

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 8th January, 2019**

+ **CS(COMM) 646/2016**

K R IMPEX

..... Plaintiff

Through: Mr. Medhanshu Tripathi & Mr. Harish
Sharma, Advs.

Versus

PUNJ LLOYD LTD

..... Defendant

Through: Mr. Shadman Ali, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.2730/2018 (of the plaintiff under Order XI Rule 14 CPC)

1. The counsel for the plaintiff states that the defendant, along with its reply to the said application has produced some of the documents of which production was sought and the plaintiff for the time being is satisfied therewith and reserving its right to rely upon the documents so produced, for the time being does not press any further relief in this application.

2. The application is disposed of.

IA No.9035/2018 (of the defendant for condonation of 65 days delay in filing IA No.2730/2018)

3. With the disposal of IA No.2730/2018, this application has become infructuous and is disposed of.

IA No.13553/2018 (of the plaintiff under Order XII Rule 6 CPC)

4. The counsel for the defendant states that reply to the application has been filed yesterday only.

5. The reply is not on record. A copy of the said reply has been taken from the counsel for the defendant and is placed on record.

6. The counsel for the plaintiff and the counsel for the defendant have been heard.

7. The plaintiff has instituted this suit for recovery of Rs.2,96,57,573/- from the defendant, together with interest at 18% per annum pendente lite and future.

8. The aforesaid amount of Rs.2,96,57,573/- comprises of, (a) the principal amount of Rs.1,77,06,014/- claimed to be due from the defendant to the plaintiff towards the remaining cost of the work done by the plaintiff for the defendant under the sub-contract awarded by the defendant to the plaintiff with respect to the contract awarded to the defendant by Gas Authority of India Ltd.; and, (b) the remaining amount subject matter of the suit is towards pre-suit interest; it is however not immediately decipherable from the plaint as to at what rate interest has been claimed and from which date.

9. The suit was entertained and summons thereof ordered to be issued and the defendant has filed a written statement to which a replication has been filed by the plaintiff.

10. Vide order dated 11th October, 2017, the following issues were framed in the suit:

- i. Whether the plaintiff is competent to initiate the legal proceedings against the defendant? OPD
- ii. Whether the suit is barred by limitation? OPD
- iii. Whether the suit is liable to be returned for want of territorial jurisdiction of this Court? OPD
- iv. Whether the suit filed by the plaintiff is based on forged, fabricated and doctored document? OPD
- v. Whether the plaintiff is entitled to a decree of recovery as per prayer A in the plaint? OPP

- vi. Whether the plaintiff is entitled to interest pendent lite and future? If yes, at what rate and from which date? OPP
- vii. Relief.”

and the parties relegated to recording of evidence which has not commenced as yet.

11. The plaintiff, after framing of issues filed IA No.2730/2018 under Order XI Rule 14 of the CPC as aforesaid and along with reply where to the defendant has produced some of the documents of which production was sought in IA No.2730/2018.

12. The counsel for the plaintiff draws attention to the “True Copy of the Statement of Account’s / Ledger details pertaining to the plaintiff” filed by the defendant as Annexure-E to IA No.2730/2018 and particularly to the last page of the said Statement of Account / Ledger, which shows a closing balance of Rs.1,69,73,766/- payable by the defendant to the plaintiff.

13. The counsel for the plaintiff argues, that the same is an admission by the defendant of the amount of Rs.1,69,73,766/- being payable by the defendant to the plaintiff and the plaintiff is entitled to a decree in the said amount along with interest forthwith.

