
(2009) 02 DEL CK 0069

In the Delhi High Court

Case No : I.A. No. 4924 of 2003 in CS (OS) 1570 of 2001

Sachdeva and Sons Industries Pvt. Ltd.

APPELLANT

Vs

Directorate of Revenue Intelligence

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Citation : (2010) 8 RCR(Civil) 1633

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Ravi Gupta, Manu Bansal and Janender Gumbak, for the Appellant; Arvind Kumar and Manwinder Singh for D-1 and Aparna Bhat, for D-2, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—By this order it is proposed to decide an application under Order XII Rule 6 read with Section 151 CPC praying for judgment on admissions made by the defendants in the pleadings and a decree in the sum of the principal amount of Rs. 49,59,630.55 (Rupees Forty Nine Lacs Fifty Nine Thousand Six Hundred Thirty and Paise Fifty Five only) admitted by them.

2. The plaintiff has filed the instant suit for the recovery of Rs. 1,18,03,920/- (Rupees One Crore Eighteen Lacs Three Thousand Nine Hundred Twenty only), which represents the principal amount of Rs. 49,59,630.55 (Rupees Forty Nine Lacs Fifty Nine Thousand Six Hundred Thirty and Paise Fifty Five only) and interest of Rs. 68,44,289/- (Rupees Sixty Eight Lacs Forty Four Thousand Two Hundred Eighty Nine only) on account of refund of the excess amount deposited by the plaintiff with the defendant No. 2 in the account of the defendant No. 1 in the following circumstances.

3. The State Trading Corporation of India (in short "the STC") sometime in the month of July, 1995 received an export order from NFA, Philippines for the export of 25000 M.Ts of rice. The STC in order to effect these supplies, entered into an

Agreement with the plaintiff for the due performance and execution of the said export order received by the STC to the extent of 13 M.Ts of rice. As per the terms and conditions of the Agreement, the plaintiff was to lift the rice from the defendant No. 2, the Food Corporation of India (in short "the FCI"). For the said purpose, the defendant No. 1 handed over to the plaintiff the release orders issued by the defendant No. 2 in favour of the defendant No. 1 duly endorsed in favour of the plaintiff. It was one of the conditions of the performance of the Contract that the plaintiff would make the full payment of the release order to the defendant No. 1 before lifting the rice from the defendant No. 2. In compliance with the said terms and conditions, the plaintiff made full advance payment and despatched the goods to Philippines in terms of the export order, except 769.009 M.Ts. Thus, it appears that the entire quantity of rice was not lifted. The quantity of rice which was not lifted was 769.009 M.Ts, though for this quantity also, the plaintiff had paid the money. The plaintiff accordingly claimed the refund of the excess amount paid by the plaintiff for the aforesaid quantity amounting to Rs. 49,59,630.55 Rupees Forty Nine Lacs Fifty Nine Thousand Six Hundred Thirty and Paise Fifty Five only) and the present suit for recovery was filed, impleading both the STC and the FCI as the defendants.

4. At this juncture, it may be noticed that the plaintiff before filing of the present suit, requested the STC for making refund of the excess amount paid by the plaintiff to the defendant No. 2. The STC, in turn, entered into a correspondence with the FCI and at some point of time the FCI appears to have agreed to refund Rs. 32.33 lacs (Rupees Thirty Two Lacs and Thirty Three Thousand only) to the STC, provided that the STC gave an indemnity bond to bear the losses to the FCI. The STC having failed to furnish the indemnity bond, as demanded by the FCI, the amount claimed by the plaintiff was finally not given by the FCI to the STC.

