

(2023) 02 DEL CK 0044

In the Delhi High Court

Case No : Civil Suit (COMM) No. 445 Of 2021

R & A Infracon Pvt. Ltd.

APPELLANT

Vs

Hindustan Spirits Ltd.

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 12 Rule 6

Citation : (2023) 02 DEL CK 0044

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : A. Maitri, Radhika, Tanmaya Mehta

Judgement

Neena Bansal Krishna, J

I.A. 3018/2022 (Application U/O XII Rule 6 r/w Section 151 of CPC, 1908 filed by the plaintiff)

1. The present application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC, 1908") has been filed on behalf of the plaintiff seeking a part Decree in the sum of Rs. 90,00,000/- along with interest @ 18% per annum pre-litigation, pendente lite and future interest.

2. The case of the plaintiff is that it had given advances/loans in the sum of Rs. 1,80,00,000/- during the period from 03rd January, 2014 to 01st August, 2018 to the defendant Company by way of bank transfer/ RTGS/ NEFT. The defendant Company has admitted the advance/loan transactions through various transactions between this period and that it has made part payments against the loan amounts received by the defendant Company. The defendant Company has acknowledged its liability in the sum of Rs. 90,00,000/- in its Balance Sheet submitted to the Registrar of Companies. Thus, a decree in respect of admitted amount of Rs. 90,00,000/- along with interest @ 18% per annum is sought in view of the admissions made by the defendant Company in their written

statement.

3. The defendant in its reply has set up a defence that the amounts paid by the plaintiff were in fact investments though were described/ treated as loans/ advances only for accounting convenience. There was no guarantee of repayment and the amounts were to be returned as a return of investment, to the plaintiff Company only if the finances of the Company so permitted. It is asserted that to the extent possible and permitted by the economic situation of the defendant and sometimes in good faith even though exceeding its economic capacity, investments were returned to the plaintiff from time to time. However, it is denied that the defendant Company is liable to pay Rs. 90,00,000/- along interest @ 18% per annum. The contents of the application are denied and the application is claimed to be liable to be dismissed.

4. The plaintiff in its rejoinder to the reply of the defendant has re-asserted that in view of the unequivocal admissions made by the defendant, the admitted claim may be decreed in favour of the plaintiff.

5. Submissions heard.

6. The present application for judgment under Order XII Rule 6 of CPC 1908 has been filed by the plaintiff seeking partial Decree in the sum of Rs. 90,00,000/- along with interest @ 18% per annum, in the light of unambiguous and categorical admissions made by the defendant. Before embarking on the merits of the case, it would be pertinent to first highlight under what circumstances a decree can be made under Order XII Rule 6 of the CPC.

7. Hon'ble Supreme Court in Himani Alloys Ltd. Vs. Tata Steel Ltd. (2011) 7 SCR 60 had observed that Order XII Rule 6 CPC is an enabling provision and the court has to exercise its judicial discretion after examination of facts and circumstances, 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 should not be exercised to deny the valuable right of a defendant to contest. It is only when the admission is clear that it may be acted upon. Similar observations were made by the Supreme Court in the case of M/s Jeevan Diesels & Electrical Ltd. (2010) 6 SCC 601.

8. The Division Bench of Delhi High Court in Vijay Myne vs. Satya Bhushan Kaura 142 (2007) DLT 483 (DB) explained the scope of Order XII Rule 6 of CPC as follows: -

"12. ...Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in

the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored."

9. In *Anil Khanna v. Geeta Khanna* 2013 SCC OnLine Del 3365, this Court had observed that the preliminary objections are based on legal advice, the same are not reply on merits wherein the party is required to plead facts specifically. In the preliminary objections, parties can even take contrary pleas and same would not amount to an admission. Further, the facts stated in the preliminary objections are without prejudice and do not constitute reply on merits and the averments cannot be read in isolation. Further, in the verification it is clearly stated that the averments in the preliminary objections are believed to be true on the basis of legal information.

10. The Division Bench of this Court in *Delhi Jal Board v. Surendra P. Malik*, 104 (2003) DLT 151 laid down the following tests: -

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."

11. In *Rajeev Tandon & Anr. Vs. Rashmi Tandon* CS (OS) 501/2016 decided by this Court on 28.02.2019 it was held that while considering an application under Order XII Rule 6 CPC the court can ignore vague and unsubstantiated pleas.

12. In *Abbot India Ltd. Vs. Rajinder Mohindra* (2014) 208 DLT 201 it was held that once it is found that there was no defence, merely because a bogey thereof is raised at the stage of framing of issues or upon the respondents/ plaintiffs filing an application under Order XII Rule 6 of the CPC, would not call for framing of an issue.

