



2025:DHC:5506-DB



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

Date of decision: 07th JULY, 2025

IN THE MATTER OF:

+ **RFA(COMM) 35/2023**

SKY CABLE INDUSTRIES & ANR.Appellants

Through: Ms. Aayushi Jain and Mr. Mohit Gupta, Advocates.

versus

M/S KKM OVERSEAS PRIVATE LTD.Respondent

Through: Mr. Gaurav Harnal and Ms. Kumud Harnal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present appeal under Section 13 of the Commercial Courts Act, 2015 has been preferred for setting aside the Impugned Judgment dated 13.10.2022 passed by the Ld. District Judge (Commercial Courts), South East District, Saket Courts, New Delhi (*hereinafter referred to as "Trial Court"*) in CS (COMM) No.28/2020.

2. The Appellant No 1 (*original Defendant No. 1*) is a partnership firm engaged in the sale of electronic goods such as mobile phones and tablets, and Appellant No. 2 (*original Defendant No. 2*), is a partner in the said firm.



3. The Respondent (*original Plaintiff*) is engaged in the business of providing freight forwarding services through air, sea and land, customs clearance and warehousing etc.

4. Shorn of unnecessary details, the facts leading to the filing of the instant Appeal are as under:-

a. The Appellants and Respondent were engaged in business with each other for several years. Appellant No.1 used to place orders through its partner i.e. Appellant No. 2 for freight forwarding services of the Respondent for delivery of cargo from various foreign countries to India. Payment for these services used to be made from time to time.

b. The said service was availed by the Appellants in April 2019 for the purpose of consigning electronic items from Hong Kong to IGI Airport, Delhi. Three invoices were raised for this service by the Respondent. The details of those invoices are as follows:

- i. Invoice No.DELAI1920GST0022 (*hereinafter referred to as “**Invoice No.22**”*) dated 29.04.2019 for Rs.1,60,798/-
- ii. Invoice No. DELAI1920GST0023 (*hereinafter referred to as “**Invoice No.23**”*) dated 29.04.2019 for Rs.3,30,965/-
- iii. Invoice No. DELAI1920GST0048 (*hereinafter referred to as “**Invoice No.48**”*) dated 11.06.2019 for Rs.80,094/-

The total outstanding amount claimed was Rs.5,71,857/-.



- c. As per the Respondent, the Appellant failed to make payments against these invoices in spite of repeated reminders. However, as per the Appellants, the goods were not delivered on time by the Respondent and as a result the Appellants suffered financial set back and issued two debit notes against Invoice No.22 and Invoice No.23.
- d. With respect to Invoice No.48 the Appellants, have averred that in spite of their willingness to pay the outstanding amount the Respondent never collected the cheque and no interest whatsoever is payable on the same.
- e. Thereafter the Respondent herein, filed a Commercial Suit bearing No. CS(Comm) 28/2020 before the Trial Court praying for a decree of Rs.6,23,324/- i.e. amount due for the three invoices along with Rs.51,467/- towards interest which was calculated at the rate of 18 % from 11.06.2019 until filing of the suit along with pendente lite interest.
- f. The relevant portion of the written statement is being reproduced as under:

“1. That the Plaintiff putting his evil mind to work, has manipulated the facts of the case with ill intent to harass the Defendants and malign the reputation and goodwill of the Defendants in the market. The correct facts of the case are:

a. That the Defendants is a partnership firm, which has a well-established manufacturing unit, dealing primarily in electronic products such as Mobiles,



Tablets etc. and it is having a strong and stable name in the electronic industry over the world.

b. That the Defendants placed the order to the Plaintiff for providing the freight services on the basis of the goodwill of the Plaintiff in the market. The Plaintiff, even after the promises and assurances to deliver the goods on time, miserably failed to deliver the goods in the prescribed frame of time, as was agreed and promised, due to which the Defendants suffered not only the financial losses but also irreparable losses and injuries to the goodwill as well as to the reputation of the Defendants in the market as further clients/customers of the Defendants cancelled the order due to the delay and has also denied to place any further order of the goods to the Defendants. One of Defendants' client had issued the debit note to Defendants on account of failure to supply goods timely, which was on account of the failure on the part of the Plaintiff to deliver goods on time.