14. The counsel for the defendant has contended that it is the plea of the defendant in its written statement, that (i) the pipeline division of the defendant to which the sub-contract awarded to the plaintiff pertained, at the relevant time was headed by one Surendra Kumar Sharma who was to oversee the said project and its execution; (ii) the plaintiff, in collusion with the said Surendra Kumar Sharma had defrauded the defendant company to the tune of crores of rupees by raising false invoices and double invoicing; (iii) the said Surendra Kumar Sharma, in his capacity as Senior General

Manager and Head of Pipeline Division was responsible for overseeing the pipeline projects and also enjoyed wide powers, of appointment of sub-contractors, approval / certification of invoices and approval of purchase orders for payment; (iv) the sub-contract / work order issued to the plaintiff was also under the instructions of the said Surendra Kumar Sharma; (v) the amount to be paid to the plaintiff was based on the type of earth encountered while digging, with varying trenching rates for normal soil, soft rock and hard rock respectively; (vi) in or around June, 2013, certain irregularities were discovered in respect of the works overseen by the said Surendra Kumar Sharma including the work orders issued to the plaintiff; (vii) upon further enquiries and scrutiny, it was discovered that there were serious irregularities in the purchase orders as approved by Surendra Kumar Sharma; (viii) on 10th June, 2013, the defendant issued a show cause notice to Surendra Kumar Sharma and subsequently Surendra Kumar Sharma was terminated from employment vide letter dated 20th June, 2013; (ix) the defendant, vide its letter dated 30th July, 2013 informed the plaintiff that it had commenced an internal investigation into the irregularities caused at the behest of Surendra Kumar Singh; (x) however, the plaintiff on 14th August, 2013 got issued a notice under Sections 433 and 434 of the Companies Act, 1956 with respect to the debt of Rs.1,77,06,014/- claimed to be due from the defendant to the plaintiff; (xi) the defendant's investigation revealed that the plaintiff had raised invoices on the defendant at the rates applicable for hard rock / soft rock even where the trenching was only in respect of normal soil terrain; (xii) it was further discovered that the plaintiff invoiced the same work done in multiple invoices leading to dual / double charging for the same work; (xiii) Surendra Kumar Sharma, in connivance with the plaintiff

also directed the concerned personnel to keep the hired excavators at the site even though they were idle; (xiv) owing to the collusion between the plaintiff and the said Surendra Kumar Sharma, defendant has suffered a loss of Rs.1,62,00,000/- as extra payment to the plaintiff and to the tune of Rs.60,00,000/- on account of payment of hiring charges for excavators; (xv) the defendant has accordingly, on 5th March, 2014 filed a criminal complaint against Surendra Kumar Sharma and the proprietor of the plaintiff and her husband with the Economic Offences Wing; (xvi) subsequently, an FIR was also registered against the said persons; and, (xvii) the plaintiff is thus not entitled to the suit amount.

15. The counsel for the defendant, in the reply to the application under Order XII Rule 6 of the CPC has also referred to the aforesaid contents of the written statement and the counsel for the defendant has today contended that the same raise disputed questions of fact and law and the plaintiff is not entitled to any decree on admissions.

16. I have considered the aforesaid contentions.

17. Rule 6 of Order XII of CPC empowers the Court to, at any stage of the suit, where admissions of fact have been made either in pleading or otherwise, make such order or give such judgment as it may think fit, having regard to such admissions.

18. This is however a commercial suit within the meaning of Commercial Courts Act, 2015. The said Act has also amended certain provisions of the CPC as applicable to commercial suits and though Order XII Rule 6 of the CPC, invoking which this application has been filed, has not been made inapplicable to commercial suits, but vide the said Act, Order XIII A titled “Summary Judgment” has been incorporated in the CPC insofar as

applicable to commercial suits and Rule 2 whereof, while prescribing the stage for making application for summary judgment, provides that the same be filed at any time after the summons have been served on the defendant but not after the Court has framed the issues in respect of the suit. Rule 3 of Order XIII A, while prescribing the grounds for summary judgment, empowers the Court to give summary judgment against a plaintiff or defendant on a claim, if it considers *inter alia* that the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be and there is no other compelling reason why the claim should not be disposed before recording of oral evidence. Rule 4 prescribes the procedure for making summary judgment.

19. Though this application has been filed after the issues have been framed and is thus not maintainable under Order XIII A by virtue of Rule 2 thereof but otherwise on the basis of the aforesaid contentions of the parties, not only is there an admission of liability by the defendant towards the plaintiff in the sum of Rs.1,69,73,766/- but the present case also falls in the category of the defendant having no real prospect of successfully defending the claim and / or there being other compelling reasons why the claim should not be disposed of before recording of oral evidence.

