

GAHC030002592023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/16/2023

The Project Manager, BRN Infrastructure Pvt. Ltd.
Hrangchalkawn, Lunglei, Mizoram

VERSUS

Smt. Lalrosangi and 2 Ors.
W/o Hrangkhuaia
R/o Ramthar, Lunglei 2: The General Manager/Project Manager

3: The General Manager/Project Manager

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mr J C Lalnunsanga for R1

Linked Case : I.A.(Civil)/58/2023

The Project Manager
BRN Infrastructure Pvt. Ltd.

Hrangchalkawn
Lunglei
Mizoram

VERSUS

Smt. Rosangi and 2 Ors.
W/o Hrangkhuaia
R/o Ramthar
Lunglei

2:The General Manager/Project Manager
ABCI Infrastructure Pvt. Ltd.
Hrangchalkawn
Lunglei
Mizoram

3:The General Manager/Project Manager
National Highway Infrastructure Development Co. Ltd.
Lunglawn
Lunglei
Mizoram

Advocate for the Petitioner : Mr B Lalramenga
Advocate for the Respondent : Mr J C Lalnunsanga for R1

B E F O R E
HON'BLE MR. JUSTICE MARLI VANKUNG
JUDGMENT & ORDER (ORAL)

Date of Judgment :16.05.2024

Heard Mr. B. Lalramenga, learned counsel for the appellant along with Mr. J.C. Lalnunsanga, learned counsel for the respondents.

2. This Regular First Appeal is filed under Section 96 CPC read with Section 17(2)(b) of the Mizoram Civil Courts Act, 2005 against the impugned Judgment & Order dated 01.11.2022 and the Decree dated 01.11.2022 passed by the learned Senior Civil Judge, Lunglei, Mizoram in Civil Suit No.2 of 2022

3. The brief facts of the case is that the present respondent/plaintiff in the Civil Suit No.2 of 2022, being the legal and rightful owner of the land bearing LSC No.439 of 1988 located at Hrangchalkawn, Lunglei, had filed the suit against the present appellant/defendant No.1 for payment of

compensation/damages caused to the land, fish pond, crops and fencing of the present respondent No.1 by the present appellant. The said land was situated besides NH-54 in which a project of widening and up-gradation of road was being carried out. The present appellant along with the proforma respondent Nos. 2 & 3 under-took the execution of the said project. During the execution of their work the present appellant dumped waste soils and mucks, thereby damaging the boundary fencing of the land, breaking one RCC built fish pond and clogging the pond with waste soils of the present respondent No.1. The present respondent No.1/plaintiff in the Civil Suit No.2 of 2022 claimed Rs.19,30,000/- (Rupees nineteen lakhs thirty thousand) for the damage property, by engaging Junior Civil Engineer, who made the estimate for construction of rectangular RCC underground water tank, garden fencing and excavation of mucks and waste on fish pond based on 'SOR 2016 for NH & State roads in Mizoram'. The present respondent No.1 also made a supplementary claim of Rs.4,00,000/- (Rupees four lakhs) for damages of fruits, trees and crops embedded on the land.

4. The present appellant/defendant no.1 in the Civil Suit, filed their written statement, wherein it was admitted that damaged was caused to the land of the present respondent No.1 due to debris, soil deposited. The present appellant submitted that the Right of way (ROW) for dumping debris was adjacent to the land of the plaintiff near the boundary and was near one of the fish pond, which was divided by natural stream, however, during monsoons, the debris deposited to the ROW was swept away by rain and overflow stream, depositing the soil in the land of the plaintiff. Consequently damaged the land with debris, waste soils deposited in the land of the present respondent No.1, which had also filled one of the fish pond near the boundary, destroying angle poles, barbed wires, etc.

The present appellant/defendant was fully aware and ready to renovate the damaged fish pond, fencing and other necessary water line to the satisfaction of the respondent No.1. Thereafter, a Joint spot verification was also done on 26.04.2022 with a hope to come to some amicable settlement.

5. The appellant in their written statement had also stated that the amount of Rs.19,30,000/- claimed by the instant respondent No.1 in the Civil Suit No.2/2022 was too high and out of question, but both the parties would agree to settle the matter amicably and the matter was also referred to Lok Adalat, however, the parties could not come to an amicable settlement.

