

(2006) 09 BOM CK 0022
In the Bombay High Court
Case No : Civ. Rev. Application No. 88 of 2006

Vaijayanti Vazalwar

APPELLANT

Vs

Chandrakant Thakkar

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

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

Citation : (2007) 4 ALLMR 593 : (2007) 1 MhLj 699

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : A.S. Samarth, holding for S.S. Voditel, for the Appellant; O.D. Kakde, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule made returnable forthwith. Heard finally.

2. In this Revision Application, petitioner has challenged Order passed below Exh.17 dated 16th August, 2005.

3. Petitioner herein - Original plaintiff had moved under Order 12, Rule 6 of Civil Procedure Code, claiming that on the basis of admissions contained in the Written Statement and application for amendment of Written Statement, it was a case where the suit could be decreed based on those admissions, and prayed for passing of a decree.

4. This application has been opposed, and ultimately rejected.

5. As can be read from the application (Exh.17), according to plaintiff, the fact of execution of agreement dated 16th March, 1996 is admitted by the defendant, and that the said admission is sufficient for decreeing the suit.

6. On perusal of the pleadings, it is seen that the dispute is in relation to performance of obligation under the said agreement. Plaintiff is treating that defendant has committed breach of terms of the said agreement, while the

defendant, who admits the agreement, is claiming failure to perform reciprocal promises, performance whereof was binding on the plaintiff. The defendant is also claiming that he may be permitted to sue in forma pauperis for counter-claim for specific performance.

7. Seen from any angle, the admission of the defendant relied upon by the plaintiff is only limited to the extent of execution of agreement, dated 16th March, 1996. The foundation of the claim of the plaintiff is the breach committed by the defendant. The facts constituting breach on the part of the defendant, alleged in the plaint, have not been admitted by the defendant. It is, therefore, not a case where decree can be prayed for or granted under Rule 6 of Order 12, Civil Procedure Code.

8. "Facts", which need to be admitted for passing a decree under Rule 6 of Order 12 of Civil Procedure Code, have to be "facts jurisdictional to the grant of decree", and not the facts on which the transaction commenced, and isolated reading of admission cannot be done.

9. Learned Advocate for the petitioner placed reliance on reported judgments of Hon"ble Supreme Court in the cases of (a) K.S. Satyanarayana Vs. V.R. Narayana Rao, , and (b) Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, .

10. This Court finds that the petitioner's reliance on these judgments is totally misplaced. There is no doubt that if facts permit, i.e. an unambiguous admission is on record, an urge to put an end to the litigation may be justified. On the perusal of Written Statement, it is seen that there is an unequivocal admission. When an admission cannot be found even on discreet search, recourse to Rule 6 of Order 12 is impermissible.

11. Revision Application has no merit.

12. It is dismissed with costs.