



2024:DHC:1014



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

% ***Judgment reserved on: 12.01.2024***
Judgment pronounced on: 12.02.2024

+ CM(M) 2065/2023, CM APPL. 64902/2023 (interim relief)

M/S. M.K. ENTERPRISES Petitioner

Through: Mr. Pankaj Gupta, Adv.

versus

M/S. VOHRA RUBBER AND ELECTRICALS & ORS.

..... Respondents

Through: Mr. Ratnesh Sharma and Mr.
Rahul Raman, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India seeking to set aside of the order dated 02.12.2023 passed by the learned District Judge, Commercial Court-10, Central, Tis Hazari Courts, New Delhi in CS(COMM) 3005/2021 (hereinafter as "Trial Court") titled as " *M/S. MK Enterprises vs M/S. Vohra Rubbers & Electricals and Others*" whereby it dismissed the application filed by the petitioner under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter "CPC") for passing of a decree for an amount of Rs.11,20,365/-.

2. To the extent necessary, this Court notes the facts relevant to the present case:

3. In 2013, the respondent nos. 2 and 3 approached the petitioner herein and expressed their interest in purchasing heavy duty industrial equipment



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and other such equipments, that the petitioner dealt in. The respondents herein are a business family hailing from Kanpur (UP) and run their business under the name of M/s Vohra Rubber and Electricals. The firm is the proprietorship of the father of the respondents no.2 & 3 but is a family business being run by all the members. Following this, the petitioner and respondents proceeded to commence business dealings with one another on the assurance given by the respondents for prompt and timely payments against the goods to be supplied within 15 days from the date of respective supply.

4. It is not disputed that the respondents committed no defaults in payment for goods supplied w.e.f 2013 to 03.08.2016, however, subsequent thereto, there was a delay on payments over two months or so owing to which the petitioner stopped supplying the goods to the respondents till the outstanding dues were cleared by them. Upon clearing the entire dues uptill 03.08.2016, the respondent Nos. 2 and 3 again approached the petitioner in October 2016 for the purchase of goods and assured the petitioner that there would not be a delay of more than 30 days in making the payments, in the event of delay beyond 30 days, they would pay interest at a rate of 18% p.a for the delayed period. Upon this assurance, petitioner then proceeded to provide goods to the respondents and raised the first invoice on 28.10.2016 on renewed terms and assurances. The petitioner made the supplies of goods as per telephonic orders received from the respondents which were received by the respondents upto their satisfaction and without any complaint whatsoever. However, in the year 2017, the respondents failed in



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abiding by their commitments in making payments within 30 days citing various excuses.

5. Nonetheless the petitioner accommodated the respondents in relation to their delayed payments. During the period of COVID, in March 2020 the respondents sought goods from the petitioner and stated that payments would be made within the stipulated time period. However, respondent did not make the said payments even within a period of 9-10 months, which adversely impacted the financial situation of the petitioner. The invoices for the period of 31.07.2020 to 06.04.2021 amounting to Rs. 11,20,365/- remained unpaid along with interest. However, the respondents made one last payment of Rs. 50,000/- on 05.04.2021 and thereafter no payments were made.

6. In such circumstances, the petitioner visited the respondents in Kanpur on 12.07.2021 where upon meeting, it was stated by the respondents No. 2 & 3 that they do not owe anything to the petitioner and are not liable to pay. The petitioner then approached the police in Police Station Kotwali, Kanpur and thereafter the respondents were called to the police station and they stated that this was a civil matter and the police had no authority to deal with the same. However, upon persuasion of the police, the respondents agreed to settle the matter amicably and stated that they would pay the outstanding amount by 12.07.2023. However, the respondents refused to pay the interest on the delayed payments.



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7. It is further the case of the petitioner that the respondents once again failed to make the payment one month after, the date promised by them. Owing to the evasive attitude of the respondents, the petitioner sought to investigate the status of the respondent no.1 firm and found out that the true owner of the same was the mother of respondent no.2 & 3. Aggrieved by the deceit and actions of the respondents, the petitioner filed a Civil Suit for recovery of money bearing CS(COMM) No.3005/2021. Along-with the same, the petitioner filed an application under Order XXXVIII Rule 1 & 5.

8. Summons were issued in the abovementioned suit. The respondents on the other hand, refuted the averments made in the plaint and filed their written statement dated 20.12.2021, however, they admitted to having entered into a settlement on 12.07.2021 in the police station with the petitioner. The matter was referred to mediation while pleadings were being completed. However, the mediation was not successful and the petitioner proceeded to file an application under Order XII Rule 6, seeking a decree on admission. The parties were again referred to mediation vide order dated 02.06.2022, but to no avail, therefore, he learned Trial Court heard the parties for disposal of the application under Order XII Rule 6 CPC. It is to be noted, on 15.10.2023, one of the partner of the petitioner namely Mr. Amit Gupta appraised the court that the settlement in the Police Station was recorded under duress.