c. It is pertinent to mention here that due to insufficiency in the services rendered by the Plaintiff to the Defendants, the Defendants have duly issued the Debit Note vide no.1 of the amount Rs.3,30,965/- dated 14.05.2019, and Debit Note vide no. 2 of the amount Rs. 1,60,798/- dated 14.05.2019 against the Tax Invoices raised by the Plaintiff for the services vide ref no. DELAI1920GST0023 and vide ref no. DELAI1920GST0022 dated 29.04.2019, which was very well within the knowledge of the Plaintiff and is even apparent from the mail dated 15.10.2019, exchanged between the employees of Plaintiff and Defendants. Hence, there is no liability of the Defendants to pay towards the abovementioned Invoices to the Plaintiff. This act of the Plaintiff only depicts the malafide intent of Plaintiff to extract money from the Defendants without any rhyme and reason.



d. That the Defendants, herein admit to make payment against the Invoice No. DELAI1920GST0048, dated 11.06.2019 amounting Rs.80,094/- raised by the Plaintiff, about which the Defendants duly intimated the Plaintiff and requested the Plaintiff to collect the cheque of Rs.80,000/- from the office of the Defendants, which was kept ready by the Defendants long back. It is further evident from various occasions and communications between the employees of the Plaintiff and Defendants that the Defendants were willing to make payment for the Invoice No.DELAI1920GST0048 on time. However, for the reasons best known to the Plaintiff, inspite of collecting the cheque, the Plaintiff with malafide intent filed the present frivolous suit to harass the Defendants and to grab the interest from the Defendants. Hence, the Defendants are not liable to pay any interest whatsoever.

e. However, despite the above categorical understanding and terms agreed between the parties regarding the Invoices and the Debit Notes, the Plaintiff with ill and malicious intent filed the present suit to illegally grab the amount and the interest from the Defendants, which the Defendants are not even liable to pay.

f. Moreso, with the ill intent to harass the Defendants and to cheat the Defendants, the Plaintiff fraudulently provided manipulated and forged Airway Bill vide no.77545187995, which was serviced vide Service Order Nos. TW190426 & TW190428. The bare perusal of both the Service Orders, it can be clearly seen that in first Service Order vide No. TWI190426, it was mentioned that the total number of boxes were 242 with gross weight of 2536 kg and in the other Service Order vide No.TI190428 the total number of boxes were 84 with gross weight of 1198 kg, whereas, the actual number of packages were 151 & 175



respectively, which only came into the knowledge of the Defendants after they tracked the shipment on the custom site 'ICEGATE'. Hence, it is very well evident from this act of the Plaintiff that the Plaintiff not only wanted to harass the Defendants but also had an intention to surreptitiously make monetary benefits out of the Defendants by playing fraud on them.

PRELIMINARY OBJECTIONS:

- 1. That the present suit as filed by the Plaintiff against the Defendants, is not maintainable against the Defendants before this Hon'ble Court and liable to be returned to be presented to another court having competent jurisdiction; as Defendant No. 1 herein is a Partnership firm, having its registered office at Village Moginand, Tehsil Nahan, District Sirmour, Himachal Pradesh-173030 and neither the Defendant is situated within the jurisdiction of this Hon'ble Court nor any alleged cause of action arose within the jurisdiction of this Hon'ble Court.*
- 2. That the present suit for recovery of Rs.6,23,324/- arises out of malafide motive to coerce the Defendants in satisfying some baseless, frivolous and fictitious claims made by the Plaintiff Company against the Defendants. The Plaintiff is guilty of SuperessoVari and SuggetioFalsi and has suppressed & concealed very material facts with regard thereto from this Hon'ble Court with malafide motives.*
- 3. That the Plaintiff has not only fraudulently filed the suit against the Defendants but has also played fraud with this Hon'ble Court by misrepresenting and misleading this Hon ble Court by averring about the other two different firms i.e., Alpha Radios and Neo Enterprises, which do not even pertains to the present suit. Hence, the Plaintiff is just mixing and merging facts to take some benefit out of the Defendants, which is not legally permitted at all.*



4. That the present suit as filed by the Plaintiff Company against the Defendants is liable to be rejected/dismissed under the provisions of Order VII Rule 11 CPC, 1908 inasmuch as there exist no cause of action in favour of the Plaintiff and against the Defendants.

