as such, they are liable for prosecution under Section

195(1)(b) of Cr.P.C. In the written statement, apart from other allegations, specific plea is made that suit is barred in view of provisions of Section

16(c) of the Specific Relief Act, 1963, in absence of any plea of readiness and willingness by the respondents-plaintiffs. While admitting the

arrangement entered into with the respondents-plaintiffs, it is the case of the appellants that the terms of the agreement were not concretized. As such

almost all the necessary columns were left blank in the agreement dated 3.5.2005. It is not necessary to refer in detail the further averments made in

the written statement for the disposal of this appeal before us. Subsequent to the filing of the written statement, the respondents-plaintiffs have filed

the present application under Order XII rule 6 of CPC on 9.2.2007 for which reply was filed by the appellants on 19.3.2007. In the reply filed on

behalf of the appellants and other defendants in I.A.No.1557 of 2006, opposing the relief sought for on the ground that in absence of any categorical

and unconditional admissions, relief cannot be granted. The application in I.A.No.1557 of 2007 is filed only on the ground that in the bail petition filed

by the appellants, in connection with the criminal case registered, arising out of a complaint filed by the 4th respondent, the appellantsÃ¢â‚¬â„¢ counsel has

pleaded his readiness to fulfill the contract entered into on 3.5.2005. Except the said plea of admission there is no other admission, claimed in the

application. The learned Single Judge has rightly rejected the application vide order dated 24.7.2017. In the order the learned Single Judge of the High

Court has held that in view of the stand of the appellants that the agreement dated 3.5.2005 is a fabricated one and the signatures of the 2nd appellant

are fabricated on pages 3 and 4 of the agreement, such issues can be resolved only after trial. But same is no ground to deliver judgment on claimed

admissions. The learned Single Judge has held in paras 41 and 42 of the judgment as under:

Ã¢â‚¬Å“41.The aforesaid raises a serious dispute as to whether, or not, the defendants have actually received the amount of Rs.5 Crores under the

agreement, as alleged by the plaintiffs, or only Rs.2 Crores by cheque as alleged by defendant Nos. 1 to 6. The defendants have alleged that the two

pages of the agreement, which, inter alia, record the receipt of Rs.5 Crores by the defendants under the agreement Ã¢â‚¬" including Rs.3 Crores in cash,

have been replaced with pages which bear the forged signatures of defendant No.2. On this aspect, additional issues were framed by the Court on

05.05.2010. Since the plaintiffs claim to have made cash payments of a very large amount of Rs.3 Crores under the agreement, which have been

disputed by the defendants, it would be for the plaintiffs to prove the same, inter alia, by showing the availability of such large amounts of cash with

them on the relevant dates. In my view, till those issues are decided Ã¢â‚¬" which are issues of fact, it cannot be said at this stage with certainty whether

the agreement dated 03.05.2005 relied upon by the plaintiffs is the one entered into between the parties, or not.

42. It is well-settled that to entitle a plaintiff to a decree on admission, it is essential that the admission made by the defendant in respect of the

plaintiffs case/claim should be clear and unequivocal. In the present case, the only admission made by the defendant No.1 to 6 is in relation to their

entering into the agreement/MOU with the plaintiffs for sale of the suit property; the goodwill of South Delhi Toyota, and; the net assets of the said

business. It was also agreed that the sale consideration for the suit property was Rs.49 Crores; for the goodwill of the business of South Delhi Toyota

was Rs.6.50 Crores and; for the sale of the net worth of the business of South Delhi Toyota, the same amount was to be transferred to the

defendants. To this extent, it could be said that there are admissions made by the defendants No. 1 to 6. However, there is a serious dispute as to

whether the plaintiffs have paid Rs.5 Crores, i.e. Rs.2 Crores by cheque and Rs.3 Crores in cash to defendants No.1 to 6, or only Rs.2 crores by

cheque. This dispute goes to the root of the mater. Unless and until the said dispute is resolved in favour of the plaintiffs, no decree for specific

performance of the agreement can be passed by the Court. Pertinently, the Court has already framed issues of fact on the aforesaid aspect.Ã¢â‚¬‹

