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

% **Date of order: 15th July, 2024**

+ **C.R.P. 15/2023**

M/S AGGARWAL PROMART PVT. LTD.Petitioner

Through: Ms.Reeta Chaudhary Advocate

versus

**M/S KALKA PROMOTERS AND DEVELOPERS PVT. LTD. &
ORS.Respondents**

**Through: Mr.Pradeep Kumar and Mr.Arpit
Singh, Advocates for R-1 and 2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of petitioner seeking setting aside of the impugned order dated 7th November, 2022 passed by the learned Additional District Judge – 02, Shahdara, Karkardooma Courts, Delhi in civil suit bearing no. 118/2017.

2. The relevant facts leading to filing of the instant petition are as follows:

- a. It is stated that the respondents approached the petitioner entity seeking a loan advancement of Rs. 30,00,000/- for their business needs and undertook to repay the same before



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31st March, 2016.

- b. Pursuant to the aforesaid, the petitioner advanced a loan amounting to a sum of Rs. 29,00,000/- through cheques/RTGS/NEFT at an interest @ 15% p.a. to the respondents.
- c. Upon failure in repayment of the loan amount and after several reminders, the petitioner served the respondents with a legal notice dated 29th November, 2016 in response of which the respondents sent a reply denying the aforesaid advancement of loan by the petitioner.
- d. Consequently, the petitioner/plaintiff filed a civil suit for recovery of sum of Rs. 42,29,714/- against the respondents/defendants before the learned Trial Court. In the said civil suit, the petitioner filed an application under Order XII Rule 6 of the CPC to pass a decree in the above said civil suit as the respondents had allegedly admitted to the petitioner's claim through the documents and that their denial in the written statement is vague and evasive.
- e. The learned Trial Court dismissed the aforesaid application vide order dated 7th November, 2022, being aggrieved by which the petitioner has filed the instant revision petition.

3. Learned counsel appearing on behalf of petitioner submitted that the impugned order is bad in law and is liable to be set aside since the same has



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been passed without taking into consideration the entire facts and circumstances as well as the settled position of law.

4. It is submitted that the learned Trial Court failed to appreciate that in the written statement filed on behalf of the defendants No.1 and 2/respondents No.1 and 2 herein, they have admitted the facts which have been stated in the plaint.

5. It is submitted that the respondent No. 2 had filed a balance sheet and under the heading “Loans and advance from related party” therein, it is stated that the respondents took a loan amounting to Rs.29,00,000/- from the petitioner which the learned Trial Court failed to take into consideration.

6. It is further submitted that since the respondents have not disputed the liability of admission of the said loan amount, no trivial issues remain for trial, and therefore, the suit of the petitioner may be decreed.

7. It is submitted that the respondents have evasively denied the contents of the aforesaid civil suit in order to wriggle out of its admitted payment obligations. In the absence of specific denial by the respondents in their written statement to the averments made by the petitioner, the respondent has admitted to its liability towards the petitioner.

8. Therefore, in view of the foregoing submissions, it is submitted that the impugned order dated 7th November, 2022 may be set aside and the instant petition be allowed.

9. *Per contra*, learned counsel appearing on behalf of respondents No. 1 and 2 vehemently opposed the arguments advanced by learned counsel for the petitioner submitting to the effect that the impugned order has been



passed by the learned Trial Court after considering the entirety of the matter as well as the law settled in the case of decree of the suit under Order XII Rule 6 of the CPC.

10. It is submitted that there was no admission on behalf of the respondents with respect to the alleged liabilities as argued by the learned counsel for the petitioner. In support of his arguments, he has placed reliance on paragraphs 3 and 7 of the impugned order and submitted that while adjudicating the application under Order XII Rule 6 of the CPC, the learned Trial Court has considered all the documents as well as reply/written statement of the respondents.

11. It is submitted that the respondent No. 2 had entered into a takeover agreement dated 15th December, 2015 with the respondents No. 3 and 4, and the said taking over agreement stipulated that any liability which accrued before such taking over was to be that of respondents No. 3 and 4.

12. It is further submitted that an indemnity bond was also executed by the respondents No. 3 and 4 and the same was within the knowledge of the petitioner. Moreover, since the respondent No. 2 was not the director of the respondent No. 1 company before 15th December, 2015, the liabilities of the loan amount etc. taken by the respondents No. 3 and 4 prior to the said period would be their sole responsibility.

