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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 85/2021

KHANNA BROTHERS

..... Petitioner

Through: Mr. Deepak Dhingra, Adv.

versus

M/S RV AKASH GANGA INFRASTRUCTURE LTD.,. Respondent

Through: Mr. Lalit Gupta, Mr. Siddharth Arora
and Mr. Priyansh Jain, Advs.

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Date of Decision: 26th July, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present revision petition has been filed challenging the order dated 14th January, 2020, whereby the learned Trial Court has dismissed the application under Order XII Rule 6 CPC.
2. Learned counsel for the plaintiff states that he had filed a suit for the recovery of Rs.74,64,107/- along with pendent elite and future interest @ 24% per annum against the respondent-company. The respondent – company though in the written statement denied the liability, however, subsequently, on an application being moved under Order XI Rule 12 CPC read with Section 151 CPC by the plaintiff produced a memorandum of understanding entered into between the company and its directors.



3. Learned counsel for the petitioner submits that in the said agreement dated 22nd January, 2018 and supplementary memorandum of settlement dated 23rd January, 2018, there is a clear-cut admission of the liability of the company qua the petitioner.
4. Learned counsel for the petitioner submits that in view of this categorical admission as appearing in the supplementary memorandum of settlement dated 23rd January, 2018, the application of the petitioner under Order XII Rule 6 CPC should have been allowed.
5. Learned counsel for the petitioner has referred to Order XII Rule 6 CPC and emphasized that the said provision makes it clear that the admission made in the pleadings or otherwise have to be taken into account for exercising the jurisdiction under Order XII Rule 6 CPC.
6. Learned counsel submits that merely because the respondent has denied their liability in the written statement, the Trial Court should not have declined to exercise its jurisdiction.
7. Learned counsel for the petitioner has referred to ***Payal Vision Ltd V. Radhika Choudhary*** (2012) 11 SCC 405, ***Charanjit Lal Mehra & Ors. v. Kamal Saroj Mahajan (smt) and Anr.*** (2005) 11 SCC 279.
8. Learned counsel for the petitioner submits that bare perusal of these judgments makes it clear that the facts of each case have to be examined and if there is any admission on the part of the respondent which can be inferred from the facts and circumstances of the case, then the application under Order XII Rule 6 CPC should be allowed.



9. Learned counsel further submits that as per the scheme of CPC, only petitioner could have invoked the revisional jurisdiction of this Court and the Hon'ble court while exercising its revisional jurisdiction is duty bound to ensure that no illegality is committed by the Trial Court.
10. Mr. Lalit Gupta, learned counsel for the respondent has vehemently opposed the revision petition.
11. Learned counsel for the respondent submits that this court has limited jurisdiction under Section 115 CPC. Learned counsel further submits that the bare perusal of Section 115 CPC would make it clear that the revisional jurisdiction can be exercised only if either the Trial court has exercised the jurisdiction which is not vested in it by law or have exceeded its jurisdiction or has acted illegally or committed material irregularity.
12. Learned counsel has further submitted that even the bare perusal of the Supplementary memorandum of settlement dated 23rd January, 2018 would make it clear that there is no unequivocal admission on the part of the company qua the liability as raised by the plaintiff in the Civil Suit No. 570/2016.
13. I have considered the submissions and perused the record carefully.
14. Before proceeding to examine the facts on merit, it is necessary to see the scope of jurisdiction to be exercised by this Court under Section 115 CPC. Section 115 CPC reads as under;

“(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such



High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation--In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”



15. In the ***Managing Director (MIG) Hindustan Aeronautics Ltd. and Anr. V. Ajit Prasad Tarway*** (1972) 3 SCC 195, it was *inter alia* held as under:

“4. Aggrieved by this decision both the plaintiff and the defendant went up in revision to the High Court of Andhra Pradesh. The Court accepted the revision petition of the plaintiff but rejected that of the defendant. It stayed the operation of the suspension order as well as the proceeding in the enquiry. It is as against that decision these appeals have been brought.

5. In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong ; may be in accordance with law or may not be in accordance with law ; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under Section 115 of the Civil Procedure Code: See the decisions of this Court in Pandurang Dkoni Chougule v. Maruti Hari Madhav , D.L.F. Housing & Construction Company Private Ltd., v. Samp Singh and Ors.

