(2006) 08 CAL CK 0047

In the Calcutta High Court

Case No : G.A. No. 2875 of 2005, G.A. No. 1292 of 2006 and C.S. No. 678 of 1999

Ghanashyamdas Agarwal APPELLANT

Vs

Bank of India and Others RESPONDENT

Date of Decision : 01-08-2006

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

Citation : (2007) 3 CivCC 110 : (2007) 5 RCR(Civil) 461

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Joy Saha, Mr. Sabyasachi Chowdhury, Mr. Sagar Bandopadhyay and Mr. Tapas Saha, for the Appellant;Nilendu Bhattacharya, S.K. Datta, K. Bhowmick, for the Defendant No. 1, Mr. Soumen Sen, D.N. Sharma, Rupak Ghosh and Mr. U. Goswami, for the Defendant No. 2 and Mr. Promit Roy, for the Defendant No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application filed by the plaintiff praying for judgment on admission against defendant No.2 American Express Banking Ltd. and defendant No.3 National Bank Ltd. inter alia on the grounds that in this suit being C.S. 678/99 for a decree for Rs. 1.53 crores against the defendants together with interest and other reliefs, defendant No.3 had opened an irrevocable Letter of Credit dated 20.04.1999 which was amended on 06.05.1999, in favour of the plaintiff in respect of certain goods to be sold by the plaintiff to defendant No.4 (since deleted). The goods forming the subject-matter of sale were sent by the plaintiff from India to Bangladesh and the documents in respect of the consignment were sent by the plaintiffs banker defendant No. 1 Bank of India to defendant No. 3. In gross breach of its obligations under the said Letter of Credit, defendant No.3 refused to make payment in respect thereof on the purported ground that certain discrepancies exist in the documents concerning the consignment of the goods. In the written statement filed by defendant No.3 it has been contended that defendant No.4 had instructed defendant No.3 to stop payment of the said Letter of Credit, that defendant No.3 had already written to defendant No. 1 that it was ready to return all the documents sent to it by defendant No. 1 and that ultimately by a covering letter dated 10.10.1999 it returned the documents to defendant No. 1 in complete discharge of all responsibilities/ liabilities in respect of the documents. Defendant No.3 in breach of its duties as a banker made over the documents concerning the said consignment to defendant No.4 and has in the process permitted defendant No.4 to take delivery of the entire consignment. Defendant No.4 filed Title Suit No. 163/ 2000 in the Court of learned Subordinate Judge 5th Court at Dhaka against the present plaintiff and defendant Nos. 1 to 3 for declaration and injunction wherein defendant No.3 in paragraphs 13, 17 and 18 of its written statement made admissions that defendant No.3 stopped payment of the Letter of Credit on the basis of request from defendant No.4, that the documents in question were made over by defendant No.3 to defendant No.4 on the basis of which defendant No.4 obtained release of the consigned goods and that defendant No.3 is under obligation to reimburse the payment to the supplier''s corresponding Bank i.e. defendant No.2. There was no discrepancy in the documents, as on the basis of such documents the importer obtained release of the goods. The plaintiffs claim is confined only against defendant No.3 and its Associate Bank defendant No.2.

2. Mr.Saha, learned Counsel for the plaintiff, on referring to paragraphs 13,17 and 18 of the written statement filed by defendant No.3 in Title Suit No. 163/2000 instituted by defendant No.4 in the Court of learned Subordinate Judge, 5th Court at Dhaka contended that on the face of specific averments made in the said paragraphs that defendant No.3 stopped payment of the Letter of Credit on the basis of request from defendant No.4, that the documents in question were made over by defendant No.3 to defendant No.4 on the basis of which defendant No.4 obtained release of the consigned goods and the said defendant No.3 is under obligation to reimburse the payments to the supplier''s corresponding Bank i.e. defendant No.2, judgment on admission may be passed by this Court. Mr.Saha, on referring the English cases of Ellis vs. Alien, (1914) CD. 904 and Ffrench vs. Sproston, (1894) CD. 499, Shikharchand and Others Vs. Mst. Bari Bai and Others, and Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, canvassed that the expression "or otherwise" as occurring in Rule 6 of Order 12 read with the words "orally or in writing" is wide enough to embrace any form of admission. Relying upon the cases of B.K.N. Narayana Pillai Vs. P. Pillai and Another, and Heeralal Vs. Kalyan Mal and Others, Mr.Saha contended that though the said suit being T.S.No. 163/2000 pending in the Court of learned Subordinate Judge at Dhaka has since been withdrawn on 26.07.2003, it does not at all affect the said admission since once an admission is made, it will remain as an admission for all time to come.