5. Both the STC and the FCI contested the suit by filing their detailed written statements. The STC in its written statement admitted the execution of the Agreement entered into between the STC and the plaintiff and that the plaintiff had made the payment for the entire quantity of rice to be lifted in terms of the Contract between the parties. The STC submitted that the STC as soon as it got the release orders from the FCI, endorsed the same to the plaintiff for taking the delivery of the rice for the purpose of export to NFA, Philippines. The plaintiff, after taking the delivery from the defendant No. 2, was to process and repack the goods to make them export worthy. The quantity of 769.009 M.Ts of rice was not lifted by the plaintiff, although the payment was made for the same by him and the release orders issued to him. The defendant No. 2 (FCI), the STC submitted, had made available the quantity of rice which was to be exported under the Contract ready for delivery, but the plaintiff did not lift the entire quantity. The plaintiff, in view of the same, failed to perform its obligations by not lifting the entire quantity and asked for refund of the amount of the quantity which was not lifted to which it was not entitled. Thereafter, the plaintiff approached the defendant No. 1 to help him in order to get the money refunded.

The defendant No. 1 in the interest of the parties, made various attempts to get the matter settled between the plaintiff and the defendant No. 2, but the defendant No. 2 did not refund the amount. As such, if there is any dispute between the parties, it is between the plaintiff and the defendant No. 2.

6. The defendant No. 1 (the STC) in its written statement further averred that the suit was not maintainable as against the defendant No. 1, as the plaintiff had also filed a case against the defendant No. 2 before the MRTP Commission, where it had filed an application before the said Commission for impleading the defendant No. 1 as a necessary party. The defendant No. 1, after receiving the notice from the MRTP Commission, had filed its reply to the said application and the Commission, after hearing the parties, had dismissed the application of the plaintiff. However, the case was going on between the plaintiff and the defendant No. 2 before the MRTP Commission.

7. Para-21 of the written statement filed by the defendant No. 1 reads as follows:

21. Paragraph 21 of the plaint as stated is not admitted to be correct and is denied. It is denied that Defendant No. 1 in any of the letters addressed to the plaintiff ever acknowledged their liability to refund the said amount together with interest to the plaintiff. It is submitted that the Defendant No. 1 is not in any way liable to the plaintiff for any amount much less so with interest as it is only between the plaintiff and the Defendant No. 2. It is further submitted that Defendant No. 1 only to help the plaintiff, had, on its repeated requests, made a number of attempts so that the matter between Defendant No. 2 and the plaintiff could be settled amicably but the same was not settled between the parties. Ultimately, after great persuasion by Defendant No. 1, Defendant No. 2 had agreed to refund the principal amount without interest subject to the condition that the plaintiff withdraws its pending complaint/claim before the MRTP Commission and finally settles the matter but the plaintiff did not agree to the same.

8. Apart from the above defence adopted by the defendant No. 1, the defendant No. 1 in its preliminary objections claimed that the suit was barred by time.

9. The FCI, the defendant No. 2, in the preliminary objections to the written statement pleaded that there was no privity of contract between the plaintiff and the defendant No. 2 and as such the suit was not maintainable against the defendant No. 2, and contended that the FCI had nothing to do with the plaintiff as there was no direct or indirect dealing of the defendant No. 2 with the plaintiff. The defendant No. 2 had no knowledge of the alleged Agreement between the defendant No. 1 and the plaintiff. The defendant No. 1 was to lift the rice from the defendant No. 2 on pre-payment basis. The release orders were issued in favour of the defendant No. 1 only by the defendant No. 2 and it was on the request of the defendant No. 1 that the Field Officers of the defendant No. 2 were to allow delivery of the stocks to the representative of the defendant No. 1, viz. the plaintiff. After delivery of the stock was over, the defendant No. 2 had

nothing to do with the plaintiff or the amount deposited by the plaintiff to the defendant No. 1 or the refund thereof.

10. In para-21 of its written statement, the defendant No. 2 stated as follows:

21. The contents of this para are denied as false. It is stated that the officers of defendant No. 1 and 2 held a meeting, in which the defendant No. 2 agreed to refund Rs. 32.33 lakhs to the defendant No. 1 as demanded by them provided the defendant No. 1 gives an indemnity bond to bear the loss to this defendant, keeping in view the petition filed in the MRTPC against this defendant without making the defendant No. 1 as a party. In spite of several reminder, the defendant No. 1 had not given the indemnity bond. It is true that this defendant has earlier refunded Rs. 15.00 lakhs to the defendant No. 1.