9. However, vide the impugned order, the learned Trial Court dismissed the petitioner's application under Order XII Rule 6 stating that a settlement in the confinement of a police station does not amount to admission of



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liability on behalf of the respondents and that the judgements relied upon by the petitioner were not applicable to the facts and circumstances of the present case and parties should be given an opportunity to contest their respective case.

Submissions of the parties

10. In the background of aforesaid framework, Mr. Pankaj Gupta, learned counsel in support of what is stated in the plaint has made the submissions that the learned Trial Court has committed an error while passing the impugned order as it has not considered the admission of the respondents that they were willing to pay the amount in terms of their settlement dated 12.07.2021, with respect to the commercial transaction carried out between both the parties as per the terms and conditions agreed by them.

11. It is submitted that the respondents as per their written statement, did not deny the invoices and the unpaid amounts and therefore are liable to pay the same. Since the respondents did not challenge the writing/settlement dated 12.07.2021, the petitioner's application ought to be allowed.

12. It is further submitted that there is only a vague denial to liability in the written statement of the respondent, which tantamounts to an admission. The petitioner drew the attention of this Court to para 12 of the written statement to the plaint and submitted that the court has the power to ignore the vague defense while considering an application under Order XII Rule 6. In this regard, reliance was placed upon **P.P.A Impex Pvt Ltd vs Mangal Sain Mittal** [166 (2010) DLT 84(DB)] and **Inderjeet Singh vs Vikram**



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Singh [194 (2012) DLT 2009]. The petitioner also placed reliance in the judgement titled **Uttam Singh Duggal & Co. Ltd vs United Bank of India & Ors.** [(2000) 7 SCC 120].

13. The learned counsel further submitted that the stipulated time period to pay the admitted amount of Rs. 11,20,365/- had lapsed and therefore the respondents would be liable to pay an interest rate of 18% p.a., thus they are entitled to judgment on admissions which are clear and unequivocal in the present case.

14. In rebuttal, Mr. Ratnesh Sharma, learned counsel who appeared for the respondents submitted that just by entering into a settlement in the police station does not amount to admission of liability on behalf of the respondents. The statement recorded by the parties in the police station was done under duress which is also admitted by the petitioner before the learned Trial Court.

15. Learned counsel further submitted that respondents have specifically denied the supply of goods through the invoices as mentioned in para 12 of the plaint. The respondents have denied and disputed the supply made to him through these invoices. The respondents have every right to dispute the liability purportedly sought to be fastened by the petitioner for the alleged supply of goods which was never received by the respondents, thus, it was submitted that learned Trial Court has rightly dismissed the application under Order XII Rule 6 CPC.



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16. The learned counsel referred to the judgments of **Peacock Plywood (P) Ltd. vs Oriental Insurance Co. Ltd.** [(2006) 12 SCC 673], **Mr. Rajendra vs State of Maharashtra & Ors** [2017 SCC ONLINE BOM 7953] and **Pawan Verma vs Sardar Manmohan Singh** in CM(M) No.2010/2023 to support his submission, contended that principles governing the judgment on admission are culled out in these cases.

Reasons

17. Before dealing with the rival submissions of the parties, it would be apposite to note the principle regarding judgment on admission under Order XII Rule 6 CPC. It is trite to say that the term ‘Admission’ has not been defined in the CPC. However, Section 17 of the Indian Evidence Act, 1872 defines admission as under:

“Section 17. Admission defined.

An admission is a statement, oral or documentary or contained in electronic form which suggests any reference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.”

18. Blacks’ Law Dictionary defines admission as “any statement or assertion made by a party to a case and offered against that party; an acknowledgement that facts are true.” Therefore, unless there is a clear cut acknowledgement of any fact, Order XII Rule 6 CPC cannot be invoked as ‘Admission’ is the unassailable requirement to attract the operation of Order XII Rule 6 CPC. It would be relevant to record the findings of case titled **Karan Kapoor vs. Madhuri Kumar** [(2022)10 SCC 496] wherein the



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Apex Court laid down about the power of the Court under Order XII Rule 6 CPC 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.”

19. Thus the provision under Order XII Rule 6 CPC confers almost extensive powers on the Court to render a judgment dispensing with the trial on the basis of admissions of facts arising in a suit. The use of word ‘may’ in Order XII Rule 6 CPC clearly stipulates that the power conferred is discretionary and cannot be claimed as a matter of right.

20. In the case of **Uttam Singh Dugal & Co. Ltd. vs United Bank of India & Ors.** [2000 SCC OnLine SC 1134], the Hon’ble Supreme Court dealt with purpose of Order XII Rule 6 CPC and observed:

“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.”

