
(2015) 06 GAU CK 0020
In the Gauhati High Court
Case No : RFA No. 18 of 2009

Buragohain Tea Co. Ltd. and Others

APPELLANT

Vs

Cosmos Business Pvt. Ltd.

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Citation : (2015) 4 GLT 984

Hon'ble Judges : Biplab Kumar Sharma and Nishitendu Chaudhury, JJ.

Bench : Division Bench

Advocate : G. Choudhury, Advocate, for the Appellant; S.S. Sharma and L. Sarma, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Nishitendu Chaudhury, J.—Defendants of Money Suit No. 16/2008 have preferred this first appeal challenging the decree dated 18.03.2009 passed by the learned trial court Plaintiff instituted Money Suit No. 16/2008 in the Court of learned Civil Judge at Jorhat on 12.09.2008 stating that defendant No. 1 company asked for financial assistance to the tune of Rs. 3,68,164/- from the plaintiff company. Accordingly, plaintiff entered into an agreement with the defendant No. 1 on 21.08.1998 on the terms and conditions mentioned therein. The defendant No. 1 thereafter deposited Rs. 1,25,000/- with the Jorhat Branch of the plaintiff to wards margin money and thereupon plaintiff issued Account Payee Draft for Rs. 4,93,164/- in favour of M/s. Himatsinghka Auto Enterprise so as to enable the defendants to purchase a Tata Sumo-DLX vehicle. As per the agreement, the loan was repayable within 36 instalments along with interest at the rate of 18% per annum as described in Schedule A and B to the agreement Although defendant initially paid the instalments regularly, but subsequently Med to make any payment Rather, by letter dated 22.08.2001 defendants informed the plaintiff that due to extreme poor financial condition defendant No. 1 was not in a position to repay the instalments and prayed for time. Although thereafter

another sum of Rs. 46,500/- was paid by the defendants towards 23rd, 24th and 25th installment but entire loan along with interest was not liquidated. Under such circumstances, plaintiff issued demand notice under registered cover for Rs. 4,67,412/- asking the defendants to clear dues within 15 days from the date of receipt of the notice but in vain. Compelled, the plaintiff instituted the suit for Rs. 5,02,888.86 along with interest at the rate of 18% per annum. On being summoned, the defendants No. 1 and 2 appeared and submitted written statement. In the written statement the defendants stated the poor financial condition of the defendant No. 1 company led the Board of Directors to adopt a resolution for its winding up so as to pay liability to the creditors. It is stated that company petition No. 1/2008 was initiated before this court for winding up of the company and the same is pending. However, from paragraph 2 onwards, the defendants have given reply to averments made in the plaint. It is stated that unless specifically admitted all allegations made therein are to be deemed to be denied. In paragraph 2(d) it is pleaded that averments made in paragraph 12 in the plaint is not admitted and that defendants, did not admit outstanding dues in the alleged letter dated 02.09.2005. Apart from that objection in regard to bar of limitation was also raised in the written statement. The defendants also pleaded that there was no cause of action for the suit. With these pleadings a prayer was made for dismissing the suit in limine and in alternative to stay the same till the winding up proceeding was concluded.

2. The learned trial Court after filing of the written statement did not frame issues and was under the impression that the defendants admitted the claim of the plaintiff and accordingly by the impugned order decreed the suit of the plaintiff for a sum of Rs. 5,02,888.86 along with interest at the rate of 18% per annum from the date of filing till realisation. In the last paragraph of the impugned order, learned trial court held that after going through the written statement it was found that defendants had admitted the claim. In so doing, the learned trial court observed as follows:

"In their written statement, defendants No. 1 and 2 admitted the claim of the plaintiff."

3. Under the facts and circumstances, the only point for determination in this appeal is as follows:

Whether the defendant admitted claims of the plaintiff in this case?

4. I have heard Mr. G. Choudhury, learned counsel for the appellant and Mr. SS Sharma, learned senior counsel assisted by Ms. L Sharma for the sole respondent. I have perused the lower court records including the pleadings of the parties and the impugned order.

