

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1687 OF 2016
IN
SUIT NO. 1042 OF 2007**

M/s. Villayati Ram Mittal	]	
A Partnership Firm duly registered under	]	
The Indian Partnership Act, 1932, having	]	
their office at Keshav Kunj, 38,39,	]	
Sector-30, Near Sanpada Railway Station,	]	]. Applicant
Vashi, Navi Mumbai – 400 705.	]	](Orig. Plaintiff)

IN THE MATTER BETWEEN :

M/s. Villayati Ram Mittal	]	
A Partnership Firm duly registered under	]	
The Indian Partnership Act, 1932, having	]	
their office at Keshav Kunj, 38,39,	]	
Sector-30, Near Sanpada Railway Station,	]	
Vashi, Navi Mumbai – 400 705.	]	]. Plaintiff

Vs.

Shivshahi Punarvasan Prakalpa Limited	]	
A company owned by the Government	]	
of Mahabharata and Incorporated under	]	
the Companies Act, 1956	]	
As a Public Limited Company, having its	]	
Registered office at 5 th floor, Grihanirman	]	
Bhavan, Bandra (East), Mumbai – 400 051	]	]. Defendant

Mr.Zubin Behramkamdin i/b Chaitanya D. Bhandarkar for plaintiff/applicant.

Mr.Snehal Shah a/w. Mr. Mikhail Behl i/b Kanga & Co. for defendant.

**CORAM: N. J. JAMADAR, J.
RESERVED ON : 5TH NOVEMBER 2019
PRONOUNCED ON : 14TH FEBRUARY 2020**

JUDGMENT :

1. By virtue of this notice of motion, the plaintiff seeks a decree on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 ('the Code').

2. The background facts necessary for the determination of this notice of motion, can be stated as under :-

(a) The plaintiff-firm's bid for construction of residential buildings, amenity buildings and onsite infrastructure works on plot bearing S.No. 239 (part), CTS No. 827-D at Dindoshi, Mumbai was accepted by the defendant, which is a company fully owned by the Government of Maharashtra vide Tender Acceptance letter dated 6th April 1999. A formal contract came to be executed and the defendant issued the work order on 28th April 1999. In the said work order, it was mentioned that M/s. Shirish Patel & Associates Consultants Private Limited would perform and act as "Engineer" as provided in the contract.

(b) It is the case of the plaintiff that the plaintiff had mobilized the resources for expeditious completion of the work in terms of the contract. However, it could not execute the work on account of the events, acts and omissions attributable to the defendant, including :

(a) *Non-availability of approach road to site.*

(b) *Delay in issue of commencement certificate from SRA.*

(c) *Delay in demarcation.*

(d) *Delay in issue of drawings for construction purposes.*

(e) *Change in the scope of work.*

(c) Even after commencement of work, the defendant committed default in payments. There was abnormal and undue delay in making payment of R.A. Bills raised by the plaintiff. Yet the plaintiff completed 85% of the Rehab buildings by April 2000. Substantial amounts remained unpaid. The plaintiff raised claims under various heads. Mr. Shirish Patel, was nominated to independently evaluate the claims

raised by the plaintiff. Mr. Shirish Patel submitted a report giving his assessment on the admissibility of the claims raised by the plaintiff. The Principal Secretary (Hsg.) and M.D. of the defendant took a decision that an amount of Rs. 4.85 Crores was payable for the work done upto-date, as conveyed in the letter dated 22nd June 2005. Even the said amount was not paid. The plaintiff continuously pursued the matter with the defendant. Ultimately, vide letter dated 2nd January 2006, the plaintiff was informed that the defendant terminated the contract.

(d) The plaintiff issued a notice to the defendant under section 80 of the Code and raised a monetary demand. As the defendant did not comply with the demand, the plaintiff instituted the suit raising various claims, including the damages for illegal termination of contract, amounting to Rs.230 crores more particularly described in the Statement of Claim (Exh.'R'). By way of amendment, the plaintiff has sought a further sum of Rs.357,57,00,000/- as an

additional claim towards loss of profit, loss of business and opportunity etc., as shown in the Additional Statement of Claim (Exh.'S').

3. The defendant has resisted the claim by filing written statement. The tenability of the suit is called in question as the plaintiff firm is not a registered partnership firm. On merits, the substance of the resistance put-forth by the defendant is that the plaintiff was at fault and the failure of the plaintiff to execute the work in accordance with the terms of the contract resulted in project getting delayed. The defendant is not liable to pay any amount under any of the heads including damages and alleged loss of profit etc. The defendant has, *inter-alia*, contended that the defendant was ready to pay an amount of Rs.4.85 crores as awarded by the Engineer and accepted by the Managing Director of the defendant provided the plaintiff submitted 'no claim certificate' and accepted the said amount as a full and final settlement of all the claims.