20. I say so for the following reasons:

A. The defendant, though has claimed to have suffered a loss of Rs.1,62,00,000/- on account of extra payments made in favour of the plaintiff and Rs.60,00,000/- on account of payment for excavators, but has in the suit neither claimed a set off nor made a counterclaim

against the plaintiff. Needless to state, the limitation therefor has since long passed.

B. The Statement of Account / Ledger pertaining to the plaintiff filed by the defendant on 11th July, 2018 as Annexure-E to the reply to IA No.2730/2018 clearly shows the books of accounts of the defendant as on 11th July, 2018 also showing a sum of Rs.1,69,73,766/- as payable to the plaintiff.

C. The counsel for the defendant has argued that the said ledger was also maintained under Surendra Kumar Sharma aforesaid and that is why it reflects the said amount as payable to the plaintiff, even though according to the written statement of the defendant, the amount is not payable and on the contrary Rs.1,62,00,000/- and Rs.60,00,000/- are recoverable by the defendant from the plaintiff. It is emphasized that though in the FIR aforesaid lodged by the defendant, a closure report was filed by the police on 12th May, 2016 but a protest petition filed by the plaintiff is pending. It is argued that till the said protest petition is not decided, the closure report of the FIR filed by the police has not resulted in closure of the FIR.

D. However, on enquiry as to why the defendant has not corrected its ledger / books of accounts and / or statement of accounts, copy of which has been filed showing the amount of Rs.1,69,73,766/- payable to the plaintiff, no answer is forthcoming.

E. The defendant is a public limited company and is subjected to internal and external audit and once, according to the books of accounts of the defendant also, the said amount of Rs.1,69,73,766/- is payable to the plaintiff, there is no reason why the defendant should in

this suit be permitted to prove a defence which is contrary to the own records of the defendant. I may in this regard also notice that the written statement filed by the defendant is dated 7th October, 2016 i.e. nearly two years prior to the date when the statements of accounts was filed demonstrating that as on the date of filing of the written statement also, the defendant made a false verification and filed a false affidavit accompanying the written statement and represented a state of affairs which was contrary to the own records and books of accounts of the plaintiff.

F. There is no reason why the defendant, when had in 2013 discovered the error claimed in the written statement in the ledger / statements of accounts, has not corrected the same for the last over five years. Needless to state, that on account of constitution of the defendant as a company, any such correction in the books of accounts would be subject to statutory provisions and the only inference which can be drawn is that the defendant is unable to, in the face of the said statutory provisions, correct its books of accounts and has instead chosen to take a false defence in this suit and the officials of the defendant viz. Dinesh Kumar Sharma who has filed an affidavit in support of the written statement, has sworn a false affidavit.

G. The counsel for the defendant is unable to state whether Dinesh Shankar Sharma, who had described himself as “Executive Legal” of the defendant, is still in the employment of the defendant or not.

H. It is the bounden duty of the Court, to at all stages of a suit, ensure that no litigant, for own benefit and to the prejudice of his opponent, by making a façade of a case or a defence, is not permitted

to buy time of the Court and which is always to the prejudice of other deserving cases.

I. If the Court is to find, as I do in this case, that a plea taken, is contrary to own records and books of the party taking the said plea and there is no justifiable explanation therefor or is illegal or contrary to law or the party taking the plea is barred or estopped from taking such a plea, the said plea has to be rejected forthwith and the Court is not required to allow evidence to be led thereon.

J. In my opinion, in law, the defendant is not entitled to lead evidence which is contrary to its own books of accounts and records required to be statutorily maintained.

