

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION NO.3877 OF 2018

Between:

Blue Cube Germany Assets GmbH & Co. KG ... Petitioner

and

Vivimed Labs Limited ... Respondent

Date of Judgment Pronouncement: 20th December, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

+ CIVIL REVISION PETITION NO.3877 OF 2018

% DATED 20th DECEMBER, 2018

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< Gist:

> Head Note:

! Counsel for petitioner : Mr.R.Raghunandan and
Ms.Shireen Sethna Baria

^ Counsel for respondent : Mr.V.Hariharan and
Mr.Rohit Pogula

? CASES REFERRED: --

1. (2007) 142 DLT 483 (DB)
2. 2017 SCC OnLine Delhi 9174
3. AIR 1999 SC 3381
4. AIR 1974 MP 7
5. (2005) 11 SCC 279
6. (2000) 7 SCC 120
7. (2005) 8 SCC 618

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
CIVIL REVISION PETITION NO.3877 OF 2018

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

C.O.S.No.4 of 2016 on the file of the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, was filed by the petitioner herein for recovery of US\$ 202,596.24 (INR 1,37,76,544.30) along with interest of US\$ 64,473 (INR 43,84,164/-) and for further interest at the rate of 18% per annum from the date of suit till realisation. I.A.No.38 of 2018 was filed in the said suit by the petitioner-plaintiff under Order 12 Rule 6 CPC to pass a decree on the strength of the admissions made by the respondent-defendant. By order dated 27.03.2018, the trial Court dismissed the I.A. Aggrieved thereby, the petitioner-plaintiff is before this Court by way of this civil revision petition filed under Article 227 of the Constitution.

Perusal of the order under revision demonstrates that the trial Court was of the opinion that as per Order 12 Rule 6 CPC, admissions of fact had to be made in the pleadings, as is clear from its observation that even a careful perusal of the written statement did not reveal any admission. The trial Court further observed that the correspondence between the parties could not be relied upon, as per Order 12 Rule 6 CPC, and that the admissions should be either in the pleadings or in the oral evidence or writing by the other side. The trial Court went on to state that neither in the e-mails nor in the reply notice, the respondent-defendant had specifically admitted the due amount and in the absence of a particular admission of a certain amount being due by the respondent-defendant and as there was no such pleading in the written statement, the trial Court concluded that the application was devoid of merit and accordingly dismissed it.

Heard Mr.R.Raghunandan, learned senior counsel representing Ms.Shireen Sethna Baria, learned counsel for the petitioner-plaintiff, and Mr.V.Hariharan, learned counsel appearing for Mr.Rohit Pogula, learned counsel for the respondent-defendant.

Order 12 Rule 6 CPC reads as under:

'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.'

The language of the provision makes it clear that admissions need not be made only in writing in the pleadings as such admissions could be made, either orally or in writing, in the pleading or otherwise. In this regard, reference may be made to the observations of a Division Bench of the Delhi High Court in VIJAYA MYNE V/s. SATYA BHUSHAN KAURA¹. Summarising that the legal position in relation to Order 12 Rule 6 CPC is to enable the Court to pronounce judgment on admissions when such admissions are sufficient to entitle the plaintiff to get a decree, the Delhi High Court categorically held that such admissions could be in the pleadings or otherwise, namely, in documents, correspondence etc., and such admissions could be oral or in writing and could even be inferred from the facts and circumstances of the case. Applying this principle, a learned Judge of the Delhi High Court in DEEPALI DESIGNS & EXHIBITS PRIVATE LTD. V/ s. PICO DEEPALI OVERLAYS CONSORTIUM² relied on an e-mail

¹ (2007) 142 DLT 483 (DB)

² 2017 SCC OnLine Delhi 9174

along with an attachment thereto, containing a clear admission, and passed a decree on the strength of such admission under Order 12 Rule 6 CPC.

In *BALRAJ TANEJA V/ s. SUNIL MADAN*³, the Supreme Court observed that the Court can pass a judgment under Order 12 Rule 6 CPC on the basis of admissions made by the defendant at an interlocutory stage of the proceedings, but before the Court can act upon such admissions, it has to be shown that the admission is unequivocal, clear and positive.

In *SHIKARCHAND V/ s. MST. BARI BAI*⁴, a Division Bench of the Madhya Pradesh High Court had occasion to deal with Order 12 Rule 6 CPC. In a separate concurring judgment, Justice G.P.Singh observed that the words 'either in the pleading or otherwise' in Rule 6 would enable the Court not only to see the admissions made in the pleadings or under Rules 1 to 4 of Order 12 CPC but also the admissions made elsewhere.

In *CHARANJIT LAL MEHRA V/ s. KAMAL SAROJ MAHAJAN*⁵, the Supreme Court observed that Order 12 Rule 6 CPC was enacted for the purpose of and in order to expedite trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case. In that case, an inference was drawn from a lease deed and it was held to be a sufficient admission for the trial Court to act on the strength thereof and pass judgment under Order 12 Rule 6 CPC.