4. Issues have been settled. The following issues bear on the prayer for decree on admission :-

“.....

(2) *Whether the plaintiffs prove that the plaintiffs*

are registered Partnership Firm registered under the Partnership Act 1932 ?

(3) If the answer to issue no.2 is in the negative, whether the plaintiff can maintain their action in view of the provisions of Section 69 of the Partnership Act 1932 ?

.....

(23) Whether the plaintiffs are entitled to any amount other than Rs.4.85 crores as per the Memorandum of Settlement/ Certificate dated 21st April 2005?"

5. In the wake of the aforesaid pleadings and issues, the plaintiff has taken out this notice of motion. The plaintiff avers that the defendant in the written statement has admitted in clear and unequivocal terms the claim of the plaintiff to the extent of Rs.4.85 crores. The plaintiff has banked upon the following contentions in the written statement of the defendant :

"16These Defendants deny that they are required to pay any amount other than Rs. 4.85 crores as awarded by the Engineer and accepted by the Managing Director of the Defendants, as full and final settlement of all the claims of the plaintiffs on issuance of a "No Claims Certificate" by the Plaintiffs to the Defendants in this regard.

17.....and submit that the defendants at all times after following the due process of law have accepted their liability to pay the Plaintiffs a further amount of Rs.4.85 crores over and above the amounts already paid which are in the range of Rs.150 crores....."

6. The plaintiff asserts that in view of the aforesaid pleadings, which incorporate a clear and explicit admission of the liability to pay a sum of Rs.4.85 crores and issue 23, extracted above, which has been framed, taking into account the said admission, a decree for said amount based on admission is required to be passed.

7. An affidavit in reply is filed by the defendant to resist the aforesaid prayer. The defendant contends that the application is thoroughly misconceived and frivolous as well. The tenability of the application is contested on the ground that in view of issue Nos.2 and 3 (extracted above), the suit instituted by the plaintiff, which is an unregistered Partnership Firm , is liable to be dismissed. As the tenability of the suit is seriously questioned, the Court may not be justified in dealing with the prayer for decree based on admission as the non-registration of the firm goes to the very root of the matter.

8. On the aspect of alleged admission in pleadings, the defendant contends that the plaintiff has selectively culled out the assertions in the written statement and wants the Court to read those assertions which allegedly constitute admission of liability, torn out of context. The defendant has specifically clarified that the entitlement of the

plaintiff to the amount of Rs.4.85 crores was contingent on the plaintiff submitting a “No Claim Certificate”, acknowledging that the said amount was towards full and final settlement of its claims and further undertaking to comply with the obligations under the works contract. Thus, the alleged admission of liability cannot be said to be an unconditional or unqualified admission of liability. Thus, the plaintiff cannot be permitted to take advantage of the said offer.

9. It is lastly submitted that the defendant is even now ready to pay a sum of Rs. 4.85 crores, without any interest, towards full and final settlement of all the claims of the plaintiff, provided the plaintiff furnishes a ‘No Claim Certificate’ and also withdraws the suit unconditionally.

10. I have heard Mr.Zubin Behramkamdin, the learned counsel for the applicant and Mr.Snehal Shah, the learned counsel for the defendant. I have also perused the pleadings and relevant documents, which indicate circumstances leading to assessment of the admissible claim of the plaintiff to the tune of Rs.4.85 crores.

11. The learned counsel for the applicant-plaintiff urged that there

are clear and unambiguous admissions of liability to pay a sum of Rs.4.85 crores, in the pleadings adverted to above. The admission of liability finds mention in the minutes of the meeting held by the Principal Secretary (Housing) and the Managing Director of the defendant to resolve the issue of the claims of the plaintiff. Thus, there are not only admissions of liability to pay the said amount of Rs. 4.85 crores in the documents which came into existence prior to the institution of the suit but also in the written statement of the defendant. In this backdrop, according to the learned counsel for the plaintiff, the plaintiff is entitled to a judgment on admission. The learned counsel for the plaintiff urged with tenacity that the defence now sought to be put-forth that the offer of payment of 4.85 crores towards the claims of the plaintiff was subject to the condition of the plaintiff's accepting the same as full and final settlement of its all the claims does not constitute an impediment for passing a judgment on admission. It was submitted that it is not an immutable rule of law that a judgment on admission cannot be passed when the admission is coupled with a condition *de hors* attendant facts of the case.

12. As against this, Mr. Snehal Shah stoutly submitted that the alleged admissions, sought to be relied on by the plaintiff are neither

unconditional nor unqualified. In the documents, namely, minutes of the meeting and the communications addressed to the plaintiff, the defendant has mentioned in categorical terms that the plaintiff must accept the said amount of Rs. 4.85 crores towards the full and final satisfaction of all its claims and further undertake the work which the plaintiff was enjoined to do under the terms of the contract. The contentions in the written statement also proceed on the same premise. The alleged admissions, thus, are part of a composite offer. The plaintiff cannot be permitted to elect one part; which is beneficial to it and refuse to comply with the other part; which is onerous in nature. The learned counsel for the defendant submitted that since the very tenability of the suit at the instance of the plaintiff-firm, which is not a registered Partnership Firm, is under serious cloud of doubt, the Court would not be justified in exercising the discretion in favour of the plaintiff.