K. As far as the issues framed are concerned, (i) the defendant, in its written statement has not denied the contract with the plaintiff and / or has not denied the status of the plaintiff as a sole proprietary of Ms. Rinku Singh; (ii) the liability to the plaintiff being admitted in the books of accounts of the defendant till date, the question of the suit, insofar as for recovery of Rs.1,69,73,766/-, being barred by limitation does not arise; (iii) the defendant has its registered office within the territorial jurisdiction of this Court and can always under Section 20(a) CPC be sued at the place where its registered office is situated; reference, if any, required in this context may be made to *N.V. Distilleries Pvt. Ltd. Vs. Frost Falcon Distilleries Ltd.* 2018 SCC OnLine Del 12544; (iv) when the amount of Rs.1,69,73,766/-, till date is standing in the ledger/books of accounts of the defendant as due to the plaintiff, notwithstanding the claim of the defendant, of having discovered as far back as in the year 2013 that the same was wrongly

entered, i.e. for a period of over five years, the defendant cannot be permitted to lead evidence that the suit filed by the plaintiff is on the basis of forged, fabricated and doctored documents; the ledger/books of accounts constitute an admission and the defendant cannot be permitted to or has made out a case for being permitted to lead evidence to withdraw the admission; (v) in the facts aforesaid, the question of the plaintiff being not entitled to a decree in the principal amount of Rs.1,69,73,766/- does not arise, since the said amount is till date admitted as due to the plaintiff in the books of accounts of the defendant; (vi) as far as the question of interest is concerned, the same is in the discretion of the Court and no evidence is required to be led with respect thereto.

21. It will thus be seen that the issues have been framed on the pleas which have no legal basis and qua matters on which the defendant is estopped from leading evidence on.

22. Reference may be made to Order XIV Rule 1 of the CPC which requires issues to be framed only on material and not every proposition of law and fact. The material proposition of fact would be a proposition which if pleaded by one of the parties and proved would entitle that party to be successful in its claim or defence. If a proposition of fact pleaded by one of the parties, as aforesaid, were to be contrary to own records and books of accounts of that party, statutorily required to be maintained and there were to be no justifiable explanation therefor or were to be illegal or contrary to law or the party taking it were to be barred or estopped from taking such plea, there would be no chance of that party succeeding thereon and the same would not constitute a material plea for issue to be framed thereon. The

defendant, as aforesaid is a public limited company, shares whereof are listed on the Stock Exchange and employing a large number of persons in hierarchy and accounts whereof were / are not maintained by an individual, manipulations made by whom will go undetected. Merely because the defendant has the temerity to take such a plea, the Court should not allow such litigant to make law and its process an ass, as was famously said by Mr. Bumble in *Oliver Twist* penned by Charles Dickens. There is no explanation, why, even if Surendra Kumar Sharma managed to make wrong entries in ledger / books of accounts of defendant, prior to 2013, the defendant, insite of discovery thereof in 2013, has for the last over five years not corrected the same.

23. As far as Order XII Rule 6 of the CPC, under which the plaintiff has applied for a decree on admissions in its favour is concerned, as per dicta of this Court in *Parivar Seva Sansthan Vs. Dr. Veena Kalra* AIR 2000 Del 349, *Meera Gupta Vs. Dinesh Chand* (2001) 94 DLT 10 (DB), *State Trading Corporation of India Ltd. Vs. Nirmal Gupta* 2012 SCC OnLine Del 3556 and *Sanjay Sharma Vs. Madan Mohan Sharma* 2013 SCC OnLine Del 2434 can be invoked even after framing of the issues.

24. A liability to another shown in books of accounts maintained by that party is an admission within the meaning of Order XII Rule 6 CPC. Reference if any required can be made to *Mahabir Cold Storage Vs. C.I.T., Patna* (1991) Supp. (1) SCC 402, *SCJ Plastics Ltd. Vs. Creative Wares Ltd.* (2012) 192 DLT 237, *Deluxe Dentelles Pvt. Ltd. Vs. Ishpinder Kochhar* (2015) 218 DLT 645 (DB) and *The Pr. Commissioner of Income Tax-6 Vs. New World Synthetics Limited* 2018 SCC OnLine Del 10979 (DB). It was further held in *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India*

(2000) 7 SCC 120 that when admission of liability is claimed and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, the Court is not helpless in refusing to pass a decree. The Court has a duty to pass a decree. In ***Karam Kapahi Vs. Lal Chand Public Charitable Trust*** (2010) 4 SCC 753 also, after rejecting the explanation given to the admission claimed, decree on admissions was passed.

