

Charanjit Singh Vs. Kehar Singh

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SooperKanoon Citation : sooperkanoon.com/714654

Court : Delhi

Decided On : May-11-2006

Reported in : 2006(90)DRJ268

Judge : Swatanter Kumar and; S.L. Bhayana, JJ.

Acts : Evidence Act - Sections 70; Carriers Act - Sections 10; Code of Civil Procedure (CPC) - Sections 96 - Order 8, Rule 5 and 5(1) - Order 9 Rule 8 - Order 12, Rule 6

Appeal No. : RFA No. 724/2005

Appellant : Charanjit Singh

Respondent : Kehar Singh

Advocate for Def. : Y.R. Sharma, Adv.

Advocate for Pet/Ap. : Anil Goel, Adv

Judgement :

Swatanter Kumar, J.

1. This appeal under Section 96 CPC is directed against the judgment and decree dated 9th August, 2005 passed by learned Additional District Judge, Delhi in Suit No. 38/2005.

2. The plaintiff had filed a suit for recovery of Rs. 5,95,500/- against the defendant on the plea that it had sold 300 bags of Mustard stock weighing about 265.95 Quintal at the rate of Rs. 1932/- per Quintal totalling to Rs. 5,34,463/- to Anand Kumar Jhanwar of Beldanga, District Murshidabad, West Bengal. The sale was effected through bill No. 204 dated 21.10.2004. The said goods were transported through G.R. No. 4632 dated 21.10.2004. The defendant was paid a sum of Rs. 23,000/- towards advance for cartage of the goods from Delhi to Beldanga, District Murshidabad, West Bengal. Balance cartage amounting to Rs. 10,343/- was payable to the defendant by purchaser/consignee at the time of delivery of the goods. The goods could not be delivered at the destination as the truck and driver were not traceable. The owner of the truck is alleged to have lodged a complaint in this regard on 4th November, 2004. The plaintiff also filed complaints dated 6th November, 2004, 26th November and 6th December, 2004 to the police and higher authorities to register a case against the defendant. After great persistence FIR No. 608 dated 7.12.2004 was registered at Police Station Keshavpuram on separate complaint made by one Mr. Hari Ram. Having failed to receive its goods or the value thereof, the plaintiff filed a suit for recovery of Rs. 5,95,000/-. In this amount, the plaintiff had claimed a sum of Rs. 5,64,463/- being the value of the goods, Rs. 23000/- being advance freight, Rs. 38,837/- as interest and Rs. 3300/- as notice charges.

3. The suit was contested by the defendant, who took various objections in the detailed written statement, which was filed on his behalf. In the written statement, preliminary objection was taken that the suit is false, frivolous, vexatious and without any cause of action in favor of the plaintiff and against the defendant. It was stated that suit is barred for non-joinder of necessary parties. According to the defendant, M/s Bawa Roadlines, the owner of the truck was a necessary party to the suit as no question could be fully and finally determined in its absence. According to the defendant, he was only a booking agent. It was not disputed that GR was issued by him and goods were loaded in the truck, which did not reach its destination. However, it was stated that even the driver was not traceable and there was attempt on the part of the plaintiff to blackmail the defendant. Paras 2 and 9 of the plaintiff's reply of the written statement discloses the stand taken by the defendant before the trial Court. The same read as under:

2..That the contents of para No. 2 of the plaint are admitted only to the extent that the Defendant issued the G.R. No. 4632 dated 21.10.2004 to the plaintiff and received Rs. 23,000/- towards part payment of cartage of goods from Delhi to Beldong, Distt. Murshidabad and the balance of Rs. 10,343/- was payable by the consignee at the time of taking delivery of goods. It is wrong and denied that the goods Along with bill No. 204 dated 21.10.2004 were delivered to the Defendant. The Defendant is only a booking agent and arranged the truck No. HR-55B-0634 from M/s Bawa Roadlines and the said goods were directly lodged into the truck at the premises of the Plaintiff. At the time of booking the Defendant had apprised the Plaintiff about the terms and conditions and requirement of insurance of goods.

9. That the contents of para 9 of the plaint are wrong, false and denied. It is wrong and denied that the Defendant has converted the goods to his own use illegally and arbitrarily or has deprived the plaintiff of the use of legal amount or that the Defendant is liable to pay interest @24% per annum as per any usage and customs or liable to pay a sum of Rs. 38,737/- towards interest or Rs. 3300/- towards legal notice or that the Defendant is liable to pay a sum of Rs. 5,95,500/- to the plaintiff.

4. It is evident from the above paragraphs of the written statement that the defendant had disputed the claim raised by the plaintiff. During pendency of the suit, an application under Order 12 Rule 6 CPC was filed seeking decree on admission. It was stated that issuance of GR was admitted and therefore, rest of the fact have been deemed to be admitted and the plaintiff was entitled to the decree prayed for. Vide judgment and decree dated 9th August, 2005, the learned trial Court allowed the said application and decreed the suit for recovery of Rs. 5,76,839/-with proportionate cost and future interest @12% per annum from the date of filing the suit till realisation is passed.

