

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

Present :

The Hon'ble JUSTICE HARISH TANDON

&

The Hon'ble JUSTICE PRASENJIT BISWAS

**APD/4/2022
With
CS/144/2016
IA NO:GA/1/2022**

**ENGINEERING PROJECTS INDIA LIMITED
VS
SQUARE FOUR ASSETS MANAGEMENT AND
RECONSTRUCTION COMPANY PRIVATE LIMITED AND ORS.**

With

OCOT/8/2022

**ENGINEERING PROJECTS INDIA LIMITED
VS
SQUARE FOUR ASSETS MANAGEMENT AND
RECONSTRUCTION COMPANY PVT. LTD. AND ORS.**

Appearance:

For the Appellant :

Mr. Anindya Kumar Mitra, Sr. Adv.

Mr. Arnab Chakraborty, Adv.

Ms. Pragya Bhowmick, Adv.

Mr. Sukalyan Chakraborty, Adv.

For the Respondents :

Mr. Jayanta Kumar Mitra, Sr. Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Zeeshan Haque, Adv.

Ms. Sristi Barman Ray, Adv.

Mr. Subranil Dey, Adv.

Ms. Sudipta Paul, Adv.

Judgement on :

9th June, 2023.

Harish Tandon, J. (Oral)

1. Both the appeal and the cross objection are filed by the respective parties assailing a common judgment dated 3rd November, 2022 by which an application under Order XII Rule 6 of the Code of Civil Procedure was allowed.

2. By the impugned order, the Trial Court has held that there is a clear admission on the part of the applicant with regard to a sum of Rs.16,01,89,691/- and Rs.12,89,18,790/- and further directed to pay an interest at the rate of 18% from 01.10.2020 to 15.4.2022 within six weeks from the date of the judgment.

3. At the very outset we must record that the findings rendered in the impugned order espousing the law relating to the provisions contained under Order XII Rule 6 of the Code of Civil Procedure is sought to be challenged by the plaintiffs/respondents treating the same

to be erroneous which also perceived by us to be so. We are unable to comprehend the proposition of law laid down in the impugned judgment and arriving at the conclusion, which in our opinion are mutually destructive.

4. Order XII Rule 6 of the Code of Civil Procedure bestows power upon the Court to pass a judgment on admission provided such admission is found in pleading or otherwise either oral or in writing, either on its own motion or on an application taken out by any party thereto without waiting for determination for any other questions involved in the said litigation. The law enunciated in this regard is explicit to the extent that mere admission does not invite the Court to pass a judgment thereupon unless such admission is clear unequivocal, explicit and unconditional. The expressions 'may' and 'make such order' convey a legislative intent that such conferment of power upon the Court is discretionary and depend upon the facts of the given case. It is the ardent duty of the Court to arrive at the definite conclusion that the admission made in the pleading or otherwise is clear and unequivocal and does not require any roving enquiry thereupon. The moment the admission is unequivocal and unconditional, the Court may exercise such power and pass a judgment on admission without waiting or investing time for trial. The legislative intent underlying

incorporation of Order XII Rule 6 can be visualized from the language employed therein that an immediate relief is granted to the party to the proceedings provided an admission is made by the other side in relation to the issues involved therein either in its entirety or partially. There is no impediment on the part of the Court to pass a judgment on admission by granting the part decree or relegating the parties to go for trial in respect of other issues which appears to the Court contentious.

5. Series of judgments relied upon the respective parties unequivocally and uniformly laid down the proposition of law that every admission may not invite the Court to pass a judgment on admission but such admission which is clear unequivocal and unconditional and does not require any trial to go on, the Court may pass a judgment on admission. The earliest judgment in this regard can be traced in relation to '**Birendra Nath Mallick vs. Brahma Brata Roy**' reported in **MANU/WB/0224/1946** where the Calcutta High Court have enunciated a proposition that while embarking the journey to ascertain the clear admission made by the parties, it is not permissible for the litigant to split the admission or dissect from the context and pass a judgment on admission in relation to a part thereof ignoring the other portions of the admission in the following :

"From what has been said above it is more than reasonably clear that the plaintiff is seeking to split the admission made

by the Defendant No.2, so as to take advantage of one part of it and to repudiate the other part. The admission of this Defendant in so far as it is an admission of the Plaintiff's claim in the suit is a strictly conditional one. The Defendant No.2 is saying that the Plaintiff is entitled to receive the amount of Rs.2,400 but subject to this, viz., that he is entitled to receive it from this Defendant and not from any of the others. The Plaintiff seeks to avail himself of the admission of liability while ignoring the condition thereof although the condition is an essential part of the admission itself."