13. Order XXII, Rule 6 of the Code of Civil Procedure, 1908 ('The Code') reads as under :-

“Order XII Rule 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 upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

14. From the phraseology of the aforesaid sub-rule (1) of Rule 6, it becomes evident that the legislature had designedly conferred the jurisdiction on the Court to pass judgment on admission. The legislature has taken care to ensure that the source of admission is not of decisive significance. Firstly, the admissions can be found either in the pleadings or otherwise. Secondly, the insistence for admission being in writing is done away with. The admission may be oral or in writing. Thirdly, the stage of the suit does not matter. The Code expressly empowers the Court to pass judgment on admission at any stage of the suit. The said aspect is further reinforced by the words *“without waiting for the determination of any other question between the parties”*. Fourthly, the party, in whose favour the admission is made, need not apply. The Court, on its own motion, can pass a judgment on admission if it comes to the conclusion that the claim or part of the claim of one party is admitted by the other. Lastly, the exercise of the said power is undoubtedly discretionary. But, in view

of the wide ambit and unhinged nature of the powers conferred on the Court to pass a judgment on admission, the Court may not be justified in refusing the relief where a case falls within the four corners of the said provision. For the ultimate object of the provision is to give an expeditious relief to a party when its claim is admitted by the adversary.

15. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors.*¹, wherein the object of the aforesaid rule was expounded and the approach expected of the Court was delineated, in the following words :

“12 As to the object of the Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule 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. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there

1 (2000) 7 SCC 120

is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

(emphasis supplied)

16. The aforesaid pronouncement was followed by the Supreme Court in the case of ***Karam Kapahi & Others Vs. Lal Chand Public Charitable Trust***². The Supreme Court traced the historical backdrop of the said provision, including the amendment introduced therein by the Amendment Act, 1976 pursuant to the recommendations of the Law Commission, and instructively enunciated the true nature and import of the said provision. The observations of the Court are as under :

“37 The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about ‘which there is no controversy’ [See the dictum of Lord Jessel, the Master of Rolls, in Thorp versus Holdsworth in (1876) 3 Chancery Division 637 at 640].

38 In this connection, it may be noted that order 12 Rule 6 was amended by the [Amendment Act](#) of 1976. Prior to amendment the Rule read thus:-

"6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the

2 (2010) 4 SCC 753

parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

39 In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it 'ex debito justitiae', a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider in as much as the provision of order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact.....either in the pleading or otherwise, whether orally or in writing'.

41. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [[See Charanjit Lal Mehra and others v. Kamal Saroj Mahajan \(Smt.\) and another](#), (2005) 11 SCC 279 at page 285 (para 8)]. Admissions in answer to interrogatories are also covered under this Rule [See Mulla's commentary on the Code, 16th Edition, Volume II, page 2177].

42. In the case of [Uttam Singh Duggal & Co. Ltd., v. United Bank of India and others](#), (2000) 7 SCC 120, this Court, while construing this provision, held that the Court should not unduly narrow down its

application as the object is to enable a party to obtain speedy judgment.

43. In that case it was contended on behalf of the appellant, Uttam Singh Duggal, that:

(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5 (1) of the Code and the Court may call upon the party relying on such admission to prove its case independently.

(c) The expression 'either in pleadings or otherwise' should be interpreted ejusdem generis. [See para 11, pages 126-127 of the report]

Almost similar contentions have been raised on behalf of the Club. In Uttam Singh (supra) those contentions were rejected and this Court opined no effort should be made to narrow down the ambit of Order 12 Rule 6.

44. In Uttam Singh (supra) this Court made a distinction between a suit just between the parties and a suit relating to Specific Relief Act where a declaration of status is given which not only binds the parties but also binds generations. The Court held such a declaration may be given merely on admission (para 16, page 128 of the report). But in a situation like the present one where the controversy is between the parties on an admission of non-payment of rent, judgment can be rendered on admission by Court.

45. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of Madhya Pradesh High Court in Shikharchand v. Bari Bai reported in AIR 1974 Madhya Pradesh 75. Justice G.P. Singh (as His Lordship then was) in a concurring judgment explained the aforesaid rule, if we may say so, very authoritatively at page 79 of the report. His Lordship held : (AIR para 19)

"... I will only add a few words of my own. Rule 6 of Order 12 of the Code of civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now rule 3 of Order 27, and is almost identically worded (see Annual Practice 1965 edition Part I. p. 569). The Supreme Court Rule came up for consideration in Ellis v. Allen (1914) Ch 904. In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting.

Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that rule. Sargent, J. rejected the argument that the rule is confined to admissions made in pleadings or under rules 1 to 4 in the same order (same as ours) and said:

"The rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargent, J. The words "either on the pleadings or otherwise" in rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also admissions made elsewhere during the trial."

46 This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by Justice

G.P. Singh (as His Lordship then was). Mulla in his commentary on the Code has also relied on ratio in Shikharchand (supra) for explaining these provisions.

47

48 *However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word "may" has been used. But in the given situation, as in the instant case, the said provision can be applied in rendering the judgment."*

(emphasis supplied)

17. It would be contextually relevant to note that the primary requirement of there being a clear and unambiguous admission by one party is a jurisdictional condition for the Court to exercise the discretion under the aforesaid rule. This aspect was highlighted by the Supreme Court in the case of *Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) & Anr.*³, wherein, the Supreme Court underscored the necessity of applying the principles in *Karam Kapahi & Others* (Supra) to the facts of the given case. Paragraph No.10 reads as under :

"10. The learned counsel for the respondents-plaintiffs relied on a judgment of this Court in Karam Kapahi & Others vs. M/s. Lal Chand Public Charitable Trust & Another reported in 2010 (3) SCALE 569 and contended that in view of the principles laid down in that case, this Court may affirm the judgment of the High Court in the instant case. This Court is unable to

3 (2010) 6 SCC 601

accept the aforesaid contention. In Karam Kapahi (supra) a Bench of this Court analyzed the principles of Order 12 Rule 6 of the Code and held that in the facts of that case there was clear admission on the part of the lessee about non-payment of lease rent. The said admission was made by the lessee in several proceedings apart from its pleading in the suit. In view of such clear admission, the Court applied the principles of Order 12 Rule 6 in the case of Karam Kapahi (supra). The principles of law laid down in Karam Kapahi (supra) can be followed in this case only if there is a clear and unequivocal admission of the case of the plaintiff by the appellant. Whether or not there is a clear, 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 of the case. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”

(emphasis supplied)

18. In the backdrop of the aforesaid exposition of the legal position, it may now be necessary to revert to the facts to determine whether the aforesaid principles govern the case at hand. At the outset, it would be apposite to note the circumstances in which the task of appraisal of the claims lodged by the plaintiff came to be entrusted to Mr. Shirish Patel. The appointment of Mr. Shirish Patel as the Conciliator has its genesis in the meeting held on 25th October 2004.

On the claims of the contractor, the plaintiff herein, the Principal Secretary (Housing) and the Managing Director of the defendant solicited the consent of the plaintiff to the proposal to appoint Mr. Shirish Patel as an independent Engineer. The plaintiff gave consent. Paragraphs 7.3 and 7.4 of the Minutes of the aforesaid Meeting are relevant. They read as under :-

“7.3 - Shri Shirish Patel mentioned that the PMC has given their opinion regarding claims of the Contractor. However, he mentioned that he is prepared to act as an independent Engineer and go through the versions of both the sides (SPPL, PMC & Contractor) if it is agreeable to the contractor and SPPL. He further added that his views may or may not be exactly same with the earlier recommendations/decisions by PMC and SPPL.

7.4 - The Principal Secretary, Housing & MD/SPPL specifically asked the Contractor, whether Shri Shirish Patel, as an independent Engineer, is agreeable and acceptable to him. Shri S.K.Mittal confirmed that the decision of Shri Shirish Patel is acceptable and binding on him. The Principal Secretary, Housing & MD/SPPL, thereafter-requested Shri Shirish Patel to act as an independent Engineer and give his recommendations.”

19. In pursuance of the aforesaid decision recorded in the meeting held on 25th October 2004, Mr. Shirish Patel evaluated the claims of the plaintiff and submitted a report on 8th December 2004. The report briefly traces the history of the project and principles of conciliation. The independent Engineer has evaluated each of the claims, ascribed reasons for allowing and disallowing the same and ultimately

recommended that a sum of Rs.6.40 crores was payable to the contractor/plaintiff.

20. The communication dated 22nd June 2005, records the fact that after consideration of the recommendations of Mr. Shirish Patel, the Principal Secretary (Housing) and the Managing Director of the defendant in exercise of the powers conferred on him vide clause 67.2 of SGCCC of Volume-I has decided that an amount of Rs.4.85 crores is payable for the work done upto date. The said decision was, however, subject to the conditions, is also mentioned therein. The relevant paragraphs of the communication read as under :-

“The Principal Secretary (Hsg.) & M.D./SPPL in exercise of the powers conferred on him vide clause 67.2 of SGCCC of Volume-I has now gone through your claims and has decided that an amount of Rs.4.85 crores is payable for work done upto-date. It has also decided by him that this amount will be paid to you only on completion of the entire work by you. This is also subject to the following conditions being satisfied by you :

(a) The work of 5 Nos. (S+7) sale bldgs. should be completed within the period of next two months i.e. by 31-07-2005.

