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

% *Date of Decision: 02nd February, 2023*

+ C.R.P. 27/2023

SARASWATI PRINTERS

..... Petitioner

Through: Mr. Rakesh Kakar, Advocate.

versus

M/S LIFE ESSENTIALS PERSONAL

CARE PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 5048/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 27/2023 & CM APPL. 5047/2023

3. Present revision petition has been filed laying a challenge to the impugned order dated 25.11.2022 passed by the Trial Court in CS DJ/122/2016 7551/16, whereby application filed by the Plaintiff before the Trial Court under Order 12 Rule 6 CPC seeking judgment on admission has been dismissed. The Petitioner before this Court is the Plaintiff before the Trial Court and Respondent is the Defendant and parties are referred hereinafter by their litigating status before the Trial Court.

4. Pithily put, case of the Plaintiff before the Trial Court is that a commercial transaction was entered into between the Plaintiff and the Defendant and that the transactions between the parties were not limited only to the Defendant before the Trial Court but also extended

to its sister concern namely, M/s Blessings Advertising Pvt. Ltd. The Defendant Company issued various purchase orders on 19.11.2013 in favour of the Plaintiff and the work was executed as required. On 01.09.2014, a Credit Balance Outstanding was issued by the Director of the Defendant Company as well as by M/s Blessings Advertising Pvt. Ltd, for a total amount of Rs.35,31,446/- and this was a clear acknowledgement and admission of the outstanding liabilities by the Defendant. Plaintiff accepted a cheque of Rs.5,00,000/- as token money out of the outstanding dues payable by the Defendant.

5. It is the case of the Plaintiff that based on the said undertaking dated 01.09.2014, Plaintiff filed a winding up petition against the parent company i.e. M/s Blessings Advertising Pvt. Ltd. in this Court, which was allowed by an order dated 12.04.2018. An appeal filed against the said order was also dismissed by the Division Bench of this Court. It is further claimed that the Plaintiff also filed a suit for recovery of Rs.9,93,920/- on 10.02.2016 against the Defendant in another Court premised on the same undertaking dated 01.09.2014. Since the Defendant allegedly acknowledged its liability to pay, Plaintiff filed an application under Order 12 Rule 6 CPC, to which reply was filed by the Defendant and by the impugned order, the application has been dismissed by the Trial Court, which according to the Plaintiff is an erroneous order and deserves to be set aside.

6. While the Defendant was not available for arguments, the Trial Court relied upon the reply filed by Defendant to the application under Order 12 Rule 6 CPC and decided the application. The stand of the Defendant in response to the application is that after the disputes arose between the parties, the Director Mr. Sanjiv Nayyar, who had allegedly given an undertaking, resigned from the post of Directorship of the Defendant Company. In reply, it is also stated that there was

collusion between the Plaintiff and erstwhile Director Mr. Nayyar and that the sum of Rs.5,00,000/- was actually paid as full and final amount to the Plaintiff *albeit* the goods supplied by the Plaintiff were neither of the quantity as ordered nor of the required quality. It is also the stand of the Defendant that prior to the undertaking dated 01.09.2014, various e-mails were sent to the Plaintiff apprising it of the poor quality of goods supplied by the Plaintiff.

7. The Trial Court, after hearing the parties, passed the following order:-

"5. The main emphasis of the plaintiff has been on the acknowledgement/ undertaking dated 01.09.2014 which is given by the Director of the defendant company to the plaintiff. This letter and its execution by the Director has been denied by defendant company. Further it is specifically pleaded by defendant company repeatedly in their written statement that several e-mails were written by defendant to the plaintiff regarding the sub-standard goods but they were not replied by the plaintiff. Copies of these e-mails have been placed on record. Plaintiff does not deny these e-mails in specific in his replication, rather the entire replication of the plaintiff is absolutely silent on the aspect of these e-mails which were sent by defendant to the plaintiff company. This e-mail is not denied in specific even once in the entire replication.

6. Hence in view of the specific plea taken by the defendant wherein they deny the execution of this acknowledgement and their reliance on the e-mail which was not denied in replication by the plaintiff, and even Order 12 Rule 6 application of the plaintiff is silent on the aspect of these e-mails which were sent to plaintiff regarding sub-standard goods, hence plaintiff cannot be said to be entitled to judgment on the basis of admissions under Order 12 Rule 6. The defendant has raised triable issues.

