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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 191/2018 & CM No.36842/2018**
ACE BUILDING TECHNOLOGIES PVT. LTD..... Petitioner
Through: Mr.Mohit Kumar Sharma, Adv.

versus

ARUN BHATIA Respondent
Through: Mr.Anuj Kapoor, Adv.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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10.12.2018

1. The impugned order dated 16.07.2018 passed by the Court of the learned Additional District Judge-05, Patiala House Courts, New Delhi ('ADJ') in Civil Suit No.57836/2016 titled as "Ace Building Tec. Vs. Arun Bhatia", dismissing the application of the petitioner/plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC') is the subject matter of challenge in this revision petition.
2. It is the case of the petitioner that during the course of execution of the work, they have raised 20 RA bills, out of which payment of 17 bills and part payment of bill no.18 were made by the respondent. Since the respondent has not disputed the non-payment of the outstanding amount of part amount of bill no.

18, entire amount of bill no.19 and 20, the suit of the petitioner should be decreed under Order XII Rule 6 CPC.

3. After perusing the file and going through the written statement and counter claim filed by the respondent/defendant, the learned ADJ found that the defendant has nowhere admitted his liability towards the plaintiff. He observed *'The defendant has claimed that there is over charging in the bills raised by the plaintiff, as mentioned in para 29 of the written statement. As per defendant, an amount of Rs.27,80,225/- has been over charged. The defence set up by the defendant requires evidence for the termination of the issues.'* Accordingly, the learned ADJ dismissed the application of the petitioner.
4. Learned counsel for the petitioner contends that in para 33 of the written statement, the respondent has pleaded that *'The defendant has admittedly not made any payments towards clearing running bills no.19 and 20. Running bill no.18 has been cleared partially, as a sum of Rs.20 lacs has been paid as against the amount Rs.30 lacs raised in the said bill.'* He submits that on account of this admission, the suit of the petitioner for the amount claimed in respect of bill no.19 and 20 and remaining amount of Rs.10 lacs of bill no.18 should have been decreed under Order XII Rule 6 CPC by the Ld. ADJ.

5. Per contra, learned counsel for the respondent submits that there is no such admission on behalf of the respondent. He argues that they have specifically pleaded that the petitioner had cheated the respondent of Rs.27,80,000/- by over charging the bills and they have filed a counter claim for recovery of Rs.18,86,882/- against the petitioner in respect of the transaction in question. He submits that there is no illegality or infirmity in the impugned order and the petition may be dismissed.
6. I have heard the learned counsel for both the parties.
7. To appreciate the rival contentions of the parties, it would be convenient to refer to Rule 6 of Order XII of the CPC, which 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.”

8. A bare reading of the above said provision clearly indicates that where admissions of the fact have been made by either in the pleadings or otherwise, whether orally or in writing, the court may at any stage of the suit make such order or give judgment as it may think fit having regard to such admission.
9. There is no dispute about the principle of law that if there is a clear, unambiguous and unequivocal admission of the case of the plaintiff by the defendant, the judgment can be rendered having regard to such admission. Whether or not there is a clear, unequivocal and unambiguous admission by one party, of the case of the other party, is essentially a question of fact and the decision of this question depends on the facts and circumstances of each case. There is no straight jacket formula to dispose of the application filed under Order XII Rule 6 CPC. Judicial precedent cannot be used to find out if there is a clear, unambiguous and unequivocal admission or not.
10. In para 9 of its plaint, the petitioner claimed that *'That during the course of execution of work, the Plaintiff issued RA Bills and a total of 20 RA Bills were issued by the Plaintiff. The Plaintiff has received full payment for only 17 out of these 20 RA Bills and part payment for bill no. 18'*.
11. The alleged admission relied upon by the appellant cannot be read in isolation and paragraph 33 has to be read completely in

order to find out whether there is a clear, unambiguous and unequivocal admission on the part of the respondent. In fact, the respondent has pleaded in para 33 of his written statement that *'The defendant has admittedly not made any payments towards clearing running bills no. 19 and 20. Running bill no. 18 has been cleared partially, as a sum of Rs.20 lacs has been paid as against the amount Rs.30 lacs raised in the said bill. However, as already indicated, the reason for not liquidating the remainder of the running bills is because the plaintiff has cheated the defendant of nearly Rs.27.8 lacs by over-charging and claiming false and exaggerated amounts in the bills'*.

12. Admittedly, the respondent has also filed a counter claim for recovery of Rs.18,86,882/- with interest against the petitioner with regard to the transaction in question.
13. It is thus evident from averments in the written statement of the respondent that he did not pay the remaining bills as the plaintiff has cheated him of Rs.27,80,000/- by over charging and claiming false and exaggerated amount in the bills. The counter claim has also been filed by the respondent against the petitioner for a recovery of Rs.18,86,882/- with interest with respect to the transaction in question. When there is no unambiguous, unequivocal or clear admission on the part of the respondent, the application filed by the appellant under Order

XII Rule 6 CPC has been rightly declined by the learned ADJ by the impugned order.

14. I do not find any illegality or infirmity in the impugned order. The petition along with pending application, being CM No.36842/2018, is dismissed with no order as to cost.

DECEMBER 10, 2018
"shailendra"

VINOD GOEL, J.