3. Mr.Sen, learned Counsel for defendant No.2 submitted that as there is no admission on behalf of his client in its pleadings, the question of passing

judgment on admission against it does not arise.

4. In addition to similar argument that there is no admission on the part of his client, Mr.Roy, learned Counsel for defendant No.3, on referring to clause (b) of said UCP-500 further contended that as there were a number of discrepancies in the documents, there was no scope on the part of his client to honour the Letter of Credit. Mr.Roy, relying upon the cases of Birendra Nath Mallick Vs. Brahma Brata Roy , Dudh Nath Pandey (Dead) by Lrs Vs. Suresh Chandra Bhattasali (Dead) by Lrs, , Naspuri Dharmaiah vs. Kola Veeraiah, 1994 (1) CCC 268 (A.P.) : 1994 NOC 150 (AP) and State Bank of India Vs. Midland Industries and Others, contended that a judgment on admission is a matter of discretion and not a matter of right, that if an admission is made subject to a condition it must either be accepted subject to the condition or not accepted at all, that if the objection raised by the defendant goes to the root of the case, judgment on admission is not permissible, and as such when the said objection has been raised by his client, the same requires to be decided in trial.

5. The object of Rule 6 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. 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, as was held in the case of Uttam Singh Duggal & Co. Ltd. (2000 (2) ACJ 633 (S.C.)). It is undisputed that the expression "or otherwise" read with the words "orally and in writing" as used in Rule 6 is wide enough to include any form of admission either in the pleadings or answering affidavit or in a letter. Reference may be made to the above case of Uttam Singh Duggal & Co. Ltd. and Ellis vs. Allen (supra). Judgment ought not to be passed on admission unless it is clear, unambiguous and unconditional which is well-settled. The pleadings are to be read as a whole and not in piecemeal, and thus it is unsafe to adopt the process of etymological dissection and after taking words or sentence out of their context to proceed to construe it.

6. In the present case, there is no admission on behalf of either defendant No.2 or defendant No.3 in their respective written statements. On the contrary, it has been contended by defendant No.3 in his written statement that since discrepancies in the documents pointed out were not sorted out, it expressed its inability to make any payment. The sum and substance of paragraphs 13, 17 and 18 in the written statement filed by defendant No.3 in Title Suit No. 163/2000 filed in the Court of learned Subordinate Judge, Dhaka is that it stopped payment of the Letter of Credit on the basis of request of defendant No.4, that the documents in question were made over by defendant No.3 to defendant No.4 on the basis of which defendant No.4 obtained release of the consigned goods and that defendant No.3 is under obligation to reimburse the payment to the supplier''s corresponding Bank i.e. defendant No.2. The said admission of defendant No.3 regarding its obligation to reimburse the payment to defendant

No.2 has to be read along with the objection of defendant No.3 for non-payment of the Letter of Credit on the ground of non-removal of discrepancies in the documents. So it being not a case of admission pure and simple and as the former hinges upon the decision of latter which is a matter for trial, it does not appear to be a case where the plaintiff is entitled to a judgment on admission. The cases of M/s.Midland Industries (supra) and Dud Nath Pandey (supra) may be relied on.

7. In the light of the above discussion, the present application for judgment on admission is dismissed.

8. The application being G.A.No.2875 of 2005 stands disposed of accordingly.

9. Let the suit be treated as on day''s list.

10. It is submitted by the learned Counsel for the plaintiff that the application being G.A.No. 1292 of 2006 has already been disposed of. If that be so, the said application need not appear in the list further.

11. It is submitted by the learned counsel for all the parties urging for extension of time to complete all formalities including discovery of documents, inspection forthwith and cross order, if any.

12. In view of the above submission time is extended for three weeks from date to complete all the above formalities including discovery of documents, inspection forthwith, cross order, if any and preparation of Judge''s Brief of Documents.

13. Let the matter appear in the list four weeks hence.

14. Department and all parties are to act on a xerox signed copy of this dictated order on the usual undertakings.