6. In the case of ***Himani Alloys Ltd. vs. Tata Steel Limited*** reported in **2011 (15) SCC 273**, the facts involved therein appear to us somewhat similar to the facts involved in the instant case. In the said case, reliance was placed upon the minutes of the meeting held between the parties and the admission was sought to be culled out therefrom to the extent that the defendant has agreed to pay a sum indicated therein unequivocally and, therefore, there is no impediment on the part of the Court to pass a judgment on admission. The Apex Court while assimilating the facts discerned from the records, found that there was an admission in the minutes of the meeting, but proceeded to decide whether such admission can be regarded as unconditional or categorical so as to invite the Court to exercise its discretion to pass a judgment on admission. The Apex Court held that both parties had agreed and such

agreement has been reproduced in the minutes of the meeting which indicates that certain figures indicated therein needs to be verified and further steps are required to be taken thereupon, cannot be regarded as an unequivocal and categorical admission to exercise the discretionary powers conferred under Order XII Rule 6 of the Code of Civil Procedure in the following:

“9. *Thereafter, in paras 3, 4 and 5, there is a reference to both the parties agreeing to provide particulars, agreeing to hold further discussions on 26-12-2000 and the respondent agreeing to check up its records to find out the correctness of certain entries. Thereafter the minutes conclude that the “final figure will be arrived at the meeting accordingly”. When the minutes merely notes certain figures and states that they are tentative and both the parties will verify the same and says that the final figure will be arrived at the next meeting, after discussions, we fail to understand how the same could be termed as an “admission” for the purpose of Order XII Rule 6 of the Code.*

10. *Another aspect regarding the minutes dated 9-12-2000 requires to be noticed. The minutes do not refer to any admission by Himani (the appellant) to pay any amount to TISCO (the respondent). If a buyer states on 9-12-2000 that his account as on 31-3-1999 shows a balance of amount X to the credit of the supplier, it cannot be treated as an admission that the said amount X was due to the supplier on 9-12-2000. In a continuing account, it may be possible that between 31-3-1999 and 9-12-2000, there may be debits to the account, or “reversal of credits”*

or “settlement of the account”. We, therefore, hold that there was no admission on 9-12-2000 which could result in a judgment under Order XII Rule 6 of the Code.

11. *It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India, Karam Kapahi v. Lal Chand Public Charitable Trust and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha.) There is no such admission in this case.”*

7. It discerns from the above report that at the time of exercising the power conferred under Order XII Rule 6 of the Code, the Court must arrive at the definite finding that the admission is categorical, consciously and deliberately made by the party against whom a judgment is contemplated. It is no longer *res integra* that the

Court must be cautious and careful in exercising the discretion conferred under Order XII Rule 6 of the Code as such judgment is passed without any trial nor the parties are permitted to adduce evidence in this regard but exercises at the pre-trial stage having a permanent impact on the right to defend and may impede the right to remedy against the same.

8. We are not unmindful of the proposition of law that the appellate court should be slow and circumspect in interfering with the discretionary order passed by the trial Court unless such discretion appears to be irrational, unreasonable and beyond the peripheral of law enunciated in this regard. Even if there is a possibility of two eventualities; one has been adopted by the trial Court, the appellate Court should not interfere with such order even if it thought fit to accept the other eventuality. The aforesaid observations get impetus for the simple reason that the provisions contained in Order XII Rule 6 of the Code does not make it imperative to pass a judgment on admission in all conceivable situation, but is a discretionary power conferred upon the Court depending upon the nature of the admission made by a party either in the pleading or otherwise.

9. The word “otherwise” incorporated in the said provision expanded the horizon of the applicability of Order XII Rule 6 of the Code as it is no longer restricted to the pleadings and the admission made

otherwise than the pleading can also be regarded as an admission for the aforesaid purposes and a judgment on admission can be passed thereupon. Any other interpretation to the word “otherwise” would frustrate the legislative intent nor the applicability of the aforesaid provision should be squeezed to the pleadings only. Admittedly, if an admission has been made otherwise than in the pleadings, which in the instant case allegedly made in the memorandum of understanding executed by the parties, squarely comes within the four corners of the said ‘otherwise’ and we do not find any ambiguity to the proposition that the Court is not denuded of any power to pass a judgment on admission thereupon.