21. In the case of **Delhi Jal Board vs. Surender P. Malik** [ILR (2003) 1 Delhi 269], the scope of the provision was discussed and it was held:-

“8. The provision confers almost sweeping powers on the Court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. The only pre-requisite for this is that there must be admissions of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing. Such admission of facts must be clear and unequivocal, unconditional and unambiguous and may relate to the whole claim or a part of it. These need not be made specifically or expressly and could be a constructive admissions also. Whether or not such admission arose in the suit would depend on the facts and circumstances of the case. If it involved disputed facts, claims and counter claims requiring evidence of parties for determination of issues or where the defence of a party touched the root of the matter, a judgment could not be passed under Order, 12 Rule 6 dispensing with the trial because the valuable right of going to trial could not be taken away from the party unless the claim was admitted. A duty was, therefore, cast on the court to ascertain the admission of facts and to render judgment on these either in respect of the whole claim or part of it. The court could do so on its own or on the application of a party and without waiting for the determination of any other question between the parties. It could do so at any stage of the suit. Dealing with the scope of provision. Supreme Court said in *Uttam Singh Duggal v. Union*, (2000) 7 SCC 120 : AIR 2000 SC 2740:—

“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 a 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.”

9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defence set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.”

22. Thus the following principles have emerged that an ‘Admission’ to qualify as a valid ‘Admission’ which can form the basis of a judgment should be unequivocal, unambiguous, unconditional and should be made with intent to be bound by it so that the parties may get rid of rival claims about which there is no controversy. Therefore, it should be a valid independent admission without having to be proved by adducing evidence and should entitle the other party to succeed.

23. In the context of the aforesaid legal position, reverting to the facts of the present case, the petitioner has relied upon a compromise arrived between the parties on 12.07.2021 in the Police Station Kotwali Kanpur which he is endeavoring to make the basis on which judgment under Order XII Rule 6 CPC can be pronounced.

24. The question that arises at this stage is that whether a settlement recorded between the petitioner and respondent nos. 1 and 2 in the police



station and not in pleadings before a Court can come within the scope of Order XII Rule 6 CPC. For ready reference Order XII Rule 6 CPC is reproduced hereinunder:-

“Order XII Rule 6 CPC

(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 upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

25. The Hon’ble Supreme Court in the case of **Karam Kapahi v. Lal Chand Public Charitable Trust** [(2010) 4 SCC 753] discussed the meaning of where admissions of fact have been made “either in the pleadings or otherwise” and observed as under:

“41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see *Charanjit Lal Mehra v. Kamal Saroj Mahajan* [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see *Mullas's Commentary on the Code*, 16th Edn., Vol. II, p. 2177).

45. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of the Madhya Pradesh High Court in *Shikharchand v. Bari Bai* [AIR 1974 MP 75] . G.P. Singh, J. (as His Lordship then was) in a concurring judgment explained the aforesaid Rule, if we may say so, very authoritatively at p. 79 of the Report. His Lordship held : (AIR para 19)

“... I will only add a few words of my own. Rule 6 of Order 12 of the Code of Civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see *Annual Practice*, 1965 Edn., Part I, p. 569). The Supreme Court Rule came up for consideration



in *Ellis v. Allen* [(1914) 1 Ch 904 : (1911-13) All ER Rep 906] . In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that Rule. Sargant, J. rejected the argument that the Rule is confined to admissions made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said:

‘The Rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.’

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargant, J. The words ‘either on the pleadings or otherwise’ in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order *but also admissions made elsewhere during the trial.*”

(emphasis added)

46. This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by G.P. Singh, J. (as His Lordship then was). Mulla in his commentary on the Code has also relied on the ratio in *Shikharchand* [AIR 1974 MP 75] for explaining these provisions.

47. Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word “pleading” under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word “pleading” has been suffixed by the expression “or otherwise”. Therefore, a wider interpretation of the word “pleading” is warranted in understanding the implication of this Rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing the judgment on admission under Order 12 Rule 6 in view of clear words “pleading or otherwise” used therein especially when that petition was in the suit filed by the Trust.”

26. Similarly in **Indian Bank vs. S.N. Engineers and Suppliers and Anr.** [(2018) 4 SCC 606], the judgment on admission passed on the basis of



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an undertaking given by the defendant by a letter to honour the issued cheques and not specifically denied in the written statement, the letter was held by the Hon'ble Supreme court to be a valid admission for passing the judgment.

27. In **Shikhar Chand vs. Badri Bai** [AIR 1974 MP 75], it was held that the rule is wide enough to afford relief not only in case of admissions in pleadings but in cases of admission de hors pleadings.