5. While decreeing the suit, the trial Court had referred to certain judgments of this Court and observed as under:

8. Reverting back to the facts of the case the Defendant had admitted that it issued GR, goods were loaded in the truck, it received part of the cartage and goods did not reach the destination. Thus all the material facts stand admitted.

6. The principle of law stated in various judgments of this Court is really not the controversy in the present case. It is a settled principle of law that admission has to be clear, unambiguous and must admit the claim of the plaintiff. It excludes admission by inference. No one can claim admission as a matter of right. The Court has to exercise its jurisdiction in accordance with settled principles of law. In this regard, reference can be made to a recent judgment of this Court in the case of *Raj Kumar Chawla v. M/s Lucas Indian Services* (RFA 130/2004 decided on 27th April, 2006) where these principles were discussed in great detail. The relevant portion of the judgment reads as under:

5. The provisions of Order XII are intended to provide expeditious grant of decree in favor of a plaintiff in a suit or proceedings where the defendant has made any admission in the pleadings or otherwise, orally or in writing of any amount due. The plaintiff would be entitled to a decree on the basis of such admission without waiting for completion of the trial. The provisions of Order XII Rule 6 were incorporated by way of amendment. The legislative object of these provisions is to curtail the period for determination of disputes between the parties to a suit and ensure that a decree on admission is passed without any unnecessary hindrance. The expression 'Admission' has been given a wider meaning and connotation so as to take within its ambit admissions made by a party in pleadings or otherwise, orally or in writing. These provisions thus are capable of liberal construction and without imposition of any unreasonable restriction, must be permitted to operate but the Courts have to be careful while passing a decree on admission. The Court essentially should look into the fact that all essential ingredients of an admission are satisfied before such a decree is passed in favor of any of the parties to the suit. Admission has to be unambiguous, clear and unconditional and the law would not permit admission by inference as it is a matter of fact. Admission of a fact has to be clear from the record itself and cannot be left to the interpretative determination by the Court, unless there was a complete trial and such finding could be on the basis of cogent and appropriate evidence on record. Rule 6 of Order XII certainly enables a party to obtain a speedy judgment fully or partially to which according to the admission of the defendant the plaintiff is entitled to. In the case of the *Uttam Singh Duggal & Co. v. Union Bank of India and Ors.* : AIR 2000 SC2740 the Court while explaining the scope and ambit of these provisions held

as under:

Learned counsel for the appellant contended that Order XII, Rule 6 comes under the heading 'admissions' and a judgment on admission could be given only after the opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII, Rule 5(1) of CPC and Court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression 'admissions' made in the course of the pleadings or otherwise will have to be read together and the expression 'otherwise' will have to be interpreted ejusdem generis. 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.

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.

6. The powers under Order XII Rule 6 of the Code has to be exercised judicially on the facts and circumstances of each case. The admission on the basis of which the Court wishes to pass a decree has to be unambiguous, clear and unconditional. There is no doubt that in a suit there can be more than one decree passed at different stages and each decree being separate and independent is enforceable in accordance with law, was the principle stated by : [1971]2SCR171 Chanchal v. Jalaluddin. Admission understood in its common parlance still must be a specific admission. There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the later category.

7. The term 'Admission' in Section 70 of the Evidence Act relates only to admission of a party in the course of the trial of the suit and not to the attestation of a document by the party executing it. The essential feature of admission is that it should be 'Concise and deliberate act'. It must not be something which was not intended and was not the intention of the party. Pre-requisite to admission are unconditional, unambiguous and intend the same to be read and construed as admission. The scope of admission of a claim is also explained under Order IX Rule 8 of the Code of Civil Procedure, which contemplates that there must be a

claim as laid down in the plaint which is admitted, for the ground stated therein and not simply an admission of cause of action. The legislative intent is clear from the provisions of the Code that an admission has to be unambiguous and clear. The Black's Law Dictionary explain the word 'Admission' as follows:

Admission: Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true. Admission against interest. A person's statement acknowledging a fact that is harmful to the person's position as a litigant. An admission against interest must be made either by a litigant or by one in privity with or occupying the same legal position as the litigant. 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 cannone. 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 *Pariwar Sewa Sansthan v. Dr.(Mrs)Veena Kalra and Ors.* : AIR2000 Delhi349 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 Anr. v. Sunil Madan and Anr.* : AIR 1999 SC3381 and *Dudh Nath Pandey v. Suresh Chandra Bhattasali* : AIR 1986 SC1509 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.