6. Thereafter the learned trial court vide order dated 26.10.2022 directed the EA to Superintending Engineer, PWD, Lunglei Circle to make an assessment report. As directed, the assessment report was filed and both the parties appeared before the learned trial court on 01.11.2022, which is the date fixed for submission of assessment report and hearing thereof. The learned trial court then passed the impugned Judgment & order dated 01.11.2022 and the Decree dated 01.11.2022 as follows

“The learned counsels of both sides are present. Assesment report, as directed by this court after hearing both side, is filed by EA to Superintending Engineer, PWD, Lunglei Circle, Lungleivide letter No.C-18015/44/2022-SEL/4 dt.26.10.2022and copy furnished to both sides and hearing conducted thereon.

Ld. Counsel of the Plaintiff submitted that the assessment amounting to Rs. 12,55,700/- pertains only to the construction of RCC underground water tank and garden fencing of the Plaintiff which did not include the aspect of the compensation claimed for damage to the trees, the fishes, fruits, bamboos and crops of the Plaintiff and thereby suggested that an additional amount of Rs.

1lakh be paid by the defendant for the same instead of the claimed amount of Rs. 4 lakhs.

On a query was made by the Court to the Ld. Counsels of the defendant in this aspect they replied that the reduction of the claim amount from Rs. 4 lakhs to Rs. 1 lakh is found amenable to them if the Court finds the same to be reasonable.

In view of the above it may thereby be expressed that since the assessing authority is a competent authority under the Government of Mizoram and the rate of assessment is as per extant norms, the assessed amount for construction RCC underground water tank and garden fencing of the Plaintiff is hereby accepted as reasonable. Further, since the existence of fish ponds as well as plantations in the land of the Plaintiff is not denied, the reduced claim amount of Rs.1 lakh from Rs. 4 lakhs is also thereby considered by this Court to be reasonable.”

Thereafter, the learned trial court on finding that the issue whether damaged is caused or not, is already an admitted fact and that no issue remained for further adjudication, passed the order that the suit was decreed on admission and that the defendant/appellant was to pay the Plaintiff/respondent an amount of Rs. 13,55,700/- (Rupees Thirteen Lakh Fifty Five Thousand Seven Hundred) only within a period of 2 months from the date of this order failing which the above stated amount shall carry penal interest @ 6% p.a until full satisfaction of the amount thereof.

7. Aggrieved by the said Judgment order dated 01.11.2022, the appellant approach this court by filing the instant Regular First Appeal.

8. Mr. B. Lalramenga, learned counsel for the appellant submits that the

impugned Judgment & Order dated 01.11.2022 and the Decree Order dated 01.11.2022 was passed based on an alleged admission on the part of the appellant, however no such admission was made by the appellant in their written statement nor before the court for payment as per the assessment report submitted by the Public Works Department, Lunglei Circle, Lunglei amounting to Rs.12,55,700/-, this amount was never admitted by the appellant..

9. The learned counsel submitted that the only admission made in their written statement was that they admitted to the damages caused to the fish pond along with the fencing and crops and they had admitted that they were willing to renovate the fish pond to the satisfaction of the present respondent No.1. He submits that the assessment report submitted by the Public Works Department, Lunglei Circle, Lunglei cannot be said to be the renovation of the fish pond but as *the assessed amount is for construction RCC underground water tank*, which was never admitted by the present appellant. The learned counsel further submitted that the assessment report submitted by the Public Works Department, Lunglei Circle, Lunglei should be proved by way of evidence and in accordance with law, since the amount was not admitted by the appellant. He submits that the only admission made by the appellant was with regards to the compensation claimed for damaged to the trees, the fishes, fruits, bamboos and crops of the respondent No.1 where the appellant admitted that an additional amount of Rs.1,00,000/- be paid by the appellant instead of the claimed of Rs.4,00,000/-

10. The learned counsel for the appellant further submits that an admission made under Order 12 Rule 6 should be cleared and without any ambiguity. In support of his submission, the learned counsel has relied on the following authorities:

In the case of **Dudh Nath Pandey -Vs- Suresh Chandra Bhattasali** reported in **(1986) 3 SCC 360 para 6**, In the case of **Jeevan diesels and Electricals -Vs- Jasbir Singhchadha (HUF)** reported in **(2010) 6 SCC 601 paras 11, 15 & 17**, in the case of **Himani Alloys Limited -Vs- Tata Steel Limited** reported in **(2011) 15 SCC 273 para 11** and **Narbada Devi Gupta -Vs- Birendra Kumar Jaiswal & Anr.** reported in **(2003) 8SCC 745 paras 16 & 18**.

