
(1976) 04 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Original Miscellaneous Petition No. 123 of 1975 in Civil Suit No. 16 of 1974

Simla Wholesale Mart

APPELLANT

Vs

Baishnodas Kishori Lal Bhalla and Others

RESPONDENT

Date of Decision : 23-04-1976

Acts Referred:

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

Citation : AIR 1977 HP 29 : (1977) ShimLC 119

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; Kamlesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—The plaintiffs filed a suit for recovery of Rs. 60,000/-. It is stated in the plaint that the defendants purchased goods from the plaintiffs and in that connection advanced certain payments. The cheques issued by the defendants in favour of the plaintiffs were dishonoured and as such the plaintiffs have ascertained a definite sum which according to them is due from the defendants. The contest of the defendants in their written statement is that the plaintiffs and the defendants entered into business dealing and their account was open, mutual and current. The said account is not yet finally settled, and unless that is done no definite amount can be found as due from the defendants to the plaintiffs. There is also an objection as to the payment of interest because according to the defendants the same was never stipulated. In fact, according to defendants, they withheld payment because either goods defective in quality were received or there was short supply of goods. It is also submitted that freight was charged which was not due and payable. It appears, there was some talk between the parties for settlement and in that context the defendants submitted that plaintiff had agreed to accept Rs. 8077.41 from the defendants in final settlement.

2. Now an application is moved by the plaintiffs under Order 12, Rule 6 of the

Civil P. Code, alleging that upon admission of fact a decree can be passed against the defendants for the sum of Rs. 8077.41. As the pleadings stand between the parties, the defendants have no doubt asserted that as a result to mutual talk the sum of Rs. 8077.41 was settled to be paid finally to the plaintiffs, but according to them even for that amount a decree cannot be passed as the plaintiffs have not sued on the basis of settlement of open, mutual and current account, but they have sued for the price of goods supplied to the defendants. In para No. 6 of the written statement the pleading is as follows:--

"As such an amount of Rs. 8077.41. if at all, is payable by the defendants to the plaintiffs, but the same is obviously not the subject-matter of the present suit in view of the circumstances stated in the plaint.""

3. It is further stated in paras 9 and 12 of the written statement as follows:--

"It is also admitted that the parties settled the account at the defendants' premises at Simla. But it is not admitted that the settlement was final and was arrived at in the month of August, 1972."

""The defendants owe an amount of Rs. 8077.41 to the plaintiffs under the trade account which is still open, mutual and current between the parties and is obviously beyond the scope of the present suit in view of the position maintained by the plaintiffs in the plaint."

4. Further in para No. 13 of the written statement, it is stated:

"The plaintiffs never closed their business and accounts with the defendants. No notice to that effect was ever given by the plaintiffs to the defendants. The account between the parties is still open and current. The defendants are nonsuited in the circumstances mentioned in this written statement"

5. In view of this state of pleading, it cannot be accepted that there was an admission of fact and the claim of Rupees 8077.41 was admitted as payable by the defendants to the plaintiffs in the action in suit. Judgments upon admission under Order 12, Rule 6. Civil Procedure Code, are matters of discretion and not of right. Where the case involves questions which cannot be conveniently disposed of on a motion under this Rule, the Court should, in the exercise of its discretion, refuse the motion. Before a Court can act under Rule 6, admission must be clear and unambiguous, and the amount due and recoverable must be due and recoverable in action in which admission is made. This is obviously not the position in the present suit. As such Rule 6 will not be applicable. There is no admission of fact and hence no decree can be passed on any such admission.

6. The application of the plaintiffs is, therefore, rejected.