13. In *A.N. Kaul Vs Neerja Kaul & Anr.* 2018 SCC OnLine Del 9597 it was observed by the Apex Court that even if there is no express admission in the written statement but an intelligible reading of the written statement shows

propositions or pleas taken to be not material and no issue to be arising therefrom, the Court is still entitled to pass a decree forthwith.

14. Having discussed the law, it requires no reiteration that for the judgment to be based on admissions, the admissions have to be unequivocal and unambiguous leading to no other conclusion but to a decision in favour of the plaintiff.

15. In this background, the facts of the present case need to be examined.

16. The facts in brief as narrated in the plaint are that plaintiff Company's Director Shri Sandeep Singh is a family friend of Aneja's who are the Directors of the defendant Company. In 2013-14 the Aneja family contacted the plaintiff for financial help and persuaded him to advance loans in the name of defendant Company for raising its financial liquidity to meet its day-to-day financial needs. The plaintiff agreed to advance loans to be refunded by the defendant Company along with interest @ 18% per annum. The plaintiff extended advances/ loans by way of bank transfer/ RTGS/ NEFT on the following dates as under:

Date

Transaction No. /RTGS I NEFT/ Bank Cheques

Amount (☐)

17.02.2014

HDFCH14048986025 (HDFC Bank)

40,00,000.00

19.02.2014

HDFCH 14050532466(HDFC Bank)

50,00,000.00

24.03.2014

HDFCH 14083742788(HDFC Bank)

35,00,000.00

03.04.2014

HDFCH 14093997809(HDFC Bank)

30,00,000.00

03.04.2014

HDFCH14093997030(HDFC Bank)

25,00,000.00

Total -

1,80,00,000.00 (Rupees One Crore Eighty Lacs only)

17. The plaintiff thus gave an advance/ loan of Rs. 1,80,00,000/- which have been duly recorded in the ledger account maintained by the defendant Company. Partial on-account repayments of the advance/ loan were done from 07th April, 2018 till 01st August, 2018 in the sum of Rs. 65,00,000/- and after making adjustment of the amounts paid Rs. 1.15 Crores along with interest @ 18% per annum i.e. Rs. 1,64,88,000/- is still found to be due till 30th September, 2019. The defendant Company, however, is incorrectly showing an amount of Rs. 90,00,000/- as due to the plaintiff towards advance and loan in its Balance sheets filed before the ROC for the years 2013-14 till 2017-18. In the light of the admissions made in the Written Statement duly supported by the ledger accounts of the plaintiff, decree for part amount in the suit of Rs. 90,00,000/- along with interest @ 18% per annum has been sought.

18. The defendant in his Written Statement has set up a defence that Shri Sandeep Singh was 50% equity shareholder as well as Director in the plaintiff Company during the period in question i.e. 2014 to 2018/2019 though the present status of the plaintiff in the Company is not known to the defendant. In the given scenario, if one was "to pierce the corporate veil", it will be abundantly clear that the plaintiff Company is nothing but "an alter ego" of Shri Sandeep Singh who owns and manages the affairs of the plaintiff Company.

19. It is further asserted that Sh. Sandeep Singh had resigned as a Director from the defendant Company w.e.f. 31st March, 2018. As per the terms of the Agreement, it was Shri Sandeep Singh's obligation to infuse funds into the defendant's Company for smooth running of the affairs of the Company. The amounts given by the plaintiff were in the nature of an investment made by Shri Sandeep Singh, though the plaintiff Company, which is the alter ego of Shri Sandeep Singh, in active connivance, has shown these amounts as loans and advances with an understanding that the same would be repaid to the extent possible if the finances of the Company permit. However, there was no surety of the same being returned. The amounts to the extent possible and good faith were returned from time to time. However, the characterization of monetary transactions as described by the plaintiff is denied. It is asserted that the amounts as claimed are not repayable as they were actually investments by the shareholders. Shri Sandeep Singh being an equal shareholder in the defendant Company is also under an obligation to share the losses/ expenses of the defendant Company equally along with the proportionate contribution towards infusing funds for settling bank liabilities.

20. It is claimed by the defendant that the shareholding of most of the previous shareholders which translated into approx. 94% (93.62%) came to vest equally between Aneja family and Shri Sandeep Singh which translated to approx. 47% (46.81%) each, and for all material times, it was in the nature of a family

Company and quasi partnership. It is further claimed that the stand taken by the Plaintiff that "it was never aware of the deeds of the defendant Company and its Directors" is apparently mala fide and misconceived.