13. Learned counsel appearing on behalf of respondents submitted that it is the discretion of the Court to decide the application under Order XII Rule 6 of the CPC after perusing the facts of the case as well as the law established and the applicant does not have any vested right to seek



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judgment.

14. It is further submitted that in the instant case, the learned Trial Court has duly considered the scope of the application under Order XII Rule 6 of the CPC while deciding the same, and therefore, the petitioner has no vested right for decretal of suit under the aforementioned provision.

15. Therefore, in view of the foregoing submissions, it is submitted that the instant petition, being devoid of any merit, may be dismissed.

16. Heard learned counsel appearing on behalf of the parties and perused the record.

17. Before delving into the merits of the instant case, it is appropriate to discuss the settled position of law *qua* Order XII Rule 6 of the CPC.

18. Order XII Rule 6 of the CPC governs judgments on admission. The Courts have the power to pass a judgment in regard to any oral or written submission made by the parties at any stage of the proceedings and such admission may be made in the pleading or otherwise.

19. The Hon'ble Supreme Court in the judgment passed in the case of ***Balraj Taneja v. Sunil Madan***, (1999) 8 SCC 396, enunciated the principles governing the provisions of Order XII Rule 6 of the CPC and held as under:

"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) 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

24. In Razia Begum Sahebzadi Anwar Begums it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.



25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

"58. Facts admitted need not be proved.-No fact need be any proceeding which the parties thereto or their agents agree to admit at the proveyd hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted in to be proved otherwise than by such admissions."

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

28. Having regard to the provisions of Order 12 Rule 6. Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum cases observed as under:

"In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as



have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms: Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission." The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted."

The Court further observed:

Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers."

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his 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. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and,



therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8. or the expression "may make such order in relation to the suit as it thinks fit" in Rule 10 of Order 8."

20. Upon perusal of the aforesaid extracts of the judgment, it is observed that there is no doubt that Rule 6 of Order XII of the CPC, has been couched in a wide language, however, before a Court can act under the said provision, the admission must be clear, unambiguous, unconditional and unequivocal. Furthermore, a judgment on admission by the defendant under Order XII Rule 6 of the CPC is not a matter of right rather the same is a matter of discretion of the Court.

21. It is imperative to note here that the aforementioned rule is not intended to apply where there are serious questions of law which are to be asked and determined. Likewise, where specific issues have been raised in spite of admission on the part of the defendants, the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to the decree and the plaintiff in that event cannot have a decree by virtue of the provisions under Order XII Rule 6 of the CPC without proving those issues.



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22. Further, the power to pass a judgment on admissions is not only discretionary but also requires exercise of caution and the Hon'ble Supreme Court in the judgment of **S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287**, delved into the aspect of extent of the Court's discretion to exercise its power under Order XII Rule 6 of the CPC.

23. Now, this Court shall peruse the impugned order, relevant portion of which are as under:

*“.....5. I have heard submissions of Ld. counsel for plaintiff and Ld. counsel for defendants no. 1 and 2 and perused the record in the light of relevant statutory provisions of CPC. At the time of deciding an application under Order XII Rule 6 CPC, court is expected to examine the pleadings/documents preferred to by the applicant for seeking relief on the basis of admissions allegedly made by the other side. The law under Order 12 Rule 6 CPC was discussed in **Inder Mohan Singh Vs. Sube Singh** RSA No. 160/2013 decided on 10.11.2014 by Hon'ble Delhi High Court wherein it was observed as under:....*

6. Adverting to the facts of the present case and applying the law, the defendant no.2 has not denied of having received the amount by Defendant company. The plea taken by him is that he was not having any dealings with the plaintiff Company prior to 15.12.2015 and as per agreement with defendants no. 3 and 4, any liability accruing before such taking over would be that of Defendants no. 3 and 4. An Indemnity Bond was also furnished to this effect by Defendants no. 3 and 4. Defendants have also placed on record certain documents i.e. ITRs of defendant no. 1 for Assessment Year 2015-2016 and Financial Year ending 31.03.2015, Audit report of the defendant no. 1 for the Financial Year ending 31.03.2015, balance sheet, profit and loss accounts for the Financial Year ending 31. 03.2015, Statement of account of Defendant no. 1 for the year 2015,



Income tax notice dated 09.07.2017 and its reply by defendant no. 1.

