IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 9TH DAY OF DECEMBER 2019

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.5740 of 2019
in
C.S.No.473 of 2019

Mr.Jagadeesh Prathap
Son of T.K.Kuttappan Nair, aged about 61 years
Residing at Villa No.4, AKS Anugriha
Jalladianpettai
Pillaiar Kovil Street,
Pallikkaranai
Chennai 600 100. ..Applicant/Plaintiff

-Versus-

M/s.Kutty Flush Doors & Furniture Company Pvt. Ltd.,
Represented by its Director Mr.Vibhu Natarajan
having its Registered Office at
New No.85, Old No.32, Orchid Plaza
3rd Floor, Razack Garden Main Road,
Arumbakkam
Chennai 600 106. ..Respondent/ Defendant

Application praying that this Hon'ble Court be pleased to pass a judgment and decree as against the Respondent/Defendant herein in favour of the Applicant/Plaintiff for a sum of Rs.63,60,000/- (Rupees sixty three lakhs sixty thousand only)

This Application coming on this day before this Court for hearing, the Court made the following order:

This application is filed under Order XII Rule 6 of the Code of Civil Procedure for a judgment and decree as against the respondent/defendant and in favour of the applicant/plaintiff for a sum of Rs.63,60,000/-.

2. I heard the learned counsel for the applicant/plaintiff and the learned counsel for the respondent/defendant.

3. The learned counsel for the applicant submitted that the suit was filed for recovery of a sum of Rs.1,00,93,473/- from the respondent/defendant. He further submitted that the applicant was an employee of the respondent/defendant and that there were salary arrears as well as loan repayments and other dues from the respondent/defendant. Therefore, he submitted that proceedings were initiated by the applicant as an operational creditor against the respondent/defendant before the NCLT. In the said proceedings, the salary dues were discharged and therefore, the proceedings before the NCLT were terminated by granting leave to the applicant to sue in respect of the other dues. As regards the amount advanced by the applicant to the respondent, he submitted that the respondent admitted the receipt of these trade advances and that therefore, the applicant is entitled to a judgment on admission as per Order XII Rule 6 of the Code of the Civil Procedure.

4. In particular, he relied upon three documents. The first document is an Audit Report submitted by

M/s.M.Anandam & Co., Chartered Accountants. He referred to the Executive Summary of the Special Report at page 55 of the typed set of papers, wherein it is stated as follows:

> "An amount of Rs.58,60,000/- stood as loan in the name of Mr.Jagadish Pratap on 28th October 2016. This loan is a violation of Acceptance of Deposit Rules under Companies Act, 2013. Further, some of the amounts have been received and paid in cash, in violation of the provisions of sections 269 SS and 269 T of the Income Tax Act."

5. He also relied upon the termination letter dated 08.12.2017. In specific, he referred to the schedule of the said termination letter, which sets out the statement of accounts, including payables and receivables. In the statement of account, he referred to the opening balance of Rs.58,50,000/- at page 99 of the typed set of papers in respect of the Jagadish Prathap, loan account. The third document is a letter dated 31.12.2018 [page 123 of the typed set of papers] from Mr.Faizal Musaliar Director of the Respondent wherein it is stated as follows:

> "Dear Mr. Mr.Jagadeesh Prathap,
>
> During the period 2013 to 2016 you had brought into the Company some Trade Advances to the tune of

Rs.1,16,70,000/-. Thus, you helped the Company to come out of a sticky situation by bringing in funds at my instance and insistence.

Those Trade Advances were brought only in the interest of the Company and on behalf of the Company and with the due approval.

It is well evident from the Audited Balance Sheets of the Company for the Financial Years ended up to 31.12.2018, in which your and Trade Advances were duly qualified. The amounts of Trade Advances mobilized by you are shown under current liabilities and the Auditors of the company and the Board of Directors have certified the same after due verification.

Therefore, I do hereby confirm your payments of the above said trade Advances of Rs.1,16,70,000/- which were brought by you into the Company, at my instance and insistence, only in the interest of the Company and on behalf of the Company and with the due approval of the Board of Directors and the full knowledge of the Shareholders of the Company.

The Company re-paid a sum of Rs.53,10,000/- leaving a balance of Rs.63,60,000/-."

6. On the basis of the above documents, he contended that there is an admission with regard to a sum of Rs.63,60,000/-. In support of his contentions, the learned counsel referred to and relied upon the following judgments:

1. UTTAM SINGH DUGGAL & CO. LTD., V. UNITED BANK OF INDIA [(2000) 7 SCC 120, wherein, at paragraph - 12, the Hon'ble Supreme Court held that the scope of Order XII Rule 6 of the Code of Civil Procedure should not be unduly narrowed down, because the object of Rule 6 is to enable a party to obtain a speedy judgment.