25. Though in view of above, there is no need for me to deal with Order XIII A CPC as applicable to Commercial Courts but a word on that too.

26. Though proviso to Rule 2 of Order XIII A unequivocally lays down that no application for summary judgment may be made after the Court has framed the issues, but it cannot be forgotten that Supreme Court in ***ITC Limited Vs. Debts Recovery Appellate Tribunal*** (1998) 2 SCC 70 has held that merely because issues have been framed, is no reason for the trial to be undertaken, if it is brought to the notice of the Court that the same is not necessary. The Courts have in innumerable judgments referred to in ***Dr. Zubair Ul Abidin Vs. Sameena Abidin @ Sameena Khan*** (2014) 214 DLT 340 (DB) (SLP(C) No.369/370 preferred whereagainst was dismissed on 16th January, 2015), ***Geodis Overseas Pvt. Ltd. Vs. Punjab National Bank*** 2016 SCC OnLine Del 1037 as well as in ***A.N. Kaul Vs. Neerja Kaul*** 2018 SCC OnLine Del 9597 held that the Court on each and every date of hearing has to ensure that no litigation which is deadwood remains pending on the roster of the Court at the cost of other deserving litigations and it is the duty of the Court to eliminate the deadwood on each and every stage. Rule 1 of newly added Chapter XA of the Delhi High Court (Original Side) Rules, 2018, introduced with effect from 1st November, 2018 also permits the Court to, of

its own, pass summary judgment at the time of Case Management Hearing which can also be post framing of issues in the suit.

27. The purpose of the proviso to Rule 2 of Order XIII A is to discourage filing of applications for summary judgment after issues have been framed, thereby delaying trial and to empower the Court to, if finding the same to be dilatory, dismiss the same in limine. The proviso to Rule 2 of Order XIII A, in my opinion, cannot be read mandatorily and to that extent is directory.

28. The objective of the Commercial Courts Act even otherwise is to expedite the disposal of the commercial suits and none of the provisions thereof can be interpreted as counterproductive to the said objective of the Commercial Courts Act and it would delay rather than expedite the disposal of commercial suits, if inspite of finding a suit to be befitting of summary judgment, the Court considers itself constrained merely on account of issues having been framed.

29. There is another aspect of the matter. The document which has entitled the plaintiff to the judgment on admissions or summary judgment, was suppressed by the defendant and has been produced by the defendant post the framing of issues. It thus cannot be said that the plaintiff, though was in a position to claim summary judgment before the framing of issues, failed to do so.

30. The application thus succeeds. The plaintiff is found entitled to a decree in the principal sum of Rs.1,69,73,766/- on admissions / summarily and the application is disposed of.

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31. The counsel for the plaintiff states that though the principal amount claimed by the plaintiff in the suit is Rs.1,77,06,014/- but the plaintiff, for

the sake of expediency and saving of costs will not press the suit for recovery of the balance amount.

32. As far as the claim of the plaintiff for interest is concerned, it is the defendant's own case in its books of accounts / ledger that the sum of Rs.1,69,73,766/- was due as on 1st November, 2013. The plaintiff would thus be entitled to interest with effect from that date.

33. Considering that the transaction between the parties was commercial, it is deemed appropriate to award pre-suit interest to the plaintiff against the defendant on the principal amount of Rs.1,69,73,766/- at the rate of 12% per annum from 1st November, 2013 till the date of institution of the suit i.e. on 13th May, 2016 and at the rate of 10% per annum with effect from 14th May, 2016 till the date of realization.

34. A decree is accordingly passed, in favour of plaintiff and against the defendant, of recovery of Rs.1,69,73,766/- along with interest, with effect from 1st November, 2013 to 13th May, 2016 @ 12% per annum and with effect from 14th May, 2016 till realization @ 10% per annum.

35. The plaintiff shall also be entitled to costs of the suit.

36. Professional fee assessed at Rs.1,50,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 08, 2019

'gsr'

(corrected & released on 23rd January, 2019)