

Srl Limited Vs. Techtrek India Limited

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SooperKanoon Citation : sooperkanoon.com/1144899

Court : Mumbai

Decided On : Feb-03-2014

Judge : S.C. Gupte

Appeal No. : Notice of Motion No. 801 of 2013 In Suit No. 337 of 2013

Appellant : Srl Limited

Respondent : Techtrek India Limited

Judgement :

1 The Notice of Motion is for a decree on admission under Order XII Rule 6 of the Code of Civil Procedure, for a sum of Rs.1,58,54,200/-. The admissions are said to be contained in various communications of the Defendant outside the pleadings.

2 The Plaintiff's case in the suit may be briefly stated thus. The Plaintiff and the Defendant entered into leave and licence agreements, under which the Plaintiff took on licence various floors of the building owned by the Defendant. The Plaintiff had kept interest free security deposits with the Defendant aggregating to Rs.1,78,54,200/- under these agreements. The Plaintiff returned the possession of the licensed premises to the Defendant. The security deposits aggregating to Rs.1,78,54,200/- were agreed to be refunded according to a payment schedule given on 6 April 2010. The Defendant refunded a sum of Rs.20,00,000/- from out of the said security deposits, but failed to refund the balance. The cheques issued by the Defendant towards such refund were dishonoured. The balance amount of

Rs.1,58,54,200/- is sought to be recovered in the present suit with interest.

3 The Plaintiff relies on the following admissions of the Defendant in support of its application for a decree on admission:

(i) By letter dated 30 August 2009 (Exhibit 'F' to the plaint), the Defendant admitted that as per its books an amount of Rs.1,78,54,200/- was shown as security deposit received from the Plaintiff;

(ii) By letter dated 10 December 2009 (Exhibit 'G' to the plaint), the Plaintiff called upon the Defendant to confirm the outstanding balance of Rs.1,78,54,000/- on account of security deposit, which was confirmed on 23 December 2009 under the signature of an authorized signatory of the Defendant with the seal of the Defendant affixed;

(iii) In the Schedules forming part of the accounts of the Defendant for the year ended on 31 March 2009 (Exhibit 'H' to the plaint), the security deposit of Rs.1,78,54,200/- is shown as current liability of Defendant No.1;

(iv) In the Schedules forming part of the accounts of the Defendant for the year ended on 31 March 2010 (Exhibit 'H1' to the plaint), the security deposit of Rs.1,78,54,200/- is shown as current liability of Defendant No.1;

(v) By letter dated 6 April 2010 (Exhibit 'C' to the plaint), the Defendant once again confirmed having received the security deposits of Rs.1,78,54,200/- and gave a full and final payment schedule towards refund of the said accounts;

(vi) The particulars of post dated cheques issued to the Plaintiff towards the said payment schedule were mentioned in the said letter;

(vii) Having regard to a part payment of Rs.20 lakh on 26 May 2011 towards the repayment of the security deposit, fresh cheques were issued by the Defendant to the Plaintiff aggregating to a sum of Rs.1,58,54,200/-. The Defendant's letters enclosing these cheques are on record (Exhibits 'D' and 'E' to the plaint), which are not disputed by the Defendant;

(viii) In the Schedules forming part of the accounts of the Defendant for the year ended on 31 March 2011 (Exhibit 'H2' to the plaint) the security deposit of Rs.1,78,54,200/- is once again shown as current liability of Defendant No.1.

4 The learned Counsel for the Plaintiff submits that the admissions are unambiguous and clear and a decree ought to be passed on the basis thereof. The learned Counsel relies on the judgment of the Supreme Court in the case of **UttamSingh Dugal and Co.Ltd. vs. Union Bank of India** (AIR 2000 SC 2740) and of our Court in **UltramatixSystems Pvt.Ltd. vs. State Bank of India** (2007 (9) LJSOFT (URC) 174) in support of his submissions.

5 The learned Counsel for the Defendant, on the other hand, submits that the Defendant is entitled to recover rent / licence fee for the notice period under the terms of each of the agreements and also has further claims in damages against the Plaintiff. The learned Counsel submits that these claims are required to be adjusted against the security deposit.

6 The admissions relied upon by the Plaintiff ought to be viewed in the context of the written statement filed by the Defendant. The Agreements, under which the security deposits have been received by the Defendant, are admitted by the Defendant. These Agreements form Annexures to the Written Statement. The receipt of the total amount of Rs.1,78,54,200/- towards the security deposit is not disputed by the Defendant. Even termination of licence and surrender of the licenced premises by the Plaintiff is admitted. What the Defendant has claimed in its Written Statement is that the termination of licence was arbitrary and shocking, and caused loss to the Defendant due to non-availability of suitable licensees for the premises. The Defendant has not formulated any claim for damages against the Plaintiff in respect of such loss, but sought leave to file a counter-claim in the suit. What the Defendant mainly contends in the Written Statement is that the Defendant is entitled to adjust the rent of 3 months' notice period from 4 December 2009 to 3 March 2010, which aggregates to Rs.45,48,700/-, against the security Deposit. The Defendant claims to have called upon the Plaintiff to settle the accounts, which the Plaintiff has refused to do. Besides these averments, the only other defence is the bar of limitation. It is claimed that the limitation expires on 3

December 2012 and the suit filed thereafter (filed on 4 April 2013) is barred.

