

IA NO. GA 7 of 2019
(Old No: GA/2651/2019)
In CS 287 of 2000
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

ADAR HOLDINGS LIMITED
Vs
ANIL KUMAR TODI

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date : 16th December, 2020.

Appearance:
Mr. S. Ghosh Adv.
Mr. M.K. Seal, Adv.
Ms. Suchismita Chatterjee, Adv.
...for plaintiff
Ms. Rakhi Shroff, Adv.
...for the defendant

The Court : The plaintiff seeks a decree for judgment on admission.

Learned Advocate appearing for the plaintiff submits that the defendant in his application for recalling the ex parte judgment and order made on admission of liability. He refers to the order dated October 12, 2018 where the submissions on behalf of the defendant no. 1 was recorded. He submits that, such contentions exhibit an admission of liability made on behalf of the defendant no. 1. He seeks judgment on admission on such ground.

The defendant no. 1 is represented.

In a suit for damages, the plaintiff obtained an ex parte decree. When the ex parte decree was put into the execution, the defendant no. 1 filed an

application under Order IX Rule 13 of The Code of Civil Procedure, 1908 for setting aside of the ex parte decree. The application of the defendant no. 1 for setting aside the ex parte decree being GA 79 of 2018 was disposed of by a judgment and order dated October 12, 2018. The application for setting aside of the ex parte decree was allowed uncontested. The plaintiff did not appear in such application and did not contest such application.

In the judgment and order dated October 12, 2018, the learned Judge recorded that, the submission of the learned Counsel for the defendant no. 1, inter alia, as follows;

“ Counsel however seeks to assail the ex parte decree on the quantum assessed under the various heads pleaded in the plaint under the provisions of Order IX Rule 13 of The Code of Civil Procedure, 1908. Under the said provision, the Court is empowered to set aside a decree passed ex parte against a defendant upon being satisfied of the contentions laid down in the said order upon such terms as to costs, which the Court may think fit to impose in the facts of the case. Counsel submits that the terms to which the defendant no. 1 may be put should be considered in context of the ex parte decree. Counsel relies on the findings of the learned Single Judge that it is difficult to accept that the plaintiff no. 2, being an experienced and prudent man could have relied solely on the advice of the first defendant in opening the new business for which he suffered loss. He also relies on the view of the Learned Single Judge that the plaintiff is not entitled to the amount as pleaded in paragraph 39 of the plaint which is in effect a claim for damages. Counsel, therefore, submits that having come to the aforesaid findings, the decree passed in respect of Rs. 51,80,529.90 as damages cannot be taken into account for putting the defendant no. 1 to terms. Counsel further submits that the finding of the learned Judge with regard to the plaintiffs’ suffering loss on account of taking loan from the defendant no. 4 bank and being entitled to an amount of Rs. 51,80,529.90 on account of the bank having obtained a decree is neither pleaded in the plaint nor corroborated by any documents annexed as exhibits to the plaint. He also submits that there is not separate prayer quantifying the damages in the prayer portion of the plaint. Counsel dwells at length on the various heads in the plaint under which the plaintiffs have claimed against the defendants and submits that apart from paragraphs 38

(being a claim on account of money paid to the defendants amounting to a total of Rs. 9.85 lakhs) and paragraph 41 (where the claim has been assessed at Rs. 17,24,000/- on account of advance given by the plaintiffs to the defendant nos. 1 and 3), the other decree in favour of the plaintiffs cannot be sustained. He, accordingly, prays that the defendant no. 1 may be put to terms for a total of Rs. 9.85 lakhs and Rs. 17.24 lakhs.”

In particular, learned Advocate appearing for the plaintiff relies upon the last sentence of the paragraph quoted above. According to him, such sentence denotes an unconditional acknowledgement of liability of the defendant no. 1 to a portion claimed by the plaintiff.

With utmost respect, I am of the view that, the learned Counsel appearing for the defendant no. 1 in the application for setting aside of the ex parte decree submitted that, of all the heads of claim, at least, the plaintiff may sustain the claim on the two heads. Such submission of the learned Counsel for the defendant no. 1, as recorded in the judgment and order dated October 12, 2018, can not be construed to be an unconditional acknowledgment of liability on the part of the defendant no. 1 for those two heads. The learned Counsel for the defendant no. 1 never stated unequivocally or unconditionally that, the two heads spoken by him, need not be established by cogent evidence, at trial, by the plaintiff.

Therefore, I am unable to find any reason to grant any relief to the plaintiff.

The application being GA 7 of 2019 in CS 287 of 2000 stands disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