5. It is submitted that the frivolous claim has been raised by the Plaintiff in his Plaint against the Defendants which is complete moonshine and nothing but an attempt to mislead, misguide and play fraud upon this Hon'ble Court as no averments raised by the Plaintiff.

6. That the present suit is nothing but a blatant abuse and misuse of judicial process, just to harass defendants by dragging him before this Hon'ble court and also to tarnish the Image of the defendants. Thus, the present suit of the Plaintiff is bad in law and is thus, is liable to be dismissed with exemplary costs.

REPLY ON MERITS

1. That the contents of Para no.1 of the Plaint are denied for want of knowledge.

2. That the contents of Para no.2 of the Plaint are denied for want of knowledge. The Plaintiff is put to strict proof of the same.

3. That the contents of Para no.3 of the Plaint are a matter of record and need no reply.

4. That the contents of Para no.4 of the Plaint are a matter of record and need no reply.

5. That the contents of Para no.5 of the Plaint are a matter of record and need no reply.

6. That the contents of Para no.6 of the Plaint are a matter of record and need no reply. However, only on the basis of the false promises and assurances given by



the Plaintiff that the goods will be supplied to the Defendants within the usual frame of time after the despatch by the respective vendor from the respective country, the Defendants used to place order with the Plaintiff for providing services of forwarder. Moreso, this is an admitted fact that the Defendants used to make all the payments on time for the services rendered by the Plaintiff. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

7. That the contents of Para no.7 of the Plaint are admitted to the extent that the Defendant have been making payments to the Plaintiff firm from time to time. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

8. That the contents of Para no, 8 of the Plaint are a matter of record and need no reply.

9. That the contents of Para no. 9 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that as on 11.06.2019 an amount of Rs.5,71,857/- exclusive of interest, is due or outstanding against the Tax Invoices raised by the Plaintiff firm to the Defendants. It is submitted that due to insufficiency in the services rendered by the Plaintiff to the Defendants, the Defendants have duly issued the Debit Note vide no. 1 of the amount Rs. 3,30,965/- dated 14.05.2019 and Debit Note vide no. 2 of the amount Rs. 1,60,798/- dated 14.05.2019 against the Tax Invoices raised by the Plaintiff for the services vide ref no. DELAI1920GST0023 and vide ref no. DELAI1920GST0022 dated 29.04.2019, which clearly shows that as on 11.06.2019 it was within the knowledge of the Plaintiff that the Defendants are not liable to pay for the abovesaid Invoices. The contents



of preliminary objections/submissions may be read as reply to Para under reply.

10. That the contents of Para no.10 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied for want of knowledge. The Plaintiff is put to strict proof of the same. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

11. That the contents of Para no. 11 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied for want of knowledge. The Plaintiff is put to strict proof of the same. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

12. That the contents of Para no. 12 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that the Tax Invoice bearing No. DELA1920GST0048 for Rs. 80,094/- dated 11.06.2019 with MAWB No. 77545187995 and HAWB Nos. TW190426 was issued/ provided to Defendants as Plaintiff received the Debit Note from the agent late and because of the agents mistake they printed wrong weight on the HAWB, It is further denied that alongwith the Tax Invoice Plaintiff provided Airline MAWB and Manifest which clearly proved the Chargeable weight difference. It is submitted that the Plaintiff has fraudulently taken a false contention to cover up their lacunas and lacklustre attitude in providing the services. The bare perusal of the mail dated 12.06.2019 reveals that the Defendants has duly investigated the documents and checked the weight which was correct and no difference, whatsoever was found by the Defendant in the weight. Infact, it is evident from the mail dated 12.06.2019 that the Plaintiff has concocted a web by



raising a wrong issue that too after a month of the transaction took place, just with the malafide intent to extort the money from the Defendants. Moreso, the ill intent to not only harass the Defendants but also, make monetary, benefits out of the Defendants, the Plaintiff fraudulently provided manipulated and forged Airway Bill vide no. 77545187995, which was serviced vide Service Order Nos. TW190426 & TW190428 to the Defendants. The bare perusal of both the Service Orders, it can be clearly seen that in first Service Order vide No. TWI190426, it was mentioned that the total number of boxes were 242, with gross weight of 2536 kg and in the other Service Order vide No. TI190428 the total number of boxes were 84 with gross weight of 1198 kg, whereas, the actual number of packages were 151 175 respectively, which only came, into the knowledge of the Defendants after they tracked the shipment on the custom site 'ICEGATE'. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 12 of the Plaint. The contents of preliminary objections/submissions may be read as reply to Para under reply.