7. This court observes that there is no Contract between plaintiff and defendant no. 2 nor there is any avelment as to any liability qua the defendant no. 2. The avelments in the plaint contain no assertion as to when defendant no.2 on behalf of defendant no. 1 received the amount or had even undertaken to make payment to the plaintiff of the alleged loan amount on behalf of the company particular in view of his denial that he had no role whatsoever prior to 15.12.2015. The take over Agreement and Indemnity Bond along with number of documents are filed by defendant no. 2 on record in support of the same. Hence, Prima facie, no case of joint or several liability is made out from the contents of the plaint. In this regard, counsel for defendants no. 1 and 2 has placed reliance upon Judgments of Hon'ble Delhi High Court in **Tristar Consultants vs. Computer Services India Pvt. Ltd. and Anr.**, 139 (2007) DLT 688; **Life Insurance Corporation vs. Escorts Ltd. and Ors.**, (1986) 1 SCC 264, **Balwant Rai Saluja vs. Air India Ltd.** (2014) 9 SCC 407 and **Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta and Ors.** (2019) 2 SCC 1.

8. The submission of Ld. counsel for plaintiff is that by lifting the corporate veil, the Directors are liable for their alleged acts. This argument cannot be accepted for the reasons that the plaint contains no avelments of any alleged fraud by defendants and the same is evident from bare reading of the same. In **Space Enterprises v. M/s. Srinivasa Enterprises Ltd.** 72 (1998) DLT 666, Hon'ble Delhi High Court while dealing with the liability of directors of the company for the dishonored cheques of the company, in a suit filed under Order 37 CPC observed that the allegations of fraud were not pleaded against the appellants and they were not even alleged to be guarantors or indemnifiers for payment of amount due from the company.



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It was therefore held that it was the Company and Company alone upon whom the liability could be fixed at all.

9. The provision under Order 12 Rule 6 CPC is enabling, permissive and is neither mandatory nor it is peremptory since the word 'may' has been used and thus is not a matter of right and rather is a matter of discretion of the court. Here the defendants have raised certain objections which go to the root of the matter and matter includes various contentious issues including liability of Defendant No. 1 being legal entity, which can be established by way of evidence by parties. In circumstances, Plaintiff Company is not entitled for the discretionary relief as prayed for i.e. judgment on the basis of admissions.

10. Accordingly, application under Order 12 Rule 6 CPC filed by the plaintiff qua defendants no. 1 & 2 stands dismissed....”

24. Perusal of the above reveals that the learned Trial Court heard the submissions from both the counsel for the plaintiff and the counsel for the defendants No. 1 and 2, and reviewed the relevant statutory provisions of the CPC. The learned Trial Court noted that the defendant No. 2/respondent No. 2 herein did not deny receiving the amount on behalf of the defendant company, however, respondent No. 2 argued that he had no dealings with the plaintiff company prior to 15th December, 2015, and as per their agreement and an indemnity bond provided by them, any liability incurred before this date would be the responsibility of defendants/respondents No. 3 and 4. Defendant No. 2 also submitted several documents, including ITRs, audit reports, balance sheets, and financial statements, to support his claims.



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25. The learned Trial Court observed that there was no contract between the petitioner and the respondent No. 2, nor were there any assertions in the plaint indicating that the respondent No. 2 had received the amount or agreed to pay the alleged loan on behalf of the company, especially given his denial of involvement prior to 15th December, 2015. The documents submitted by the respondent No. 2, including the takeover agreement and indemnity bond supported his position. Therefore, no *prima facie* case of joint or several liability was established from the plaint's contents.

26. It was observed by the learned Trial Court that the provision under Order XII Rule 6 of the CPC is discretionary, not mandatory, as indicated by the use of the word 'may' and held that the defendants/respondents raised substantial objections that required evidence to resolve, particularly regarding the liability of respondent No. 1 as a legal entity. Consequently, the petitioner company's application file under Order XII Rule 6 of the CPC was dismissed.

27. This Court has gone through the material placed on record including the plaint, written statement, take over agreement dated 15th December, 2015, balance sheet for the year ending on 31st March, 2015 (filed by the respondent No. 2/defendant No. 2) as well as the application filed by the petitioner/plaintiff under Order XII Rule 6 of the CPC and reply to the said application filed on behalf of the respondents/defendants before the learned Trial Court.

28. The petitioner had filed the application under Order XII Rule 6 of the CPC seeking judgment on the basis of admissions made on behalf of the



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respondents No. 1 and 2.