11. Mr. J.C. Lalnunsanga, learned counsel for the respondents on the other hand submits that on plain reading of the written statement filed by the instant appellant and defendant No.1 in Civil Suit No.2 of 2022, the instant appellant at paras 7 & 8 of his written statement had clearly admitted that the land of the plaintiff was damaged due to mucks and debris, soil deposited, and the answering defendant admitted that, during monsoon, the debris, waste soils, deposited to the ROW was swept away by rain and over flown stream, depositing the soil to the land of the Plaintiff, consequently filled one of the fish pond near the boundary, destroying angle poles, barbed wires, etc., That the appellant was fully aware and ready to renovate the damaged fish pond, fencing and other necessary water line to the satisfaction of the respondent No.1.

12. The learned counsel for the respondents further submits that at para 8 of the written statement, the present appellant had also stated "the answering defendant is ready to take any necessary action for renovation, and reconstruction of the site at any point of time to the satisfaction of the instant respondent No.1.

13. The learned counsel for the respondents submits that in view of the above, it is clear that the present appellant had admitted and was also ready to take any necessary action for the reconstruction of the site to the satisfaction of

the instant respondent No.1. The learned counsel submits that the instant respondent No.1 while filing the plaint had prayed for compensation amount of Rs.19,30,000/-, which was then reduced by the learned trial court to 12,00,000/- when the learned trial court had asked the Public Works Department, Lunglei Circle, Lunglei to make the necessary assessment.

14. The learned counsel also brought to the notice of this court, the WhatsApp conversation enclosed by the respondent in the written objection to condonation of delay application, I.A.(C) No.58.2023. The learned counsel submits that in the WhatsApp conversation, on receiving a legal notice, the appellant had also not denied that they have to pay compensation.

15. The learned counsel for the respondents further submits that remanding the case back to the learned trial court for adducing evidence would be futile, since an assessment has already been made for the damages caused to the land of the instant respondent No.1 by the competent authority and no further steps would be required to be taken before the learned trial court.

16. Having heard the submissions made by the learned counsels for both the parties, this court find that, it is an admitted fact that the present appellants had caused damages to the land of the respondent No.1, which was damaged due to mucks and debris, soils deposited at ROW (Right of way) for dumping debris, wherein during monsoon, the debris, waste soils, deposited at the ROW was swept away by rain and over flown stream, depositing the soil to the land of the Plaintiff/respondent consequently filled one of the fish pond near the boundary, destroying angle poles, barbed wires.

17. Thus, the issue to be looked into is whether the appellant, while admitting responsibility for the damage caused to the fish pond of the present respondent,

can be said to admit the payment of the assessed amount of damages made by the Public Works Department, Lunglei Circle, Lunglei dated 26.10.2022 which amounted to Rs.12,55,700/-.

18. Though, the expression admission is not defined in the Civil Procedure Code, Section 17 of the Indian Evidence Act, 1872, defined admission as a statement made in the oral, documentary or electronic or contained in electronic form which suggesting an inference to any fact in issue or relevant fact. Thus, an admission is a statement made by the parties to a legal proceeding and in case of a clear admission, there should not a possibility of entertaining the possibility of a different view whether the summary judgment on admission is made without trial. Section 58 of the Indian Evidence Act also provides that where a fact has been admitted by the parties there would be no requirement to prove such facts. Thus the admission to the facts and circumstances should be clear and without any ambiguity.

19. The Apex Court in **Himani Alloys Ltd vs. Tata Steel Ltd. (Supra)** has observed that ;

“10. It is true that a judgment can be given on an admission 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 admission which can be acted upon"

20. It is seen that the appellants in their written statement at para 7 has stated that they *"were fully aware and ready to renovate the damaged fish pond, fencing and other necessary water line to the satisfaction of the plaintiff"* At para 8 of the written statement the present appellant had mentioned *"ready to renovate and re- construction of the site at any point of time as mentioned in the foregoing para."* Thus, this court is of the opinion that, what can be construed from the above admissions, is that the present appellant had admitted to the **renovation** of the fish pond to the satisfaction of the present respondent no.1. On scrutiny of the impugned order it is seen that the learned trial court observed that the assessed amount is for the construction of RCC underground water tank and garden fencing of the Plaintiff which the court found acceptable and as reasonable, since the assessing authority is a competent authority under the Government of Mizoram and the rate of assessment is as per extant norms. It is thus noticed that the assessed amount was not for the *renovation* of the damaged pond.

