IN THE HIGH COURT AT CALCUTTA

ORIGINAL SIDE

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 1 of 2022

In

CS-COM 432 of 2024

(Old No. CS 247 of 2022)

Utkarsh India Limited

Versus

Buildstar Infra Private Limited

Mr. Chayan Gupta
Mr. Souradeep Banerjee
Mr. Dwip Raj Basu

... For the plaintiff.

Mr. Rabindra Kumar Mitra
Mr. Sourjya Das
Ms. Poulami Bhowmick

... For the defendant.

Hearing Concluded On : 20.08.2024

Judgment on : 10.09.2024

Krishna Rao, J.:

1. The plaintiff has filed the present application being G.A. No. 1 of 2022 in CS-COM 432 of 2024 (Old No. C.S. No. 247 of 2022) praying for judgment upon admission or a direction upon the defendant to furnish security of Rs. 31,55,799/-.

2. The plaintiff has filed the suit for a decree of sum of Rs. 31,55,799/- along with interest at the rate of 18% per annum. After negotiation between the plaintiff and the defendant, it was agreed that the defendant will place purchase orders and the plaintiff will supply crash barriers of diverse specifications to the defendant. The plaintiff will immediately raise invoices and the defendant would make payment immediately after receipt of invoices failing which the defendant would be liable to pay interest at the rate of 18% per annum. It was also agreed between the parties that they would maintain a current, open, running and continuous account. The defendant would make ad hoc payments from time to time and the same would be adjusted against invoices raised by the plaintiff.

3. The claim of the plaintiff in the present suit only for the period from 5th March, 2021 to 22nd April, 2021. In between 5th March, 2021 to 14th April, 2021, the defendant has placed verbal purchase orders to the plaintiff for supply of WBEAM Crash Barriers with accessories. On receipt of the purchase orders, the plaintiff has supplied materials to the defendant and the same was duly received by the defendant without any objection. After supply of materials, the plaintiff has raised four (4) invoices which were duly received by the defendant without any objection. On 23rd April, 2021, the defendant has paid an amount of Rs. 8,50,000/- to the plaintiff. Out of the said amount, an amount of Rs. 12,195/- was adjusted against the pending dues of the plaintiff and Rs. 8,37,805/- was adjusted against the amount of four invoices raised by the plaintiff. After adjustment of the said amount, an amount of Rs.25,20,606/- remains due and outstanding against the defendant.

4. Thereafter, the defendant did not paid any further amount to the plaintiff. The plaintiff has sent a detailed Ledger to the defendant and on receipt of the same, the defendant by a letter dated 4th January, 2022, admitted that an amount of Rs.25,20,606/- is due and payable to the plaintiff and the defendant agreed that the defendant will clear the pending due within six months. In the said letter, the defendant has stated that the first instalment of Rs. 8,00,000/- will be paid in the month of January 2022 and the remaining amount will be paid within a period of six months.

5. The defendant has not paid any amount as agreed by the defendant as per communication dated 4th January, 2022. On 22nd June, 2022 and 25th June, 2022, the plaintiff had sent emails to the defendant calling upon defendant for making payment but inspite of receipt of email, the defendant has not paid any amount. On 6th July, 2022, the plaintiff has sent legal notice to the defendant for payment, the same was duly served upon the defendant but had neither paid the amount nor has sent any reply.

6. On 5th August, 2022, the defendant approached the plaintiff and expressed its desire to settle the dispute amicably. It was decided that the defendant will pay the full and final settlement of Rs. 27,50,000/- in two installments within 15th September 2022. The defendant has issued a cheque of Rs. 7,50,000/- dated 23rd August, 2022 and assured that another cheque would be issued within 15th September, 2022. The cheque issued by the defendant was presented for encashment but the same was dishonored with the reason "Funds Insufficient".

7. Learned counsel for the plaintiff submits that the defendant by a communication dated 4th January, 2022 has admitted the amount of Rs.25,20,606/- is due and payable to the plaintiff and has also issued cheque of Rs. 7,50,000/- which was dishonored with the reason "Funds Insufficient". The plaintiff says that the defendant clear and unequivocally admitted the claim of the plaintiff and thus the plaintiff is entitled to get judgment on admission.

8. Learned Counsel for the plaintiff in support of his submissions relied upon the following judgements.

i. *(2000) 7 SCC 120 (Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & Ors.).*

ii. *(2010)4 SCC 753 (Karam Kapahi & Ors. Vs. Lal Chand Public Charitable Trust & Anr.).*

iii. *(2011) 2 CHN 527 (Adhunik Ispat Limited Vs. Triveni Infrastructure Development Co. Limited).*

iv. *(2009) 2 CHN 20 (Shankar Charan Chattopadhyay Vs. Berger Paints India Ltd. & Ors).*

9. The defendant says that during the transactions between the plaintiff and the defendant has verbally placed purchase orders to the plaintiff. One of the specifications that the weight of the materials should not exceed 23 Kg per meter but the plaintiff has not issued any weighment certificate as such, the defendant did not have the opportunity to verify whether the said goods were in line as per the specifications of the defendant.