28. On appeal the Division Bench has set aside the order of the learned Single Judge and held that the appellants have admitted execution of the

agreement dated 3.5.2005. At this stage, it is to be noticed that all throughout, the case of the appellants is that though they have entered into

arrangement/agreement on 7.4.2005 and 3.5.2005 with the respondents-plaintiffs and received Rs. Two crores by way of cheque but such agreement

is fabricated by forging signatures on pages 3 and 4 of the agreement. In view of such stand of the appellants, we are of the view that the mere

admission of entering into arrangement/agreement dated 3.5.2005 cannot be termed as a categorical and unconditional admission for the purpose of

delivering judgment by allowing the application filed under Order XII Rule 6 of CPC. It is to be noticed at this stage that even before filing of the

present suit in CS(OS) NO.2046 of 2006, when the document dated 3.5.2005 was produced in the suit filed by the 4th respondent Mr. Praveen Kumar

Jolly, the appellants have filed I.A. No.61 of 2006 in CS(OS) No.1508 of 2005 on 3.1.2006. In the aforesaid I.A., there was a challenge to the

genuineness of the agreement dated 3.5.2005 which application was subsequently disposed of on 7.12.2016. The present suit in CS(OS) No.2046 of

2006 was filed subsequently on 1.11.2006. The Division Bench of the High Court has proceeded on the premise that there is no dispute on the

agreement to sell dated 3.5.2005. At this stage, it is to be noted that the suit in C.S.(OS) No.1508 of 2005 was filed for specific performance of the

agreement by the 4th respondent and on production of the agreement to sell dated 3.5.2005, they have already filed I.A.No.61 of 2006, alleging that

there was a fabrication of the document dated 3.5.2005 and their signatures were forged on pages 3 and 4. In view of such plea of appellants, we are

of the considered opinion that such admissions are erroneously treated as categorical and unconditional admissions by the Division Bench of the High

Court for the purpose of disposal of the application filed under Order XII Rule 6 of CPC. Further, the Division Bench has relied on balance sheets of

the first appellant company for the years 2004-05, 2005-06 and 2006-07 and also the letter alleged to have been addressed by the auditor. On the

aforesaid documents, the plea of the appellants is that such documents also are forged and fabricated balance sheets which were submitted before the

ROC by their auditor Mr. S.R. Varshney in connivance with Mr. T.R. Arya (respondent No.3 herein), who is a common chartered accountant for the

appellants and respondent Nos. 1 and 2. Allegations and counter allegations are made by the parties in respect of balance sheets and other documents

relating to the company, the merits of which can be gone into only at the time of trial where the parties will have opportunity of adducing evidence and

explain their stand.

29. In the judgment in the case of Himani Alloys Limited vs. Tata Steel Limited (supra), nature and scope of Order XII Rule 6 has been considered by

this Court. In the aforesaid judgment this Court has held that the discretion conferred under Order XII Rule 6 of CPC is to be exercised judiciously,

keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of the

judgment read as under:-

Ã¢â‚¬Å“11. It is true that a judgment can be given on an Ã¢â‚¬Å“admissionÃ¢â‚¬ contained in the minutes of a meeting. But the admission should be categorical.

It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision,

it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial

discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of

an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to

deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear Ã¢â‚¬Å“admissionÃ¢â‚¬ which

can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] K, aram Kapahi v. Lal Chand Public

Charitable Trust (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262]and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha [(2010) 6 SCC 601 :

(2010) 2 SCC (Civ) 745] .) There is no such admission in this case.Ã¢â‚¬â€‹

30. In the judgment in the case of S.M. Asif vs. Virender Kumar Bajaj (supra), this Court has held that the power under Order XII Rule 6 of CPC is

discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to

root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 of CPC. Para 8 of the judgment read as under:-

Ã¢â‚¬Å“8. The words in Order 12 Rule 6 CPC Ã¢â‚¬Å“mayÃ¢â‚¬ and Ã¢â‚¬Å“make such order Ã¢â‚¬Â¦Ã¢â‚¬ show that the power under Order 12 Rule 6 CPC is

discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the

court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order

12 Rule 6 CPC. The said rule is an enabling provision which 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.Ã¢â‚¬â€‹

31. In the judgment in the case of Balraj Taneja and another vs. Sunil Madan and another (supra), while considering the scope of Order VIII Rule 10

and Order XII Rule 6 of CPC, this Court has held that the court is not to act blindly upon the admission of a fact made by the defendant in the written

statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the

facts set out by the plaintiff in the plaint filed in the court.

