

**IN THE COURT OF SH. KISHOR KUMAR, ADDITIONAL
DISTRICT JUDGE-04, NORTH DISTRICT, ROHINI
COURTS, DELHI.**

CS No. 442/2021
CNR No: DLNT01-006237-2021

Sharmishtha

..... Plaintiff

VERSUS

Naresh Rana & Ors.

.....Defendant

Order/26.03.2024

1. Vide this order I shall dispose of the application under Order I Rule 10 CPC, moved on behalf of proposed defendant Smt. Vijay Rana as well as application under Order XII Rule 6 CPC, filed on behalf of the plaintiff.

2. Plaintiff has filed the present suit for recovery of Rs.5,00,000/- along with temporary injunction restraining the defendants from transferring or creating third party interest in movable and immovable assets inherited from Smt. Anita, deceased wife of defendant no.1 and mother of defendant no.2 stating inter alia that parties are known to each other for last ten years and plaintiff gave a sum of Rs.5,00,000/- to Smt. Anita at

the interest of two per cent per month for a period of two years against due acknowledgment and a security cheque bearing no.623811 was also issued by Smt. Anita. After expiry of two years, Smt. Anita did not return the said amount despite repeated requests and demands made by the plaintiff and she expired during Covid-19. The defendants no.1 and 2 have already planned to abscond and to settle in Australia.

3. The defendant no.1 filed written statement wherein it is averred that there is no privity of contract between the plaintiff and defendants. It is further stated that defendant had nothing to do with the business and dealing of deceased Anita Rana and she was solely responsible for her dealings and never allowed the defendant to interfere in her business and dealing. The defendants are not the beneficiary of the property of deceased Anita Rana as at the time of her death she had no property to be inherited in their favour. Rest of the averments made in the plaint are denied by the defendant being false and incorrect.

4. In view of the pleadings and admissions by the defendant side in the written statement, the plaintiff has moved application under Order XII Rule 6 CPC wherein it is stated that defendants as legal heirs of the deceased Anita Rana have not denied the existence of the liability of deceased Anita Rana towards the plaintiff. Defendants as legal heirs have inherited the

immovable properties and bank balances of deceased Anita Rana and therefore, have clear and unambiguous liability towards plaintiff.

5. Per contra, it is submitted on behalf of the defendants that there is no clear and unequivocal admission on part of the defendants. It is further stated that defendants have not inherited any immovable property left by Smt. Anita Rana and they are not liable to pay anything to the plaintiff.

6. I have heard the learned counsels for the parties and have carefully gone through the material on record.

7. 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.”

8. The main contention of the plaintiff is that defendants as

legal heirs of deceased Anita Rana have not denied the existence of the liability of deceased Anita Rana towards the plaintiff and thus, there is clear and unambiguous admission on the part of the defendants.

9. The law relating to applicability of Order XII Rule 6 CPC is well settled that it is a discretionary relief and the Court has to exercise discretion in a judicious and circumspective manner. The Hon'ble Delhi High Court in **Joginder Singh Lakra Vs. BSES Rajdhani Power Ltd., in CRP 51/2023**, while referring to the judgment of the Hon'ble Supreme Court in **Hari Steel and General Industries Ltd. & Anr. Vs. Daljeet Singh & Ors., (2019)20 SCC 425**, held

“25. in the judgment in Himani Alloys Ltd. vs. Tata Steel Ltd., (2011) 15 SCC 273, nature and scope of Order XII Rule 6 CPC has been considered. In the aforesaid judgment this Court has held that the discretion under Order XII Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of judgment read as under:

“It is true that a judgment can be given on an admission contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII Rule 6 CPC being an enabling provision, it is neither mandatory nor peremptory but discretionary. The Court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and

unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear admission which can be acted upon.”

10. Further in *Raj Kumar Chawla Vs. Lucas Indian Service*, (2006) 129 DLT 755, their Lordships held -

“it is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather a matter of discretion of a Court. Where a defendant raised a objection which will go very root of the case, it would not be appropriate to exercise this discretion. The use of the words ‘may’ and, ‘makes such orders’ or ‘give such judgment’ spells out that powers under these Rules are discretionary and use of discretion would have to be controlled in accordance with the non-judicial canons. The cases which involves questions to be decided upon the regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions.