13. That the contents of Para no. 13 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is vehemently denied that the services provided by the Plaintiff to the Defendants were to the utmost satisfaction. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 13 of the Plaint. The contents of preliminary abjections/submissions may be read as reply to Para under reply.

14. That the contents of Para no. 14 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that inspite of various written requests, demand and reminders made by the Plaintiff to the Defendants, the Defendants have failed and neglected to make the payment. The



Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 14 of the Plaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

15. That the contents of Para no. 15 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that the Defendants failed to make payment of the aforesaid amount to the Plaintiff. It is submitted that the Defendants has no liability to pay any amount except Rs.80,000/- against the Invoice No.DELAI19200048 and nor has any liability to pay any kind of interest as alleged. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 15 of the Plaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

16. That the contents of Para no. 16 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that, the aforesaid emails were duly served upon the Defendants but inspite of that the Defendants has not complied with the same. It is an admitted fact that the emails were exchanged between the Plaintiff and Defendants but the Defendant out rightly denies and disputes the content of the emails and as such the Plaintiff is called upon to strictly prove the contents of the emails. It is further submitted that the Plaintiff has concocted a web by raising frivolous averments even after being well acquainted with the facts and circumstances as there was nothing in the emails to which the Defendants should have complied with in view of the objections and issuance of debit notes. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

17. That the contents of Para no. 17 of the Plaint are absolutely wrong and incorrect; being baseless and



frivolous and are hence denied. It is submitted that the Plaintiff is trying to misrepresent this Hon'ble Court by averring about the other two different firms i.e., Alpha Radios and Neo Enterprises, which do not even concerns to the present suit. This averment is nothing but is merely an attempt to mislead, misguide and play fraud upon this Hon'ble Court. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 17 of the Plaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

18, That the contents of Para no. 18 of the Plaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is vehemently denied that the Defendants are liable to pay interest @18% p.a. as per. agreed terms between the parties and is otherwise also the prevailing rate of interest in similar commercial transactions. It is further denied that the Defendants are liable to pay to Plaintiff the total of Rs.6,23,324/-. The said... amount is not legally due and or payable to the Plaintiff from the Defendants as claimed or otherwise. It is submitted that since services provided by the Plaintiff was not within time which is the breach of contractually agreed terms, thus the Defendants is not liable to pay any amount to the Plaintiff let alone the interest amount. As mentioned above, the Defendants was unable to take the fruits of the services rendered by the Plaintiff, which lead to not only financial losses and damages but also loss of repute and inability to complete order within prescribed time. Therefore, it is submitted that the captioned suit has been filed as an afterthought to cover up for their own breach and as a way to harass and force the Defendants to make payment for the services which clearly did not meet the agreed terms. Hence, the Defendants are not liable to pay any interest whatsoever. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are



contained in Para No. 18 of the Complaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

19. That the contents of Para no. 19 of the Complaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is submitted that no cause of action has arisen in favour of the Plaintiff and against the Defendant which warrants the Interference of court of law and hence the complaint is vexatious, malafide and made in error of law. Under these circumstances, the suit is liable to be rejected. As such provisions of Order VII Rule 11 CPC are applicable, for the reason that no cause of action has ever arisen against the Defendants. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

20. That the contents of Para no. 20 of the Complaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 20 of the Complaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

21. That the contents of Para no. 21 of the Complaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are contained in Para No. 21 of the Complaint. The contents of preliminary objections/ submissions may be read as reply to Para under reply.

