(1993) 10 DEL CK 0019

In the Delhi High Court

Case No : Regular First (OS) Appeal No. 15 of 1993

Prem Industries and Another — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 27-10-1993

Acts Referred:

Citation : (1994) 1 BC 448 : (1993) 52 DLT 284

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : S.K. Puri and J.S. Bakshi, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This first appeal by the defendant is directed against the judgment and decree of the Learned Single Judge (DalveerBhandari, J) passed on the oasis of admission under Order 12 Rule 6 of the Code of Civil Procedure.

(2) The plaintiff (now respondent) filed a mortgage suit for recovery of over Rs. 12.89 lakhs against five defendants being the principle debtor and the guarantors. On the pleadings of the parties, the following issues are framed :

(1)Whether the plaint is signed, verified and the suit instituted by a duly authorised person ?

(2)Whether the suit is bad for mis-joinder of cause of action ?

(3)Whether the defendants signed the documents in blank ? If so ,its effect.

(4)At what rate the plaintiff is entitled to charge the interest ?

(5)To what amount the plaintiff is entitled to and from whom ?

(6)Relief. -

(3) Then the plaintiff bank filed an application under Order 12 Rule6 of the CPC stating that in the balance-sheet of the first defendant (now appellant) this

defendant admitted that a sum of Rs.11,95,0857- was due from it to the plaintiff-bank. On the basis of this admission in the balance-sheet and after recording the relevant facts, the Learned Single Judge passed a decree for this amount with cost and then adjourned the suit for subsequent date for further proceedings.

(4) The appellant says that the impugned judgment could not have been passed and in support of his argument, reliance has been placed on two decisions of Single Benches of this Court. These being State Bank of India Vs. Midland Industries and Others, and Canara Bankv. M/s. M.M. Poly packing (P) Ltd. 1922 (22) Drj 130. In both the judgments it is mentioned that relief under Order 12 Rule 6 of the Code is discretionary one and has to be exercised. judicially on the facts and circumstances of each case and that Court is not bound to pass a decree. In this case the admission was clear, unambiguous, unconditional and unequivocal. These two judgments did not lay any law that admission in a balance-sheet is not admission or that a judgment cannot be passed under Order 12 Rule6 of the Code on that basis. It was stated before us that serious issues were involved in the case and the impugned judgment, Therefore, could not have been passed. No serious issue of law arises and we are of the opinion that the Learned Single Judge rightly felt that there was admission on the part of the defendants and that he could, under Order 12 Rule 6 of the Code, pass the impugned judgment and decree.

(5) It was submitted by Mr. Puri, learned Counsel for the appellant, that the balance-sheet was prepared for tax purposes for submission to the Income Tax authorities and could not be treated as any admission oa the part of the defendant that any amount was due from it to the plaintiff. We disagree with this submission. We ,Therefore, find no merit in this appeal, which is dismissed. Appeal dismissed