5. Mr. G. Choudhury, learned counsel for the appellant submits that the order has been purportedly passed under Order XII Rule 6 of the Code of Civil Procedure on admission. But fact remains that defendants have not admitted either by filing written statement or otherwise. Rather, defendants have pleaded that plaintiff

does not have any cause of action and that the suit is barred by limitation. They have specifically denied the outstanding payable by them and under such circumstances, the finding of the learned trial court that defendants had admitted the claim of the plaintiff is out and out a perverse finding.

6. Mr. S.S. Sharma, learned senior counsel appearing for the sole respondent has vehemently argued that from tenor of the pleadings in the written statement it is clear that the defendants were unable to make payment of the dues. They admitted that because of their poor condition a winding up proceeding was pending in the High Court. The defendants not having specifically denied the averments made in the plaint in regard to sanctioning and payment of loan to the defendants, the learned trial court has not committed any error in holding that the defendants have admitted the claim of the plaintiff. With these arguments, the learned senior counsel urged that the appeal is devoid of any merit and it is liable to be dismissed.

7. In the case of Robert Marbaniang Vs. Ramona R. Marak reported in (2012) 4 GLR 494 this Court held that unless there is certain, unambiguous and clear admission either in pleadings or otherwise orally or in writing, a Court would not derive jurisdiction under Order XII Rule 6 of the Code of Civil Procedure to pass a decree on admission thereby refusing to give a scope to the defendants to lead evidence. Paragraph 7 of this judgment is quoted below:-

"7. Thus, wide power is vested in the court in terms of provisions of order 12, rule 6 to pass a decree at any stage or proceeding upon application or on its own accord where an admission of a fact has been made either in the pleadings or otherwise, orally or in writing. But a decree passed in exercise of this provision cannot be beyond the specific admission made by a party necessarily it follows that the admission should be certain, unambiguous and clear. Before a party can be denied the right to lead its defense or contest the case on merits, the admission should be capable of being truly accepted as an unequivocal admission of a fact.

The powers under order 12, rule 6 of the Code has to be exercised judiciously on the facts and circumstance of each case. The admission on the basis of which the court wishes to pass a decree has to be unambiguous, clear and unconditional. There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to admission on the part of a party to the suit. The court has to consider the need for passing a decree on admission on the part of a party to the suit. The court has to consider the need for passing a decree on admission under these provision only in the cases of first category and normally should decline in the cases of the later category."

8. In the case of Himani Alloys Ltd. Vs. Tata Steel Ltd. reported in JT 2011 (11) SC 222, the Hon"ble Supreme Court held that power under Order XII Rule 6 is only 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. Undoubtedly, such discretion should be used only when there is a clear "admission" which can be acted upon. To be an admission within the meaning of Order XII Rule 6 of the Code of Civil Procedure, it has to be specific, clear, unambiguous and certain capable of being acted upon.

9. Coming to the case in hand, there is nothing on record to hold that defendants have made any admission of the claim made by the plaintiff. In terms of the yardstick referred to above, it does not appear that defendants have made any admission whatsoever within the meaning of Order XII Rule 6 of the Code of Civil Procedure. There is no admission in the written statement. There is no other application admitting the claim of the plaintiff. The defendant has not deposed and so oral admission also does not appear. Moreover, in the case in hand the defendants having stated that the suit is barred by limitation and that it is devoid of any cause of action, it is apparent that defendants have sought the plaintiff to contest their case on merit and so a stringent step depriving the defendants from going to trial of the suit is not warrant in this case. There being no clear, unambiguous and specific admission as to any of the claims of the plaintiff, the impugned order passed by the learned court apparently on the presumption that defendants have admitted the claim, cannot be sustained. Consequently, there is no force in the objection raised by learned senior counsel. Mr. SS Sharma. Accordingly, the appeal stands allowed. The impugned judgment and decree is set aside.

10. The matter is sent back to the learned trial court for trial in accordance with law. The learned trial court shall frame issues on the basis of the rival contentions of the parties and thereafter proceed in accordance with law. Since the matter is of the year 2008, the learned trial court shall make endeavour for expeditious disposal of the suit.

11. No order as to costs. Parties shall appear before the learned trial court on 13th May, 2015 to receive necessary order(s). Registry shall send down the records in the mean time.