11. Interestingly, in the replication filed by the plaintiff to the written statement of the defendant No. 1, the plaintiff admitted in para-5 of the replication that "all transactions were done for and on behalf of the defendant No. 1 and there have been no privity of contract directly with the defendant No. 2 by the plaintiff". The plaintiff also admitted that the quantity of 769.009 M.Ts of rice could not be lifted by the plaintiff. Likewise, in the replication filed by the plaintiff to the written statement of the defendant No. 2, the plaintiff stated that "it had approached the defendant No. 2 only at the instance of the defendant No. 1 as they stated to the plaintiff that the amount was to be refunded by the defendant No. 2".

12. In the rejoinder filed by the plaintiff to the instant application also, the plaintiff in para-2 thereof admitted as follows:

It is also not disputed that there is no privity of contact between the plaintiff and the defendant No. 2.

13. After examining the pleadings of the parties and hearing the learned Counsel for the parties on the application under Order XII Rule 6 CPC filed by the plaintiff, a learned Single Judge of this Court by his order dated 20th January, 2005 held that there being admissions made by the defendant No. 1 in its written statement, particularly in para Nos. 11,12 and 21 and also in the written statement filed by the defendant No. 2 in paras 14, 16 and 21, and the same being unambiguous, clear and unconditional, the plaintiff was entitled to a decree in the sum of Rs. 49,59,630.55 on the strength of the said admissions. It was ordered that a decree sheet to that extent be drawn up.

14. Appeals were filed by the STC and the FCI bearing RFA(OS) Nos. 12/05 and 30/05 against the aforesaid order and a Division Bench of this Court (Hon"ble Mr. Justice A.K. Sikri and Hon"ble Ms. Justice Aruna Suresh) by an order dated 19th April, 2007 held that the order of the learned Single Judge was not sustainable. The matter was accordingly remitted back to the Single Judge after setting aside the order dated 20th January, 2005 passed by the learned Single Judge. The relevant portion of the order of the Division Bench reads as follows:

3. The suit was contested by both the defendants by filing separate written

statements. It is not necessary to give the details of the defence put up by both the defendants. Suffice to state that so far as STC is concerned, apart from stating that it had no liability it acted only as a analysing agency, it contended that the amount was given to FCI which FCI was supposed to return in case of any liability. It was also alleged that there was a breach of contract on the part of the plaintiff in not lifting the aforesaid quantity of rice. So far as FCI is concerned, it interalia pleaded in the written statement that there was no privity of contract between the plaintiff and the FCI inasmuch as the order in question was placed by STC upon the FCI and, therefore, the suit could not be filed by the plaintiff against the FCI.

4. In the impugned order passed by the learned Single Judge, the learned Single Judge has allowed the application after holding that there was clear admission on the part of both the defendants that they owed a sum of Rs. 49,59,630.55 to the plaintiff but this payment was deferred for certain reasons as the defendant wanted indemnity bond for making the payment and also that the plaintiff withdrawn its claim against them before the MRTP Commission. It is also stated that in the correspondence exchanged between defendants No. 1 and 2, there was unambiguous admission on their part to refund the said amount to the plaintiff. However, this order does not reflect that any consideration is bestowed on the aforesaid defences taken by both the defendants.

5. It is trite law that a decree on admission can be passed only if admissions are unambiguous and unqualified. In the present case FCI has taken the plea that there was no privity of contract between the plaintiff and the FCI and, therefore, no decree can be passed, which plea has not been dealt with. Likewise, what would be the effect of non-lifting of the rice by the plaintiff is not dealt with. If those issues could also be decided on the basis of admitted documents and pleadings, it was necessary for the learned Single Judge to decide this aspect before relying upon the purported documents. For this reason alone we are of the view that the impugned order is not sustainable and is set aside accordingly.

15. Pursuant to the aforesaid order passed by the Division Bench, the case was listed before this Court to decide the application under Order XII Rule 6 CPC afresh. The parties were heard through their respective counsel, namely, Mr. Ravi Gupta, Advocate for the plaintiff; Mr. Arvind Kumar, Advocate for the defendant No. 1, and Ms. Aparna Bhat, Advocate for the defendant No. 2.

