

(2005) 09 KAR CK 0057
In the Karnataka High Court
Case No : Writ Petition No. 31867 of 2004

CREF Finance Limited

APPELLANT

Vs

Sri Shanthi Homes Private Ltd. Company and Others

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 151
Evidence Act, 1872 — Section 18, 23

Citation : AIR 2006 Kar 54 : (2006) ILR (Kar) 528 : (2006) 5 KarLJ 69 : (2006) 1 KCCR 303

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : G.L. Vishwanath and Manasa, for the Appellant; C.V. Nagesh, M. Mahesh and K.B. Srinivas for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—The petitioner is the plaintiff and respondents 1 to 3 are defendants 1 to 3 in O.S. No. 15045/2001. The said suit is filed to recover a sum of Rs. 19,33,74,411/- jointly and severally from respondents and others along with interest at the rate of 30% p.a. and all other consequential reliefs. Suffice it to say that the proceedings had a checkered career.

2. The facts giving rise to the present proceedings could be summarised as follows:

In terms of certain Memorandum of Understanding dated 29.9.1995, the petitioner had paid a sum of Rs. 3.52 crores to the 1st respondent and an additional sum of Rs. 2.88 crores to the 3rd respondent in all aggregating to Rs. 6.40 crores. In terms of the said agreement between the parties, the respondents were not in a position to develop the immovable properties agreed to be sold under the said Memorandum of Understanding the respondents who are the defendants would refund the said amount paid by the petitioners

together with interest. Since the said amount was not paid by the respondents, the present suit is filed for recovery of the said amount which is inclusive of interest. It appears certain correspondence has taken place between the parties in respect of the dispute and there appears to be a certain confirmation letter stated to have been written by one of the defendants confirming a sum of Rs. 920 lakhs, which according to the petitioner is the principle amount claimed in the suit which is inclusive of the interest of Rs. 65 lakhs. An application I.A. No. 4 was filed by the respondents herein under -Section 8 of the Arbitration and Conciliation Act 1996 to refer the dispute raised by the plaintiff-petitioner to Arbitration and to dismiss the suit as not maintainable. The reasons assigned by the learned Trial Judge are not germane for disposal of the present proceedings. Be that as it may the learned Trial Judge rejected the application I.A. No. 4 on the ground that it is not a case where the proceedings will have to be suspended u/s 8 of the Act and the matter will have to be referred to the Arbitratory Tribunal. The said order passed by the learned Trial Judge is produced at Annexure "K". The said order was challenged by the respondents before this Court in CRP 3857/2002. An application was also filed in the said revision petition for staying of all further proceedings of the suit in O.S. No. 15045/2001. This Court, while granting an interim order of stay directed the respondents to pay a sum of Rs. 2 crores out of the undisputed principal amount at Rs. 9.25 crores within 15 days failing which the revision petition shall stand dismissed without further reference to the Bench. The said order passed by this Court in the Civil Revision petition is produced at Annexure "L1". The said order was challenged by the respondents before the Apex Court in SLP (C)No. 24069/2002. The Apex Court did not grant special leave and thereby dismissed the special leave petition. At this point of time, the petitioner plaintiff filed an application I.A. No. 2 under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 seeking a judgment on the admissions, directing the respondents, 1 to 3 to jointly and severally pay the admitted principle sum of Rs. 9,20,69,032/-. The sum and substance of the said application is that from time to time since 1996-1999, the 1st respondent Company acknowledged its liability in writing to the plaintiff and promised to pay the said outstanding dues. The said acknowledgment is by way of confirmation of certain letters stated to have been written by the respondents. Some of them are produced in the present petition, which are at Annexures-G, H and J. In view of these admitted documents confirming the liability, the present application under Order 12 Rule 6 of the CPC was filed seeking a Judgment on the basis of admissions, which has given rise to the present proceedings. The said application was seriously opposed and disputed by the respondents on all factual aspects inter alia contending that such a decree under Order 12 Rule 6 of the CPC cannot be granted in favour of the petitioner as all those documents, which are sought to be relied on by the plaintiff-petitioner are disputed documents. A perusal of the statement of objections would also reveal that the entire liability to satisfy the suit claim is also denied in toto by the respondents. The learned Trial Judge having considered the rival submissions of both the petitioner as well as respondents has rejected the application by its impugned order dated

18.11.2003, a copy of which is produced at Annexure "R".

3. Mr. G.L. Vishwanath, learned Counsel appearing for the petitioner-plaintiff would strenuously contend that Annexures-G, H and J are the confirmation letters issued by the respondents admitting their liability to pay a sum of Rs. 9.25 crores. The said confirmation according to him would amount to admission, which would entail a decree under Order 12 Rule 6 of the Code of Civil Procedure. He would also further submit that Form-8 which is filed before the Registrar of Companies would disclose that the amount secured by way of charge would amount to Rs. 952 lakhs and the beneficiary thereof is none other than the plaintiff-petitioner, a copy of which is produced at Annexure "E". He would also stress on Form No. 13, which is a Register of Charges, which would once again disclose that it is the plaintiff-petitioner who are entitled for the charge in respect of the property to the tune of Rs. 952 lakhs together with interest. Based on these two documents, he would submit that the petitioners- plaintiffs are entitled for a partial decree at least to an extent of Rs. 2 crores, which has been admitted by the respondents.