In *UTTAM SINGH DUGAL & CO. LTD. V/ s. UNION BANK OF INDIA*⁶, the Supreme Court observed that the object of Order 12 Rule 6 CPC 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. The contention urged before the Supreme Court was that

³ AIR 1999 SC 3381

⁴ AIR 1974 MP 75

⁵ (2005) 11 SCC 279

⁶ (2000) 7 SCC 120

the resolutions or minutes of the meetings of the Board of Directors could not amount to a pleading or come within the scope of Order 12 Rule 6 CPC as such statements were not made in the course of the pleadings or otherwise. However, the Supreme Court observed that when a statement is made to a party and such statement is brought before the Court showing admission of liability, by way of an application filed under Order 12 Rule 6 CPC and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, the trial Court would not be helpless. The Supreme Court further observed that when the trial Court found that the statement made in the proceedings of the Board of Directors meetings and the letter sent as well as the pleadings, when read together, led to an unambiguous and clear admission and only the extent to which the admission was made, being in dispute, the trial Court would have a duty to decide the same and grant a decree. The Supreme Court categorically held that this approach would be unexceptionable.

This being the legal position, it is manifest that the opinion of the trial Court that an admission for the purposes of Order 12 Rule 6 CPC necessarily has to be made only in the pleadings cannot be countenanced. Even correspondence can be looked into for the purpose of determining as to whether the requirements of Order 12 Rule 6 CPC are satisfied. The petitioner-plaintiff relies upon not only the e-mails exchanged between the parties but also the reply dated 09.12.2015 of the respondent-defendant through its Advocate, in response to the legal notice dated 10.11.2015 issued by the petitioner-plaintiff. Unfortunately, the trial Court lightly brushed aside this document while coming to the conclusion that no admission had been made in terms of Order 12 Rule 6 CPC. The trial Court seems to have gone mostly by the fact that the e-mails did not mention any 'due amounts'

and therefore, there was no admission, though the reply notice dated 09.12.2015 stood on a different footing. As pointed out by the Supreme Court in CHARANJIT LAL MEHRA⁵, an admission in terms of Order 12 Rule 6 CPC can also be inferred from the facts and circumstances of the case. Therefore, the trial Court necessarily had to consider not only the e-mails but also the reply notice dated 09.12.2015, together and in their entirety, before concluding as to whether any admission had been made by the respondent-defendant, warranting exercise of power by the trial Court by taking recourse to Order 12 Rule 6 CPC. As the trial Court failed to undertake this exercise and proceeded on the wrong assumption that for the purposes of Order 12 Rule 6 CPC, an admission necessarily had to be made in writing and only in the course of the pleadings, we are left with no alternative but to set aside the order under revision and remit the matter to the trial Court for consideration afresh of the subject I.A. on its merits and in accordance with law.

Before parting with the case, we may refer to the contention of Mr.V.Hariharan, learned counsel, as to the maintainability of the civil revision petition, only to reject it. The learned counsel would contend that Section 8 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*'for brevity' the Act of 2015*), bars any revision application or petition being filed against an interlocutory order of a Commercial Court and therefore, this Court would have no power to entertain the present civil revision petition.

This argument loses sight of the fact that though the nomenclature given by this Court to a petition filed under Article 227 of the Constitution is 'civil revision petition', it is not equivalent to a revision petition under Section 115 CPC. The power of judicial superintendence vesting in this Court under

Article 227 of the Constitution cannot be equated to ordinary revisional jurisdiction. Be it noted that in several High Courts, petitions filed under Article 227 of the Constitution are not referred as 'revisions' as is being done in this Court, but as writ petitions (civil). The argument of the learned counsel that the mere nomenclature given by this Court to a petition filed under Article 227 of the Constitution would bring it within the bar envisaged by Section 8 of the Act of 2015 therefore cannot be accepted. It is only the ordinary revisional jurisdiction vesting in this Court that is barred by Section 8 of the Act of 2015 and not the power of superintendence vesting in this Court under the Constitution. Needless to state, a statute cannot control the Constitution.

Reference, in this regard, made to the decision of the Supreme Court in *M/ S. SBP & CO. V/s. PATEL ENGINEERING LTD.*⁷ is irrelevant. Therein, the Supreme Court categorically held that the power of High Courts under Articles 226 and 227 of the Constitution would not be available against an interim order passed by an Arbitral Tribunal during the pendency of the arbitration proceedings. In the light of the positive edict laid down by the Supreme Court, the Constitutional powers vesting in this Court under Articles 226 and 227 would not be available against an interim order passed by an Arbitral Tribunal, notwithstanding the fact that there is no specific provision in the Arbitration and Conciliation Act, 1996, barring the same. Admittedly, there is no judgment of the Supreme Court barring exercise of power by this Court under Articles 226 and 227 of the Constitution in relation to the interlocutory orders passed by Commercial Courts. The contention of the learned counsel that the civil revision petition is not maintainable is accordingly rejected.

⁷ (2005) 8 SCC 618

On the above analysis, this Court finds that the trial Court erred in concluding that unless an admission is made in the course of the pleadings, it cannot be taken into account for the purposes of Order 12 Rule 6 CPC. The order under revision holding to this effect is set aside and I.A.No.38 of 2018 in C.O.S.No.4 of 2016 is restored to the file of the trial Court for consideration afresh on its merits and in accordance with law. The trial Court shall endeavour to dispose of the said I.A. expeditiously and if possible, within two months from the date of receipt of a copy of this order.

The civil revision petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M.GANGA RAO, J

20th DECEMBER, 2018

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Note: L.R. copy to be marked.
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