(b) The work of 4 Nos. (S+18) and 2 Nos. (S+7) towers should be completed by 30-11-2005 in all respects including infrastructure works excepting external painting works. External painting work should be completed by 15-12-2005.

(c) You should submit a detailed programme with monthly cash-flow statements for the completion of work for the schedule mentioned above to enable SPPL to make prompt payment.

(d) The amount of claim will be released to you on the satisfactory completion of the entire project.

(e) This will be in full and final settlement of all claims submitted by you through various authorities for the work done so far as no further claims will be entertained.”

21. It seems that as the stalemate could not be resolved, another meeting was held on 23rd July 2005 and certain decisions were recorded therein. The relevant clauses of the minutes of the meeting dated 23rd July 2005 read as under :

“4/- Shri S.K. Mittal requested to release Rs. 4.85 Crs. out of Claims of Rs. 64.01 Crs. However, GM (Mktg.) categorically expressed that contractor should give no claim certificate first and they also accept the decision taken by the Principal Secretary (Hsg.) & MD/SPPL under clause 67.2 of SGCCC, Volume-I on the basis of reports of Shri Shirish Patel as Independent Engineer appointed by the Principal Secretary (Hsg.) & MD/SPPL. However, Shri Mittal stated that the decision given by the Principal Secretary (Hsg.) & MD/SPPL under clause 67.2 of SGCCC, Volume-I on the basis of recommendation of Shri Shirish Patel, the Independent Engineer, is not acceptable to him.”

....

6/- On the request of the contractor to pay Rs.4.85 Crs. First, Jt. MD/SPPL mentioned that the Contractor to start the work immediately and progress the work

the proportionate claims amount with respect to work done vis-a-vis balance work can be released. However, the same was not acceptable to the contractor.”

22. If the aforesaid documents are considered in conjunction, it becomes evident that the independent Engineer Mr. Shirish Patel was appointed to evaluate and appraise the claims lodged by the plaintiff. Mr. Shirish Patel has recommended a sum of Rs.6.40 Crores. The said recommendations were considered by the defendant. The Managing Director of the defendant took a decision that an amount of Rs.4.85 crores was payable to the defendant for the work done upto date. Undoubtedly, the Managing Director also took a decision that the said amount will be payable to the plaintiff only on completion of the entire work and fulfillment of the conditions, extracted above. It was further stipulated that the said payment would be in full and final settlement of all the claims submitted by the plaintiff for the work done upto the said date and no further claims would be entertained.

23. The pleadings in the written statement, extracted above, are required to be considered in juxtaposition with the aforesaid documents. The learned counsel for the defendant, in the light of the aforesaid conditions, subject to which the decision to make the

payment of Rs.4.85 crores was taken by the defendant, urged that neither the contentions in the written statement nor the offer of payment in the documents, referred to above, can be construed as an unconditional and unqualified admission. A strenuous effort was made to draw home the point that the plaintiff cannot be permitted to take advantage of the alleged admissions without adhering to the conditions subject to which the said offer was made.

24. To bolster up this submission, the learned counsel for the defendant placed a strong reliance on a judgment of the Division Bench in the case of *Shantez and Anr. Vs. Applause Bhansali Films Pvt. Ltd. Company, Mumbai & Ors.*⁴. In the said case, this Court, after reference to the judgment of the Supreme Court in the case of *Uttam Singh Duggal* (Supra), observed as under :

“5 It will be further useful to make a reference to a judgment of this Court in Western Coalfields Ltd. v. Swati Industries, 2004 (1) Bom. C.R. 322 where the Court took the view that admission made by the parties has to be absolute and unconditional and where in the written statement it had been specifically stated that in terms of another contract, the said amount had already been appropriated. This is not an unqualified admission on part of defendant which would invite a decree against it for the said amount. Nature of admission is neither conclusive to invite order under Order 12, Rule 6 of Civil Procedure Code nor would operate as

4 2009(4) Mh.L.J. 37

estoppel against defendant under Section 115 of Evidence Act. The provision of Order XII Rule 6 of the Code contemplates an admission of fact and such admission could not be inferred.

.....

