

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.01.2021

Pronounced on 18.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1707 of 2016

M/s.Finecons Pvt. Ltd.
Represented by its Director,
P.Tyagi,
No.5, First Floor,
Maharaja Surya Road,
Alwarpet,
Chennai-18

..Petitioner

Vs.

1.M/s.R.P.Abacus Netcomm Pvt Ltd.,
Represented by its Managing Director,
R.Prabakar,
No.G-33, Ground Floor,
Anna Nagar Plaza,
2nd Avenue, Anna Nagar,
Chennai - 600 040

2.R.Prabakar

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 4.2.2016 made in IA.No.3742 of 2014 in OS.No.1314 of 2014 by the learned XV Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.C.Harikumar

M/s.P.C.Hari kumar and Associates

For Respondents : Mr.Sandeep Samir Shah
for M/s.Shah and Shah

ORDER

This civil revision petition is directed as against the fair and decretal order passed in IA.No.3742 of 2014 in OS.No.1314 of 2014 on the file of the learned XV Additional Judge, City Civil Court, Chennai thereby dismissing the petition to pass judgment and decree for a sum of Rs.11,09,000/- on admission by the defendants.

2. The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit for recovery of Rs.12,36,151/- with interest as against the respondents herein. According to the petitioner, he supplied desktops to M/s.Vel Tech Institution as per the order placed by the respondents from the month of July 2012 to October 2013. On receipt of desktops, on the basis of the orders placed by them, the respondents committed default in payment of amount due. In fact the cheques issued by the respondents were also dishonoured on several occasions. Though the respondents failed to make payment, they admitted their liability by their letter dated 28.10.2013 and 30.10.2013 to the extent of Rs.12,36,151/-. They

also undertook to pay the said amount on or before 31.12.2013 failing which the petitioner can take legal action to recover the same as against the respondent. Thereafter, the respondents did not make any payment as undertaken by them. Therefore the respondents categorically admitted their liability to the extent of Rs.12,36,151/- and as such the petitioner sought for judgment on admission under Order 12 Rule 6 of CPC. It was dismissed and aggrieved by the same, the petitioner preferred this revision petition.

3. The learned counsel for the petitioner submitted that the admission of facts have to be in either pleadings or otherways. There is clear admission made by the respondents in the letter dated 28.10.2013 and 30.10.2013 which were marked as Ex.P.24 and P.25. Though the petitioner marked Ex.P.1 to P.34 in support of his application, those are not appended in the fair order. Therefore, the court below without perusal of the documents and without making any discussion dismissed the petition for the only reason that there are so many issues involved and are triable in nature. The statement of account of the respondents marked as Ex.P.34 in which the outstanding amount arrived at Rs.12,36,151/-. It also clearly shows that the cheques issued by the respondents were dishonoured for the reason insufficient funds. Ex.P.24 letter dated 28.10.2013 issued by the respondents categorically admitted their liability by stating that they have transferred sum

of Rs.24 lakhs through RTGS on 25.10.2013 and the balance as on date stands at Rs.11,09,000/-. They have discussed on 26th day of October at the plaintiff's office and they hereby admitted that they shall duly compensate the plaintiff towards interest component for the delayed payment. Further stated that they shall clear plaintiff's old outstanding payment by 31.12.2013, failing which the plaintiff may be at liberty to initiate suitable legal proceedings for recovery of the dues. He further submitted that in Ex.P.25 dated 30.10.2013, clearly mentioned that outstanding as on 25.10.2013 was at Rs.9,59,536/-. It also correlates with the statement of accounts which was marked as Ex.P34. Therefore, the respondents categorically admitted their liability to the tune to the extent of Rs.11,09,000/- and the suit is to be decreed on their admission. In support of his contention, he relied upon the judgments in the case of ***Uttam Singh Duggal & Co Ltd. Vs. United Bank of India and others*** reported in ***(2000) 7 SCC 120*** and ***Dr.K.Padmanabhan and another Vs. W.S.Nisha*** reported in ***2002-3 LW 118***.