22. That the contents of Para no. 22 of the Complaint are absolutely wrong and incorrect; being baseless and frivolous and are hence denied. It is denied that the present suit is filed within the period of limitation as prescribed by law. The Defendant calls upon the Plaintiff to prove to the hilt the averments as are



contained in Para No. 22 of the Complaint. The contents of: preliminary objections/ submissions may be read as reply to Para under reply.”

g. Upon completion of pleadings the Respondent, filed an application under Order XII Rule 6 Civil Procedure Code, 1908 (*hereinafter referred to as the “the Code”*). The Trial Court while disposing off the said application held as under:

"7. Following admissions have been made in preliminary submissions and para nos. 9 and 12 of reply on merits in written statement:

(1)The plaintiff is in the business of providing Freight Forwarding Services.

(2) The defendants deal primarily in electronic items such as mobile phones and tablets.

(3) The defendants used to place orders to the plaintiff for providing Freight Services from off shore to IGI Airport, Delhi.

(4) For the freight services provided to the defendants from Hongkong to IGI Airport, the plaintiff had raised invoice no. 0023 dated 29.04.2019 of Rs. 3,30,965/- and invoice no. 0022, dated 29.04.2019 of Rs. 1,60,798/-. But the plaintiff had committed following discrepancies:

(I) The plaintiff did not transport goods on time due to which the defendants suffered not only the financial loss but injury to reputation also. Some customers cancelled their orders due to delay and refused to place further orders in future. One of its client had issued a debit note to the defendant due to non-supply of goods on time. Due to that reason, the defendant



had raised a debit note no. 1 of Rs. 3,30,965/- against invoice no. 0023 and debit note o. 2 of Rs. 1,60,798/- against invoice no. 0022. (II)The plaintiff forged Airway bill no. 77545187995 and service orders nos. TW190426 and TW190428 by mentioning the number of boxes to be transported to the defendants as 242 and 84. But when the defendants checked the custom site “ICEGATE”, it came to know that the number of boxes were 151 and 175 respectively.

(5) The defendants were liable to pay Rs. 80,094/- in respect of invoice no. 0048 dated 11.06.2019 and hence, a cheque of Rs. 80,000/- was given to the plaintiff.

8. The document Annexure 7 appearing at page no. 19 has been described by the plaintiff as Master Airway Bill (MAWB) and its no. is 77545187995. Vide that consignment note, 326 boxes of the gross weight of 3734 were consigned from Hongkong to IGI Airport in the container of Spice Jet and the plane flew on 21.04.2019.

The above MAWB was serviced through two notes Annexures 8 and 9 appearing at page no. 20 and 21. Those documents bearing nos. TW 190428 and TW 190426 have been described by the plaintiff as Home Airway Bill (HAWB). The numbers of boxes written in Annexure 8 and 9 are 84 and 246. The gross weights of the 1198 and 2536 kgs respectively have also been mentioned therein. The total of boxes mentioned in Annexure 8 and 9 make 326 and total of the gross weight also make 3734 Kgs. The number of boxes and their weight correspond to the number and weight as mentioned in MAWB. It means that in all, the plaintiff was to transport 326 boxes of the weight of 3734 Kgs to the defendants and it transported those goods in two consignments on the same day.



9. The defendants did not suffer any prejudice in transportation of their goods in two lots instead of one because they did not suffer any loss by that act of the plaintiff. Moreover, in order to show that as per the tracking report appearing on "ICEGATE", the consignments were containing 151 and 176 boxes, the defendant did not file tracking report. Even if it is presumed that the tracking report is to that effect it would not make any difference because the total of those boxes as per that report, make 326 and it is the same number which the plaintiff had undertaken to transport to Delhi.

10. The second discrepancy pointed out by the defendants is that the goods were not transported well in time due to which they suffered loss as their customers cancelled their orders and one of the customers raised a debit note.

The defendants did not place on record any document to show that time was the essence in contract with the plaintiff for transporting their goods from Hongkong to Delhi. It is pertinent to mention that as per MAWB and I IAWB, the container was to come to Delhi on 21.04.2019. The consignment included the mobile phones and laptop etc. As per the mail dated 18.10.2019 sent by the plaintiff to defendants, appearing at page no. 31, it was intimated to the defendants that the flight was to leave Hongkong on 21.04.2019. It left on time and the DO was handed over to the defendants on 23.04.2019. It is further mentioned that there was no agreement between them that shipment was to arrive at Delhi Airport exactly on time. It is next mentioned that there was a delay of one week in shipment but that delay was attributable to the shippers of the defendants because despite its best



effort, the plaintiff could not reach to the shippers for almost a week as there was no response from them.

