

24.03.2023.

Present: Id counsel for the plaintiff.

Sh Vibhor Goel, Id counsel for the defendant.

Heard. Perused.

Vide this order, I shall dispose of the application u/o XII Rule 6 CPC filed by defendant for dismissal of the present suit on admission of plaintiff in his cross-examination.

For disposal of present application, brief facts of the case are that plaintiff and defendant were known to each other and in good faith, plaintiff advanced Rs.1,50,000/-, Rs.50,000/- and Rs.50,000/- to defendant on different occasions from June 2013 till February, 2014 on interest @ 24% p.a. It is further averred that defendant had not paid any amount till April, 2015 despite repeated reminders. In discharge of his liability, defendant issued a cheque of Rs.8,000/- as interest of April and May, 2015 from the account of his wife Smt Monika Walia. Defendant assured the plaintiff that he shall repay the entire loan with interest on or before 30.06.2015. Thereafter, defendant committed default in payment and shifted his residence and changed his Sim card. It is further averred that plaintiff sent a legal notice dt 14.07.2015 which was duly served and the said legal notice was neither replied nor complied with. Hence, plaintiff filed this suit for recovery of Rs.3,16,800/- with interest @ 24% p.a. against defendant.

After service of summon to defendants on 21.01.2016, defendant no. 1 filed his WS.

As per WS, defendant averred that plaintiff and defendant were known to each other. It is further averred that defendant never asked for money from plaintiff instead defendant and his wife always helped the plaintiff and his wife in odd times. It is further averred that the cheque no. 039252 drawn on ICICI Bank was issued by Monika Walia, wife of defendant, in favour of Sunita Pawar, wife of plaintiff, as financial help to the wife of plaintiff. It is further averred that Smt Monika Walia and Smt Sunita Pawar are not litigating parties to the suit and they have no concern with the present suit. It is further averred that the present suit is based upon bald oral averments which are frivolous in nature and there is no documentary evidence on record to prove the same. All other averments made in the plaint are denied in *toto*.

In the present application, defendant has stated that there is no prima facie case as the present suit is based on bald averments. It is further stated that during cross-examination of PW1/plaintiff, PW1 admitted that entries in the pass book shows only withdrawl of the amount and does not prove the payment of money to the defendant. It is further stated that present suit is liable to be dismissed as there is clear cut admission of the plaintiff during cross-examination that no loan was advanced to the defendant. Defendant relied upon judgment titled as *Raman Tech and Process Engg. Co. v Solanki Traders*¹.

In reply to the present application, the plaintiff stated that his suit only for recovery of friendly loan of Rs.2,00,000/- against defendant and the same is supported by statement of PW2 Sh Ravinder Kumar. It is further stated that application u/o VII Rule 11 CPC of defendant for dismissal of

¹(2008) 2 SCC 302

suit was also dismissed by this court on 08.09.2022. All the averments made in the application were denied in toto. It is prayed that present application may kindly be dismissed with exemplary cost. Plaintiff relied upon judgments *Chanchal v Jalaluddin*², *Express Towers P Ltd* and *Anr v Mohan Singh & Ors*³, *Western Coalfields Ltd. v. Swati Industries*⁴ and *Alka Bose v Parmatma Devi & Ors*⁵.

I have heard the ld. counsel for both the parties and have carefully perused the record.

At this stage, it would be fruitful to refer to Order XII Rule 6 of the Code of Civil Procedure which provides as under :-

“6. Judgment on admission. - (1) Where admissions of fact have been made either in the *pleading or otherwise, whether orally or in writing*, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or given such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule(1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

In *Karan Kapoor v. Madhuri Kumar*⁶, the hon’ble Supreme Court of India held that :-

“15. Prior to appreciating the arguments in the facts and looking to the controversy involved in the present case, it is required to know the object and the purport to introduce Order XII of CPC. The relevant provisions are reproduced hereinunder:

.
. .
. .
. .