4. Per contra, the learned counsel for the respondents submitted that there is no admission at all in the letters dated 28.10.2013 and 30.10.2013 marked as Ex.P.24 and Ex.P25. It revealed that the transactions held between the petitioner and the respondents, amount outstanding and the further correspondence that have occurred between them. It would also reveal that

the assurances made by the petitioner during the period of transaction and finally held that the respondents are not liable for any payment as alleged in the plaint. Further he submitted that the admission allegedly made in those letters are not judicial admission under Order 12 Rule 6 of CPC. There are so many issues in respect of transaction between the petitioner and the respondents herein. As such the issues have to be framed and it can be decided only during the trial. In fact, the petitioner agreed to adjust the outstanding dues with over riding commissions payable to the respondents on supply of materials to the customers belong to the respondents. Therefore, there is no necessity to make any payment to the petitioner since all the outstanding adjusted by them with the over riding commission. The respondents produced the purchase order to the petitioner to supply materials directly to its customers and the payment will be made through the respondents herein. In fact, M/s.Vel Tech Group of Colleges placed orders with the respondents for purchase of 226 numbers of HP3330 Pro MT Desktops and they directly approached the petitioner herein. The petitioner also agreed and accepted to supply the above items to M/s.Vel Tech Group of Colleges. Further submitted that in fact the petitioner cheated the respondents to the tune of Rs.15 lakhs . Therefore there are so many issues involved in the suit and the respondents never admitted their liability to the tune of Rs.11,09,000/- . He also submitted that the power under Order 12 Rule 6 of CPC

is discretionary and cannot be claimed as matter of right. In support of his contention, he relied upon the judgment in the case of **S.M.Asif Vs. Virender Kumar Bajaj** reported in **(2015) 9 SCC 287**.

5. Heard Mr.P.C.Harikumar, the learned counsel for the petitioner and Mr.Sandeep Samir Shah, the learned counsel for the respondents.

6. The petitioner filed suit for recovery of money to the tune of Rs.12,36,151/- against the respondents herein. The plaintiff / petitioner is a dealer in buying, selling and installing computers and other allied electronic items and their maintenance. While being so, the respondents approached the petitioner for supply of computers on bill to bill basis. On perusal of the plaint, there were so many transactions between the petitioner and the respondents herein in respect of supplying desktops. At the outset, according to the plaintiff, the respondents are in due of Rs.12,36,151/-. By the communication dated 28.10.2013 and 30.10.2013, the respondents admitted their liability to the tune of Rs.11,09,000/- and thereafter they denied their liability. The respondents also claimed Rs.15 lakhs as commission. In fact the cheques issued by the respondents were also dishonoured and thereafter there were money transactions between them. According to the respondents, on the basis of the orders placed by the customers, the desktops were directly supplied to its

customers and also received payments directly. On perusal of the written statement, the respondents denied the alleged admission and on their compulsion they issued post dated cheques and they are in custody of the petitioners herein. Those cheques were not presented for payment. Therefore, there are various issues as triable by the trial.

7. The learned counsel for the petitioner relied upon the judgment in the case of ***Uttam Singh Duggal & Co Ltd. Vs. United Bank of India and others*** reported in (2000) 7 SCC 120, wherein it is held as follows:

Before the trial judge, there was no pleading much less an explanation as to the circumstances in which the said admission was made, so as to take it out of the category of admissions which created a liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order XII Rule 6 CPC, the stand is clearly to the contrary. Statements had been made in the course of the Minutes of the Board of Directors held on 30th May, 1990 to which we have already adverted to in detail. In the pleadings raised before the Court, there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30th May, 1990 in the letter dated 4th June, 1990 what is stated in the affidavit-in-opposition in application under Order XII Rule 6 CPC is save, what are matters on record and save what

would appear from the letter dated 30th May, 1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.

