

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 504 of 2022

Annapurna Ashray Private Limited & Ors.

Vs.

Steelco Brick Field & Ors.

For the petitioners :Mr. Shiba Prasad Mukherjee, Adv.
Mr. Debanjan Mukherjee, Adv.
Mr. Aniruddha Ganguly, Adv.

For the Opposite Party no. 2 :Mr. Muhammad Obaid, Adv.

Heard On :11.07.2024, 19.08.2024 &
19.09.2024

Judgement On : 22.11.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India assailing the order being no. 26 dated 30.09.2005 passed by Ld. Civil Judge, 2nd Court, Basirhat, North 24 Parganas in connection with Title Suit No. 135 of 2004 wherein the application under Order 12

Rule 6 of the Code of Civil Procedure (for short CPC) made by the petitioners herein was rejected.

Facts in brief:-

2. Plaintiffs/petitioners herein, filed a suit for accounts along with a prayer for injunction, against the defendants/opposite parties herein.
3. Defendants/opposite parties herein entered appearance in the said suit by filing Written Statement, wherein they have, inter alia, admitted that the petitioners/plaintiffs are entitled to have the amount of Rs. 16 lakhs and odd out of total claim by the plaintiffs/petitioners.
4. Considering such admission, plaintiffs/petitioners herein filed an application under Order 12 Rule 6 of the CPC before the trial Court, but the application was rejected on the ground of unclear and unequivocal admission.
5. Being aggrieved by and dissatisfied with the above order of the Trial Court, the instant revision application has been preferred.

Observation of the Ld. Trial Court:-

6. Ld. Trial Judge, as referred to by the petitioners/plaintiffs, quoted paragraph 12 & 13 of the written statement, wherein it was alleged that the opposite parties have admitted the claim of the plaintiffs. Learned Trial Judge recorded his observation

that the statements made in paragraph 12 & 13 cannot be said to be clear and unambiguous admission in response to claim of the plaintiffs.

Analysis:-

7. Ld. Counsel, Mr. Shiba Prasad Mukherjee, appearing on behalf of the petitioners has mainly canvassed his argument on the ground that since the suit was dismissed for default on 17.09.2008, there was no point in proceeding with the C.O. No. 226 of 2006 when the matter was called for hearing and accordingly, the petitioner had not pressed the earlier application filed on 27.07.2011 and the same was dismissed for non-prosecution. But, after the restoration of the suit on 08.03.2019, the instant civil revision application has been filed challenging the impugned order dated 30.09.2005.
8. Mr. Mukherjee has further contended that since the earlier revision application was not decided on merit, the present revision application is indeed maintainable in as much as there can be no application of the principle of *res judicata* in the present case.
9. Before parting with, Mr. Mukherjee has referred to the written statement filed by the defendants no. 2, 3 & 5 with putting special emphasis to paragraph no. 11 & 12 wherein allegedly

the defendants have admitted the fact that the petitioners are liable to be paid the amount admitted therein along with interest so prayed in the plaint.

10. In order to substantiate his argument, Mr. Mukherjee has relied on the following cases:-

- ***Uttam Singh Duggal & Co. Ltd vs. United Bank of India and others*** reported in ***(2007) 7 Supreme Court Cases 120***
- ***Sudipta Banerjee vs. Ashis Kumar Sen & Anr.*** reported in ***2016 SCC OnLine Cal 4580***
- ***Concast Steel & Power Limited vs. Ramesh Gudla*** reported in ***2016 SCC OnLine Cal 7418***
- ***Calcutta Municipal Corporation vs. Pabitra Kumar Basu*** reported in ***2002 SCC OnLine Cal 1001***
- ***Rafiq and another vs. Munshilal and another*** reported in ***(1981) 2 Supreme Court Cases 788***
- ***Ram Kumar Gupta and others vs. Har Prasad and another*** reported in ***(2010) 1 Supreme Court Cases 391.***
- ***Kandapazha Nadar and others vs. Chitraganiammal and others*** reported in ***(2007) 7 Supreme Court Cases 65***

- ***Mangalore Electricity Supply Company Limited vs. Amr Power Private Limited and another reported in (2016) 16 Supreme Court Cases 135***

11. Per contra, Ld. Counsel, Mr. Muhammad Obaid, appearing on behalf of the opposite party no. 2 has raised a preliminary objection regarding the maintainability of the present revision application as since the previous application (C.O. No. 226 of 2006) challenging the self same order was withdrawn without seeking liberty to file afresh. Therefore, the instant civil revision application is not maintainable in view of the provision of Order 23 Rule 3 of the CPC.