7. In the same Notice of Motion No.2561 of 2007, the Applicants had also claimed certain interim orders while titling the application as for decree on admission. It is a settled principle of law that the Order XII, Rule 6 of the Code cannot be used where vexed and complicated questions or issues of law arise and it does not contemplate passing of interim orders. Reference in that regard can be made to the case of Manisha Commercial Ltd. Vs. N.R. Dongre and anr., AIR 2000 Dehli 176 as well as to a judgement in the case of Gorivelli Appanna Vs. Gorivelli Seethamma, AIR 1972 A.P.62

(emphasis supplied)

25. Reliance was also placed on another judgment of a learned Single Judge of this Court in the case of ***Pankaj Unit No.1 Housing Development Company Pvt. Ltd. & Anr. Vs. Oshiwara Land Development Company Pvt. Ltd. & Anr.***⁵, wherein this Court has observed that the salutary principle is that the admissions in the pleadings as well as admissions in correspondence or communications outside the pleadings, must be unambiguous and clear. If there is any ambiguity in the admission or any reasonable explanation for such admission, a decree may not be passed by the court on the basis of

⁵ 2014(3) Mh.L.J. 353

such admission.

26. In opposition to this, the learned counsel for the applicant/plaintiff would submit that the plaintiff cannot be deprived of the benefit of the provisions of Order XXII, Rule 6, despite an admission of liability for the reason that the defendant qualifies the same with a rider that the plaintiff must accept it in full and final settlement of all its claims. Such a condition, according to the learned counsel for the applicant/plaintiff, does not erode the value of the admission. Despite such condition, the Court would be justified in passing a judgment on admission, which is otherwise clear, explicit and unequivocal.

27. To buttress the aforesaid submission, the learned counsel for the applicant/plaintiff placed reliance on a judgment of Calcutta High Court in the case of *Pabitra Kumar Basu and another Vs. Calcutta Municipal Corporation* ⁶. In the said case, the Calcutta Municipal Corporation had admitted the liability to the extent of a sum of Rs.31,55,740/- not only in the pleadings but also in affidavit in opposition to the application for judgment on admission with a rider

6 2000 All India High Court Cases 2101

that the admitted sum shall be in full and final satisfaction of the plaintiff's claim. The learned Single Judge repelled the contention of the Calcutta Municipal Corporation that in view of the said condition, it would be impermissible to pass a decree on admission, unless the plaintiff accepts it as a full and final satisfaction of his claim.

Paragraphs 5 and 6 of the aforesaid judgment read as under :-

“5 Now I am to examine whether the aforesaid condition being full and final satisfaction is a fetter to dilute the effect of entire admission or not.

6 The proportion laid down in the decision cited by Mr. Mitra, viz., (1945-46) 50 CWN 437 following Privy Council decision is not disputed. In my view it is correct in order to pass a judgment in admission (sic) should be absolute. In other words, if any condition cannot be excluded and it has to be accepted. The aforesaid general principle is not an inflexible one. It has to be examined the nature of admission, and to be ascertained whether condition attached to admission taken together entirely negate effect of the admission or not. If such a condition negates the effect of admission then the adversary shall get advantage of such condition. In this case the condition attached to the admission does not dilute effect of admission. In my view, in both the suits the dispute is ‘one’ whether the plaintiff in this suit is entitled to the aforesaid sum in full and final satisfaction or not, in other words, whether the plaintiff in this suit is entitled to more than the aforesaid amount. There is no dispute as regard admission of the aforesaid amount. In the case cited by Mr. Mitra factually condition to admission in the said suit taken together, diluted effect of admission. So the aforesaid decision is wholly distinguishable on the facts and circumstances of this case. Therefore, I have respectfully chosen not to follow the same. But one aspect of the matter is this had the plaintiff in this suit accepted the aforesaid amounts as full and final satisfaction of the claim, then both the

suits would have been disposed of and there would not have any occasion to proceed further.”

28. Reliance was also placed on another judgment of the learned Single Judge of this Court in the case of ***SRL Limited Vs. Techtrek India Limited***⁷ wherein this Court, after referring to the judgment of Calcutta High Court in the case of ***Premasuk Das Assaram Vs. Udairam Gungabux***⁸, had passed a judgment on admission, as regards the principal amount,, the liability to pay which was admitted. Paragraphs 13 and 14 read as under :-

“12 Under Rule 6 of Order XXII, the Court has jurisdiction to enter a judgment for the Plaintiff and pass a decree for the admitted claim even if such admitted claim be a part of the total claim in the suit. The Calcutta High Court in sat 8/9 nm 801-2013.doc the case of Premasuk Das Assaram vs. Udairam Gungabux 3, considered a money claim based on accounts. There was an admission of a part of the claim. On the basis of this admission, the Court entered a judgment for part of the suit claim, whilst permitting the Plaintiff to proceed to prove the rest of his claim at the trial. The Calcutta High Court held as follows :

" In my opinion, it would be lamentable if the discretion, which for the best of reasons has been left free and untrammelled by the Legislature, were to be crystallised by judicial decisions, as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the

7 AIR 2014 Bom. 42

8 AIR 1918 Cal 467

discretion, which must be applied with due regard to the varying circumstances of each particular case. I must consequently decline to interpret Order XII, Rule 6, so as to restrict its operation to cases where the plaintiff accepts the admission of the defendant in its entirety or where the claim is severable into distinct portions and the defendant admits his liability in respect of one such fragment of the claim. I do not also feel pressed by the argument that if a decree is made first on admission in respect of one portion of the claim and then on investigation as to the remainder, there may ultimately be two decrees in the same suit. I see nothing objectionable in principle to such a result, specially in view of the provisions of Order XXIV which treats of payments into Court."