16. The learned Counsel for the plaintiff, apart from relying upon the order dated 20th January, 2005 passed by the Single Judge and the admissions made by the defendants No. 1 and 2 in their respective written statements, also placed reliance upon the following documents: (i) The first document is a letter dated 23.11.1995 from the defendant No. 1 (STC) to the FCI, stating that the final settlement of accounts with STC's representative M/s. Sachdeva and Sons (the plaintiff herein) had been held up for want of refund from the FCI, Gandhidham and requesting for reimbursement of the balance costs against 769.009 M.Ts of unlifted rice.

(ii) The second document relied upon by the counsel for the plaintiff is a letter dated 6.12.1995 from the FCI to the plaintiff, the relevant part whereof reads as follows:

In this connection, it is to inform you that you were authorized by M/S. S.T.C., Gandhidham for taking delivery of the stocks on behalf of STC and since delivery is over, this office will not entertain any communication from you directly in connection with refund etc., which may please be noted. Hence forth please do not send any communication this office in this regard.

(iii) The third document is a letter dated 27.07.1998 addressed to the plaintiff by the STC, the relevant portion of which reads as follows:

...after great persuasion, FCI had agreed to refund the principal amount only in respect of unlifted stock of 769.009 MT rice provided indemnity is given by STC to FCI. Since you had filed your claim in MRPTC, New Delhi on FCI for the principal amount plus interest @ 24% and legal costs, damages, etc. for the unlifted stocks of rice, it was considered necessary by FCI to obtain the indemnity from STC so that later on as & when order of the MRPTC is passed, no additional liability is fastened to the ...This proposal was also discussed with your representative by STC officials and you were requested to issue required indemnity in favour of STC facilitating STC to furnish parallel indemnity to FCI so that refund could be obtained from FCI. However, this proposal was not acceptable to you and hence the refund of principal amount due from FCI could not be expedited. Since you have already filed your petition/claim in MRPTC against FCI and also impleaded STC for recovery of the principal amount, interest, legal cost, damages, etc., there seems to be no alternative but to await the verdict of the MRTPC.

(iv) The fourth document relied upon by the plaintiff is a letter dated 22.11.2006 in respect of the decree dated 20.01.2005 passed by this Court in the present suit. The said decree having been set aside in appeal by the Division Bench of this Court. Suffice it to say that in the said letter the FCI had after referring to the order of this Court demanded that an undertaking be furnished by the STC indemnifying the FCI for any liability over and above Rs. 32.33 lacs. On the strength of the aforesaid documents, the learned Counsel for the plaintiff prayed for a decree in terms of order XII Rule 6 of the Code.

17. The learned Counsel for the defendant No. 1 (the STC), on the contrary, contended that the suit was clearly barred by time for the reason that the plaintiff in the plaint had placed reliance on the fact that the cause of action had arisen on 27.07.1998, when allegedly the defendant No. 1 vide letter dated 27.07.1998 confirmed and acknowledged the liability of the refund of the amount of Rs. 49,59,630.55 (Rupees Forty Nine Lacs Fifty Nine Thousand Six Hundred Thirty and Paise Fifty Five only). The learned Counsel for the defendant No. 1 submitted that relying upon the said letter the suit had been filed on 26.07.2001 on the premise that three years" limitation, as calculated from 27.07.1998,

expired on 26.07.2001. However, reliance placed by the plaintiff upon the said letter was misplaced as the same was not an acknowledgment. Even otherwise, the original letter had not been produced by the plaintiff and the photocopy placed on the record by the plaintiff was not admitted by the defendant No. 1.

18. The further contention of the learned Counsel for the STC was that not a single admission or acknowledgment had been made by it, though it had tried to mediate between the plaintiff and the FCI. Insofar as the STC was concerned, it had no liability to pay for the unlifted quantity of rice for the reason that the substratum of its defence was that "in spite of the release orders duly endorsed in favour of the plaintiff and the payments also having been made, the plaintiff had failed to lift the total contracted quantity against the payments made to the defendant No. 2 and, therefore, it is the plaintiff alone who failed to perform its obligations under the Contract and, therefore, it is not entitled to any refund". The alternative stand of the defendant No. 1 is that the plaintiff, in any case, if it is to be held entitled to any relief, it is from the defendant No. 2, who has neither delivered the goods nor refunded the amount to the plaintiff.