12. Mr. Obaid has further submitted that in the factual background of the case, the application under Order 12 Rule 6 of the CPC is not maintainable as there has been no unconditional, unequivocal and clear admission on the part of the defendants as alleged.

13. In support of his argument, Mr. Obaid has taken assistance of the following cases:-

- ***Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior and ors. reported in Manu/SC/0114/1986***

- ***Ballygunge Properties Development Corpn vs. Shree Anandamoyee Charitable Society and other reported in 1997 SCC OnLine Cal 411***
- ***State of West Bengal & Ors. vs. Dr. Subiman Saha and anr. reported in 2019 SCC OnLine (Cal) 9194***

Ratio of the cases relied on behalf of the parties:-

For the petitioner:-

14. In ***Uttam Singh Duggal*** (supra) the Hon'ble Supreme Court observed that Order 12 Rule 6 of the CPC should not be unduly narrowed down because the object of Rule 6 is to enable a party to obtain a speedy judgment. It has been further observed that the decree can be passed under Order 12 Rule 6 of the CPC on the basis of admissions which are of many kinds.

15. In ***Sudipta Banerjee*** (supra), ***Concast Steel*** (supra) & ***Calcutta Municipal Corporation*** (supra) it has been observed that the power exercised by the Court under Order 12 Rule 6 of the CPC is discretionary and depends upon the attending facts and circumstances. The main object and purpose of Order 12 Rule 6 of the CPC is to provide speedy trial where the defendant has made clear, unequivocal and

unconditional admission of the claim of the plaintiff, in such cases it would be a futile exercise to relegate the parties to go to trial.

16. In **Rafiq** (supra) & **Ram Kumar Gupta** (supra) the Hon'ble Apex Court has observed that the contesting parties should not suffer for lapses on the part of their counsels. As it would be improper that the appellants be punished and suffer injustice merely because their Advocate defaulted.

17. In **Kandapazha Nadar** (supra) & **Mangalore Electricity Supply Company Limited** (supra) the Hon'ble Supreme Court held that there is no bar for taking defense in a fresh round of litigation in respect of the same point involved in a petition which was withdrawn without seeking liberty. It is the provision in Order 23 Rule 1 of the CPC and not any principle of *res judicata* that precludes the plaintiff in a case falling under this category from bringing a fresh suit in respect of the same matter in respect of which a suit was withdrawn without leave having been granted to file a fresh suit in respect thereof.

18. In **Sarguja Transport Service** (supra) Hon'ble Apex Court observed that while the withdrawal of the writ petition filed in a High Court without permission to file a fresh writ

petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abundant by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without permission to file a fresh petition.

19. In ***Ballygunge Properties Development Corpn*** (supra) the Co-ordinate Bench of this Hon'ble Court held that if there is a disputed question of law and facts embodied in the averments of the petition and there is firm denial of the claims of the plaintiff by the defendant then no decree can be passed in terms of Order 12 Rule 6 of the CPC.

20. In ***Dr. Subiman Saha*** (supra) The Hon'ble Division Bench of this Court held that if the earlier application was not pressed by the petitioner in view of the dismissal of the suit, even then leave to file afresh was required to be granted particularly in view of the provision of Order 23 Rule 3 of CPC. Furthermore, silence in the order of dismissal regarding liberty to file afresh amounts to or should be understood as rejection of the prayer.

Analysis:-**Maintainability:-**

21. Ld. Counsel, Mr. Muhammad Obaid, appearing on behalf of the opposite party no. 2 has contended that the plaintiffs/petitioners herein preferred a revision application being no. C.O. 226/2006 against the Order dated 30. 09.2005 whereby Ld. Trial Court rejected the prayer for judgment on admission under Order 12 Rule 6 of the CPC. It is further submitted that the said revision application (C.O. 226/2006) was withdrawn on 27.07.2011 without seeking leave to file afresh. It is further contended that the plaintiffs again filed the instant revision application no. C.O. 504 of 2022 against the same Order dated 30.09.2005 which is barred as no leave was ever sought for at the time of withdrawal of revision application being no. C.O. 226 of 2006.

22. On the Contrary, Ld. Counsel, Mr. Shiba Prasad Mukherjee, appearing on behalf of the petitioners has argued that the petitioners were compelled to withdraw revision application no. 226 of 2006 on 27.07.2011 as the Title Suit No. 135/2004 was dismissed for default on 17.09.2008 and moreover the said revision application was not disposed of on merit.