14 The suit claim, in our case, is clearly severable into distinct portions, one representing the principal amount claimed and the other relating to the interest calculated on such principal amount. The Defendant having clearly and unambiguously admitted its liability in respect of one portion of such claim, namely, the principal amount, there seems to be no difficulty in passing a partial decree on admission for a sum of Rs.1,58,54,200/- being the principal amount of the security deposit refundable by the Defendant to the Plaintiff as claimed in the Notice of Motion."

29. Indisputably, there has to be a clear and unambiguous admission. It is well recognized that an admission is not conclusive as to truth of the matter stated therein. A party, who has made an admission, may be in a position to demonstrate that the admission

was made under an erroneous impression or it is simply untrue. The admission is essentially a piece of evidence, the weight to be attached to it naturally varies according to the circumstances under which it is made.

30. In the case at hand, however, I am unable to persuade myself to agree with the submission on behalf of the defendant that there is no clear and unambiguous admission. On the contrary, the admission of the liability to pay a sum of Rs.4.85 crores is preceded by appraisal of the claim lodged by the plaintiff by an independent Engineer. The claims were evaluated by Mr. Shirish Patel in a methodical manner and recommendations were made. The Managing Director of the defendant took a decision to allow the claims of the amount (Rs.4.85 crores) less than that of the recommendation (Rs. 6.40 crores). Thus, there is no escape from the conclusion that the admission of liability to pay a sum of Rs.4.85 crores was conscious, deliberate and informed. It is not a stray admission made in an unguarded moment.

31. The pivotal question which wrenches to the fore is whether the effect of the aforesaid admission is diluted by the condition subject to which the offer of payment of Rs.4.85 crores was made by the

defendant. Can it be said that the plaintiff shall take nothing on account of the said admission unless it accepts the conditions associated with it?

32. For an answer, the circumstances in which the assessment of the claims lodged by the plaintiff was made assumes significance. Evidently, the plaintiff had lodged claims in respect of the works executed before the meeting held on 25th October 2004. The independent Engineer made the recommendations in respect of the said claims. The minutes of the meeting dated 2nd June 2005, records the following state of affairs, which then prevailed :

3.3 Financial crunch in SPPL also resulted in delay for payment to the Contractor. Initially the progress of the contractor's work was very good. However, due to delay in giving decisions to start of tower work, non-payment of escalation etc. the Contractor started making claims and the work had come to a stand-still. Therefore, the Principal Secretary (Hsg.) & MD/SPPL called for a meeting on 25.10-2004. During the meeting, the contractor stated that he has no money to proceed with the work and also will not be taking any interest unless his claims are examined and payment due to him was made. Therefore, the Principal Secretary (Hsg.) & MD/SPPL appointed Shri Shirish Patel as an Independent Engineer to go through the claims of the contractor and submit his report/recommendation to enable the Principal Secretary (Hsg.) & MD/SPPL to take decision in the matter. Shri Shirish Patel submitted his report / recommendation as to the acceptability or otherwise of the claims with the guidelines and also tentative amount subject to the detailed verifications of the

amount.”

Thereafter, the Managing Director of the defendant took a decision that an amount of Rs. 4.85 crores is payable for the work done upto date. It would be contextually relevant to note that Mr. Shirish Patel had also observed in his report that “delay in payments continued to be a feature of the said contract”.

33. The conditions which were imposed by the defendant, are required to be construed in the aforesaid backdrop. Once, it is held that the amount of Rs.4.85 crores was reckoned to be payable for the work done upto date, the liability to pay for the said executed work gets crystallized. It is not the case that to claim the said amount of Rs.4.85 crores, the plaintiff was required to execute certain works, which formed part of the work, the payment for which was covered in the said amount. Nor it is alleged that the plaintiff was required to discharge the liability in the nature of a defect liability.

34. It was the defendant's endeavour to put the plaintiff to terms in the nature of expeditious completion of the project and forego the rest of the claims. In my view, in order to qualify as a conditional admission which commands its enforcement with condition and not

otherwise, the condition must flow from the matter in respect of which admission is made. The condition ought to be intrinsic to the fact admitted. A condition superimposed with a view to obviate the consequences which flow from the admission need not be given effect to, in every case. The provisions contained in Order XII Rule 6 will lose much of its force and utility, if a plain and unambiguous admission cannot be given effect to on the premise that admission is coupled with a condition and other party shall take its benefit only with the strings attached. Such an interpretation may render the provision redundant as a party after making an admission would add conditions and then insist that the party in whose favour it is made must accept it subject to those conditions.

