ODC- 2

APDT/6/2022
With
CS/22/2022

IA NO.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

M. D. CREATIONS AND ORS.
-VS-
POONAM GUPTA AND ANR.

BEFORE:
The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE PRASENJIT BISWAS
Date : 19th January, 2023

<u>*Appearance:*</u>
Mr. Rahul Karmakar, Adv.
Mr. S. K. Poddar, Adv.
Ms. Raj Lakshmi De, Adv.
Mr. Sounak Mukherjee, Adv.
..for the appellant/respondent nos.1 to 3

Mr. M. Katra, Adv.
Mr. F. Ghaffar, Adv.
..for the respondents

The Court : The dispute pertains to providing the maintenance facilities and/or amenities in terms of the maintenance service agreement executed contemporaneously with the deed of lease in respect of a shop situated at 28/2, Shakespeare Sarani, Kolkata 700 078. The said agreement provides the obligations and duties of the lessor and the corresponding obligation of the lessee for smooth and continuous enjoyment of the demised shop room. Admittedly, the lease expired and the dispute was raised in relation thereto and since the said deed of lease contains an arbitration clause, the parties have exhausted the remedy of alternative dispute resolution; rather informed that the arbitrator has entered into a reference and the matter is still in seisin thereof. The obligations and liabilities imposed under the said maintenance service agreement were alleged to have been violated and though the possession remained with the appellants, no payment on account of the said agreement was made to the respondents. Primarily for recovery and enforcement of the terms of the maintenance service agreement, the suit was filed. A composite application under Order XII Rule 6 and Order XXXVIII Rule 5 of the Code of Civil Procedure was taken out. The trial court proceeded to decide the said application treating the same to have been filed under Order XII Rule 6 and passed the order directing the appellants to deposit a sum of Rs.8,11,075/- being an admitted amount by way of judgment on admission.

The learned advocate for the appellants is very much vocal in his submission that neither there is any clear, unequivocal and/or explicit admission made by the appellants in the pleadings or otherwise nor the ingredients required to be pleaded for relief under Order XXXVIII Rule 5 are eminently present in the said application and, therefore, the trial court ought not to have proceeded to pass the impugned order. It is further submitted that there is serious dispute in relation to discharge of obligation on the part of the respondents under the aforesaid agreement and, therefore, the disputes would not come within the periphery of Order XII Rule 6 of the CPC nor would invite the judgment on admission to be passed.

On the other hand, the respondents contended that the agreement being the subject-matter of the dispute in the suit is clear, unambiguous and invites no debate on law or facts for the appellants to make payment of the sum reserved therein. It is further submitted that even after the expiration of the period, for which the said demised shop room was let out, by efflux of time, the appellants continued in possession and are still enjoying usufruct therefrom. He, thus, submits that there is no infirmity in the impugned order and, therefore, no interference is called for.

On the conspectus of the aforesaid facts, we are not unmindful of the proposition of law that in order to succeed under Order XII Rule 6 of the Code, the admission in the pleadings or otherwise should be clear, explicit, unambiguous and unconditional. The moment the Court finds that there is no categorical admission in the pleadings or otherwise, it does not invite invocation of the provision incorporated under Order XII Rule 6 of the Code. Legislative intent with sublime incorporation of the aforesaid provision is to avoid an unnecessary delay in adjudication of the claim in its entirety or forcing the parties to go for a trial. If the admission is clear and unconditional, the Court is vested with the power to pass the judgment on admission. The purpose is not only to shorten the litigation but to grant immediate relief on the basis of such admission, provided the defendants cannot wriggle out of such admission on any of the well-known legal parameters recognised under the aforesaid provision. Though the court should examine the admission scrupulously, yet the court cannot ignore the surrounding facts which may lead to an admission of the liability or the claim either in part or in its entirety. The expanding language used in the said provision manifestly conveys the intention of the law that such admission is not restricted to the pleading but beyond it. Any other interpretation to the expression "or otherwise" appearing therein would be rendered otiose. The legislature does not use any expressions or words in the statute unnecessarily but gives the word a definite meaning and object and, therefore, it is the duty of the court while interpreting the provision to harmoniously construe the same in juxtaposition with the object and purpose behind its incorporation and to make it workable as opposed to render it redundant.

We do not find any infirmity on the part of the court in exercising the inherent powers for rendering justice on equitable principles. The provision relating to inherent power is founded upon a legal principle of *ex debito justitiae* meaning thereby to secure the ends of justice and not to its peril.

In the instant case, we find that though the ingredients required under Order XXII Rule 6 are conspicuously absent, yet the agreement between the parties, prima facie, appears to be in existence and so long the possession of the appellants in respect of the demised shop room is not disturbed, he cannot scape the liabilities entrusted under the said agreement. The dispute raised in this regard is founded on whether the terms and conditions and/or obligations foisted upon the respondent have been complied with or not, which is definitely a matter of trial and cannot be decided in isolation at this stage. Be that as it may, the obligation of the applicant to make the payment is evident and it is the duty of the appellants to show bona fide that the defence raised in the suit is not sham or a bogus dispute. We, therefore, by applying the powers entrusted upon the appeal court, modify the order to the extent that the appellants shall deposit a sum of Rs.8 lakh with the Registrar, Original Side of this Court within 45 days from date.

In the event of the deposit, the Registrar, Original Side, shall invest the said amount in an interest bearing fixed deposit in any nationalised bank and shall continue to renew the same until further order passed in the said suit. It is further made clear that the said amount deposited by the appellants shall not be permitted to be withdrawn by the by the respondents until the final decision is taken in the said suit.

The appeal and applications, if there be any, are accordingly disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)

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