

**IN THE COURT OF SH. AKASH JAIN
ADDITIONAL DISTRICT JUDGE-01
SOUTH-EAST DISTRICT, SAKET COURTS: NEW DELHI**

CS DJ No:- 1680/17

Niraj Tiwari v. M/s Imperia Structures Ltd.

Sh. Niraj Tiwari

S/o Late Sh. C. B. Tiwari

R/o B-1773, Shastri Nagar

PO Ashok Vihar, Delhi-52

..... Plaintiff

Versus

M/s Imperia Structures Ltd.

Through its Directors:-

Sh. Harpreet Singh and

Sh. Brajinder Singh Batra

Regd Office at:- A-25

Co-operative Industrial Estate

New Delhi-110044

..... Defendant

ORDER

1. Vide this order, I shall dispose of the present application under Order XII Rule 6 of The Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') filed by **Sh. Niraj Tiwari** (hereinafter referred to as 'plaintiff') to pass decree in lieu of admissions made by **M/s Imperia Structures Ltd.** (hereinafter referred to as 'defendant company') in his written statement.

2. Briefly stated, it is the case of plaintiff that he was appointed by defendant company as Senior Manager on 01.12.2011 and his services were confirmed on 01.06.2012. It is averred that w.e.f. 01.12.2015, plaintiff continued his employment with the defendant as DGM, drawing a gross monthly salary of

Rs.1,05,000/-. On 15.04.2017, plaintiff was informed by defendant company that his services were not required without assigning any specific reasons. The plaintiff was informed to serve notice period of 1 ½ months which he duly did and handed over his charge along with necessary documents, two desktop computers, etc. to the defendant company on 31.05.2017. It is alleged that defendant deliberately did not clear the dues of plaintiff i.e. salary for the month of May, 2017, gratuity, leave encashment and other expenses. The plaintiff had sent legal demand notice to the defendant dated 17.10.2017 to pay the outstanding amount due to him, but to no avail. Hence, the present suit for recovery of sum of Rs. 16,06,100/- had been instituted.

3. Vide present application under Order XII Rule 6 CPC, it is submitted on behalf of plaintiff that the factum of employment of plaintiff with defendant company is not in dispute. Moreover, defendant vide reply in para no. 8-9 of his written statement clearly admitted its liability to pay outstanding salary for the month of May, 2017 and gratuity to the plaintiff. In these circumstances, it is prayed that the defendant be directed to pay the admitted sum of Rs. 2,15,000/- to the plaintiff in terms of Order XII Rule 6 CPC.

4. In response to the application under Order XII Rule 6 CPC, it is submitted on behalf of defendant company that plaintiff has drawn wrong inference from the written statement of defendant and that it was categorically submitted by defendant in

its written statement that defendant company is ready and willing to make the requisite payment to the plaintiff only after plaintiff returns the property of defendant which is in his possession i.e. a laptop.

5. Arguments heard on the application under Order XII Rule 6 CPC and record perused carefully.

6. Before adverting to the findings, it is imperative to refer to the provision of Order XII Rule 6 CPC, which is reproduced as under :

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 upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

7. The object of Order XII Rule 6 CPC is to enable a party to obtain a speedy judgment to the extent of the admissions of the Defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of any other question. It is a settled proposition of law that before a judgment can be passed under Order XII Rule 6 CPC, the admission must be clear, unambiguous, unconditional and unequivocal.

8. In ***Uttam Singh Duggal & Co. Ltd. Vs. Union Bank of India*** 72(1998) DLT 798, the Hon'ble Supreme Court of India observed as under :

“... we should not unduly narrow down the meaning of this Rule as the subject is to enable a party to obtain speedy judgment. Where the 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...”

9. In ***National Textile Corporation v. Ashval Vadera*** on 9 February, 2010 RFA 274/2009 and CM No. 10578/2009, it was held by Hon'ble Delhi High Court as under :

*“... 17. It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour. In order to invoke the provisions of Order XII Rule 6 CPC, admissions de hors pleadings may also be considered as is evident from the use of the word "otherwise" in the said provision. [See ***Shikharchand v. Mst. Bari Bai***, AIR 1974 MP 75; ***K. Kishore v. Allahabad Bank***, 1997 (41) DRJ 698; ***Uttam Singh Dugal v. UBI***, (2000) 7 SCC 120; ***Rajiv Srivastava v. Sanjiv Tuli***, 119 (2005) DLT 202; ***Rama Ghei v. U.P. State Handloom Corpn.***, 91 (2001) DLT 386 and ***R.N. Sachdeva v. R. L. Mahajan Charitable Trust***, 1997 (41) DRJ 698]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements recorded under Order X Rule 1 CPC. Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been deliberately made in order to mislead the Court, or gathered from the non-traversal of specific averments made in the pleadings and documents.*