21. It is further asserted by the defendant that plaintiff has claimed Rs. 90 lakhs from the defendant Company, however, this amount was never received in the account of the defendant Company, and alternatively if the money was received in the name of the defendant Company, it remained under the control of the previous shareholders i.e. Garg family and it never came to the beneficial control of the Company under the new shareholding which was purchased by Aneja family with Shri Sandeep Singh as a shareholder. The money was therefore, never made available to the defendant Company for its benefit and use.

22. Furthermore, it was the understanding of the defendant Company that these amounts were paid by the plaintiff not as payments to the defendant Company, but in fact to the previous shareholders i.e. the Garg family, and thus, irrespective of whose name the said account may have stood, the money actually went into the accounts owned and controlled by previous shareholders for their benefit. The perusal of the bank statements of the plaintiff makes it apparent that the money has been credited into the account of one "Adarsh Mahila Mercantile". This account may have been under the control of erstwhile Garg family, but it never came to the beneficial control of the defendant Company. Evidently, this money was meant for the benefit of the shareholders alone and not for the Company.

23. It is further claimed that the counter-claim adjustments/ sets off etc. that arise are inextricably linked to form part of same set of transactions and defendant is entitled to set off/ adjustment of crystallized liquidated amounts against the plaintiff. All the alleged claims raised by the plaintiff ought to be set off/ adjusted against the counter-claim which the Defendant Company has filed qua Shri Sandeep Singh in the connected case bearing CS (COMM) 444/2021 titled as Sandeep Singh vs. Hindustan Spirits Ltd.

24. From the pleadings of the parties and in the light of the case laws as discussed above, it has to be ascertained whether there are any facts admitted by the defendant which entitling the plaintiff to judgment on admissions.

25. The claim of the defendant Company that the amounts which are due and outstanding, were to be adjusted towards the outstanding liabilities of the defendant Company in which Shri Sandeep Singh was a director with a shareholding to the extent of 47%, is not tenable for the simple reason that liabilities, if any, may be of Shri Sandeep Singh, but the plaintiff Company has a separate entity, the liabilities of the entitlements of Shri Sandeep Singh in his individual capacity cannot be adjusted or attributed to the plaintiff Company. Further, for the same reason, the assertion that defendant has claimed certain adjustments by way of set-off/ counter-claims against Sandeep Singh who has filed CS (COMM) 444/2021 against the defendant Company again does not give

any valid defence in the present case. It is the case of the defendant company itself that Sandeep Singh had resigned as a Director from the defendant company w.e.f. 31st March, 2018. It is but natural that all his liabilities/adjustments in that capacity towards the company would have been settled at that time. One cannot ignore or overlook that the Directors of a Company has a separate set of responsibilities which cannot be merged with the individual capacity, more so when the defendant has already filed a separate counter claim/set in the suit filed by the plaintiff in its individual capacity.

26. The defences taken by the defendant Company clearly reflect an unequivocal admission that the loans had been given by the plaintiff Company to the defendant Company. Whether money got utilized for the business of defendant Company or erstwhile Directors, in an internal matter of defendant Company which may utilize the Company money in whichever manner it may choose. Admittedly, certain amounts have been returned which again reflect that money was intended to be returned.

27. There cannot be a vaguer defence, especially which considering the affairs of the Company that the loan would be returned if and when the funds of the defendant company would permit.

28. The claim that the advances received were as investments or the return of these amounts was dependant on the financial status of the Defendant Company, infact amount to its admission that the advances received by the defendant were intended to be returned.

29. There is no denial that a sum of Rs. 90,00,000/- as reflected in the Balance Sheets of the defendant Company filed with ROC, is due and outstanding to the plaintiff. In the light of these unequivocal admission, with no tenable defence disclosed by the defendant, the plaintiff is held entitled to recover Rs. 90,00,000/- from the defendant Company.

30. The plaintiff has also asserted that it is entitled to interest @ 18% per annum. However, there is no such Agreement which has been shown between the parties at the time when the loan was credited by the plaintiff to the account of defendant Company from time to time. Considering the commercial practices, the plaintiff is granted interest @ 6% per annum from the date of institution of the suit till the date of recovery of Rs. 90,00,000/-.

31. The decree be accordingly prepared.

32. The application is accordingly, allowed.

CS (COMM) 445/2021 & I.A. 11960/2021

33. List this matter before the Roster Bench for framing of issues on 21.02.2023.