29. It is the case of the petitioner that the documents placed on record by the respondents shows that the claim of the petitioner is genuine. In the aforesaid application, the petitioner had relied upon income tax return of the defendant No. 1 for the assessment year 2015-2016 and for the financial year ending on 31st March, 2015; computation of total income for the assessment year 2015-2016; auditing report of CA for the financial year ending on 31st March, 2015; balance sheet, profit and loss account, notes on balance sheet for the financial year ending on 31st March, 2015; letter dated 23rd March, 2017 statement of account of the defendant No. 1 pertaining to the year 2015; income tax notice dated 19th July, 2017 to the defendant No. 1; reply dated 28th July, 2017 to the said notice; and letter dated 3rd August, 2017 to the income tax department. Whilst relying upon the said document, the petitioner contends that the respondents No. 1 and 2 are evidently liable for the payment of the due amount of the petitioner.

30. In rival submissions, it has been contended on behalf of the respondents No. 1 and 2 that a takeover agreement dated 15th December, 2015 was executed which states that any liability which accrued before such taking over was to be that of respondents No. 3 and 4. Furthermore, an indemnity bond was also signed by the respondents No. 3 and 4 with respect to the said taking over and that the petitioner was duly aware of the same. Additionally, the respondent No. 2 was not the director of the respondent No. 1 company before 15th December, 2015 and as such all the liabilities of the loan amount etc. taken by the respondents No. 3 and 4 prior to the said



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period would be their sole responsibility only. Thus, no case of judgment on the basis of alleged admissions is made out.

31. It is observed that in the present case, the respondents have raised objections which go to the very root of the case and it would not be proper to exercise the discretion to pass a decree in favor of the petitioner at this stage when evidence and examination is pending. In paragraphs no. 6 to 9, the learned Trial Court has observed the objections raised by the defendants/respondents against the claim of the petitioner with respect to the liability of loan amount alleged.

32. The learned Trial Court observed that in order to prove the loan advancement, there is no contract among the petitioner and the respondents. Further, no particulars have been provided by the petitioner with regard to alleged assertion that the respondent No. 2 had undertaken to repay the alleged loan amount.

33. One of the major objections that the learned Trial Court noted was with regard to the aforementioned takeover agreement by virtue of which the respondent No. 2 asserts that the entire liability, prior to 15th December, 2015, i.e., the period when the petitioner allegedly advanced the loan, is of the respondents No. 3 and 4 for which an indemnity bond has also been executed by them in the favour of the respondent No. 2.

34. Moreover, with regard to the contention of the petitioner that the directors cannot absolve themselves from the liability of the company (respondent No. 1), it was observed by the learned Court below that since the petitioner/plaintiff has not made any averments of any alleged fraud in



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its plaint, the same cannot be accepted as the law states that in order to lift the corporate veil, the allegation of fraud has to be specifically pleaded.

35. This Court is of the view that unclear and ambiguous admissions cannot be taken into consideration in isolation without taking into account the objections of the respondent. Categorical admissions are required for granting of the relief under Order XII Rule 6 of the CPC.

36. The purpose of Order XII Rule 6 of the CPC is to avoid the pendency of a suit when there is a clear, unequivocal, unambiguous and unconditional admission by a defendant in respect of the claim of the plaintiff and no such case is being inferred herein.

37. It is an admitted fact that the learned Trial Court has considered all the documents on record as well as the reply filed by the respondents, while deciding the application under Order XII Rule 6 of the CPC and the same is also apparent from the bare of the impugned order. The learned Trial Court has also considered the scope of the application under Order XII Rule 6 of the CPC.

38. Thus, this Court is of the considered view that the learned Trial Court has rightly discussed upon the merits of the petitioner's application for judgment under Order XII Rule 6 of the CPC and after relying upon the settled position of law, it has appropriately concluded that the present case does not invite the exercise of discretion of the Court under the above said provision.

39. This Court is inclined to confirm with the observations made by the learned Trial Court and it is held that the objections raised by the



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respondents No. 1 and 2 goes to the root of the matter since the same are with regard to the determination of their liability *qua* the alleged loan, and the same would require the parties to lead evidence and proper trial.

40. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and does not go into the merits of the case.

41. Keeping in view the above facts and circumstances as well as the discussion on law, this Court does not find any illegality in the impugned order dated 7th November, 2022 passed by the learned Additional District Judge – 02, Shahdara, Karkardooma Courts, Delhi in civil suit bearing No. 118/2017 and the same is upheld.

42. Accordingly, the instant civil revision petition stands dismissed along-with pending applications, if any.

43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 15, 2024

Dy/ryp/av

Click here to check corrigendum, if any