

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.4652, 4707, 4708 and 4726 of 2015

COMMON ORDER:

In all these Revisions, orders passed by the VIII Additional District and Sessions Judge, Warangal rejecting the applications filed by petitioner seeking passing of a decree against respondent under Order XII Rule 6 C.P.C. are questioned.

2. The petitioner had filed suits O.S.Nos.217 of 2012, 190 of 2012, 216 of 2012 and 218 of 2012 on the file of the VIII Additional District and Sessions Judge at Warangal for recovery of amounts against the respondent.

3. According to petitioner, it had been engaged in the business of civil construction and infrastructure development, that respondent had floated tenders for construction of certain structures in its campus at N.I.T. Warangal, that it was the successful bidder and it was awarded the work of construction under several agreements and it completed the said work but payments were not made by respondent.

4. Written statement was filed in all these suits by respondent stating that the works contracts were awarded

to petitioner by the then Director of the respondent by inducement for wrongful gain , that they were unconscionable and do not bind the respondent. It was contended that exorbitantly high tender premia was granted by the said Director of respondent contrary to C.P.W.D. norms, that the contracts do not bind the respondent, and an enquiry was initiated against the said Director by a retired Judge of the High Court. It was contended that the contracts allegedly entered into by petitioner with respondent were unconscionable, void or voidable, that it is avoiding the same and no decree can be passed on the basis of a void contract. It was alleged that the then Director had exceeded the authority in allotting additional works to petitioner, that there is no written contract governing the terms for the additional works said to have been entrusted by him and not only the original contract but also entrustment of additional work does not bind the respondent. In addition to the above contentions, it was also contended that the rate of interest claimed by petitioner was fanciful, exorbitant and oppressive and same the same is also disputed.

5. The petitioner filed applications under Order XII Rule 6 C.P.C. in all these suits contending that certain interrogatories have been served on the respondent's

officials, and the pleadings in the written statement as well as answers given by petitioner to the interrogatories, in no uncertain terms prove the said claim. It was also alleged that the respondent had not taken a specific pleading either denying or disputing the said claim or pointed out any defaults in executing the works by petitioner in concluding the contract. It was pointed out that although respondent had raised a plea of the contracts being void, the respondent is not entitled to do so and is estopped from raising such a plea. It was stated that in the interrogatories the respondent had admitted that certain payments had been made to petitioner and this also amounts to an unequivocal admission with regard to its liability to pay the suit amounts. It was further contended that the only issue that remains in the suits is regarding interest with regard to disputed amounts and the same can be adjudicated in the trial.

6. Counter affidavits were filed by respondent to these applications denying all the contentions raised therein and it is pointed out that in the written statement there is no unequivocal admission of liability to pay any amount to petitioner. It was contended that merely because in the written statements it was stated that part payment of bills submitted by petitioner was made, it does not amount to

any unequivocal admission; and that in the light of the defense taken in the written statement that the then Director of respondent had exceeded his power in awarding contracts to the petitioner at grossly inflated tender premium, the said contracts do not bind respondent, no relief can be granted to petitioner.

7. By separate orders dt.27-07-2015, the Court below dismissed all the applications. The Court below referred to the defense of respondent in the written statements that the works contracts awarded to petitioner by the then Director of the respondent at exorbitantly high tender premia is contrary to the C.P.W.D. norms, that they are unconscionable, and that the petitioner had procured the said contract through the said Director through inducement for wrongful gain to itself, and so they do not bind the respondent. It held that merely because certain amounts were released to petitioner by respondent, there is no admission of liability to pay to petitioner the balance amounts claimed by it in the respective suits. It held that the nature of the contentions raised by respondent indicates that there is no unequivocal admission as to liability to pay the balance amount. It observed that a combined reading of the written statement and reply to interrogatories does not disclose any unconditional

admission on the part of respondent of the suit claim, that when the original contracts and entrustment of additional works are in question, and there is an enquiry initiated against the then Director of respondent by a retired High Court Judge, all the issues involved in the suits require to be determined after full trial.

8. Challenging the same these Revisions are filed.

9. Sri K.G.Krishna Murthy, learned counsel for petitioner, contended that respondent had entrusted the works to petitioner under agreements, that it had also got done certain works, and after getting the works executed by petitioner, respondent cannot take the plea that the contracts entered into by petitioner with respondent by the then Director are unconscionable and he had exceeded his powers in entering into such contracts. He also contended that there is no specific denial in the written statement of the liability to the petitioner and that the answers given in the interrogatories supplied by petitioner to respondent wherein the respondent had admitted to have paid certain bills to petitioner, amounts to an unequivocal and unconditional admission of liability entitling the petitioner to a decree under Order XII Rule 6 C.P.C. He also relied upon the judgment of the Supreme Court of India in **Balraj Taneja and another Vs. Sunil**

Madan and another^[1], Karam Kapahi and others Vs. M/s.Lal Chand Public Charitable Trust and another^[2], Regula Krishna Vs. Kondapalli Sampath Kumar and others^[3] and Pothireddy Kannam Reddy Vs. The District Collector^[4].