In order to show that some of its customers had cancelled their orders due to late arrival of the consignment, the defendants did not place on file the copy of orders of those customers. The names of such customers have also not been mentioned. They did not place on file the consignment note raised against defendants by one of their customer due to late arrival of the consignment. So, the defense taken by the defendants is completely moonshine and cannot be taken into account because even if the case is allowed to go to the stage of trial, that would not make any difference.

11. During arguments, learned counsel for defendants admitted that though the cheque of Rs. 80,000/- was given to the plaintiff regarding invoice no. 0048 dated 11.06.2019 but the same has not been encashed. So, the plaintiff is entitled to that amount also from the defendants.

12. In view of above discussion, the application u/o XII Rule 6 CPC is allowed. It is held that the plaintiff is entitled to an amount of Rs. 1,60,798/- + Rs. 3,30,965/- + Rs. 80,094/= Rs. 5,71,857/- from defendant no. 1. It is mentioned in Clause no. 5 of the invoices that interest @ 18 % p.a shall be payable if the payment was made beyond 15 days of the invoice. The transactions between the parties were commercial in nature. So, the plaintiff is entitled to interest on principal @ 18 % p.a from the date of last invoice i.e. from 11.06.2019 till the realization thereof. The plaintiff is entitled to cost also. "

h. The Respondent herein was awarded a sum of RS. 5,71,857/- by the Trial Court vide the impugned judgement.



- i. Aggrieved by the said judgment, the Appellants have preferred the present appeal.

5. It has been submitted on behalf of the learned Counsel for the Appellants that the impugned judgement passed by the Trial Court under Order XII Rule 6 is unsustainable in law. The Ld. Counsel for the Appellants contends that there is no clear admission made by the appellants in their written statement, filed before the Trial Court. On the contrary he contends that the Trial Court has failed to appreciate multiple disputed averments which go to the root of the matter and there was a fundamental error on the part of the Trial Court to treat them as admissions.

6. The learned Counsel for the Appellants further contends by pointing out that the Appellants had categorically denied their liability for Invoice No.22 amounting to Rs.1,60,798/- and Invoice No.23 amounting to Rs.3,30,965/- before the Trial Court. The learned Counsel for the appellant further submits that as far as Invoice No.48 is concerned the Appellants have already handed over a cheque of Rs.80,000/- to the Respondents and the decretal amount has been passed on the basis of a conditional and qualified statement and the same would be in the teeth of Order XII Rule 6 of the Code.

7. Additionally, the learned Counsel for the Appellant submits that a number of averments had been raised before the Trial Court. These averments pertained to the issues such as the liability of the Respondent for not delivering the consignment on time, allegations regarding the forging of airway bill by the Respondent and these issues are substantial in nature and it was imperative that these issues be dealt with and undertaken at the stage of the trial. Therefore, this was not a case fit for the exercise of discretion under Order XII Rule 6 by



the Trial Court and a perusal of the pleadings would indicate that the Appellants have conditionally admitted to only a part of the payment and categorically and consistently denied any other liability.

8. *Per contra*, the learned Counsel for the Respondent has argued that the admissions of the Appellants in their written statement filed before the Trial Court is clear, categorical and unambiguous and therefore the admissions are sufficient to pass a decree on the basis of Order 12 Rule 6 of the Code. He asserts that the Appellants have made categorical admissions in the pleadings with respect to payment of Invoice No.48. He also contends that the Appellants have also acknowledged that goods were transported by the Respondent. The learned Counsel for the Respondents has also argued that the Trial Court has noted that the Appellant has admitted that the total number of boxes received by them vide two separate consignments was 151 and 175. This adds up to about 326 boxes and the same corroborates with the details in the Respondent's Master and House Airway Bills and thereby undermined the defence of the Appellant. Furthermore, the Trial Court has held that the Appellant has been unable to raise any substantial defence regarding the issue of delay by the Respondent in the delivery of goods and how such a delay caused any loss in business. Therefore, in view of these categorical findings taken in tandem with the clear and categorical admission of the Appellants with respect to their liability for payment of amount claimed by the Respondent in Invoice No.48, the Appellants admitted their liability towards the entire decretal amount and the impugned judgement of the Trial Court warrants no interference.