8. The learned counsel for the petitioner also relied upon the judgment in the case of **Dr.K.Padmanabhan and another Vs. W.S.Nisha** reported in **2002-3 LW 118**, wherein it is held as follows:

6.It may be worthwhile to refer Order 12 Rule 6 C.P.C which reads as follows:

"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 questions 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. HIGH COURT

AMENDMENT (MADRAS): Re-number the existing Rule 6 as sub-rule 6(1) and insert the following as sub-rules (2) and (3). (2)The court may also of its own motion make such order or give such judgment as it may consider just, having due regard to the admissions made by the parties.

(3)Whenever an order or judgment is pronounced under the provisions of this rule, a decree may be drawn up in accordance with such order or judgment and bearing, the same date as the day on which the order of judgment was pronounced."

8.Coming to the question of admission, sub-rule (2) of Rule 6 of Order 12 C.P.C is very clear as pointed out by the Apex Court that the admission may be either in the pleading or otherwise either oral or in writing. In this case, the first appellant had given the following letter of undertaking:

"This letter of undertaking executed by Dr.K. Pathmanaban S/o Late Kaliappa Pillai, Managing Director, Chennai Kaliappa Hospital having office at No.52, II Main Road, Raja Annamalaipuram, Chennai - 600028.

On a suit filed by Mrs.W.S. Nisha, the Hon'ble Court of Chennai, passed an order of attachment in application No.390/2000 dated 13th March, 2001 and the bailiffs representing the High Court to execute the warrant of attachment served a copy of the warrant on me.

I hereby undertake to pay a sum of Rs.1,00,000/- (Rupees one lakh only) in cash today and I shall pay the balance of Rs.14,00,000/- as detailed below: Sl.No. Cheque No. Date Amount

Rs.1.035831	27.3.2001	1,00,000	2.035832	28.3.2002
1,00,000	3.035834	29.3.2001	1,00,000	4.035835
30.3.2001	1,00,000	5.035836	2.4.2001	1,00,000
6.035837	3.4.2001	1,00,000	7.035838	4.4.2001
1,00,000	8.035839	5.4.2001	1,00,000	9.035840
6.4.2001	1,00,000	10.035841	9.4.2001	1,00,000
11.035842	10.4.2001	1,00,000	12.035843	11.4.2001
1,00,000	13.035844	22.3.2001	1,00,000	14.035845
24.3.2001	1,00,000	If the cheques are not honoured as per the above schedule, the warrant of attachment may be executed. I request the Bailiffs to keep the warrant of attachment in abeyance for a period of three weeks in view of the payments referred to above. I shall pay the balance paying amount within a period of two months."		

It is admitted by the first appellant that he gave such undertaking letter and also paid a sum of Rs.1,00,000/-. He also entrusted the post dated cheques to the respondent herein.

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9. In the above cases, the Hon'ble Supreme Court of India as well as this Court held that there shall be clear and unequivocal admission of the case of the plaintiff by the defendant. Whereas in the case on hand, on perusal of the written statement as well as the counter filed by the respondents, there is denial of every allegations and there are several issues involved in nature of

triable issues. Further the provision under Order 12 Rule 6 contemplates about the admission must be clear and unambiguous. Therefore, the above judgments are not applicable to the case on hand.

10. The learned counsel for the respondent in support of his contention cited the judgment in the case of **S.M.Asif Vs. Virender Kumar Bajaj** reported in **(2015) 9 SCC 287**, wherein it is held as follows:

9. In the suit for eviction filed by the respondent-landlord, appellant-tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted respondent-plaintiff's claim by setting up a defence plea of agreement to sale and that he paid an advance of Rs.82.50 lakhs, which of course is stoutly denied by the respondent-landlord. The appellant- defendant also filed the Suit for Specific Performance, which of course is contested by the respondent-landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC.

