SUPREME COURT OF INDIA

Uttam Singh Dugal and Co. Ltd.

Vs.

Union Bank of India

S.L.P. (C) No. 12511 of 1999

(S. Rajendra Babu and Shivaraj V. Patil, JJ.)

08.08.2000

JUDGEMENT

RAJENDRA BABU, J.:-

1. This petition is filed against the judgment passed by the High Court of Calcutta affirming a decree passed by the learned single Judge of the High Court for a sum of Rs. 1015.50 lakhs on application of the respondent for judgment upon admission as provided under Order XII, Rule 6 of the Code of Civil Procedure. The facts leading to the suit are as follows :

Transorient Engineering Company Ltd. sub-contracted construction of students' dormitories/dining hall for the University of Baghdad, Iraq. Respondents Nos. 1 to 3 functioned as consortium to finance the said project. Certain disputes having arisen petitioner filed suits against the respondent banks that the debits raised are illegal etc. Indian Overseas Bank (IOB) filed a suit for recovery of certain sums of money and an application made therein under Chapter XIII-A of the Original Side Rules and the High Court of Calcutta rejected the same and Respondents 1 and 3 Banks and E.C.G.C. were also impleaded by an amendment in the said suit. Respondent No. 1 filed a suit for

recovery of certain sum of money with certain other reliefs and in that suit, application for judgment upon admission was allowed. Appeal thereon being unsuccessful, this petition is filed.

2. The application filed by 1st respondent-Bank for judgment on admission covers only a part of the suit claim. The 1st respondent-Bank relied upon (i) Balance Sheet of the petitioner for year ending 31st March, 1989 with reference to Schedules 'C', 'D' and 'E'; (ii) Minutes of the meeting of Board of Directors held on 30th May, 1990 which noticed the discussion at the meeting and issues that could be deemed to have been settled as result thereof; (iii) letter dated 4th June, 1990 communicating the resolution and minutes of the meeting of the Board of Directors held on May 30, 1990.

3. In the said minutes in the meeting held on 30th May, 1990, it was mentioned as follows :-

"IT WAS RESOLVED THAT :

In consideration of the United Bank of India, Connaught Circus Branch, New Delhi, having agreed to the continuation of the previously sanctioned aggregate eredit limits amounting to Rs. 17.45 crores and in consideration of the Bank having agreed to continue the operation of the various borrowing accounts with outstanding dues, as stated hereinbelow in detail, the Company agrees to duly execute a fresh set of documents as required by the Bank there against.

That Mr. Harcharan Singh Dugal, the Managing Director of the Company be and is hereby authorised to execute the said documents and the official seal of the Company be affixed thereon.

It is also resolved that the Company disputes the amount of Rs. 3,08,01,000 debited to its Cash Credit Account on 1-8-89 which along with interest stands at Rs. 3,60,62,579 as on 31-2-90.

That the company accepts its liability as per details stated hereinbelow :

Natures Present Sanctioned

(Rs. In lakhs) Amount Due

(Rs .In lakhs)

Cash Limit/OD	65.00	101.16
Inland Guarantee	401.31	23.18
Baghdad Guarantee	1082.60	793.73
Jordan Guarantee	209.30	101.85
Term Loan	5.00	Nil
Loan Account		Nil
	16.88	
		1745.07
	1036.80	

That, also due to fluctuations in Exchange Rate there has been difference in amount due under Jordan Guarantee amounting to about Rs. 21 lakhs which is not reflected in details shown above."

4. A copy of the aforesaid resolution was sent to the plaintiff with the following note as indicated in the letter dated 4th June, 1990:

"(a) We do not confirm the debit entry of Rs. 3,60,62,579/- representing your share of the involved guarantee with interest up to 31-3-90 which has been effected by you unauthorisedly against the illegal payment made by the Indian Overseas Bank. We are enclosing a copy of the reply given to the Legal Notice received by us from them. The reply is self-explanatory. You will agree that before effecting the said payment consisting of such a large amount, a reference ought to have been made to us.

(b) The loan account of Janpath Branch amounting to Rs. 4,03,820 is not accepted and is totally denied. We have repaid your Janpath Branch the Convertible was loan for Baghdad along with interest in full. The debit in your ledger is on account of the Janpath Branch not giving effect to the reduced interest rate as directed by the Reserve Bank of India. At their request a copy of the RBI-circular was given to them and had also been sent to you.