(ii) CHARANJIT MEHRA AND OTHERS V. KAMAL SAROJ MAHARAJAN [(2005) 11 SCC 279, wherein at paragraph-8, the Hon'ble Supreme Court followed the ratio of the judgment in **UTTAM SINGH DUGGAL** case.

7. By relying upon the aforesaid judgments, the learned counsel concluded his submissions by contending that the applicant is entitled to a judgment on admission.

8. In response, the learned counsel for the respondent submitted that the respondent was unaware about the letter dated 31.12.2018 from Faizal Musaliar, Director of the

respondent, and became aware of the said letter only upon receipt of the suit papers. Consequently, he pointed out that, thereafter, a meeting of the Board of Directors was convened on 02.09.2019. At the said meeting, it was recorded that the said letter was issued without the knowledge and consent of the Board and that the said Director informed the Directors that the letter was issued in his personal capacity. Consequently, he submitted that the letter dated 31.12.2018 cannot be relied upon as an admission of liability. As regards the Special Report of the Auditor, he submitted that the said special Report merely records that the trade advance was received as per the books of accounts of the company and that this does not amount to an admission of liability. In this connection, he referred to the second NCLT proceedings which culminated in the order dated 16.05.2018. In particular, he referred to paragraph-10 of the said order at page 108 wherein the NCLT recorded that after transfer of the trade advance to the account of the Company, some withdrawals from the said accounts are also reflected and that it *prima facie* leads to the inference of round tripping of money by the applicant. Therefore, the learned counsel for the applicant submitted that it cannot be said that there is an admission of liability in the correspondence and that the application is liable to be rejected.

9. By way of rejoinder, the learned counsel for the

applicant submitted that the Director of the respondent, who issued the letter dated 31.12.2018, is the same person who deputed the applicant to the unit in Himachal Pradesh and that a letter from the Director cannot be disowned by the Company and that the applicant is entitled to rely upon the said letter on the basis of the principle of indoor management. He also submitted that the NCLT merely decided as to whether there is a financial debt as per the provisions of the Insolvency and Bankruptcy Code, 2016 (the IBC) and not as to whether there is a debt due from the respondent/defendant to the applicant / plaintiff.

10. The records were examined and the oral submissions of both the learned counsel were considered.

11. The limited question that arises for consideration is whether there is an unequivocal and unambiguous admission of liability by the respondent in its correspondence. Three documents are required to be examined in order to decide the question. The first of these documents is the executive summary of the Special Report of the Auditor which records that a sum of Rs.58,60,000/- stood as loan in the name of Mr.Jagadish Pratap on 28.10.2016. The second is the termination letter wherein the company has stated that a sum of Rs.12,09,373/- is due to the respondent Company from the applicant after setting off all the payables and receivables. The third document is the letter from Mr.Faizal Musaliar, Director of the

respondent/Company, dated 31.12.2018. As regards the first document, namely, the Executive Summary of the Auditor, it cannot be said that this is an unequivocal admission of liability because it merely expresses the factual position that the sum of Rs.58,50,000/- stood as loan as per the books of account as on 28.10.2016. The second document, in fact, reflects that after adjusting the amounts payable and receivable, there is an outstanding amount of Rs.12,09,373/-, as per the books of the company which is payable by the applicant/employee to the respondent/employer. Consequently, this document cannot be relied upon as an unequivocal or unambiguous admission of liability. The third document remains to be considered. The third document is the letter from the Director of the Company stating that there is a balance outstanding of Rs.63,60,000/- after reckoning the sum of Rs.53,10,000/- that was repaid. As regards this document, the subsequent Minutes of the Meeting of the Board of Directors held on 02.09.2019 was relied upon by the learned counsel for the respondent. In the said Minutes of the Meeting, it is recorded that the said letter was issued without authorisation or consent from the Board of Directors by the Director concerned and that the Director concerned had agreed that it was issued in his personal capacity. In addition, the National Company Law Tribunal, in its order dated 16.05.2018, has concluded that after such trade advances were received by the respondent/company, withdrawals are also reflected in the books of account and that it *prima facie* leads to the inference of round tripping of money by the applicant.

12. In the above facts and circumstances, it cannot be concluded that the sum of Rs.63,60,000/- or part thereof was unequivocally and unambiguously admitted to be payable to the applicant by the respondent. Even the judgments relied upon by the applicant/plaintiff state that the admission should be unequivocal and unambiguous in order to sustain an application under Order XII Rule 6 of CPC. The said test is not satisfied in the present case. Consequently, the application filed under Order XII Rule 6 of CPC is hereby dismissed.

Sd./-S.K.R.J
09/12/2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

jj 30/12/2019