10. The defendant says that the credit period was extended by the plaintiff on receipt of blank cheque as security from the defendant but the defendant has not committed any default in paying the amount as per invoices raised by the plaintiff. The defendant says that in order to procure further materials, the defendant was compelled to issue in writing that an amount of Rs. 25,20,606/- is outstanding in the Ledger of the plaintiff against the defendant and due to which the defendant has issued the letter dated 4th January, 2022.

11. The defendant says that on receipt of the letter dated 4th January, 2022, the plaintiff agreed to supply further materials on 4th January, 2022 and payment had to be made by the defendant on 5th January, 2022. The defendant relied upon WhatsApp and submitted that the plaintiff has not supplied materials as per the specifications mentioned in the WhatsApp chat. The defendant says that due to supply of faulty materials by the plaintiff, the defendant had to suffer enormous loss since the defendant did not receive any payment against such faulty materials.

12. Learned Counsel for the defendant says that there is no clear, unequivocal or unconditional admission made by the defendant. He submits the document dated 4th January, 2022, is a disputed document as the plaintiff has obtained the same by coercion. He submits that the plaintiff has demanded the said letter as pre condition to supply goods to one Infratech Engineering Industry, an associate entity of the defendant to whom the plaintiff has supplied goods.

13. Learned Counsel for the defendant says that the letter dated 4th January, 2022, was issued only for the purpose to secure supply of materials by the plaintiff. He submits that if the letter dated 4th January, 2022, will read as a whole, from the second paragraph, it reveals that the said letter is conditional one and cannot be termed as admission.

14. Learned Counsel for the defendant in support of his submissions relied upon the following judgments:

i. *(2019) 20 SCC 425 (Hari Steel & General Industries Ltd & Anr. Vs. Daljit Singh & Ors).*

ii. *ILR (2003) 1 Delhi 269 (Delhi Jal Board Vs. Surendra P. Malik).*

iii. *ILR 1946 Cal 652 (Birendra Nath Malik Vs. Brahma Brata Ray).*

iv. *(2022) 10 SCC 496 (Karan Kapoor Vs. Madhuri Kumar).*

15. Heard the learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. The plaintiff has filed the present application for judgment upon admission under Order XII, Rule 6 of the Code of Civil Procedure, 1908, on the basis of the letter dated 4th January, 2022. Order XII, Rule 6 of the Code of Civil Procedure, 1908, reads as follows:

> *"**Judgement 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 judgement as it may fit, having regard to such admissions."*
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> *(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."*

16. The plaintiff has relied upon the letter dated 4th January, 2022 issued by the defendant to the plaintiff wherein the defendant has informed the plaintiff that "*we will clear the pending amount i.e., INR 25,20,606/- lying in the ledger of Utkarsh India Limited from Buildstar Infra Pvt. Ltd. will be cleared maximum by 6 months. We are not be able to clear the full amount at a glance as we have a huge financial crisis. We will pay the first payment in the month of January' 2022 appx. upto 8,00,000/- and the balance will be paid in the specified time frame mentioned above.*

In between any requirement of the materials, we will lift those with the payment at the time of lifting. Please cooperate with us to revive the situation."

17. The defendant has not denied the letter dated 4th January, 2022 but raised defence that the plaintiff has compelled the defendant to issue letter dated 4th January, 2022 to procure further materials from the plaintiff. The defendant has relied upon WhatsApp conversation between plaintiff and defendant on 4th January, 2022 and 5th January, 2022 wherein it was informed to the plaintiff that the plaintiff has supplied faulty materials. On perusing the WhatsApp massages dated 4th January, 2022 and 5th January, 2022, this Court finds that the said WhatsApp massages are connected with Infratech Engineering Industry not the defendant company. The massages also reveals that after pointing out the differences in specification, the plaintiff has delivered the specified materials to M/s. Infratech Engineering Industry and the defendant has paid an amount of Rs. 1,79,717/- to the plaintiff by way of bank transfer. The WhatsApp massages which the defendant has relied upon are not connected with the invoices of the plaintiff dated 6th March 2021, 22nd March 2021, 8th April 2022 and 22nd April 2022 total amounting to Rs. 33,58,411/- out of which an amount of Rs. 8,37,805/- is deducted and the balance amount payable by the defendant is Rs. 25,20,606/ - which corroborate with letter dated 4th January, 2022.