(c) That fresh documents are executed against the consideration of permitting us to operate the sanctioned limits there against as they stand. The debit entry of Rs. 3,60,52,579 and entries for interest thereon will have no bearing on the actual amount due as confirmed by us in our Board Resolution.

(d) Almost two years ago an unofficial freeze was imposed on our Inland Guarantee limits for reasons never communicated to us. Thus, you had denied fresh Guarantees for Bid Bonds etc. to tender for new works and the company's huge fleet of Construction equipments and trained personnel perforce thereby remained idle since the last one and a half year."

5. The petitioners filed an affidavit-in-opposition to contend that :

1. That the defendant No. 1's suit is barred by limitation;

2. That the resolution dated 30-5-90 was passed subject to a condition that the inland guarantee limit would be resumed and that as the condition was not fulfilled, the resolution was not binding;

3. That the defendant No. 1's suit was liable to be stayed under Section 10, CPC because the matter in issue in the suit was also directly and substantially in issue in the previous suits filed by others.

4. That the suit of the defendant No. 1 is bad for misjoinder of parties.

6. The defendants further contended that, insofar as resolution dated 30-5-1990 and a letter dated 4-6-1990 are concerned, they are to the effect that they are matters of record and save what are matters of record and save what would appear from the letter dated 30-5-1990 all allegations to the contrary are disputed and denied. It is categorically denied that there is any admission of liability by the first respondent to the petitioner to the extent of Rs. 10,15,80,090 as on 30th March, 1990 or that since the said alleged admission of the liability the claim of the petitioner has increased and it is now more than Rs. 24 crores, as wrongly alleged, if at all.

7. At time of hearing it appears it was contended :

1. that the amount claimed by the plaintiff from the defendants was part of the consortium agreement under which the Indian Overseas Bank, United Bank of India and the EXIM Bank agreed to advance money to defendant No. 1 in the proportion of 50 : 25 : 25. It was stated that Indian Overseas Bank has filed a suit against the defendants for recovery of all the amounts advanced by the consortium to the defendant No. 1 and that suit was still pending, therefore, they were estopped from filing that suit and making an independent claim against the defendant No. 1.

2. That in the suit filed by Indian Overseas Bank an application had been moved by the Indian Overseas Bank for final judgment under Chapter XIII-A on the basis of the same documents which were sought to be relied upon by the plaintiff. The trial Judge had rejected the same.

3. That payments had been made subsequent to the admission and loan was recalled only in 1993 just prior to the filing of the suit.

4. That several claims have been included in the suit in respect of which another suit has been filed in the Madras High Court and, therefore, the amount could not be recovered.

5. The claim of the plaintiff had been covered by a counter guarantee issued by the Export Credit Guarantee Corporation and the extent of payment made by it to the plaintiff and the suit was for the reason not maintainable at the instance of defendant No. 1.

6. That the defendants in the suit had filed a separate suit in which he had claimed for certain reliefs which would nullify the claim made by the plaintiff to the suit.

8. The learned trial Judge found that there is an unequivocal admission of the contents of the documents and what is denied is the extent of admission and the increase of the liability admitted.

9. The learned trial Judge took the view that the pre-requisites of Order XII, Rule 6, CPC had been satisfied in this csae and that on a plain reading of the resolution of the Board dated 30-5-1990 there could be no doubt that the petitioner had read a clear, unambiguous and unconditional acknowledgement of its liability to the Bank. The language of the resolution would show that the extent of the admission in the resolution is for Rs. 10,15,80,000/-, if not for Rs. 10,36.80/- lakhs. The figure of Rs. 1015.80 lakhs is firm admission being the figure arrived at after deducting Rs. 21 lakhs claimed by the defendants by reason of fluctuation of the exchange rate and that was the amount claimed by the petitioner in the suit. This admission made in the course of the Board of Directors' resolution had not been explained by the petitioner in the affidavit-in-opposition but on

the other hand had reiterated the same. The arguments raised before the trial Court were considered to be contrary to the pleadings raised in the case. Therefore, the application was allowed.