2AIR 1971 SC 1081

3Decided by hon’ble High Court of Delhi on 7 September, 2007

4AIR 2003 Bom 369

5 AIR 2009 SC 1527

6 Civil Appeal No. 4545/2022

.
.
.
6. Judgment on admissions. —(1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced...*

.
.
.
.
.
.
Rule 6 confers discretionary power to a Court who 'may' at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

.
.
.
.
.
.
16.....*The said provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for full fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute.....*

.
.
.
.
.
.
17.....*a three Judge Bench of this Court in the case of **S.M. Asif v. Virendar Kumar Bajaj**⁷ made the legislative intent clear to use the word 'may' which clearly stipulates that the power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right.....*

Further, in the case of **Western Coalfields Ltd. v.**

Swati Industries (Supra), the hon'ble Bombay High Court held that:

“in the matter of judgment on admission, general rule is that the pleadings are to be read as a whole; admissions in pleadings cannot be dissected. The Court is vested with jurisdiction to pass a decree on admission on the strength of the principle laid down under Section 58 of the Evidence Act that admitted facts need not be proved and as such admissions can be considered as substantive evidence on which a decree can be passed. When the admission is qualified and conditional and not conclusive then order cannot be invited under order XII rule 6.”

Further, in **Delhi Jal Board v Surendra P Malik**⁸, the hon'ble High Court held that :

“.....it is essential that the admissions must be plain, unambiguous and unequivocal and that when a defence is set up and it requires evidence for determination of the issues then the provisions of Order XII Rule 6 are not applicable and a judgment cannot be passed on the plaintiff's asking”.

In the case of **Manisha Commercial Ltd. v. N.R. Dongre**⁹, J. Vikramajit Sen of hon'ble Delhi High Court, had dismissed an Application under Order XII Rule 6 of the CPC observing that :

“.....it was wholly inappropriate to permit any party to employ this provision where vexed and complicated questions or issues of law had arisen.”

Further, in the case of **Express Towers P. Ltd. and Anr. v. Mohan Singh (Supra)**, the hon'ble High Court of Delhi held that :

“.....it may not be safe and correct to pass a judgment under order XII, Rule 6 of the Code when a case involves disputed questions of fact and law which require adjudication and decision. Even when a party has made an admission, the Court need not dismiss or allow the suit. Judgment on the basis of admissions is not a matter of right but a matter of discretion for the Court.

8 2003 (68) DRJ 284

9 (2000) 125 PLR 53

Coming to the facts of the present case, the main contention of the plaintiff is that the plaintiff has advanced a loan of Rs.2,00,000/- on interest @ 24% p.a. to the defendant and same has not been returned till date nor any interest was paid. Defendant has paid Rs.8,000/- as interest for April and May 2015 through cheque from account of his wife Smt Monika Walia.

On the other hand, the contentions of the defendant is that plaintiff has filed only bank pass book entries showing withdrawals however the same cannot prove that the amount withdrawn was given to the defendant. Apart from bank entries, no documentary evidence is placed on record by plaintiff to prove his case. It is further contented that during his cross-examination, plaintiff has admitted that the entries in the pass book reflects only that he has withdrawn the money from the account and not that the money has been given to the defendant.

It is prayed that in the absence of documentary evidence, it is an admission on behalf of plaintiff that his case shall not be proved.

On perusal of testimonies of PW1 and PW2, it is found that there are no admission of fact as alleged by defendant in his present application, and further both deposed that plaintiff has given loan amount to defendant.

Keeping in view that the law laid down under order XII Rule 6 CPC that this provision is discretionary and cannot be claimed as a matter of right, I am of the opinion that issues in the present case are disputed and same needs adjudication through complete trial.

In the light of above, I am of the opinion that the defendant is not entitled to grant order of dismissal of the present

suit u/o XII Rule 6 CPC.

Accordingly, **the present application u/o XII Rule 6 CPC is hereby dismissed and disposed of with cost of Rs.5,000/- to be paid to the opposite party on the NDOH.**

Put up for RPE/cross-examination of PW2 on **10.05.2023.**

(Surender Mohit Singh)
ADJ-04, North, Rohini Courts,
Delhi/24.03.2023