

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION.**

**NOTICE OF MOTION NO. 1405 OF 2015
IN
SUMMARY SUIT NO. 475 OF 2013**

M/s. Polycab Wires Pvt. Ltd.	... Applicant.
V/s.	
M/s. Lanco Infratech Limited	... Respondent

Mr. Heeralal Chaturvedi for the plaintiff/applicant.
Mr. Anoshak Daver A/w Sayeed Mulani, Shobhana Waghmare & Dilip Satale i/b Mulani & co. for the Defendant.

**CORAM : K. K. TATED, J.
DATED : 10/12/2015.**

PC.:

. Heard learned Counsel for the parties.

2 By this Notice of Motion, the applicant plaintiff seeks decree on admission under Order 12 Rule 6 of Code of Civil Procedure, 1908.

3 In the present proceeding, the plaintiff filed summary suit No. 475 of 2013 for recovery of sum of Rs.6,18,00,279/- with interest @ 18% per annum towards the goods sold and delivered to the defendant.

4 The defendant preferred Notice of Motion (L) No. 253 of 2004 for revocation of leave under clause XII of the Letters Patent. In that motion, the learned Single Judge held that this Court has no jurisdiction. Hence, the plaintiff preferred Appeal (L) No. 200 of 2014. The appeal was allowed by the Division Bench, directing the Single

Judge to decide the Summons for Judgment on its own merits including the issue of jurisdiction. Thereafter, Summons for Judgment decided by this Court on 16.02.2015 granting leave to the defendant to defend the suit upon and subject to the condition to deposit a sum of Rs.5,66,87,038/- within a period of 16 weeks in the Registry of this Court. That order was complied by the defendant. Thereafter, the plaintiff preferred Notice of Motion no. 930 of 2015 for withdrawal of amount deposited by the defendant. That motion was allowed by this Court on 26.08.2015. This Court allowed the plaintiff to withdraw the amount deposited by the defendant on undertaking to the Court in writing that they will bring back the amount in the event the plaintiff fails in the suit. Thereafter, the plaintiff preferred the present Notice of Motion, which is under Order 12 Rule 6 of Code of Civil Procedure, 1908.

5 The learned counsel for the plaintiff submits that defendant by their email dated 04.10.2012 admitted their liability to pay the plaintiff's dues. The said email reads thus:

*"From : MDMustaque [<mailto:mohd.mustaque@lancogroup.com>]
Sent: Thursday, October 04, 2012 2:45 PM
To: ars@polycabbdg.com; sachin@polycabbdg.com; 'ram'; kram@polycabbdg.com
Cc: anil.sethia@lancogroup.com; 'Hemant Gupta'
Subject: Regd Polycab Outstanding : Amarkantak 3 & 4*

Dear Sir,

As discussed also over phone also there is no disagreement anytime on outstanding amount whereas we appreciate Polycab to supply us the material on time.

As communicated earlier also as soon as Funds for Amarkantak comes we

will Liquidate the Payment of Polycab partwise staring from coming month.

So in view of seeing the good relation between Lanco and Polcab from long back, we would request Polycab to withdraw the legal notice.

*Regards
Md. Mustaque”*

6 The learned counsel for the plaintiff submits that this Court (Coram: Mrs. Roshan Dalvi, J) at the time of deciding the Notice of Motion (L) No. 1739 of 2013 in order dated 13.03.2014 observed that in a civil suit upon the admission of liability/claim a judgment on admission would follow under provision of Order 12 Rule 6 of C.P.C., notwithstanding the defence of denial of the plaintiff's claim taken in the suit. He further submits that even this Court in the order dated 26.08.2015 in Notice of Motion no. 930 of 2015 observed that in such type of cases, the plaintiff is entitled to decree on admission under Order 12 Rule 6 of Code of Civil Procedure, 1908.

7 The learned counsel for the plaintiff submits that the defendant by email dated 04.10.2012 categorically admitted the liability to pay the plaintiff's outstanding amount and hence, they are entitled to decree on admission under Order 12 Rule 6 of Code of Civil Procedure, 1908. He submits that the Apex Court in the matter of ***Uttam Singh Duggal & Co. Ltd. v/s. Union Bank of India & Ors., reported in (2000)7 Supreme Court Cases 120*** held that plaintiff can claim decree on admission at any stage during the pendency of the suit. To that effect, the Counsel for the plaintiff relies on paragraph 12 of the said Judgment which reads thus:

“12. As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the 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." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

8 On the basis of email dated 04.10.2012 and Judgment of the Apex Court in the matter of Uttam Singh (Supra), the learned counsel for the plaintiff submits that this Hon'ble Court be pleased to pass a decree on admission under Order 12 R. 6 of Code of Civil Procedure, 1908 against the defendant.

9 On the other hand, the learned counsel Mr. Daver appearing on behalf of defendant vehemently opposed the present Notice of Motion. He submits that in the present proceeding, they raised objection of jurisdiction. He submits that objection of jurisdiction is question of law as well as fact. The same to be decided at the time of trial. He submits that in the present proceeding, they preferred Notice of Motion (L) no. 253 of 2014 challenging the jurisdiction of this court to entertain the present suit. That motion was allowed by this Court (Coram : Mrs. Roshan Dalvi, J) by order dated 13.03.2014. Against the said order, the plaintiff preferred Appeal (L) No. 200 of 2014. That appeal was

disposed of by the Division Bench by order dated 05.09.2014 remanding the Notice of Motion (L) No. 253 of 2014 for deciding afresh on merits in accordance with law. Thereafter, that motion was decided by this Court (Coram : S. C. Gupte, J) by order dated 16.02.2015 holding that the question of jurisdiction would be a matter of trial and cannot be decided on a plea of demurrer in motion for revocation of leave pending trial. He submits that even at the time of deciding the Summons for Judgment No. 42 of 2013 this Court specifically recorded in paragraph 2 that *“that only leaves the question of challenge to the jurisdiction of this court as a matter of trial.”* He submits that this Court instead of making Summons for Judgment absolute granted conditional leave to the defendant to defend the suit by depositing sum of Rs.5,66,87,038/-.

10 The learned counsel for the defendant submits that this itself shows that this Court found some merits in defendants arguments about the jurisdiction. Hence, by present Notice of Motion, plaintiff has no right to claim the decree on admission under Order 12 Rule 6 of Code of Civil Procedure, 1908. Hence, Notice of Motion to be dismissed with costs.

11 I heard both the sides at length. In the present proceeding, the plaintiff preferred Summons for Judgment No. 42 of 2013 that was decided by this court by order dated 16.02.2015 granting conditional leave to the defendant to defend. That itself shows that the defendant had made out case for defending the summary suit. Just because some observations made in order by this Court at the time of deciding other

proceeding, the plaintiff is not entitled to decree on admission as per Order 12 Rule 6 of Code of Civil Procedure, 1908. The authority relied by the plaintiff in the matter of Uttam Singh (supra) is not applicable in the facts and circumstances of the present case, because in the present matter this court already decided the Summons for Judgment and granted conditional leave to the defendant to defend the suit.

12 In view of disposal of Summons for Judgment on its own merits, granting conditional leave to the defendant to defend the suit, I am of the opinion that plaintiff is not entitled to decree on admission under Order 12 Rule 6 of Code of Civil Procedure, 1908 at this stage.

13 Hence, Notice of Motion stands rejected. No order as to costs.

(K.K.TATED, J.)