10. The question still begging an answer as to what may constitute an admission within the ambit of Order XII Rule 6 of the Code, and what may not ? The plethora of judgments rendered by different Courts including the High Court have uniformly laid down the proposition of law that such admission must be clear, explicit, categorical and unconditional and consciously made by the party being aware of the consequences thereof. Every admission may not come within the mischief of the aforesaid provision. In the event such admission is found to have been made upon happening of events or in other words upon fulfilment of the conditions made therein, the

conditional admission cannot be regarded as an admission for the purpose of the aforesaid provision and the parties may be relegated to trial to prove their respective cases in accordance with law.

11. Such being the proposition of law perceived from different decisions rendered by the Court which can further be fortified in a subsequent decision of the Supreme Court rendered in the case of **S.M. Asif vs. Virender Kumar Bajaj** reported in **(2015) 9 SCC 287** in the following :

“8. The words in Order XII Rule 6 C.P.C. “may” and “make such order ...” show that the power under Order XII Rule 6 C.P.C. is discretionary and cannot be claimed as a matter of right. Judgment of admission is not a matter of right and rather it a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 C.P.C. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent’s claim.”

12. The minutes of the meeting between the appellant and the plaintiff held on 1st October, 2020 was in relation to negotiate the rate of the premises being 50, Chowringhee Road, Kolkata- 700 071 occupied by the appellant and the admission intended to be culled out therefrom. The gist of a consensus arrived in the said meeting itself reproduced in

the form of the minutes would reveal that the appellant has agreed to quit and vacate the said 8th and 9th floor of the said premises on or before 31st December, 2020. It further records that the parties have mutually agreed that the suit which has been instituted by the plaintiff/respondent shall be withdrawn after the signing of the minutes of the said meeting and appose the same, it was mutually agreed that the appellant would pay a sum of Rs.16 crores and odd in three instalments; the first instalment would be payable after the withdrawal of the said case.

13. There is no ambiguity in our mind that the appellant has agreed to pay the aforesaid sum to the plaintiff/respondent in relation to the said subject property but the question still boils down to one whether such admission can be regarded as conditional or unconditional one ? The record would reveal that both the parties have failed to honour the terms and conditions agreed upon as recorded in the minutes of the meeting. Neither the appellants have vacated the premises in the month of December, 2020 nor the plaintiff/respondent withdrew the said suit. It further appears that the plaintiff/respondent thereafter resiled from the same and claimed the interest in respect of the amount which, according to it, is due and payable by the appellant whereas the tenate of the decision taken in the said meeting would reveal that the parties

mutually agreed to waive the interest. There is no hesitation in our mind that the amount so indicated in the minutes of the meeting signed by the parties was to be paid by the appellant upon waiver of the interest. The trial Court has held that the Court should refrain from dissecting the different parts of an agreement and arrive at the agreement which appears to be independent and separate from the rest. We do not find any quarrel to the aforesaid proposition as the Court cannot re-write the agreement for the parties but must hover around the terms of the agreement and interpret the agreement on the basis of the intention gathered therefrom. The moment the agreement is in writing, the intention can be gathered from the language and/or the words used therein and, in some cases, the conduct of the parties in relation to the said consensus are also the relevant factors.

14. The trial Court has relied upon the judgment of this Court in relation to ***Motabhoy Mulla Essabhoy vs. Mulhi Haridas*** reported in **2019 CWN 713** that an admission in the pleading should not dissected and if it is found that it is made with condition, it must either be accepted or subject to the condition or not accepted at all. The aforesaid judgment throws a light on the basic ingredient required under Order XII Rule 6 by incorporating the expression “or otherwise” and, therefore, the applicability of Order XII Rule 6 of the Code is not restricted to the

pleading to expand to a thing beyond the pleading but the basic foundation for exercising the discretion under the aforesaid provision remained unchanged in the sense that the Court must arrive at the definite conclusion that the admission is unequivocal, categorical, explicit, clear and not brindled with any condition. The trial Court even after holding that the admission must be clear, unequivocal, yet it proceeded to hold:

14. *This Court is inclined to accept the principle as laid down in Birendra Nath Mallick. It would also not be out of place to state that judgements on admissions are matters of discretion and are entered subject to the particular facts before the Court. It should also be stated that the point taken on behalf of the plaintiffs with regard to sections 28(a) and 57 of The Indian Contract Act, 1872 are not relevant to the present application since the plaintiffs have not been restrained from enforcing its rights in respect of any contract. The reciprocal promise in this case does not contain any illegal component (section 57).*

15. *The admission must then be enforced as against the defendant no. 8 in conjunction with the conditions which were attached to the admission. Both the conditions form the crux of the Minutes of the Meeting and the parties must hence be directed to act in accordance with the terms which were mutually agreed by them. The application partly succeeds.*

The parties are accordingly directed to do the following :-

i) The defendant no. 8 shall pay a sum of Rs.16,01,89,691/- + Rs.12,89,18,790/- = Rs.28,91,08,481/- to the plaintiffs in the manner directed. The payment shall be made in three equal monthly installments; the first installment shall be paid within 4 weeks from the date of this judgment followed by two other equal installments payable within 3 weeks and 6 weeks respectively from the date of payment of the first installment.

ii) The defendant no. 8 shall pay occupational charges on a monthly basis from 1.10.2020 to 15.4.2022 calculated at the applicable market rate pertaining to the area and location. The plaintiffs shall be at liberty to undertake an appropriate exercise through a valuer/surveyor and inform the defendant no. 8 of the market rate as in September-October, 2022.

iii) The defendant no. 8 shall pay interest at the rate of 18% from 1.10.2020 to 15.4.2022 on the sum of Rs.28,91,08,481/- within 6 weeks from the date of this judgment.

(15.4.2022 has been taken as the closing date and the directions calculated on that basis since the plaintiffs state that the defendant no. 8 vacated the premise occupied by it after 4.4.2022 and was directed to hand over possession of the said premises to the plaintiffs by an order of Court dated 5.4.2022)

iv) The plaintiffs shall withdraw the suit being CS No.144 of 2016 and all pending applications within 2 weeks from

receiving the full payment from the defendant no. 8 as directed in this judgment.”

15. We are, therefore, unable to concur with the findings of the trial Court that the admission must be enforced in conjunction with the conditions which are attached to the admission as in our opinion, such runs counter to the law enunciated in this regard. The moment the admission is coupled with conditions, it does not invite the invocation of provision contained under Order XII Rule 6 of the Code as the party must be relegated to go for full-fledged trial and prove the case by adducing convincing evidence. One of the ingredients relating to the judgment on admission that the admission must be ‘unconditional’ has been done away with while passing the judgment on admission holding that even if the admission is subject to any condition, there is no fetter on the part of the Court to pass a judgment on admission with condition to be followed and/or implemented.

16. As indicated hereinabove, the payment of the sum was agreed subject to the condition that the plaintiff/respondent would withdraw the suit and shall be payable in three instalments, first of which shall reckon after the withdrawal of the suit. If the right to recover the said amount has not accrued as the suit has not been withdrawn, we are unable to accept the finding of the trial Court that the said amount

should be payable upon fulfilment of the conditions attached thereto. As already indicated above, both the parties have acted in defiance of the mutual consensus recorded in the minutes of the meeting. Neither the appellant vacated the premises by the end of December, 2020 nor the suit has been withdrawn. It is not safe to dissect the agreement arrived at between the parties and cull out a portion which is beneficial to either of the litigant ignoring the other part of the agreement. The Court must read the agreement as a whole without dissecting or segregating any portion thereof to arrive at a conclusion that the admission is unequivocal and clear. We do not find any huddle on the part of the Court to pass a judgment on admission, but the moment it is found that the admission is attached with conditions and the conditions have not been fulfilled nor the eventualities indicated therein have seen the light of the day, it cannot be regarded as an unequivocal and categorical admission for invocation of the power conferred under Order XII Rule 6 of the Code.

17. In view of the discussions made hereinabove, we hold that the admission is a conditional one and, therefore, the impugned order cannot be sustained. The impugned order is, thus, set aside. As a consequence whereof, the application under Order XII Rule 6 of the Code of Civil Procedure is dismissed.

18. Any observation made hereinabove shall not have any persuasive effect at the time of deciding the suit upon full-fledged trial as it is restricted to the application under Order XII Rule 6 of the Code as the determination is different than at the time of passing a judgment or decree after the parties adduce their respective evidence.

19. With these observations both the appeal and the cross-objection are disposed of.

20. Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)