16. In ***State of A.P. v. Vatsavyi Kumar Venkata Krishna Verma*** (1999) 2 SCC 297 while discussing the scope of jurisdiction under Section 115 CPC, it was *inter alia* held as under:

“ So far as Section 115 is concerned, the scope and ambit of the revisional jurisdiction under the said Section as conferred on the High Court is now well settled by a series of decisions of this Court. It is obvious that the revisional jurisdiction under Section 115, C.P.C. or for that matter under pan materia provision of Section 21 of the Act is not an appellate jurisdiction and pure



finding of fact reached by the court of appeal could not be interfered with. The Court can interfere in revision only when it is satisfied that the findings reached by the court below suffer from any jurisdictional errors. In this connection, we may usefully refer to two decisions of this Court. In the case of Hari Shankar & Ors. v. Rao Girdhari Lal Chowdhury reported in AIR (1963) SC 698, Hidayatullah, J. speaking for two other learned Judges distinguished revisional jurisdiction under Section 115 C.P.C. with revisional jurisdiction under other Acts which conferred wider jurisdiction on the High Court, the following observation in paragraph 7 of the report deserve to be noted in this connection.

"7. The distinction between an appeal and a revision is a real one. A right of appeal carry with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. Under S.115 of the Code of Civil Procedure, the High Court's powers are limited to see whether in a case decided there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone."

17. Similarly, in ***Shiv Sakti Coop. Housing Society, Nagpur v. Swaraj Developers and Ors.*** (2003) 6 SCC 659, Supreme Court inter alia held as under:

" 13- First aspect that has to be considered is the respective scope of appeal and revision. It is fairly a well settled position in law that the right of appeal is a substantive right. But there is no such substantive right in making an application under Section 115. Though great emphasis was laid on certain observations



in Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat (AIR 1970 SC 1) to contend that appeal and revision stand on the same pedestal, it is difficult to accept the proposition. The observations in the said case are being read out of context. What was held in that case related to the exercise of power of a higher court, and in that context the nature of consideration in appeal and revision was referred to. It was never held in that case that appeal is equated to a revision.”

18. Thus, it has repeatedly been held that the scope of revisional jurisdiction is very limited. It can be exercised only if the Trial Court has exceeded the jurisdiction or exercised the jurisdiction not vested in it by law. The revisional jurisdiction can also be exercised if, there is any material irregularity or illegality.
19. This Court in its revisional jurisdiction cannot replace its view in place of the view already been taken by the Trial Court. Learned counsel for the petitioner has heavily relied upon Clauses A and B of the supplementary memorandum of settlement dated 23rd January, 2018. Clauses A and B are reproduced herein below:

“A. That it is mutually agreed that an amount of Rs.45.00 Lacs shall be paid by Sh. Ramesh Bhagat to RVAGIL as repayment of Loan availed on or before 01.09.2014 and interest thereon shall be waived on withdrawal of Civil Suit No. 570 of 2016 pending in the Hon’ble Rohini Courts filed by M/s Khanna Brothers.

B. RVAGIL and Sh. Rohit Bhagat shall fully co operate with each other for recovering Appz INR 40 Lacs due from Gangotri Enterprises Ltd. on account of supplies made to M/s Gangotri Enterprises Ltd. by M/s Khanna Brothers,



Faridabad. The Balance INR 35 Lacs shall be paid by Sh. Rohit Bhagat as full and final settlement of Khanna Brothers account. A sincere effort shall be undertaken by Sh. Rohit Bhagat for withdrawal of Civil suit No. 570 of 2016 pending in the Hon'ble Rohini Courts filed by M/s Khanna Brothers. However RVAGIL shall not have any sort of liability in the aforesaid matter.

20. The bare perusal of Clauses A and B of supplementary memorandum of settlement dated 23rd January, 2018 makes it clear that Sh. Ramesh Bhagat, who is stated to be the Director of the respondent –company HAS agreed to pay an amount of Rs.45 lacs to the company, on account of repayment of loan availed, on or before 1st September, 2014. It further states that the interest on such loan shall be waived on withdrawal of civil Suit No. 570/2016.
21. It is not disputed that the Civil Suit No. 570/2016 is a suit filed by the petitioner against the respondent in which the present application has been filed. However, the reading of Clause A nowhere leads to an inference that the company has admitted its liability towards the petitioner. Similarly, in Clause B, the company and Sh. Rohit Bhagat have agreed to cooperate with each other in recovering of Rs.40 lacs from Gangotri Enterprises Ltd. on account of supplies made by the petitioner herein.
22. This Clause further reads that the balance amount of Rs.35 lacs shall be paid by Sh. Rohit Bhagat as full and final settlement of Khanna Brothers. This is also something which is being settled between Sh. Rohit Bhagat and the Company. There is no unambiguous admission



on the part of the company regarding the liability towards the petitioner.

23. I consider that all these matters require evidence. This court do not consider that the learned Trial Court has either exceeded the jurisdiction or has exercised the jurisdiction which is not vested in it. The facts placed before this Court, also do not indicate that there is any material irregularity or illegality committed by the learned Trial Court.
24. In view of the discussions made hereinabove, the present petition along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

JULY 26, 2022

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