9. Heard learned Counsel for the parties and perused the material on record.



10. The principal question which emerges for the consideration of this Court is whether the Trial Court has exercised its discretion in a manner as mandated by the language of Order XII Rule 6, while passing the impugned judgement. An ancillary question which needs to be dealt with before answering the main question is whether there was an unequivocal, clear and categorical admission by the Appellants. It is the contention of the learned Counsel for the Respondent that the admission on behalf of the Appellants with respect to their liability towards the third invoice i.e. Invoice No.48 was a clear and categorical admission. Additionally, he argues that the Trial Court was justified in holding that there was no proper justification for non-payment of the disputed invoices or how late delivery of the consignment caused any prejudice to the Appellants. Therefore, the impugned judgement need not be interfered with.

11. This Court is unable to agree with the contentions raised by the learned Counsel for the Respondent. Material on record indicates that the admission of liability, for the third invoice i.e. for Rs.80,094/-, by the Appellants tantamount to only a conditional and qualified statement acknowledging that they had issued a cheque for the payment of the said amount. It can in no way whatsoever be construed to be an admission under the language of Order XII Rule 6. Similarly, the said statement cannot be used to justify a decree for the entire disputed amount given the fact that there was categorical denial of liability by the Appellants with respect to the other two invoices.

12. The Apex Court in Payal Vision Limited v. Radhika Choudhary, (2012) 11 SCC 405, has explained the powers of a Court under this provision. The relevant excerpts read as under :



"7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC, which reads 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."

8. The above sufficiently empowers the court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff



seeks to invoke the powers of the court under Order 12 Rule 6 CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd.* [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] relied upon by the High Court where this Court has observed: (SCC p. 604, para 10)

“10. ... Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi* [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.”

(emphasis supplied)

13. Similarly, in *Hari Steel And General Industries Limited & Anr. v. Daljit Singh & Ors.*, (2019) 20 SCC 425, the Apex Court has expanded upon the need for categorical and unconditional admissions for passing a decree under Order XII Rule 6, The Apex Court has held 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."

(emphasis supplied)

14. The Apex Court in Karan Kapoor v. Madhuri Kumar, (2022) 10 SCC 496, held as under:

"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.

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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. "

(emphasis supplied)

15. What emerges from the above discussion is that the language of Order XII Rule 6 allows the Court to pass a decree during any stage of the suit either upon application moved by any party or of its own accord for the entire dispute in question or any part thereof on the basis of admissions made by any party made in the pleadings or orally, taken as a whole. The purport of this provision is not to bypass a full-fledged trial but to preserve judicial time and resources when there are clear and unambiguous admissions. Similarly, the power granted to a Court under this provision is comprehensive but qualified by the use of the word “may” and it makes the exercise of this discretionary power contingent upon clear, categorical and unambiguous admissions that would enable the Court to pass a decree exclusively on the basis of those admissions.

16. In the facts of the present case, the Trial Court has relied upon the Appellant’s limited and conditional admission of liability for Rs.80,094/- in



relation to Invoice No.0048 dated 11.06.2019 and erroneously treated the same as sufficient to decree the entire claim of Rs.5,71,857/-. A perusal of the material on record indicates that the Appellants herein have consistently denied their liability with respect to Invoice No. 22 and Invoice No.23. The Appellant has also contested all the claims advanced by the Respondent. The defence advanced by the Appellant with respect to the two debit notes vis-à-vis the disputed invoices, that Airway Bills had been forged and manipulated by the Respondent are all triable issues which go to the root of the matter. It would be improper to adjudicate upon those issues without proper appreciation and discussion of evidence after determination and framing of triable issues. This is not a case fit for passing a decree on the basis of admission and the Trial Court has clearly applied the provision of Order XII Rule 6 erroneously.

17. Therefore, the impugned judgement is liable to be set aside and the matter is remanded back to the Trial Court of competent jurisdiction. The appeal is disposed of. Pending applications, if any, also stand disposed.

18. The observations made in this judgement shall have no bearing on the merits of the case and are limited to the correctness of the order passed by the Trial Court under Order XII Rule 6.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHANSHANKAR, J

JULY 07, 2025

Vibh. R.