28. It is further relevant to refer to the case of **Himani Alloys Ltd. vs. Tata Steel LTd.** [2011 SCC OnLine SC 890], the Hon'ble Supreme Court considered the issue that in a case where a party admitted liability for such sum as per minutes of the meeting held between the representatives of both sides for reconciliation of accounts and held:

“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* [(2000) 7 SCC 120] , *Karam Kapahi v. Lal Chand Public Charitable Trust* [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and *Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha* [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .) There is no such admission in this case.”



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29. The position of law is clear that a wide approach has been adopted to interpret “otherwise” appearing in Order XII Rule 6 CPC. Therefore, the document relied on for a judgment on admission need not necessarily be made before the Court, however, such a document should not have been denied or explained in the pleadings before the Court to take it out of the ambit of ‘Admission’ for the purpose of Order XII Rule 6 CPC.

30. In the present case, it is not disputed that the respondents have admitted that the parties to the suit have resolved their disputes regarding pending payments and have entered into a settlement dated 12.07.2021 in the Police Station Kotwali, Kanpur, (U.P).

31. To clarify the stand of the respondent, it is relevant to refer to para 5(a) of the preliminary submission in the written statement which is reproduced as under:-

“That the said settlement deed was entered into between the plaintiff and defendant nos. 2 and 3 without any force and coercion and the plaintiff cannot choose to defy the said settlement deed now at this stage.”

32. Respondents have further averred in para 1 of the written statement as under:-

“..... it is not denied that parties had participated in a meeting on 12.07.2021 at Police Station being Thana Kotwali, Kanpur (UP), and wherein the parties reached at an amicable settlement. It is denied that the defendants ever denied to pay the said due amount as was decided during the said settlement and in the manner in which it was agreed.”

33. Pertinently, in the settlement arrived between the petitioner and respondent nos. 2 and 3 on 12.07.2021 in the Police Station Kotwali, Kanpur it is stated that the petitioner had approached the respondents at their shop to



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take their balance amount of Rs. 11,20,365/- from the respondents, however, the respondents expressed their inability to pay the amount but became ready with certainty to pay the same in two years. They also refused to pay the amount in monthly installments and stated that as and when they will receive money from bank, it shall be paid and if this does not happen the petitioner may take recourse to legal remedies before the court.

34. Interestingly, the petitioner has claimed that respondent no. 1 is a proprietorship firm, however, he has taken contradictory stand in the plaint filed before the learned Trial Court and petition instituted before this Court. Therefore, he could not state it with clarity, whether respondent no. 4, Mr. Anjum Vohra or Mrs. Nooren Vohra is the actual proprietor of respondent no. 1/firm. In the plaint, the respondent has mentioned that later on, he came to know that the Mrs. Nooren Vohra was the proprietor of M/s Vohra Rubber and Electricals, however, being a family business, it was being also run by respondent nos. 2 and 3 who are the sons of Mrs. Nooren Vohra and respondent no. 4 who is her husband. However, before this Court, it is stated in the petition that M/s Vohra Rubber and Electricals is a proprietorship concern of respondent no. 4 i.e. father of respondent nos. 2 and 3 but the business is being looked after by all the family members. It is further stated in the petition that the initial agreement took place in the year 2013 between the parties to start the business was reached between the petitioner and respondent nos. 2 and 3 who approached the petitioner at his Delhi Office to purchase goods from him. It is to be noted that the settlement dated 12.07.2021 has been arrived between the petitioner and



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respondent nos. 2 and 3 and not between the petitioner and the proprietor of M/s Vohra Rubber and Electricals.

35. Needless to say, that the petitioner has not clarified the position of the respondent no. 2 and 3 in business dealings with him in case, the respondent no. 1 i.e., M/s Vohra Rubber and Electricals is proprietorship concern either of Mrs. Nooren or of respondent no. 4. Therefore, for the purpose of Order XII Rule 6 CPC, the correct status of respondent no. 1 is yet to be ascertained by the petitioner.

36. Moreover, though the respondents have admitted the said settlement but have tried to wriggle out the same by contending that the settlement was recorded in the police station due to the pressure exerted by the police on the respondents. It is to be noted that one of the partner appearing on behalf of the petitioner before the Court has admitted on 15.10.2023 that the settlement recorded in the police station is under duress. Also, the respondents have disputed the forty invoices for the period w.e.f 31.07.2020 to 06.04.2021 amounting to Rs. 11,20,365/- vide which goods were supplied to the respondents by the petitioner.

Conclusion

37. In view of the above discussion, the petition is dismissed. It is made clear that this Court has not recorded any finding nor expressed any opinion in regard to the merits of the case which shall be decided on the evidence to be led before the learned Trial Court by the parties.

SHALINDER KAUR, J.

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