23. After evaluating rival submissions made on behalf of the parties as well as the admitted facts, this Court finds that the Order dated 30.09.2005 (impugned order) passed in Title Suit no. 135/2004 was challenged before the Hon'ble High Court in revision application no. 226/2006 which was withdrawn on 27.07.2001 because of non-existence of Title Suit no. 135/2004 which was dismissed for default on 17.09.2008. After lapse of a substantial period, the said Title Suit was restored to its original file and number. Thereafter, plaintiffs/petitioners herein preferred instant revision application assailing the impugned order dated 30.09.2005. Therefore, where there is no existence of any suit, question of revision of any order passed in that suit does not even arise. From that point of view seeking or giving leave to file fresh revision application does not bare any meaning.

24. Thus, argument advanced by Mr. Obaid in this regard, is found to be devoid of any merit.

On Merit:-

25. Controversy over the issue of judgment on admission under Order 12 Rule 6 of the CPC has already been set at rest by the Hon'ble Apex Court through a plethora of decisions.

26. It is well-settled that the aforesaid provision is intended to expedite legal proceedings by enabling the Court to deliver Judgment without waiting for the resolution of other issues in the case. The provision not being mandatory allows the Court to act based on clear, unambiguous and unconditional admissions made by the parties involved. A judgment on admission is effectively a judgment without trial, which permanently denies the defendant any remedy based on the merit of the case. Therefore, the Court must ensure that the admission is categorical and shows an intention to be bound by it.

27. Therefore, pre-conditions prescribed in order to invoke order 12 Rule 6 of the CPC to pass judgment on admission is that it must be a clear admission and where there is no clarity in the nature of admission, no judgment can be passed therefrom. The Court's discretion plays a crucial role in determining whether to grant a judgment based on such admissions.

28. Further in the provisions of Order 12 Rule 6 CPC, there is clear legislative intention to confer a discretionary power on this Court and judgement based on admission cannot be claimed as a matter of right.

29. Rival contentions of the parties give rise to an issue as to whether para 12 & 13 of the written statement filed in the suit can give thought to an admission of claim of the plaintiffs.

30. Ld. Trial Judge recorded that the statements in paragraphs 11-13 did not reveal any unambiguous, unconditional or unequivocal admission on the part of the defendants regarding any particular amount. Ld. Trial Judge recorded the following order:-

“ I have carefully perused the plaint, written statement and the instant petition and the W.O. and also the documents wherefrom I find that the admission is not clear and unequivocal. The defendant have admitted that the plaintiff have time to time paid Rs. 16,00,000/- to the defendant but that amount has been adjusted by Rs. 7,47,055/-and now RS. 7,61,671 is outstanding. It has been only been stated that the defendants are ready to supply various classes of bricks to the plaintiffs against the balance amount of Rs. 7,61,671/-. But no where it has been stated that Rs. 16,00,000/- is the correct amount due to the plaintiffs. Further it has not been specifically admitted the claims of the plaintiffs. This issue involves the adducing of evidence. Therefore, in these circumstances it cannot be said that there is an admission on the part of the defendants to return particular amount as claimed by the plaintiffs.”

31. Now coming to the contents of the written statements, especially paragraphs no. 11,12 & 13, the following admitted facts have been revealed:-

a. At the very outset the defendants have vehemently denied all the statements put forth in the plaint.

- b. There was a commercial transaction by and between the parties.
- c. The defendants received Rs. 16,00,000/- from the plaintiffs for supplying various classes of bricks.
- d. The defendants supplied bricks from time to time amounting to Rs. 7,47,055/- and were ready to supply bricks against the remaining amount, if any.

32. In the aforesaid view of the matter, it cannot be said that the parameters for invoking the provision of Order 12 Rule 6 of the CPC have been fulfilled in connection with the instant revision application as already discussed in paragraphs no. 25 to 28 hereinabove.

33. Therefore, I find hardly any reason to disagree with the observation made by the Ld. Trial Judge in the impugned order.

34. As a sequel, the instant civil revision application being no. C.O. 504 of 2022, being devoid of merits, stands dismissed.

35. Considering the long pendency of the suit, Ld. Trial Judge is requested to dispose of the suit as expeditiously as possible.

36. Connected applications, if there be, also stand disposed of accordingly.

- 37.** Interim order, if there be, also stands vacated.
- 38.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 39.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]