32. In the aforesaid judgment, while considering the scope of Order XII Rule 6 of CPC, post amendment by amending Act, 1976 this Court has held

as under:

Ã¢â‚¬Å“21.There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order

12 which provides as under:

Ã¢â‚¬Å“6. Judgment on admissions.Ã¢â‚¬"(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the

court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other

question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the

date on which the judgment was pronounced.Ã¢â‚¬â€‹

22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this

amendment are given below:

Ã¢â‚¬Å“Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim.

The object of the rule is to enable a party to obtain a speedy judgment at least to the extent of the relief to which, according to the admission of the

defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also

covered by the rule.Ã¢â‚¬â€‹

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.Ã¢â‚¬â€‹

33. By applying the ratio laid down by this Court in the aforesaid judgments, it is to be held that there are no categorical and unconditional admissions,

as claimed by the respondents-plaintiffs. In view of the stand of the appellants that, the pages 3 and 4 of the agreement dated 3.5.2005 are tampered

and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by

the appellants. Mere admission of entering into arrangement/contract on 7.4.2005 and 3.5.2005 itself cannot be considered in isolation, without

considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement

is fabricated as claimed, post trial it goes to the root of the case on the claim of the respondents-plaintiffs. Hence, we are of the view that the

aforesaid judgments fully support the case of the appellants.

34. Learned counsel for the respondents-plaintiffs Sri Shyam Divan, relying on the judgment of this Court in the case of Uttam Singh Duggal & Co.

Ltd. vs. United Bank of India (supra) has submitted that in view of the balance sheets and resolutions of the company, they are to be considered as

admissions otherwise it will amount to narrowing down the scope of the Rule itself. In the aforesaid judgment itself, this Court has held that when a

statement of admission is brought before the Court, as long as the party making the statement is given sufficient opportunity to explain such

admissions, judgment on admission can be delivered. In the case on hand it is to be noted that the relief claimed under Order XII Rule 6 of CPC by

filing a written application claiming admission only based on the statement made by the advocate in the bail application, and there is no other pleaded

admissions, in the application filed by the respondents-plaintiffs. It is a trite principle that any amount of evidence is of no help, in absence of pleading

and foundation in the application. It is true that when categorical and unconditional admissions are there, judgment on admission can be ordered,

without narrowing down the Rule but at the same time the judicious discretion conferred on the court is to be exercised within the framework of the

Rule but not beyond. Even on balance sheets of the company and the note of one of the Directors, it is the specific case of the appellants that the third

respondent, in connivance with the respondents-plaintiffs, is also working against the appellants. In that view of the matter the claim of the

respondents-plaintiffs relying on the documents relating to company is to be considered with reference to the defence of the appellants during trial in

the suit.

35. In the judgment in the case of Karam Kapahi & Ors. vs. Lal Chand Public Charitable Trust & Anr. (supra), this Court has interpreted the

expression Ã¢â‚¬Å“otherwiseÃ¢â‚¬ as used in Order XII Rule 6 of CPC and has held that the scope of the said provision of the Order XII Rule 6 is wider in

comparison to provision of Order XII Rule 1 of CPC. It is true that after amendment, scope of the Rule under Order XII Rule 6 is expanded but at the

same time the expression Ã¢â‚¬Å“otherwiseÃ¢â‚¬ inserted in Order XII Rule 6 is also to be considered within the framework of the Rule but not beyond. In

any event, even in a given case, the admissions are categorical and unconditional, whether any inference can be drawn on admissions having regard to

documents placed on record, is a matter to be considered having regard to facts of each case. There cannot be any straight jacket formula to extend

the benefit of Order XII Rule 6 of CPC.

36. In the judgment in the case of Usha Rectifier Corporation (India) Limited vs. Commissioner of Central Excise, New Delhi (supra) relied on by

learned senior counsel Sri Shyam Divan, this Court has held that entries made in the balance sheets filed on behalf of the company are to be treated as

admissions and the appellant cannot turn around and take stand, contrary to such admissions but in this case from the beginning it is the case of the

appellants that the third respondent is in connivance with the respondents-plaintiffs.