10. On appeal, the Division Bench noticed these very facts and also noted that discrepancy, if any, between the appellant's particulars and the particulars in respect of which a judgment was sought on admission was not made the subject-matter of challenge either in the affidavit-in- opposition before the trial Judge or in the arguments thereof and characterized the same as a point of accounting discrepancy which could not be raised at the stage of appeal and dismissed the same.

11. Learned Counsel for the appeal contended that Order XII, Rule 6 comes under the heading 'admissions' and a judgment on admission could be given only after the opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII, Rule 5(1) of CPC and Court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression 'admissions' made in the course of the pleadings or otherwise will have to be read together and the expression 'otherwise' will have to be interpreted ejusdem generies .

12. As to the object of the Ordr XII , 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 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.

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to

pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

14. Before the trial Judge, there was no pleading much less an explanation as to the circumstances in which the said admission was made so as to take it out of the category of admissions which created liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order XII, Rule 6, CPC, the stand is clearly to the contrary. Statements had been made in the course of the Minutes of the Board of Directors held on 30th May, 1990 to which we have already adverted to in detail. In the pleadings raised before the Court , there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30th May, 1990 in the letter dated 4th June, 1990 what is stated in the affidavit-in-opposition in application under Order XII, Rule 6, CPC is save, what are matters on record and save what would appear from the letter dated 30th May, 1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.

15. Even without referring to the expression 'otherwise' in Rule 6 of Order XII, CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression 'otherwise' becomes unnecessary.

16. The learned counsel for the appellant relied on a decision of this Court in Nagubai Ammal v. B. Shama Rao, 1956 SCR 451 : (AIR 1956 SC 593), as to when an admission becomes relevant. In Nagubai Ammal (supra) which is locus classious on the subject states that merely because a written admission made in a different context, such admission may not become relevant if the party making it has a reasonable explanation of that. But that is not the position in the present case at all. Learned counsel for the appellant further adverted to the decision in Balraj Taneja v. Sunil Madan (1999) 8 SCC 396 : (1999 AIR SCW 3345 : AIR 1999 SC 3381) in which the Court was concerned with a case of the effect of not filing a written statement and whether a decree could be passed only on that basis. That was a suit for specific performance and it was held it could not be granted without even writing a detailed judgment and adverted to various provisions of Code of Civil Procedure and reference was made to Order XII, Rule 6 by way of analogy and referred to the dictum in Razia Begum v. Sahebzadi Anwar Begum, 1959 SCR 1111 : (AIR 1958 SC 8860), to state that Order XII, Rule 6 should be read along with proviso to Rule 5 of Order 8 , CPC. In that case, what was noticed was that in cases governed by Section 42 and Section 43 of Specific Relief Act, 1877, the Court is not bound to grant declaration prayed for on the mere admission of the claim by the defendant if the

Court has reason to insist upon a clear proof apart from admission. The result of a declaratory decree confers status not only on the parties but for generations to come and so it cannot be granted on a rule of admissions and, therefore, insisted upon adducing evidence independent of the admission. That is not the position in the present case at all. We fail to see how this decision can be of any use to the petitioner. The decision in re Pandam Tea Co. Ltd. , AIR 1974 Cal 170, pertains to the manner in which the balance-sheet should be read and has no bearing on the case. The decision in Shikharchand v. Mst. Bari Bai, AIR 1974 Madh Pra 75, is to the effect that the Rule is wide enough to afford relief not only in cases of admissions in pleadings but also in the case of admission dehors pleadings. State Bank of India v. M/s. Midland Industries, AIR 1988 Delhi 153, and Union of India v. M/s. Feroze and Co., AIR 1962 J and K 66, cannot have relevance because the facts in arising cases and the present case are entirely different.

17. Learned counsel for the petitioner contended that admissions referred to in Order XII, Rule 6, CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traverse. Secondly as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it unnecessary to examine as to what kinds of admissions are covered by Order XII, Rule 6, CPC.

18. We are not impressed with the contention of the learned counsel for the appellant that there is no admission for the purpose of Order XII, Rule 6 at all, nor that the admission if any is conditional because we cannot spell out any conditions stated therein nor the dismissal of application filed by Indian Overseas Bank in the suit has any relevance. Therefore, we are of the view that this case deserves to be dismissed with advocates fee quantified at Rs. 10,000/-.

Petition dismissed.