18. It is the bane of the judicial system that with a view to protract and drag on the case, a litigant who is a wrong-doer often takes all sorts of false and legally untenable pleas. Such litigants should not be allowed to hijack the judicial process and to subvert the cause of justice. Where

it is palpably clear to the Court that the defence is with the sole purpose of protracting the proceedings to the advantage of the wrongdoer and the disadvantage of the aggrieved party, it becomes the bounden duty of the Court to save the latter from going through the rigmarole of a futile and expensive trial. For this, the Court has been invested with sweeping powers by a number of provisions in various statutes, the most potent of which are the provisions of Order XII Rule 6 read with Order VIII Rules 3 and 4 CPC. Regrettably, the said provisions, though exploited by the Courts to the advantage of the judicial process, have yet to reach the optimum level of exploitation. It thus becomes imperative on this Court to use the powers reposed in it to prevent misuse of the judicial process, to cut short laws' delays and to save the aggrieved party from the travails of a long drawn out litigation, often outliving his life span itself and falling into the lap of his survivors..."

10. For the sake of clarity, relevant excerpts from para 8 & 9 of plaint and corresponding written statement are reproduced as under:

Plaint :-

".... 8. That the Defendant has deliberately not cleared the dues of the Plaintiff till date like salary, gratuity and above said monthly expenses despite being relieved from duties on 31.05.2017 and aforesaid other dues in violation of various statutory provisions like Payment of Gratuity Act which constitutes an act of illegal termination of services. In fact, the Defendant has acted inhumanly by returning request of Plaintiff for advance against salary during his hospitalization to meet his medical expenses despite his entitlement.

9. That even after lapse of almost six month after discontinuance of service of the Plaintiff, the dues of my client including his salary for May 2017 has not been cleared by the Defendant which is causing a serious financial, mental and physical harassment to the Plaintiff who is undergoing treatment of heart ailments. Further, Plaintiff is finding it difficult to meet his obligations towards education and other expenses of his two major sons besides his wife who are solely dependant upon him as he still in search

for suitable job in accordance with status/standing. The details of dues withheld by the Defendant are as under:

S. No.	Particulars	Amount (Rs)
1	Salary (May 2017)	1,05,000.00
2	Various expense bill (Nov 16-May 2017) already submitted with a/c depts.*	55,000.00
3	Gratuity (83 days)	1,10,000.00
Total Dues payable		6,74,600.00

** payment made, if any, are adjustable subject to production of proper receipt/supporting docs....”*

Written Statement:-

“... 8-9 That contents and averments made in paras 8 and 9 save the matters of record, are wrong and denied. It is submitted that subject to (i) plaintiff returning the aforesaid properties of defendant and (ii) plaintiff furnishing the above required undertaking, defendant was always and is ready and willing to pay the outstanding salary of plaintiff for the month of May, 2017 as well as the amount of gratuity as claimed by plaintiff in plaint after making necessary deductions towards EPF, TDS as well as aforesaid Data recovery charges...”

11. Suffice it to say, the defendant vide its written statement has clearly admitted its liability to pay outstanding salary of plaintiff for the month of May, 2017 along with gratuity as claimed in the plaint. As regards, claims of plaintiff regarding expenditure of Rs. 55,000/- along with leave encashment charges of Rs. 4,04,600/-, which have not been categorically admitted by the defendant in its written statement, the same could only be decided after leading of evidence during trial. Similarly, claims of defendant company regarding payment of data recovery charges

by plaintiff, are subject matter of trial.

12. However, in lieu of clear, unambiguous and unequivocal admission made by the defendant, regarding outstanding salary of plaintiff for the month of May, 2017 and gratuity, in its written statement, application under XII Rule 6 CPC stands allowed. Defendant is thus, directed to pay admitted sum of Rs. 2,15,000/- to the plaintiff within one month from the date of this order. Decree sheet be prepared accordingly.

13. During the course of arguments, it was fairly conceded by the plaintiff that one laptop belonging to the defendant company is in his possession and he is willing to surrender the same to the defendant company at the time of receipt of aforesaid sum. Request not opposed on behalf of defendant company. As such, the plaintiff shall handover the laptop to the defendant company at the time of receipt of sum as ordered against due acknowledgment. With respect to the remaining claims of the parties, the trial shall continue on merits.

**ANNOUNCED IN OPEN COURT
ON 30.01.2023**

**(AKASH JAIN)
ADJ-01, SOUTH-EAST
SAKET, NEW DELHI**

This order contains 7 pages and each paper is signed by me.

**(AKASH JAIN)
ADJ-01, SOUTH-EAST
SAKET, NEW DELHI**