7. The Counsel for plaintiff submits that this acknowledgement dated 01.09.2014 has been relied upon by Hon'ble Delhi High Court in company petition no. 244/2015 and orders were passed in favour of plaintiff on 12.04.2018 on the basis of this acknowledgement. This Court has perused the Order placed on record. One of the defences taken by defendant before Hon'ble Delhi High Court was regarding these e-mails. However it was observed by Hon'ble Delhi High Court in para 12 of the Order dated 12.04.2018 that these e-mails were pertaining to the goods which were received by Mis Life Essential Personal Care Private Ltd. which is defendant herein. The defence regarding these e-mails was rejected by Hon'ble Delhi High Court as they were not pertaining to Mis Blessings Advertising Private Ltd. who was the defendant in said company petition. As these e-mails

have been specifically pleaded and have been brought on record by defendant, there is no admission with regard to its liability by the defendant. Further this acknowledgement has been denied by defendant.

8. It is submitted by the Counsel for plaintiff that this acknowledgement was relied upon by Hon'ble Delhi High Court for the purpose of passing judgments and hence this being 'judicial admission' is binding on this defendant as well. However it is pertinent to mention here that the present respondent M/s Life Essentials Personal Care Limited was not a party to the said suit. Hence this document could not have been admitted by this defendant in the said suit which was against the different company. Further the present defendant was not a party to the said suit, hence there are no observations against the present defendant in the said company petition. Nor the present defendant has presented his case in the said company petition nor he was a party therein.

9. Secondly there are specific e-mails on record by the defendant written to the plaintiff which are dated prior to the date of acknowledgement wherein it has been repeatedly stated about the quality of the goods. Further such e-mails have not been denied by plaintiff. Hence there is no merit in Order 12 Rule 6 application and the same is hereby dismissed.”

8. Having perused the order of the Trial Court, in my view, there is no infirmity in the order dismissing the application under Order 12 Rule 6 CPC. The principles required to be followed by the Court while deciding an application under Order 12 Rule 6 CPC are well-settled and there is a wealth of judicial precedents on this aspect. I may profitably allude to a recent judgment of the Supreme Court in **Karan Kapoor v. Madhuri Kumar, (2022) 10 SCC 496**, relevant paras of which are as follows:

“23. Order 12 Rule 6 confers discretionary power to a court who “may” at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not

compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial.

...

26. On the issue of discretion of Court to pass judgment on admission, a three-Judge Bench of this Court in S.M. Asif v. Virender Kumar Bajaj [S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287 : (2015) 4 SCC (Civ) 589] made the legislative intent clear to use the word “may” which clearly stipulates that the power under Order 12 Rule 6CPC is discretionary and cannot be claimed as a matter of right. In the said case, the suit for eviction was filed by the respondent landlord against the appellant tenant. The relationship of tenancy was admitted including the period of lease agreement. The plaintiffs' claim was resisted by the defendant setting up a plea that the property in question was agreed to be sold by an agreement and the advance of Rs 82,50,000 was paid.”

9. In this regard, I may refer to another judgment of the Supreme Court in ***Hari Steel and General Industries Limited and Another v. Daljit Singh and Others***, (2019) 20 SCC 425, relevant paras of which are as under:-

“25. In the judgment in Himani Alloys Ltd. v. Tata Steel Ltd. [Himani Alloys Ltd. v. Tata Steel Ltd., (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376] , nature and scope of Order 12 Rule 6 has been considered by this Court. In the aforesaid judgment this Court has held that the discretion conferred under Order 12 Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of the judgment read as under: (SCC pp. 276-77)

“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 12 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 [Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120], Karam Kapahi v. Lal Chand Public Charitable Trust [Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753: (2010) 2 SCC (Civ) 262] and Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha [Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha, (2010) 6 SCC 601: (2010) 2 SCC (Civ) 745] .) There is no such admission in this case."