21. This court find that by using the term renovation it would indicate that the present appellant admitted that they were willing to act or process the repairing, renewing or restoring to good condition the fish pond, which was admittedly damaged when the debris, waste soils, deposited at the ROW was swept away by rain and over flown stream, depositing the soil to the land of the Plaintiff/respondent consequently filled one of the fish pond of the respondent no.1.

22. Based on this admission, the learned trial court had then directed the EA

to Superintending Engineer, PWD, Lunglei Circle, vide a letter No. C-18015/44/-2022-SEL/4 dated 26.10.2022 to submit assessment report after hearing both sides. The assessment report submitted amounting to Rs.12,55,700/- however pertains to the construction of RCC underground water tank and garden fencing of the plaintiff/respondent. Thereafter, the learned counsel of the plaintiff/respondent had submitted that the assessment amount of Rs.12,55,700/- pertains only to the construction of RCC underground water tank and garden fencing of the plaintiff/respondent and do not include the aspect of the compensation claimed for damage to the trees, the fishes, fruits, bamboos and crops of the plaintiff/respondent and thereby suggested that an additional amount of Rs.1 lakh be paid by the defendant/instant appellant for the same instead of the claimed amount of Rs. 4 lakhs.

23. The learned trial court then made a query to which the learned counsel for the present appellant had agreed to the reduction of the claimed amount from Rs. 4 lakhs to Rs. 1 lakh. The rate of assessment for construction RCC underground water tank and garden fencing of the plaintiff/respondent was also found reasonable by the Court since the assessing authority is a competent authority under the Govt. of Mizoram and the rate of assessment is as per extant norms, however the court had not enquired whether the present appellant also agreed to the amount assessed by the EA to Superintending Engineer, PWD, Lunglei Circle, Lunglei.

24. In view of the above, this court finds that admission under Order 12 Rule 6 must be categorical, unconditional and should not be led to the interpretative determination by the court. When an admission is made by the party it would meant that the party making the admission would be bound by it. In the instant case, it is seen that though it is an admitted fact that the damages was caused

to the fish pond the appellant had agreed to renovate the fish pond to the satisfaction of the present respondent, however the assessment report filed by the EA to Superintending Engineer, PWD, Lunglei Circle, Lunglei is for construction RCC underground water tank. It is also seen that the appellant had categorically only admitted to pay Rs. 1 lakh for the damage of the trees, the fishes, fruits, bamboos and crops of the plaintiff/respondent. There is no report of the acceptance or admission made by the appellant to the amount assessed by the EA to Superintending Engineer, PWD, Lunglei Circle, Lunglei. Thus, when there is no admission recording that the appellant agreed to assessed amount of Rs.12,55,700/ assessed by the EA to Superintending Engineer, PWD, Lunglei Circle, Lunglei, it cannot be held that the appellant had admitted to the assessment report for construction RCC underground water tank.

25. This court is of the considered view that to decree the suit Under Order 12 Rule 6 of the Code of Civil Procedure, mere admission that damage is caused by the appellant wherein the appellant was ready to renovate the damaged fish pond, fencing and other necessary water line to the satisfaction of the plaintiff cannot be said to be an unequivocal admission to the assessment report for construction RCC underground water tank made by the EA to Superintending Engineer, PWD, Lunglei Circle, even if it was found reasonable by the learned trial court. It may also be noted that there is no report or finding which says that that the said damaged fish pond of the present respondent is not fit for renovation or that it cannot be renovated at this stage. Thus, this court finds that having regard to the stand taken by the Appellant, an opportunity has to be afforded to the Appellant to put forth his defence.

26. In view of the above, considering the limited issue in dispute, wherein though it is noted that the present appellant is liable to pay for the damages

caused to the fish pond, fencing and other necessary water line to the satisfaction of the plaintiff, this court finds it appropriate for the aforesaid reasons as discussed above, to remit the case back to the learned trial court, by setting aside the Judgment & Order dated 01.11.2022 and the Decree dated 01.11.2022 passed by the learned Senior Civil Judge, Lunglei, Mizoram in Civil Suit No.2 of 2022, wherein, the learned trial court shall proceed with the case from the stage of giving an opportunity to the Appellant of being heard with regards to the assessment report made by the EA to Superintending Engineer, PWD, Lunglei Circle, Lunglei and further evidence may be adduced by the parties, if found appropriate by the learned trial court. Both the parties are to appear before the learned Senior Civil Judge, Lunglei, on 12.06.2024, for further necessary steps.

27. Accordingly, RFA No.16 of 2023 stands disposed of as above.

28. LCR is to be sent back to the Trial Court.

JUDGE

Comparing Assistant