37. In this case it is to be noted that the suit was filed on 1.11.2006 and written statement was filed on 25.01.2007 and the application under Order XII

Rule 6 was filed on 9.2.2007. In year 2010 issues and additional issues were framed and trial is also commenced. In that view of the matter, there is

no reason to pass the impugned order now for decreeing the suit on claimed admissions, in exercise of power under Order XII rule 6 of CPC at this

stage. In view of the serious factual disputes and the defence of the appellants in the suit, it is not permissible for making roving inquiry for disposal of

the application filed under Order XII Rule 6 of CPC. When the trial is already commenced, it is desirable to record findings on various contentious

issues and disputes in the suit on merits by appreciating evidence but at the same time there is no reason or justification to decree the suit at this stage.

For the aforesaid reasons, we are of the view that the impugned judgment of the High Court cannot be sustained and is liable to be set aside on this

ground alone.

38. Further it is also to be noted that the suit is for specific performance of the agreement of sale. The relief sought is equitable and discretionary

relief. The readiness and willingness on the part of plaintiffs to execute the document is to be pleaded and proved. At first instance in the plaint filed

on 1.11.2006 there was no such averment at all. Subsequent to the filing of the written statement, interlocutory application No.3370 of 2007 was filed

on 20.3.2007 to incorporate the plea of readiness and willingness on the part of the respondents-plaintiffs in the plaint, which was allowed

subsequently. The readiness and willingness on the part of the respondents-plaintiffs cannot be inferred merely on the ground that they have deposited

the balance amount after the impugned order is passed. Even in absence of refusal of the application for amendment of written statement, it is

obligatory on the part of the plaintiffs to prove that they were willing and ready to perform the contract, to claim the equitable relief of specific

performance. In the judgment relied on by Sri P.S. Narsimha, learned senior counsel in the case of Aniglase Yohannan vs. Ramlatha and Ors. (supra),

this Court has held that the basic principle behind Section 16(c) read with Explanation (ii) of the Specific Relief Act, is that any person seeking benefit

of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. In the

aforesaid judgment this Court has further held that the court is to grant relief on the basis of the conduct of the person seeking relief. Paras 12 and 13

of the judgment read as under:-

Ã¢â‚¬Å“12.The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract

must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is

to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the

relief on perusal of the plaint he should not be denied the relief.

13. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish the fact by evidence aliunde that he has always been ready and

willing to perform his part of the contract. On considering almost an identical fact situation it was held by this Court in Surya Narain Upadhyaya v.

Ram Roop Pandey 1995 Supp (4) SCC 542 : AIR 1994 SC 542] that the plaintiff had substantiated his plea.Ã¢â‚¬â€‹

The said judgment of this Court also supports the plea of the appellants herein.

39. The learned counsels appearing for the appellants, have also contended stating that as per the directions of the High Court remaining balance

amount, as per the agreement dated 03.05.2005, is not deposited by the respondents-plaintiffs, and the said amount is deposited by a third party who

has no concern in the matter. In view of our findings recorded above on other issues, we are of the opinion that it is not necessary to deal with the said

contention.

40. For the aforesaid reasons we are of the view that the High Court fell in error in passing the impugned judgment, decreeing the suit by delivering

the judgment on the application filed under Order XII Rule 6 of CPC. The impugned judgment is liable to be set aside. Accordingly, the same is set

aside, with no order as to costs. Accordingly, the appeal is allowed and the impugned judgment dated 2nd August, 2018 rendered in FAO(OS) No.268

of 2017 is set aside and the order of the learned Single Judge dated 24th July, 2017 passed in I.A.No.1557 of 2007 is restored. Consequently, the

aforesaid I.A. No. 1557 of 2007 stands dismissed, with no order as to costs.

41. As it is pleaded that after the impugned order is passed, the respondents-plaintiffs have deposited the balance consideration amount, they are

entitled for the refund of the same along with accrued interest, if any.

42. We also make it clear that the findings and observations made by this Court are confined only for the purpose of the application filed by the

respondents-plaintiffs under Order XII Rule 6 of CPC and all contentions of the parties are left open and it is open for the High Court to record

findings on various issues which fall for consideration in the suit on its own merits. We also request the High Court to expedite the trial in CS(OS) No.

2046 of 2006.