11. Now adverting back to the facts of present case, after perusal of written statement filed on behalf of defendant, it is found that there is no such admission on the part of defendant. Further, in the written statement it is the contention of defendants that they had nothing to do with the dealings of plaintiff with late Smt. Anita Rana and they are not aware of any such dealings. It is further the contention of defendants that they did not inherit any property left by Smt. Anita Rana. In these circumstances, it cannot be said that there is clear and unambiguous admission on the part of defendants which is a

conscious and deliberate act of the defendants and the objection raised by the defendants would go to the very root of the case.

12. Now, coming to the application under Order I Rule 10 CPC filed on behalf of applicant Smt. Vijay Rana. It is stated on behalf of the applicant that the property bearing no. D-1/76 and 77, second and third floor, Sector-11, Rohini, Delhi-110085 was sold to the applicant by late Smt. Anita Rana. It is further stated that later in January 2018 late Smt. Anita Rana again approached applicant and her husband to sell the first floor and upper ground floor of the said property to the applicant and her husband for Rs.40,00,005/- and till June, 2020, applicant and her husband made entire payment in favour of Anita Rana for the above mentioned properties, but later on Smt. Anita Rana and Naresh rana told the applicant and her husband that they had taken a loan on the above said properties from Tata Capital Financial Services Ltd. The applicant had also paid loan installments of Narsh Rana and they handed over the possession of first floor of the said property to the applicant and sought time to hand over possession of upper ground floor of the said property. It is further stated that the applicant has also filed a civil suit against Naresh Rana along with others titled as Vijay Rana v. Naresh Rana & Ors. It is prayed that applicant is the proper and necessary party to the present suit.

13. In reply to the application under Order I Rule 10 CPC, it is stated on behalf of the plaintiff that applicant Smt. Vijay Rana is neither a necessary nor a proper party for the adjudication of present suit and the present application deserves to be dismissed with cost being filed just to delay the trial.

14. It is a well-settled principle that it is for the plaintiff in a suit to bring the parties against whom he has any dispute and to implead them as defendants in the suit filed for necessary relief. The principles governing the power of the court under Order 1, Rule 10 of CPC, are that as a rule, the court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the “dominus litus”.

15. A person is a necessary party when in the absence of whom relief claimed in the suit cannot be granted. A necessary party is against whom the relief is sought and without whom no effective order can be passed. Proper parties are those whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit. In ***Kasturi vs. Uyyamperumal and others (2005) 6 SCC 733***, the Hon’ble Apex Court provided two tests that are to be satisfied for determining the question that who amounts to a necessary party:

(i) there must be a right to some relief against such party in respect of the controversies involved in the proceedings,

(ii) no effective decree can be passed in the absence of such a party.

16. Perusal of plaint shows that plaintiff has filed the present suit for recovery of money against the defendants on the ground of advancing a sum of Rs.5,00,000/- which the defendants failed to return. The plaintiff has not sought any relief against any specific property mentioning the particulars of that specific property.

17. The plaintiff in a suit, being dominus litus may choose the persons against whom he wishes to litigate to seek any relief but if an involvement of such a party is not found, then, the party's name can be deleted from array of parties under Order I Rule 10(2) of the CPC. This was stated by **Hon'ble High Court of Delhi**, in the case of **Sumer Singh Salkan vs. Vikram Singh Mann & Ors. [CM(M) 37/2019]** on **10.01.2022**.

18. As per the applicant Smt. Vijay Rana, she has already filed a suit against the defendant no.1 along with other defendants for appropriate remedy available to her. In the suit in hand, the applicant has nothing to do since the present suit is suit for recovery of money and there is nothing in plant which suggests that plaintiff has sought any relief against the applicant Smt. Vijay Rana. Since the applicant Smt. Vijay Rana has already availed the legal remedy available to her against the defendants,

she has nothing to do with the alleged transaction took place between Smt. Anita Rana and the plaintiff. Under these circumstances, I do not consider Smt. Anita Rana either a necessary party or a proper party in the present suit.

19. In view of my above discussion, the application under Order XII Rule 6 CPC, filed on behalf of the plaintiff as well as the application under Order I Rule 10 CPC filed on behalf of applicant Smt. Vijay Rana, are hereby dismissed.

Announced in Open Court

On Dated 26.03.2024.

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/26.03.2024