

(1917) 03 CAL CK 0001
In the Calcutta High Court

Premasuk Das Assaram

APPELLANT

Vs

Udairam Gungabux

RESPONDENT

Date of Decision : 28-03-1917

Acts Referred:

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

Citation : 44 Ind. Cas. 233

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal by the defendant against the judgment of Fletcher, J., whereby he directed that judgment should be entered for the plaintiffs for Rs. 4,503 with interest and costs, and that the plaintiffs were to be at liberty to prove their claim in respect of the balance of the claim in suit in the ordinary way.

2. This judgment was given upon a motion made by the plaintiff firm under Order XII, Rule 6.

3. The suit was for Rs. 6,813-1-0, and, if necessary, for an account of the dealings and transactions between the parties and for an order on the defendant firm to pay to the plaintiff firm what on the inking of such accounts might be found due by the defendant firm to the plaintiff firm.

4. It was alleged in the statement of claim that the plaintiff firm had been acting as commission agents in Calcutta for the defendants on terms set out therein. That on the last adjustment of accounts, viz., on 25th March 1915, a sum of Rs. 9,329-5-6 was found to be due from the defendants to the plaintiffs. That the business continued until 15th October 1915, at which time the accounts showed a balance of Rs. 6.038-5 6 due to the plaintiffs and that with the interest thereon up to 4th April 1916 amounting to Rs. 774-11-6, the total due at the time of institution of the suit was Rs. 6,813-1-0.

5. The material points of the defence are paragraphs 3, 4 and 5. In paragraph 3

the defendant alleged that he denied that "there was any adjustment on the 9th day of Chayet 1972, corresponding with 25th day of March 1915, or that Rs. 9,329 5-6 was found due by the defendant firm to the plaintiff firm, the fact being that the last adjustment took place sometime in March or April 1914 in respect of dealings between the parties for the Sumbat year 1970 and since then there was no other adjustment. Shortly prior to the said adjustment the plaintiffs had sent certain goods of the value of Rs. 4,500 or thereabouts to the defendants which had not been ordered by the defendants." Then he proceeded to say that "shortly thereafter the plaintiff firm sent their accounts of the dealings for the Sumbat year 1970 and Badri Dass Jalooka, gomastha of the plaintiff firm, came to adjust the accounts for the Sumbat year 1970. The defendant Assaram Agarwalla told the said Badri Dass Jalooka to take back the unordered goods. Whereupon Budri Dass Jalooka asked Assaram to sell those goods, and in the next accounts between the parties the plaintiff firm would not charge any interest on the price of the unordered goods and would also pay to the defendant firm all losses to be incurred by them in the sale of those goods,"

6. In paragraph 4 the defendant said, "with reference to the Exhibit A annexed to the plaint the defendant firm states that the item of Rs. 9,329-5 6 on the debit side of the said exhibit is not correct, the fact being that a much smaller sum was due to the plaintiff firm at the end of the Sumbat year 1971, inasmuch as the same will be reduced by the interest charged by the plaintiff firm on the said sum of Rs. 4,500 and by the losses incurred by the defendant firm on the sale of the unordered goods aforementioned."

7. Then in paragraph 5 he said: "With reference to the 7th and 8th paragraphs the defendant firm state that on an account being taken of the dealines between the parties during the years 1970, 1971 and 1972 it will be found that the sum of Rs. 4,500 or thereabouts is due to the plaintiff firm from the defendant firm besides interest on the sum."

8. On these pleadings the application was made by the plaintiffs for leave to enter judgment for Rs. 4,500 with interest on the ground of the admissions contained in" the statement of defence.

9. It was not denied by the defendants at the hearing of the application that the plaintiffs were entitled to judgment for Rs. 4,500 and interest, but the defendants alleged that if such judgment were obtained, the plaintiffs should not be allowed to proceed with the suit as to the remainder of their claim.

10. Fletcher, J., decided that the plaintiffs were entitled to judgment for Rs. 4,500 and interest and further that they should be at liberty to prove their claim to the balance, and consequently this appeal was lodged by the defendants.

11. The learned Judge in his judgment said "In this case there is no doubt that the defendant admits that Rs. 4,500 is due to the plaintiff. I asked the learned Counsel appearing for the defendant whether he still admitted that Rs. 4,500 was due to the plaintiff, and he said he did so. The admissions need not necessarily

be made in the pleadings, they can be made otherwise, and under Order XII, Rule 6, a verbal admission is sufficient to enter up judgment provided the Court is satisfied that the admission was in fact made. That being so, there cannot be any doubt that in this case there was a clear admission that Rs. 4,500 was due."

12. Now Order XII, rule C, provides as follows: Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to without waiting for the determination of any other question between the parties: and the Court may upon such application make such order or give such judgment, as the Court may think just."