35. In the facts of the instant case, the condition that the plaintiff shall accept the said amount in full and final settlement of all its claims, assumes the character of a condition superimposed. The said condition is not intrinsic to the work towards payment of which the liability was acknowledged. In this view of the matter, which the Court is persuaded to take, the aforesaid endeavour of the defendant does not whittle down the value of the admission of liability to make payment for the work already done. Thus, the Court would be

justified in directing the defendant to satisfy the claim to the extent of admission without insisting upon the fulfillment of condition.

36. This take me to the challenge to the tenability of the suit on the count that the plaintiff-firm is not a registered Partnership Firm . The learned counsel for the defendant would urge that the suit itself is not maintainable as the plaintiff has failed to establish that the plaintiff is a registered Partnership Firm and, thus, decree cannot be passed even on admission.

37. To lend support to this, the learned counsel for the defendant placed a strong reliance upon a Division Bench judgment of this Court in the case of *Gandhi & Co. Vs. Krishna Glass Pvt. Ltd.* ⁹, wherein it was, *inter-alia*, enunciated that on a plain reading of section 69(2) of the Indian Partnership Act, 1932, it was clear that in order that the suit is validly instituted by or on behalf of the firm against any third party, two conditions must be fulfilled, namely, (i) the firm is registered; and (ii) the persons suing are or have been shown in the Register of Firms as partners in the firm.

38. The learned counsel for the defendant invited the attention of

9 AIR 1987 Bombay 348

the Court to an order passed by this Court on 23rd October 2015. This Court has noted that the firm registration certificate, sought to be tendered in evidence by the plaintiff, was totally at variance with the document which is marked as 'X-1' for identification. Finding something amiss, this Court directed the Prothonotary and Senior Master, High Court, Bombay to write to the Registrar of Firms, Government of NCT of Delhi, Delhi to enquire (a) whether there is a firm by the name M/s.Villayati Ram Mittal, F-345 Kotla Mubarakpur, New Delhi, (b) whether the firm is registered at Serial No.1749 of 1979 and (c) whether they have issued certified copy of certificates, which are marked as X-1 and also at page 10 of Exhibit P-43.

39. The Deputy Commissioner of Industries (Firms and Societies), Government of N.C.T of Delhi, submitted a report on 16th February 2016. It records that (a) M/s. Villayati Ram Mittal, F-345 Kotla Mubarakpur, New Delhi is a registered firm. (b) The firm is registered at SI. No. 1749/79. (c) Copy marked X-1 has not been issued by the said office. However, copy exhibit, at page 10, has been issued by the said office.

40. The learned counsel for the defendant submitted that the fact

that the plaintiff had annexed a false document, namely, Firm Registration Certificate (X-1) which was not issued by the competent authority, dis-entitles the plaintiff from claiming any relief. The learned counsel further submitted that the copy of the Partnership Deed, which was furnished by the plaintiff, while executing the contract reveals that the Partnership Deed was executed on 1st day of April 1993, whereas the firm registration certificate now sought to be relied upon indicates that the firm was registered on 7th June 1979. These aspects require adjudication at trial. At this juncture, in the absence of clinching material to demonstrate that the plaintiff firm is a registered Partnership Firm, no decree on admission can be passed, urged Shri Snehal Shah.

41. I find it difficult to accede to this submission. The certificate issued by the Deputy Commissioner of Industries (Firms and Societies), Government of N.C.T of Delhi on 16th February 2016 indicates that M/s.Villayati Ram Mittal, the plaintiff, is a registered firm with registration at SI.No. 1769/79. The certificate of registration which was sought to be proved in evidence has been issued by the said authority. At this juncture, *prima-facie*, there appears to be adequate material to show that the plaintiff-firm is a registered Partnership

Firm. The discrepancies which are sought to be pressed into service on behalf of the defendant as regards registration of the firm do not detract materially from the said status of the firm. In any event, the issue can be adjudicated at the trial.

42. The conspectus of the aforesaid consideration is that in view of the clear and unequivocal admission of liability to pay a sum of Rs. 4.85 crores, the plaintiff is entitled to a judgment on admission. The final adjudication of the claim of the plaintiff would take considerable time. A sum of Rs.4.85 crores cannot be said to be negligible, by any standard. There is no justifiable reason to deprive the plaintiff of the the said due amount which is determined after following due process of assessment. Thus, the following order :

O R D E R

- (i) The Notice of Motion stands allowed in terms of prayer clause (a).
- (ii) The defendant do pay a sum of Rs.4.85 crores to the plaintiff within a period of two months from today.
- (iii) There shall be decree on admission for a sum of Rs. 4.85 crores.

(iv) A decree be drawn and sealed for the amount of Rs.4.85 crores.

(v) The suit to proceed for rest of the claim.

[N.J. JAMADAR J.]