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

% Judgment delivered on: 05.04.2023

+ CM(M) 1122/2022 & C.M. No. 46161-62/2022

ALP OVERSEAS PVT LTD

..... Petitioner

versus

AXIS BANK LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Samaksh Goyal, Advocate

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the orders dated 12.04.2022 and 17.08.2022 passed in CS No. 666/2018 titled '*ALP Overseas Pvt. Ltd vs. Axis Bank Ltd.*', whereby the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter as "CPC") filed by the petitioner/plaintiff was kept pending and not decided on the basis that the application under Order VII Rule 11 CPC was dismissed and the issue of limitation would be decided at the end of trial alongwith other issues.

2. Vide the order dated 17.08.2022 in the aforesaid suit, the learned Trial Court had also dismissed the application under Section 114 read with Section 151 of CPC seeking review of the order dated 12.04.2022.
3. Learned counsel for the petitioner submits that the refusal to decide the application under Order XII Rule 6 CPC by the learned Trial Court on the basis that the application under Order VII Rule 11 CPC was decided in favour of the petitioner/plaintiff by the learned Trial Court appears to have no basis or nexus.
4. The advance notice of the present petition was served upon the respondent. Learned counsel submits that notice of the present petition alongwith the copy of the petition was served by hand upon the learned counsel for the respondent/defendant at the concerned branch. Despite service, no one appears for respondent today.
5. This Court has considered the submissions made by learned counsel for the petitioner as also perused the impugned order
6. It is observed that the learned Trial Court referred to the disposal of the application under Order VII Rule 11 CPC to predicate its refusal to decide the application under Order XII Rule 6 CPC. The order appears to be bereft of any reasons, much less any sound reason on the basis whereof an application under Order XII Rule 6 CPC was kept pending for the reason that an application under Order VII Rule 11 CPC was dismissed. It seems to be without any rationale and predicated on an aspect which does not concern the application under Order XII Rule 6 CPC.
7. Both the applications are predicated on different aspects covering different situations of the same suit.

8. The provisions of Order XII Rule 6 CPC are applicable in situations where in the submission of the plaintiff there are unequivocal admissions made by defendant, which would lead to passing of a decree whereas the provisions of Order VII Rule 11 CPC would be confined to aspects, which have no bearing or any nexus with the consideration required under Order XII Rule 6 CPC.

9. Having regard to the aforesaid, this Court deems it fit to quash the impugned order dated 12.04.2022 as also order dated 17.08.2022 and consequently direct the learned Trial Court to take up the application under Order XII Rule 6 CPC filed by the petitioner/plaintiff and dispose of the same in accordance with law.

10. Learned counsel appearing for the petitioner/plaintiff undertakes to inform the respondent/bank about the present order.

11. Copy of this order be sent to the respondent at the address given in the memo of parties.

12. In view of the aforesaid, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 5, 2023

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