13. I assume from the above mentioned extract from the judgment that the learned Judge satisfied himself that there was a clear and unambiguous admission by the defendants that in any event Rs. 4,500 was due from them to the plaintiffs. Assuming that to be so, I am of opinion that the learned Judge had jurisdiction to enter judgment for that amount, and it was in his discretion, having regard to the nature of the case and the allegations contained in the pleadings and the admission made in Court, whether he would allow the plaintiffs to proceed to prove the remainder of their claim.

14. I do not think that the case of *United Telephone Co. v. Danohoe* (1886) 31 Ch.D. 399 : 55 L.J.Ch. 480 : 54 L.T. 34 : 34 W.R. 326 covers the point raised in this case. The above-mentioned case was an action for infringement of a patent and the defendant admitted ten instances of infringement, but denied he had committed any others: the plaintiffs thereupon moved for judgment upon the admissions in the pleadings: in the Court of first instance the Vice-Chancellor granted an injunction against infringement by the defendant of the plaintiffs' patent, but he refused an enquiry as to damages. The Court of Appeal held that the plaintiffs were entitled to an enquiry as to damages, but that it must be limited to the instances of infringement admitted; and that the judgment having been obtained upon a motion for judgment upon the pleadings, the plaintiffs were bound to take the negative as well as the affirmative allegations therein.

15. The question whether the Judge, who in the first instance heard the application, would have had jurisdiction to give judgment on the admissions and to allow the plaintiffs to proceed to prove the rest of their claim as to the other alleged infringements, if such an application had been made, was not before the Court.

16. The case of *Andrews v. Patent Assurance Co. of Ireland* 18 Ir.L.R. 115 does not decide that the Judge hearing the application had no jurisdiction to make the order asked for in that case; it amounts to a decision merely that having regard to the circumstances of that case and the form of the pleadings, the Judge was entitled to exercise his discretion and to decide that the plaintiff ought not to have judgment for the ₹62 and yet proceed to trial of the remainder of the case.

17. This being a matter of discretion, we ought not to interfere unless it is clear

that the discretion was wrongly exercised.

18. In this case I cannot say that it is clear that the discretion of the learned Judge has been wrongly exercised.

19. The main question which remains to be tried is, whether the arrangement alleged by the defendants in their defence to have been made with respect to the unordered goods was in fact made, and, if so, how much must be deducted in respect thereof from the plaintiffs' total claim.

20. This seems to be an issue independent of the other part of the claim, and even if it were decided in favour of the defendants it would not, having regard to the above-mentioned admission made by the defendants in Court, reduce the plaintiffs' claim below Rs. 4,500.

21. With regard to the question of costs, I think that the plaintiffs should not at present be given the costs of the suit, but that these costs should be reserved until the trial, when they will be in the discretion of the Judge who tries the matters which remain for decision.

22. The plaintiffs are entitled to the costs of the application for judgment. For these reasons in my judgment the appeal should be dismissed on the main point raised therein, but that the decree as to costs should be varied in the manner above mentioned.

23. There will be liberty to apply with respect to the question of costs to the learned Judge on the original side in the event of the parties not proceeding to the trial of the remainder of the plaintiffs' claim.

24. I think that the parties should bear their own costs of this appeal.

Mookerjee, J.

25. This is an appeal by the defendant from a judgment on an application by the plaintiff under Order XII, Rule 6, of the Civil Procedure Code, 1808. The plaintiff firm instituted this suit for the recovery of a sum of money from the defendant firm in respect of a commission agency. The plaintiff firm alleges that accounts had been adjusted between them on the 25th March 1915, when a sum of Rs. 9,329 5 6 was found due from the defendant firm, that thereafter business was continued on the same terms and conditions as before down to the 15th October 1915, and that on the 4th April 1916, when the suit was instituted, an aggregate sum of Rs. 6,813-1-0 inclusive of interest was recoverable from the defendant. The written statement of the defendant firm denied the alleged adjustment of accounts, mentioned a transaction on terms other than those previously arranged and contained an admission that if an account were taken of the dealings between the parties and credit allowed from all payments made, the sum of Rs. 4,500 or thereabouts would be found due to the plaintiff firm besides interest on such sum. Thereupon on the 19th May 1916, the plaintiff firm applied to the Court under Order XII, Rule 6, for judgment for Rs. 4,500 with interest

thereon according to the admission of the defendant firm. Mr. Justice Fletcher heard the application on the 22nd May. In answer to a question put by the Court to Counsel for the defendant whether he still admitted that Rs. 4,500 was due to the plaintiff, an answer was given in the affirmative. The Court thereupon proceeded to give judgment for the plaintiff for Rs. 4,500 with liberty to the plaintiff to prove in the ordinary way the claim for the difference. The plaintiff was also awarded the costs of the application and the costs of the suit. The defendant has appealed to this Court on the ground that the Court could not or at any rate should not have given judgment to the plaintiff under Order XII, Rule 6. It is consequently necessary to examine the terms of the rule and determine its exact scope.