19. Per contra, the learned Counsel for the defendant No. 2 (the FCI) contended that the FCI had no privity of contract with the plaintiff, inasmuch as it had no direct or indirect dealing with the plaintiff nor it was a party to the Agreement between the plaintiff and the defendant No. 1. The amount claimed by the plaintiff was not refundable. It had earlier refunded Rs. 15 lacs to the defendant No. 1 and was not prepared to refund Rs. 32.33 lacs unless the defendant No. 1 gave an indemnity bond to bear the losses suffered by it, keeping in view the petition filed in the MRTP Commission against the defendant No. 2 without making the defendant No. 1 as a party.

20. After hearing the learned Counsel for the parties at length, in my considered opinion, the plaintiff cannot be held entitled to a decree by virtue of the provisions of Order XII Rule 6 CPC. The reasons are two-fold. The admissions, far from being unambiguous, clear, unconditional and unqualified, are hemmed in by various defences pressed by the defendants No. 1 and 2, which go to the root of the matter. The mainstay of the defence of the defendant No. 1 is that the plaintiff is guilty of non-performance of its part of the contract between the parties and hence cannot claim refund for the unlifted quantity of rice, which, under the Agreement, it was bound to lift. The defendant No. 1 also claims that the suit is liable to be dismissed as barred by limitation, as the only document which can save the suit from the bar of limitation is the letter dated 27.07.1998, which is claimed by the plaintiff to be an acknowledgment by the defendant No. 1. The said letter has yet to be proved by the plaintiff in evidence. Only a photocopy has been placed on the record and as such the same has not been admitted or denied by the defendant No. 1, which has reserved its right to do so on production of the original. Then again, whether the said letter can be construed as an acknowledgment will depend upon the evidence adduced by the parties at the time of trial. If as the defendant No. 1 insists, it has no liability,

where is the question of acknowledgment thereof.

21. So far as the defendant No. 2 is concerned, as noticed above, the plaintiff himself has admitted that it has no privity of contract with the defendant No. 2. If this is the case, the plaintiff has not been able to explain as to how refund can be claimed by it from the defendant No. 2, more so, as it is the admitted case of the parties that the defendant No. 2 was ready to release the rice to the defendant No. 1 through the plaintiff, but it was the plaintiff who failed to take delivery of the same. All these facets of case, in my view, have yet to attain clarity on the plaintiff's adducing evidence in support of its claim for the refund of the amount and by withstanding the test of cross-examination. The only fact which is not disputed is that 769.009 M.Ts of rice, which were to be lifted under the Agreement between the plaintiff and the defendant No. 1, were not lifted by the plaintiff for no fault of either the defendant No. 1 or the defendant No. 2. In such circumstances and in the face of the defence of the defendants, the question whether the plaintiff is or is not entitled to claim refund of the amount deposited by it, the plaintiff himself having failed to take delivery of the rice, is a question which can be gone into only after evidence has been adduced by all the parties. The plaintiff can very well be non-suited on the ground of limitation or on the ground that there is no privity of contract between the plaintiff and the defendant No. 2 or on the ground that the plaintiff is itself guilty of breach of the contract between the plaintiff and the defendant No. 1. These are, therefore, matters which go to the very root of the case and it is not possible to decide the same without giving an opportunity to the parties to adduce their respective evidence.

22. In the above context, reference may usefully be made to the judgment of a learned Single Judge of this Court in *State Bank of India Vs. Midland Industries and Others*, . In para-6 of its judgment, the following apposite dicta was laid down by this Court.

