

Development Consultants Ltd. Vs. Mayank Poddar and ors.

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SooperKanoon Citation : sooperkanoon.com/857073

Court : Kolkata

Decided On : Apr-04-2007

Reported in : 2007(2)CHN704

Judge : Bhaskar Bhattacharya and ;Kishore Kumar Prasad, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 12, Rule 6

Appeal No. : A.P.O. No. 304 of 2006, A.P.O.T. No. 422 of 2006 and G.A. No. 2560 of 2006

Appellant : Development Consultants Ltd.

Respondent : Mayank Poddar and ors.

Advocate for Def. : Anindya Mitra and ;Sumit Talukdar, Advs.

Advocate for Pet/Ap. : Hirak Mitra, ;Gour Roy Chowdhury and ;Subhrojit Roy, Advs.

Disposition : Appeal dismissed

Judgement :

Bhaskar Bhattacharya, J.

1. This appeal is at the instance of a defendant in a suit for eviction and other consequential relief and is directed against order dated June 5, 2006 passed by a

learned Single Judge of this Court by which an application filed by the plaintiff/respondent under Order 12 Rule 6 of the Code of Civil Procedure was allowed and consequently, a money decree was passed on admission against the appellant to the extent of Rs. 51,13,633.23p. payable by six equal monthly instalments commencing from June 30, 2006. His lordship further made it clear that upon payment of the first instalment the plaintiff would produce necessary receipts from the municipal authority with regard to the payment of the said sum to the municipal authority as well as the earlier sum of Rs. 34.64 lakh paid by the appellant.

2. The respondent filed a suit claiming eviction of the appellant on the ground that the lease earlier executed between the parties had expired by efflux of time. During the pendency of the suit the appellant, however, vacated the premises in favour of the landlord. There was outstanding amount of municipal rates and taxes and for the above reason, the respondent, claiming a decree of recovery of the amount payable by the defendant towards the corporation tax, was proceeding with suit.

3. It may not be out of place to mention here that in the past, the respondent filed a similar application under Order 12 Rule 6 of the Code thereby praying for a decree on admission regarding payment of the selfsame municipal rates and taxes. The said application, however, was, dismissed by one of us (Bhattacharya, J.) on the ground that there had been no final assessment of the amount by the municipal authority and as such, the jurisdiction of the Court under Order 12 Rule 6 of Code should not be invoked.

4. Against such order, an appeal was preferred and during the pendency of the appeal, the municipal authority finally assessed the municipal taxes. Ultimately, an application for bringing the final assessment on record was filed and the Division bench disposed of the appeal by giving liberty to the plaintiff to move a fresh application before the learned Single Judge based on such final assessment and consequently, the second application out of which the present appeal arises was filed.

5. In the earlier proceeding under Order 12 Rule 6 of the Code, the appellant filed an affidavit-in-opposition and it was stated therein that a sum of Rs. 34.64 lakh had already been paid on account of the corporation taxes and that the same was in full and final payment until final assessment was done.

6. By taking advantage of the said admission made in the earlier affidavit-in-opposition, the second application filed alleging that the defendant having admitted the liability of making payment of corporation taxes and having further stated that so long the final assessment was not made, it was under no obligation to pay and that subsequently, such assessment having been made by the Calcutta Municipal Corporation quantifying the amount, the Court should pass a decree on the basis of admission of the defendant so far the liability of the corporation tax is concerned.

7. The aforesaid application was opposed by the appellant but the learned Single Judge by the order impugned herein has allowed such application on the basis of admission made by the appellant in the earlier affidavit-in-opposition.

8. Being dissatisfied, the defendant has come up with the present appeal.

9. Mr. Hirak Mitra, the learned senior Advocate appearing on behalf of the appellant vehemently contended before us that in the affidavit-in-opposition filed by his client in the previous application under Order 12 Rule 6 of the Code all that was stated was that in the absence of the final assessment such application was not maintainable and there was no specific admission made by his client admitting the dues of the corporation tax. Mr. Mitra, therefore, prays for setting aside the order passed by the learned Single Judge. Mr. Mitra further contends that in the absence of any specific admission on the part of his client accepting the decretal amount to be payable by his client, there is no scope of invoking Order 12 Rule 6 of the Code.

10. Mr. Anindya Mitra, the learned senior Advocate appearing on behalf of the plaintiff/respondent has, however, supported the order passed by the learned Single Judge and has contended that the appellant having admitted his liability to pay corporation taxes and the assessment having been finalised, the learned Trial

Judge rightly passed the order.

11. After hearing the learned Counsel for the parties and after going through the materials on record, we find that in the previous application under Order 12 Rule 6 of the Code, the defendant did not dispute his liability to pay corporation taxes and on the other hand admitted payment of Rs. 34.64 lakh towards that account. All that was stated by the defendant was that so long, the corporation authority had not assessed the valuation and the amount payable by the appellant, the plaintiff was not entitled to get that amount from the defendant.

12. Subsequently, the municipal authority has assessed the valuation of the building and also the amount in respect of the portion so long occupied by the appellant and in view of such fact, we find substance in the contention of Mr. Anindya Mitra, the learned senior Advocate appearing on behalf of the respondent that it is a fit case where a decree should be granted on the basis of the admission. There is no dispute that the assessment order issued by the Corporation has been brought on record, indicating the actual amount assessed by the Kolkata Municipal Corporation and it is an admitted position that the defendant had not challenged the same before the appropriate forum. Such being the position, the learned Single Judge rightly passed the decree to the extent assessed by the Municipal Corporation, less the amount admittedly paid by the defendant i.e. Rs. 34.64 lakh as admitted in the affidavit-in-opposition to the earlier application. It is not the case of the defendant that any further amount was subsequently paid.

13. We, therefore, find no substance in this appeal and the same is accordingly dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

14. I agree.