18. In the case of ***Uttam Sing Duggal (supra),*** the Hon'ble Supreme Court held that:

> ***"12.*** *As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the 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". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.*
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> ***13.*** *The next contention canvassed is that the resolutions or minutes of the meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent Bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors' meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and*

> *grant a decree, we think this approach is unexceptionable.”*

19. In the present case, the defendant has not denied the letter dated 4th January, 2022 wherein the defendant has categorically stated that an amount of Rs.25,20,606/- lying in the Ledger of the plaintiff and the defendant will clear the said dues by six months. The plea of the defendant that the plaintiff has compelled to issue such letter to procure further materials cannot be said to be a proper explanation. In the said letter, it was also mentioned that in between any requirement of the materials, the defendant will lift the materials with payment. The WhatsApp massages which the defendant has relied upon also against the defendant as the defendant admitted that Infratech Engineering Industry is another company of the defendant and the plaintiff has supplied materials in between 4th January, 2022 and 5th January, 2022 and the said firm paid the amount of Rs. 1,79,717/- to the plaintiff. After issuance of letter dated 4th January, 2022, the plaintiff had sent emails to the defendant on 22nd June, 2022 and 25th June, 2022, calling upon the defendant to pay the amount but the defendant had not sent any reply. The plaintiff has also sent legal notice to the defendant on 6th July, 2022 which was also received by the defendant but the defendant has not sent any reply. In all notices, the plaintiff has relied upon the letter dated 4th January, 2022, thus the plea of the defendant that the plaintiff has compelled the defendant to issue such letter cannot be relied upon.

20. In the case of ***Adhunik Ispat Limited Vs. Triveni Infrastructure Development Co. Limited*** reported in ***2011 SCC OnLine Cal 119***, the Coordinate Bench of this Court held that:

> *"Order XII Rule 6 of the Code bestows wide powers on the civil court to sift through unworthy defences and spend precious court time only on such aspects of the claim that call for adjudication. The spirit embodied in the rule cannot be whittled down to suggest that every denial of the factum of admission or every dispute of the consequent liability merits to be pushed to trial. In respect of the dishonoured cheques, a mere assertion in this case that they were issued without consideration flies in the face of the admitted transaction and the uncontroverted receipt by the defendant of the bills raised by the plaintiff. The Negotiable Instruments Act recognises that a presumption arises upon a cheque being issued that it had been so done for valid consideration. The rebuttal of the presumption cannot be by a single phrase denial of the cheques having been issued for no consideration received.*
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> *Unworthy claims and frivolous defences abound the tomes that from part of the civil court's records in pending cases. Recalcitrant parties are now given to take advantage of the known delay in the judicial process which may not be the judiciary's own doing. On a party's application based on the principle recognised in Order XII Rule 6 of the Code, the opponent is afforded a chance to both discredit the admission and explain away the liability thereunder. In Uttam Singh Duggal the Supreme Court found that the quality of the defence was such that the admission virtually appeared in the affidavit filed on behalf of the defendant in that case. It is by the same test that the factum of admission of the ledger accounts and the two cheques stands established in the present case. And, there is no attempt by the defendant to explain away the admission save the bald assertion as to the poor quality of goods or lack of consideration in relation to the cheques. After all, the goods were not supplied subsequent to the ledger accounts being admitted by the defendant or subsequent to either of the cheques being issued."*

In the instant case even after receipt of legal notice, the defendant has issued a cheque of Rs. 7,50,000/- dated 23rd August, 2022 of ICICI Bank being the part payment and the same was duly informed to the defendant by an email dated 31st August, 2022. The cheque was dishonored with the reason “Funds Insufficient” on 31st August, 2022. The defendant has now taken the plea that a blank cheque was by the defendant as security. As per the case of the defendant, the plaintiff has not supplied the materials as per specifications, the letter dated 4th January, 2022, was issued on being compelled by the plaintiff and the cheque was issued for security. Considering the above, this Court unable to accept the stand of the defendant.

21. This Court considered the judgments relied by defendant. There is no dispute with regard to the law decided by the courts in the judgments but the facts and circumstance of the present case is distinguishable from the facts and circumstances of the cases referred by the defendant. As the facts are distinguishable and thus this Court has not elaborately discussed the said judgments.

22. For the reasons aforesaid, this Court allows prayer (a) of notice of motion for judgment upon admission. The defendant is directed to pay Rs.25,20,606/- to the plaintiff along with interest at the rate of 18% per annum from 1st May, 2021 till realization of the said amount.

23. **G.A. No.1 of 2022** is **disposed of**. Accordingly **CS-COM No. 432 of 2024 (Old No. C.S. 247 of 2022)** also **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)