At this stage it would be useful to recall some factual contentions emerging from the pleadings : In 1995 the appellant/defendant was asked to vacate and hand over possession of the suit premises, on the ground of the violation of the terms of the lease; On 25th May, 1996 a notice was alleged to have been served upon the defendant, requiring it to vacate the premises, on 12th September, 1996, tenancy is alleged to have expired by efflux of time and on 8th September, 1996, telegraphic notices were also alleged to have been served upon the defendant. The defendant had pleaded that they were the contractual tenants in respect of the basement since 12-9-90 and in respect of ground floor since 29-11-85; that the lease deeds dated 12-5-94 were never acted upon and were sham documents; two tenancies existed in respect of the ground floor and two tenancies existed in respect of the basement and plaintiff Nos. 1 and 2 used to get separate cheques in their individual names, in respect of each of these portions. In fact, the plaintiffs did not deny the fact that they had been receiving the rent separately in their respective names, with regard to the ground floor and basement tenancies. However, it was pleaded that in 1995, the defendants started issuing two separate cheques in the name of each of the plaintiffs for their convenience. On the basis of these pleadings trial Court, inter alia, framed specific issues that whether the defendant is a contractual tenant or not and whether the lease was validly terminated or was terminated by efflux of time?

The question whether defendant became contractual tenant after 1995, when they were called upon to vacate the premises on the ground of alleged violation of the terms of the lease, and effect of the circumstances leading to the acceptance of the rent by the two plaintiffs individually in their respective names would require trial. These questions could not be determined without evidence and, therefore, it cannot be said to be a case of unequivocal and clear positive admission, which is an essential requirement of law for a decree on admission. Learned trial Court instead of concentrating on the question that whether there was any admission on the part of the defendant or not in its pleadings or elsewhere, proceeded to adjudicate upon some of the issues on merits by observing that the pleas raised by defendant are unbelievable, which could not have been done. There being

triable issues raised going to the root of the case, the trial Court ought to have proceeded to try the suits and returned findings on merits. The impugned judgment and decrees are thus liable to be set aside and the suits deserve to be remanded for trial in accordance with law.

9. In the light of the above principles of law, now we will revert back to the facts of the present case. The learned Judge has noticed that vide letter dated 23.9.2000 the defendant No. 2 had stated that an amount of Rs. 3.97 lacs prior to the meeting with him had come down to Rs. 0.36 lacs without any payment by him. The Court also observes that they had not disputed the liability of Rs. 1,54,949/- in their letter. The learned Trial Court felt that the defendants had returned the goods worth Rs. 54949/- and they admitted their liability to pay Rs. 0.36 lacs in the letter dated 23.9.2000 thus decreed the suit taking it to be an admission on the part of the defendants to the extent of Rs. 1,90,949/-. These findings of the Court appear to be not in consonance with the settled principles.

7. Having noticed the above principle of law, it is clear that the admission by a party has to be in definite and clear terms. The trial court has failed to apply the principles enunciated in the case of Redington (India) Ltd. v. Modi Olivetti Ltd. : 94(2001)DLT205 , which has even noticed by the trial Court, wherein the Court observed that what is right of an unpaid seller cannot be decided under Order 12 Rule 6 because there is no clear admission.

8. The above referred paragraphs of the written statement do not amount to a clear and unambiguous admission. The defendant had relied upon the terms and conditions of good receipt, issuance of which he admitted and stated that in fact and in law there is no liability upon the defendant to pay the claimed amount. The preliminary objection taken in the written statement in regard to non-joinder of parties as well as the suit being vexatious would go to the very root of the case, if the defendant is able to prove these pleas during the course of trial. A plea was also taken that the defendant had not acted in accordance with the provisions of Section 10 of the Carriers Act and no notice had been served. In para 6 of the written statement even receipt of the notice was disputed. Written statement has to be read and construed as a composite document and the Court cannot pick up a

single line and treat it as an admission out of the contest in which the line is written. The learned Counsel appearing for the appellant contended that there was no privity of contract between the truck owner and the plaintiff and, therefore, there was no occasion to implead the said party. This is a question, which could only be decided after the parties had led evidence and the Court still had to examine as to what will be the effect of the preliminary objection taken by the defendant in their written statement. It is impermissible in law that only a line from the written statement could be taken up and even the entire para in which the said line is written is ignored in its entirety. What the defendant is stated is that he had issued GR and the goods were loaded to the truck and driver and goods were not traceable. What was stated in the same paragraph was that as per the terms and conditions part of the goods receipt there was no liability upon the carrier to make good the loss. This was a question of law, which required adjudication and the defendant was entitled to an opportunity to prove his pleaded case. This was certainly be not a case where the Court could decree the suit by treating the above paragraph of the written statement as admission, which is unambiguous, clear and admits the claim of the plaintiff.

9. During the course of hearing it was brought to the notice of the Court that in furtherance to an interim order passed by the Court, the appellant has deposited a sum of Rs. 2.50 lakhs in the registry of this Court.

10. In view of the detailed discussion as above, we allow this appeal partially, set aside the impugned judgment and decree of the trial Court and remand the suit to the trial Court. The Court shall proceed with the trial in accordance with law. Further to balance the equity between the parties, we direct that the amount of Rs. 2.50 lakhs deposited by the appellant before this Court shall be transmitted to the trial Court. The same will be retained by the trial Court. The Court will pass orders for disbursement of the said amount while passing the final decree.

11. RFA 724/2005 is accordingly disposed of while leaving the parties to bear their own costs.