6. ...There is no doubt that Rule 6 of Order 12 has been couched in a very wide language. However, before a Court can act under Rule 6, admission must be clear, unambiguous, unconditional and unequivocal. Furthermore a judgment on admission by the defendant under Order 12 Rule 6 CPC is not a matter of right and rather is a matter of discretion of the Court, no doubt such discretion has to be judicially exercised. If a case involves questions which cannot be conveniently disposed of on a motion under this rule the Court is free to refuse exercising discretion in favour of the party invoking it. It is not in each case where Order 12 Rule 6 CPC is invoked that the Court would be obliged to pass a decree which case would depend upon its own peculiar facts. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff. The purpose of Order 12 Rule 6 CPC is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the defendant. The rule only secures that

if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of Order 12 Rule 6 CPC without proving those issues.

6A. It was held by a Division Bench of the Calcutta High Court in *Prem Suk Das Assaram v. Udairam Gunga Bux* AIR 1918 Cal 467 that:

A judgment on admission by the defendant under Order 12, Rule 6, 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.

23. A Division Bench of this Court in the case of *Raj Kumar Chawla Vs. Lucas Indian Services*, , after referring to the entire gamut of case law on Rule 6 of Order XII CPC, held as follows:

8. It is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather is a matter of discretion of a Court. Where the defendant has raised objection which will go to the very root of the case, it would not be appropriate to exercise this discretion. The use of the words "May" and "make such orders" or "give such judgment" spells out that power under these rules are discretionary and use of discretion would have to be controlled in accordance with the known judicial canons. The cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions. In the case of *Parivar Seva Sansthan Vs. Dr.(Mrs.) Veena Kalra and Others*, , the Court examined at length the provisions and the need for an admission to be unequivocal and positive. The admission would obviously have the consequences of arriving at that conclusion without determination of any question and evidence. The Court while relying upon the case of *Balraj Taneja and Another Vs. Sunil Madan and Another*, , and *Dudh Nath Pandey (Dead) by Lrs Vs. Suresh Chandra Bhattasali (Dead) by Lrs*, , held as under:

In *Razia Begum v. Sahebzadi Anwar Begum* it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the Court may still require the plaintiff to prove the facts pleaded by him in the plaint.

Thus, in spite of admission of a fact having been made by a party to the suit, the

Court may still require the plaintiff to prove the fact which has been admitted by the defendant....

9. ...

10. The cumulative effect of the above discussion is that there is no unambiguous, specific and clear admission by the defendant of his liability towards the plaintiff much less of any definite claim as stated in the plaint. In the written statement large factual and legal controversies have been raised which require determination by the Court of competent jurisdiction before any decree could be passed. Viewed from any angle, the facts and circumstances of the present case cannot justify passing of a decree on admission, on facts and in law.

24. The learned Counsel for the plaintiff relied upon the judgments reported in Badat and Co. Vs. East India Trading Co., Allora Electric and Cable Co. Vs. M/s. Shiv Charan and Bros. and Others, . and 142 (2007) DLT 483 Vijaya Myne v. Satya Bhushan Kaura.

25. In the aforesaid cases, the scope and ambit of Order XII Rule 6 CPC has been summarized to state that the admissions can be in the pleadings or otherwise, namely, in the documents, correspondences etc., but the admissions must be unequivocal, unqualified and unambiguous and in the process the Court is required to ignore the vague, evasive and unspecific denials. This is trite law and it is too well established to require this Court to restate that a party is expected to expressly deny the allegations made in the plaint and a vague or evasive reply by the defendants must be construed as an admission made by the defendants.

26. It is not, however, the contention of the defendants in the present case that they have not admitted certain allegations made in the plaint. On the contrary, their case is that they have set up certain defences such as failure of the plaintiff itself to perform its part of the contract, the suit being hit by the bar of limitation, the lack of privity of contract etc, which are capable of non-suiting the plaintiff, if proved in the affirmative. In other words, the defences raised by the defendants go to the very root of the matter and hence it is within the discretion of this Court to hold that the admissions made by the defendants cannot entitle the plaintiff to a decree in the suit without trial.

27. The application is accordingly dismissed, but in the peculiar circumstances, the parties are left to bear their own costs. The suit shall now proceed to trial. The plaintiff shall file its affidavit by way of evidence along with the original documents relied upon by it within a period of eight weeks.

List before the Joint Registrar on 27th February, 2009 for directions.