10. Order XII Rule 6 C.P.C. states:

“Order XII – Admissions:

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.”*

11. Order VIII Rule 5 C.P.C. states:

“Order VIII: Written Statement, Set-off And Counter-Claim

5. Specific denial: (1) *Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:*

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader

(4) Whenever a judgment is pronounced under this Rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.”

12. A reading of Order XII Rule 6 C.P.C. indicates that it is permissible for a Court to grant a decree in favour of plaintiff if there are admissions of fact made either in the pleading or otherwise, whether orally or in writing, without waiting for the determination of any other question between the parties. Thus, this provision enables the Court to pass a decree without insisting on trial if the defendant admits the claim of plaintiff in its entirety or in part.

13. In **Himani Alloys Ltd. v. Tata Steel Ltd**^[5], the Supreme Court held that for a decree to be granted under this provision, an admission should be categorical and should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. It held that Order XII Rule 6 CPC is only an enabling provision

and it is neither mandatory nor peremptory, but is only discretionary. It observed that 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. It observed that 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. It clarified that the discretion should be used only when there is a clear “admission” which can be acted upon.

14. In **Balraj Taneja** (1 supra), the Supreme Court held that denial by the defendant in his written statement must be specific with reference to each allegation of fact made in the plaint and a general denial or an evasive denial is not treated as sufficient denial and it is required to be definite, positive and unambiguous.

15. In **Karam Kapahi** (2 supra), the Supreme Court reiterated that the provision under Order XII Rule 6 C.P.C. is enabling, discretionary and permissible and is neither mandatory nor peremptory and in a given situation it can be applied in rendering the judgment. In that case also it was also observed that admissions can be inferred from

facts and admissions of the case and admissions in answer to the interrogatories are also covered under this Rule.

16. In **Regula Krishna** (3 supra), a learned Single Judge of this Court held that order VIII Rule 5 C.P.C. can be invoked where allegations in the plaint are not specifically denied in the written statement in which event they should be deemed to have admitted.

17. In **Pothireddy Kannam Reddy** (4 supra), a Division Bench of this Court also placed reliance on Order VIII Rule 5 C.C.P.C. and held that the said principle applies to Writ jurisdiction and can be applied where a Writ petitioner did not file a reply affidavit to the counter affidavit filed by a respondent therein disputing the stand taken by respondent in the counter affidavit.

18. In the written statements filed by respondent nowhere is there a clear, unambiguous and unconditional admission of liability by respondent. Not only had the respondent stated that all material claims, contentions, averments and allegations in the plaints are false and baseless, it had also stated that save those expressly admitted in the written statements, the respondent does not admit any of them and puts the plaintiff to strict and

legal proof. That apart, it was specifically contended that the work contracts awarded to petitioner by the then Director are unconscionable and do not bind the respondent, and that the petitioner had procured the same through the said Director by inducement for wrongful gain to itself. It was contended that there was an enquiry by a retired High Court Judge against the Director of respondent for having granted the subject contracts at exorbitant high tender premia contrary to the C.P.W.D. norms to petitioner and that the respondent is avoiding the said contract. It was specifically contended that the then Director of respondent had exceeded his authority in entrusting additional works to petitioner without any written contract and for shockingly excessive tender premia and this entrustment is also not binding on respondent. In addition, there is also denial of liability to pay any amount at the rate of interest claimed in the plaint. In my considered opinion, this amounts to implied denial of every allegation in the plaint. Even the statement of the respondent in response to the interrogatories that some bills submitted by petitioner were paid, does not amount to any admission of liability to pay the balance amounts claimed in the suits.

19. Although learned counsel for petitioner sought to

contend that there is no specific denial of the allegations made in the plaint by respondent in the written statement and it amounts to admission of liability by respondent under Order VIII Rule 5 C.P.C.,

I am unable to agree with the said submission. I am of the considered opinion that in the present case, taking into account the pleadings of the written statement in its entirety, by necessary implication, the allegations in the plaint in so far as the liability of respondent are concerned, are clearly denied.

20. In view of the above discussion, I do not find any error of jurisdiction warranting interference by this Court in the orders passed by the Court below in the orders impugned in these Revision Petitions.

21. Accordingly, the Civil Revision Petitions are dismissed. No costs. However, the Court below is directed to expedite hearing of the suits.

22. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22-12-2015

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[\[1\]](#) (1999) 8 SCC 396

[\[2\]](#) AIR 2010 SC 2077

[\[3\]](#) 2007(2) ALD 359

[\[4\]](#) 2014(4) ALT 653

[\[5\]](#) 2011(5) SC 273