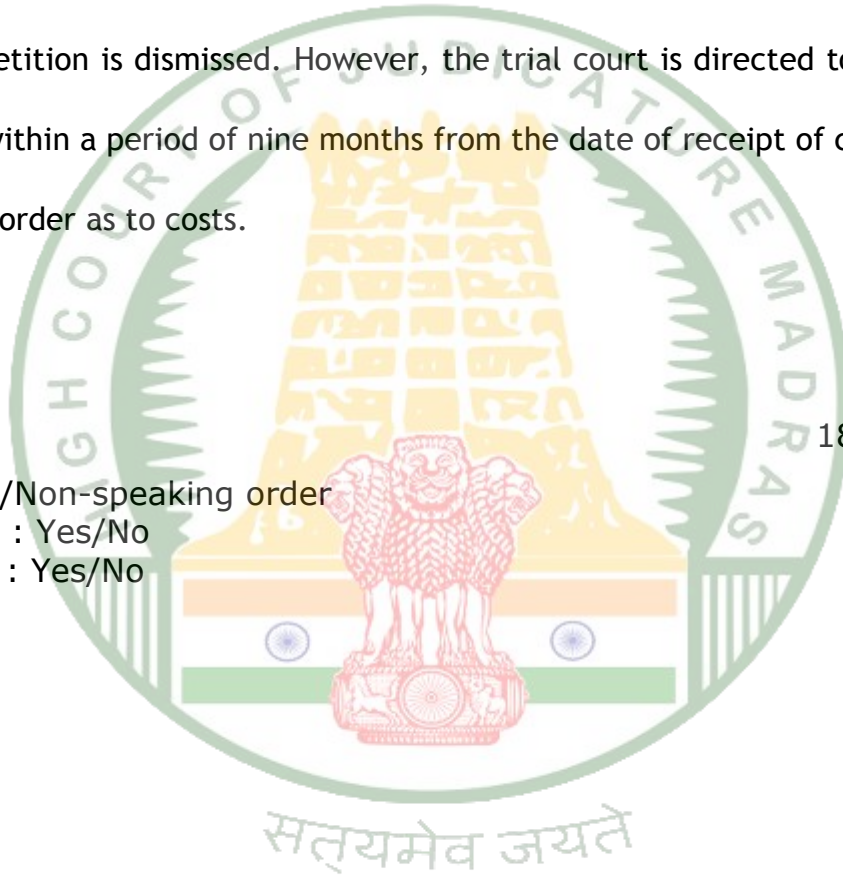
The judgment on admission is not a matter of right and rather it is a matter of discretion of court. When there is objection, it would not be appropriate to exercise discretion under Order 12 Rule 6 of CPC. In the case on hand as stated supra, the respondents have rival claim and categorically denied the entire allegations made in the plaint, in the written statement filed by the

respondents dated 25.07.2014. Therefore, the above judgment is squarely applicable to the case on hand.

11. In view of the above discussion, this Court finds no infirmity and irregularity in the order passed by the court below. Accordingly, this civil revision petition is dismissed. However, the trial court is directed to complete the trial within a period of nine months from the date of receipt of copy of this order. No order as to costs.