26. Order XII, Rule 6, which reproduces Order XXXII, Rule 6, of the English rules is as follows:

Any party may at any stage of a suit, where admissions of fact have been made either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to without writing for determination of any other question between the parties: and the Court may, upon such application, make such order or give such judgment as the Court may think just.

27. The rule, it will be observed, is expressed in comprehensive terms, and the only requisite for a judgment under the rule in favour of the plaintiff is that admission of facts should have been made by the defendant, either on the pleadings or otherwise. It would be obviously improper for the Court to read into the rule qualifications which may restrict its application. But a judgment on admission is not a matter of right, it is in the discretion of the Court, so that if a case involves questions which cannot be conveniently disposed of on a motion under the rule, the Court may in the exercise of its discretion refuse the motion. The discretion is judicial and an erroneous exercise thereof may be open to correction by a Court of Appeal which however, on well established principles will be slow to interfere, unless either of the parties has been manifestly and unfairly prejudiced. See the observation of Jeasel, M. R. in *Mellor v. Sidebottom* (1877) 5 Ch. D. 342 : 46 L.J.Ch. 398 : 37 L.T. 7 : 25 W.R. 401. Subject to these observations I cannot hold that any crystallised rules can be formulated to regulate the exercise of the discretion vested in the trial Court. It has been urged, however, that such rules are deducible from cases in the reports and reference has specially been made to the decision in *United Telephone Co. v. Danohoe* (1886) 31 Ch.D. 399 : 55 L.J.Ch. 480 : 54 L.T. 34 : 34 W.R. 326 which arose under Rules of Supreme Court Order XXXII Rule 6 and *Andrews v. Patent Assurance Co. of Ireland* 18 Ir.L.R. 115 which turned upon the construction of Rules of Supreme Court (Irish) Order XXXII, Rule 6. It may be observed that the Irish rule is identical in terms with the English rule. These cases, though not binding upon us as authorities, are valuable guides in the interpretation of the rule in our Code, for as observed by White, C.J., in *Messrs. Lovelock and Lewes v.*

Malabar Timber and Saw Mills Ltd. 18 Ind. Cas. 997 : 13 M.L.T. 282 in considering the construction of a section in an Indian Act which is professedly based on an English enactment, which in fact reproduces the language of the English enactment, we are in practice, if not in theory, bound by the decision of the English Court of Appeal. The cases mentioned, however, do not assist the appellants. In the first case the defendant in an action for infringement of a patent admitted certain instances of infringement but denied that he had committed any others. The plaintiffs thereupon moved for judgment upon the admission in the pleadings. Bacon, V.C., granted a perpetual injunction but refused an enquiry as to the damages. The plaintiffs appealed and contended that a direction might be added for an enquiry as to the damages sustained by them by reason of the infringement mentioned in the pleadings. The Court of Appeal ruled that they were entitled to an enquiry as to the instances of infringement admitted in the pleadings, but as to no others. This decision is not an authority for the proposition that the plaintiff might not have joined issue and set down the action for trial as regards the infringements not admitted by the defendant. The decision in *Andrews v. Patent Assurance Co. of Ireland* 18 Ir.L.R. 115 seems at first sight more favourable to the contention, of the appellant, but upon closer examination turns out to be an authority only for the proposition that the Court has a discretion to exercise in relation to applications for judgment on admissions and may impose terms if relief be given. The case is not an authority for an inflexible rule that the plaintiff who applies for judgment upon an admission must always take the admission as a whole or must ignore the admission and proceed to trial. In my opinion, it would be lamentable if the discretion, which for the best of reasons has been left free and untrammelled by the Legislature, were to be crystallised by judicial decisions, as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion, which must be applied with due regard to the varying circumstances of each particular case. I must consequently decline to interpret Order XII, Rule 6, so as to restrict its operation to cases where the plaintiff accepts the admission of the defendant in its entirety or where the claim is severable into distinct portions and the defendant admits his liability in respect of one such fragment of the claim. I do not also feel pressed by the argument that if a decree is made first on admission in respect of one portion of the claim and then on investigation as to the remainder, there may ultimately be two decrees in the same suit. I see nothing objectionable in principle to such a result, specially in view of the provisions of Order XXIV which treats of payments into Court. In my opinion, the case before us falls within the scope of Order XII, Rule 6, and sufficient grounds have not been assigned to induce us to hold that the order made by Mr. Justice Fletcher was unjust to the defendant. The direction for costs was, however, inappropriate and I agree that subject to modification in that respect as indicated in the judgment of the learned Chief Justice, the order should be affirmed.