7 Effectively, therefore, the only defences arising on pleadings are (i) bar of limitation and (ii) claim for adjustment of rent / licence fee for the three months' notice period in the sum of Rs.45,48,700/-. As against these, there are admissions of the Defendant's liability to repay the principal sum claimed towards the refund of security deposit of Rs.1,58,54,200/-. The issue of interest will be discussed separately.

8 These admissions as against the pleadings noted above, may now be examined in the light of the law on the subject. In **UttamSingh Dugal** (supra), the Supreme Court analysed the provisions of Order XII Rule 6 in the following words:

œ12. As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the

basis of the claim and the manner in which the trial court has dealt with the same. When the trial judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.?

9 Our Court in the case **UltramatixSystems Pvt.Ltd.** (supra) has also considered what constitutes an admission within the meaning of Order XII Rule 6. The Court in that case observed as follows:

œAdmission is not defined under the provisions of the Act or for that matter Indian Evidence Act, 1872. Section 17 however, sets out that 'An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned.' Under section 18, statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. In other words, statements made by a party to the proceeding can be treated as admission by the party. Section 21 sets out the admissions are relevant and may be proved as against the person who makes them. It would, therefore, be clear from a consideration of these provisions, that an admission is a statement, oral or documentary made by any person which suggest an inference as to a fact in issue or relevant fact.?

The Court accepted in **Ultramatix** case that statements contained in the balance sheet and profit and loss account would constitute admission of liability, observing as follows:

œWe have no difficulty, therefore, in holding that the statement contained in the balance sheet and profit and loss account of the petitioner company would be an admission of its liability, unless subsequent balance sheets were filed to show that either the amounts have been paid or were not due and payable and/or any other material was produced to hold otherwise. That exercise was not done.?

10 There is absolutely no substance in the defence on limitation. The refund was due on 4 December 2009. The liability has since been acknowledged on a numerous occasions as noted above, the last of such acknowledgments being made in the Balance Sheet and account for the year ending 31 March 2012. There is a part payment of the sum of Rs.20 lacs admittedly on 26 May 2011. The suit is clearly within time.

11 Having regard to the law laid down as above, what needs to be seen is whether on the basis of the admissions noted above, which are plain and not disputed per se, the Plaintiff is entitled to succeed and whether in the face of these admissions it is possible at all for the Defendant to nonsuit the Plaintiff. It is, firstly, to be noted that most of these admissions are post termination of the licence, and what is more important, after expiry of the notice period. These admissions clearly support the Plaintiff's case that the balance of security deposit claimed is arrived at after the adjustment of licence fees due including the licence fee for the notice period. The communication of 6 April 2010 clearly admits the Defendant's liability to refund the sum of Rs.1,78,54,200/- and in fact sets out the payment schedule and particulars of cheques given towards such payment. The cheques submitted along with the communication of 6 April 2010 were substituted with fresh cheques aggregating to Rs.1,58,54,200/- (the liability owed by the Defendant having since been reduced by part payment of Rs.20 lakhs) with the communications of 27 August 2010 and 6 June 2011. These are further clear admissions of the Defendant's liability towards the principal amount claimed in the suit. The clear and unequivocal statements in the Balance Sheets and Profit and Loss Accounts of the Defendant also amount to an admission of the Plaintiff's claim towards the principal amount. No other material is produced or relied upon by the Defendant to show that these amounts have since been paid or the entires in the accounts have since been rectified. The observations of our Court in the case of **Ultramatix** (supra) quoted above squarely apply to these statements. In the face of all these admissions, it is not possible for the Defendant to succeed in the suit.

12 The Plaintiff's claim in the suit is for a sum of Rs.2,80,19,161/- together with further interest at the rate of 18% per annum on quarterly rests basis till payment or realisation. The amount of Rs.2,80,19,161/- is arrived at by adding to the

principal amount of Rs.1,58,54,200/- interest at the rate of 18% per annum compounded with quarterly rests from 1 April 2010 to 3 April 2013 aggregating to Rs.1,21,64,961/-. The pre-suit interest would be a matter of dispute, since there is no contractual rate mentioned in the documents and no notice under the Interest Act is relied upon or produced by the Plaintiff. The Court, however, can grant pendente lite interest on the principal sum claimed under Section 34 of the Code of Civil Procedure.

13 Under Rule 6 of Order XXII, the Court has jurisdiction to enter a judgment for the Plaintiff and pass a decree for the admitted claim even if such admitted claim be a part of the total claim in the suit. The Calcutta High Court in the case of **PremasukDas Assaram vs. Udairam Gungabux** (Indian Law Reports (Vol.XLV.) Calcutta Series Page 138), considered a money claim based on accounts. There was an admission of a part of the claim. On the basis of this admission, the Court entered a judgment for part of the suit claim, whilst permitting the Plaintiff to proceed to prove the rest of his claim at the trial. The Calcutta High Court held as follows:

œIn 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.?

14 The suit claim, in our case, is clearly severable into distinct portions, one representing the principal amount claimed and the other relating to the interest calculated on such principal amount. The Defendant having clearly and unambiguously admitted its liability in respect of one portion of such claim, namely, the principal amount, there seems to be no difficulty in passing a partial decree on admission for a sum of Rs.1,58,54,200/- being the principal amount of the security deposit refundable by the Defendant to the Plaintiff as claimed in the Notice of Motion.

15 Notice of Motion is, accordingly, made absolute in terms of prayer clause (a). There shall be a decree on admission for the principal sum of Rs.1,58,54,200/- together with pendente lite interest at the rate of 9 percent per annum from the date of the suit till payment or realization.

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