18.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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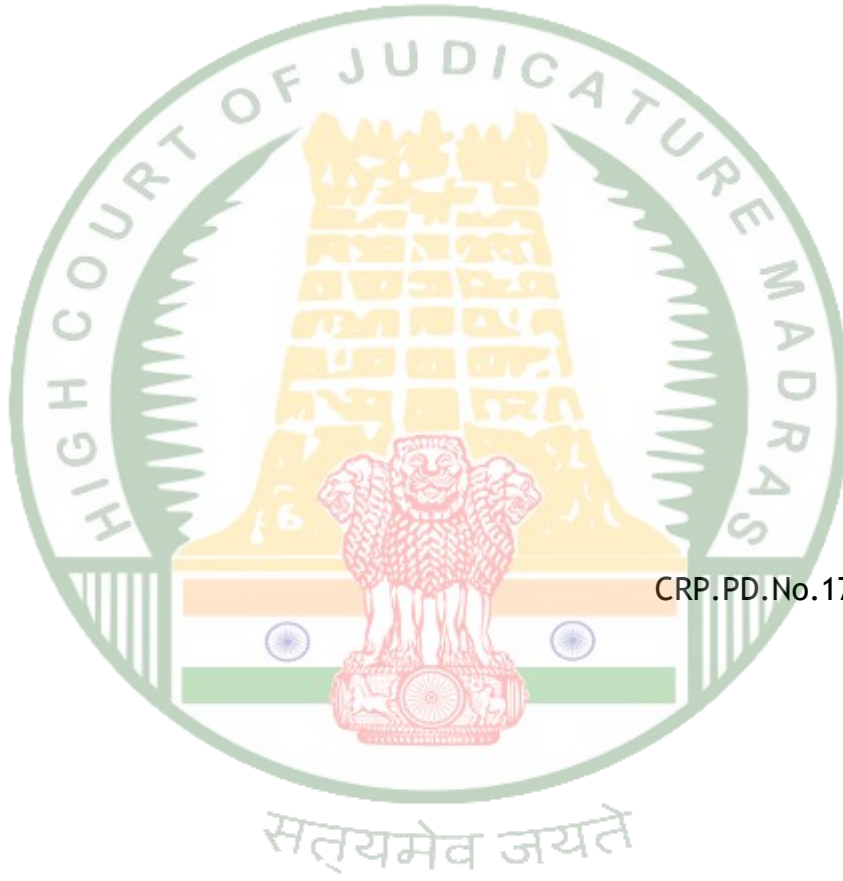
The XV Additional Judge,
City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN,J.

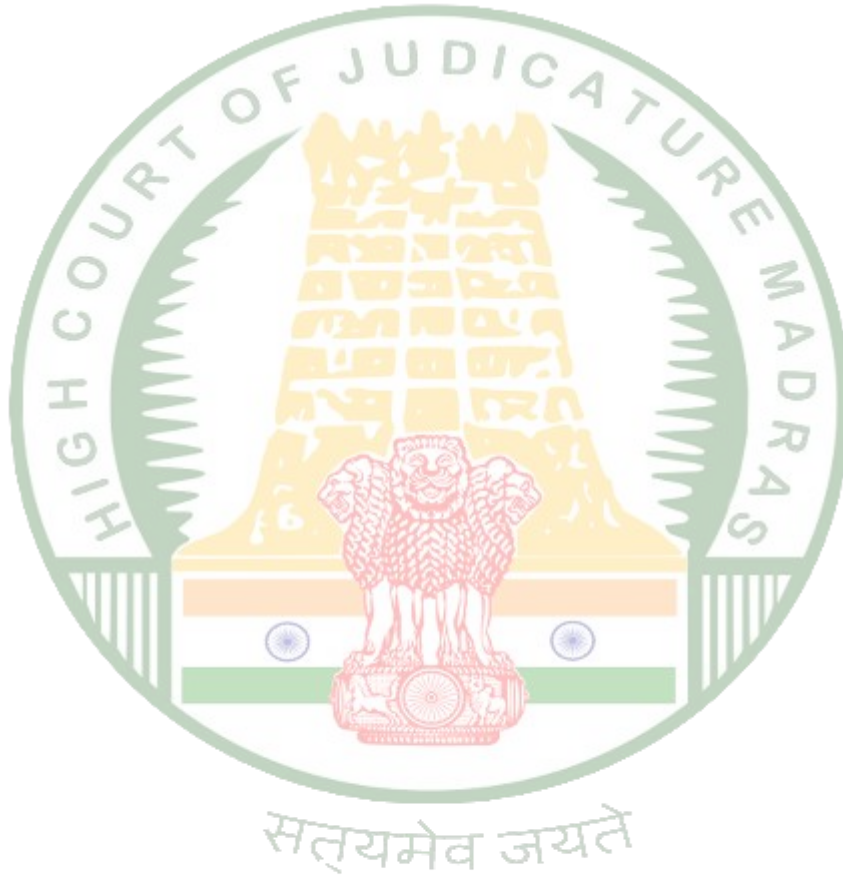
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