26. *In the judgment in S.M. Asif v. Virender Kumar Bajaj [S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287 : (2015) 4 SCC (Civ) 589] , this Court has held that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order 12 Rule 6 CPC. Para 8 of the judgment read as under : (SCC p. 291)*

"8. The words in Order 12 Rule 6 CPC "may" and "make such order ..." show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is 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 12 Rule 6 CPC. 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."

27. *In the judgment in Balraj Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] , while considering the scope of Order 8 Rule 10 and Order 12 Rule 6 CPC, this Court has held that the court is not to act blindly upon the admission of a fact made by the defendant in the written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court.*

28. *In the aforesaid judgment, while considering the scope of Order 12 Rule 6 CPC, post amendment by amending Act, 1976 this Court has held as under : (Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] , SCC p. 408, paras 21-23)*

"21. There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides as under:

'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 up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.'

22. *This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this amendment are given below:*

'Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a 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. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule.'

23. *Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.*

29. *By applying the ratio laid down by this Court in the aforesaid judgments, it is to be held that there are no categorical and unconditional admissions, as claimed by the respondent-plaintiffs. In view of the stand of the appellants that, pp. 3 and 4 of the agreement dated 3-5-2005 are tampered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the appellants. Mere admission of entering into arrangement/ contract on 7-4-2005 and 3-5-2005 itself cannot be considered in isolation, without considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement is fabricated as claimed, post-trial it goes to the root of the case on the claim of the respondent-plaintiffs. Hence, we are of the view that the aforesaid judgments fully support the case of the appellants."*

10. From a reading of the aforementioned judgments, it is clear that while deciding an application under Order 12 Rule 6 CPC, the Court is

required to examine if there are clear and unequivocal admissions of liability justifying a decree on admission. In the present case, as rightly held by the Trial Court, the Defendant has not made any unequivocal or unambiguous admission of any liability to pay and on the contrary, a defence has been raised questioning the very acknowledgment/undertaking dated 01.09.2014, heavily relied upon by the Plaintiff. Defendant has questioned the alleged undertaking on the ground that the same was in collusion with the erstwhile Director of the Defendant. Defendant has also repeatedly averred that several e-mails were written to the Plaintiff regarding the deficient quantity as well as quality of the goods supplied by the Plaintiff, which are not denied in the replication. Insofar as the reliance on the acknowledgement by the Plaintiff being the basis of the judgment in the company petition is concerned, the Trial Court has recorded a categorical finding, after perusing the order dated 12.04.2018 in Company Petition No. 244/2015, that the present Defendant was not a party in the Company Petition, as the Respondent therein was M/s Blessings Advertising Pvt. Ltd., which is a different entity. The Trial Court has also noted that the e-mails relied upon by the Defendant are all prior to the acknowledgement, implying thereby that with the disputes having arisen between the parties, regarding the quantity and quality of the goods supplied, the acknowledgement is questionable.

11. Once the Defendant has raised these specific defences in the written statement, which may be right or wrong, it cannot be said at this stage that there is an admission entitling the Plaintiff to a decree under Order 12 Rule 6 CPC. As held in ***Hari Steel and General Industries Limited and Another (supra)***, a decree on admission should not be lightly passed by the Court as the decree is without a trial and particularly in a case where the Defendant raises a defence

which questions the stand of the Plaintiff and needs trial. In any case, a bare perusal of the provisions of Order 12 Rule 6 CPC shows that the Legislature has carefully used the word 'may' and not 'shall' thereby emphasising the fact that even where there are unequivocal admissions by the Defendant, it is the discretion of the Court to decree the suit on admissions or not. This Court does not find any error in the discretion exercised by the Trial Court and it is the settled law that unless the exercise of discretion is perverse, interference ought not to be made by the Higher Court. This well-settled principle emerges from the judgment of the Supreme Court in *Wander Ltd and Another v. Antox India P. Ltd., 1990 Supp SCC 727*.

12. In view of the aforesaid, there is no merit in the revision petition. Revision petition along with pending application is accordingly dismissed.

13. It is made clear that the observations made in the present judgment are only for the purpose of deciding the present revision petition and will have no bearing on the adjudication of the merits of the suit.

JYOTI SINGH, J

FEBRUARY 02, 2023/rk/shivam/kks