4. Mr. Sachin, learned Counsel appearing for the Mr. C.V. Nagesh, learned Counsel for the respondents would strenuously submit that Order 12 Rule 6 of the CPC can be exercised in exceptional circumstances, inasmuch as by filing such an application, the Courts are not obliged to pass a decree. He would further submit that all the documents, which are sought to be relied upon by the petitioner, have been denied in toto in the statement of objections as well as by subsequent written statement. In the circumstances, on these disputed documents, the question of granting a decree or even a partial decree is not contemplated. He would also further submit that any condition which is imposed by this Court while granting an interim order on an earlier occasion in the revision petition, that by itself will not amount to an admission under Order 12 Rule 6 of the Code of Civil Procedure. To buttress his contention, he has relied on the Judgment of this Court in the case of Janardhan Jog Vs. Srikrishna, .

5. I have perused the impugned order as well as considered the rival submissions of both the Counsel, Order 12 Rule 6 of the CPC would read as under:

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.

A reading of Order 12 Rule 6 of the CPC would contemplate that whenever there is an admission made in the pleadings or otherwise even orally, the Courts are

obliged to pass a decree on the basis of such admission. The decree could certainly be a partial decree. But however, the question is whether the discretion, which is exercised by the Trial Court while considering the said application could be interfered by this Court under Article 227 of the Constitution of India. The Apex Court in case of *Surya Dev Rai Vs. Ram Chander Rai and Others*, has ruled in what circumstances the Court can interfere with the discretion exercised by the Trial Court. Apparently, the said discretion could be found fault with, if it is one without jurisdiction or is passed in violation of principles of natural justice or there is an error apparent on the face of the record, which would warrant interference. Apparently the documents which are relied on by the learned Counsel appearing for the petitioner are, without doubt, in the nature of admission of certain liability but in the face of later the respondent resiling by filing the statement of objections and also by filing a written statement, they would partake the character of disputed documents. When that is the situation the said documents no doubt dehors the denial would provide the basis for a decree, cannot now be looked into for the purpose of granting a decree under Order 12 Rule 6 of the Code of Civil Procedure.

6. A Judgment of Apex Court was cited at the bar in case of *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, to the effect that on the basis of admission made in the minutes of the meeting and the Resolution passed thereof, a decree could be passed under Order 12 Rule 6 of the Code of Civil Procedure. The said decision is not applicable to the facts of the case. Apparently, the said admission, which is made on the basis of minutes of meeting and resolution passed thereof was not resiled by the contesting parties thereof. But however, the said decision also would confirm my view to the effect that on a disputed document, which is objected to by the contesting parties and unless an opportunity is given to them to explain the said documents, a decree cannot be passed under Order 12 Rule 6 of the CPC on the basis of the said disputed documents. In the case referred to above, notwithstanding opportunity given to explain such admission as contemplated under Sections 18 to 23 of the Evidence Act, the Apex Court was of the opinion that the decree granted by the Trial Court cannot be faulted with. However, that is not the situation here. The Judgment relied on by Mr. Vishwanath, learned Counsel appearing for the petitioner will be of no assistance to him in view of the Judgment of the Apex Court in AIR 2000 SCC 120.

7. When an application is filed under Order 12 Rule 6, objections are filed by the respondents denying in toto, the said documents would partake the character of a disputed documents. u/s 18 of the Evidence Act, an opportunity is to be given to the respondents to explain the said admissions and in what situation those admissions were made. But however, this is a matter to be decided during the course of trial and not at a stage, when the application is being considered under order 12 Rule 6 of the Code of Civil Procedure. A Division Bench of this Court in the case of *B.S. Viswanath Vs. Smt. Chandika ben J. Mehta and Others*, has held that as can be seen from the provision, the Court in its discretion has the

jurisdiction to pass partial decree on the basis of the facts admitted, whether such admission is in the pleadings or otherwise. The scope of the above provision is, the admission must be such which is complete and sufficient to pass a partial decree, which the Court proposes to pass on the basis of admission. The same view is taken in the case of Janardhan Jog v. Srikrishna (supra) that the admission must be absolute and capable of being worked out by itself. It is also to be noticed that so far as the admission as contemplated under Order 12 Rule 6 of the CPC is concerned should independently stand without there being any interlink support and unless that is established, a decree under Order 12 Rule 6 of the CPC cannot be granted.

8. Having considered the rival submissions and also the law in what circumstances a decree could be granted under Order 12 Rule 6 of the Code of Civil Procedure, I am of the considered view that the impugned order passed by the learned Trial Judge cannot be faulted, Consequently, I do not find any merit in this petition.

Petition stands rejected.

Any observation made in respect of the documents, which are referred to during the course of the order shall be only for the purpose of the disposal of the application under Order 12 Rule 6 of the CPC which shall not have any bearing on the merits of the case.

The petitioner is at liberty to prove the veracity of the said documents during the course of the trial.

The learned Trial Judge shall expedite trial and shall dispose of the same on or before the Commencement of summer vacation 2006.