

**IN THE COURT OF MANISH SHARMA, ADDITIONAL DISTRICT
JUDGE-01, WEST DISTRICT, TIS HAZARI COURTS, DELHI**

In the matter of :

CS No. 397/17

Kapil Chanana

..... Plaintiff

Vs.

M/s V.S. Structures Pvt. Ltd.

.... Defendants

ORDER :

1. Vide this order, I shall dispose of an application U/o XXXIX rule 10 CPC filed by the plaintiff seeking issuance of direction to the defendants to deposit the debt admitted by the defendant with the plaintiff.

2. It is averred that defendants in para no. 2 of preliminary objection of their written statement have admitted that a sum of Rs. 2,58,271/80p is due and payable by the defendants. It is further averred that several times, defendants have approached the plaintiff and requested him to settle the account. It is further averred that the plaintiff has claimed an amount of Rs. 10,03,683/- with interest as the same was payable by the defendants to the plaintiff towards the rental charges of shuttering material. It is further averred that

defendant is liable to pay the admitted debt of Rs. 2,58,271/80p. It is further prayed that the defendant may be directed to pay Rs. 2,58,271/80p to the plaintiff without prejudice to his rights to recover the balance amount.

3. Reply to application U/o XXXIX rule 10 CPC filed by the defendants wherein it is averred that in fact the plaintiff has removed/ lifted some articles belonging to the defendants from the site which the defendants had taken on rent. Therefore, the defendants are still bearing the cost of the rent of those articles and will continue to do so till those articles are not handed over back to them. Therefore, the admitted amount of Rs. 2,58,271/80p is reducing day by day. It is further averred that the plaintiff cannot claim the alleged admitted amount prior to the disposal of the present suit. It is further prayed that the application filed by the plaintiff may be dismissed.

4. Arguments heard. Record perused.

5. It is unequivocally admitted by the defendant in the written statement that a sum of Rs. 2,58,271/80p is due and outstanding towards the plaintiff. The relevant extract from para no. 2 of written statement is reproduced hereunder as :

“Later on, the accounts of the defendant were audited by the Chartered Accountant and found that the plaintiff raised incorrect bills by over billings to the tune of Rs. 3,71,551/90p and further the plaintiff received the extra material from the defendants on 08.11.2014 and the defendant borne the rent and

cost of the said extra material, which illegally taken by the plaintiff, to the tune of Rs. 1,53,128/70p and after adjusting the said amount of over bills and the rent and cost of the extra material lifted by the plaintiff from the sites of the defendants, a sum of Rs. 2,58,271/80p is due against the defendants. However, the defendants several times, approached the plaintiff and asked him to come at their office and sit together to settle the account and receive the said due amount from the defendants, but the plaintiff did not come forward and filed the present false suit against the defendants, to extort more money beyond their liability through the present suit, as such, the suit of the plaintiff is without any cause of action and is liable to be rejected outrightly as per the provisions of Order VII Rule 11 CPC.”

The plea raised in reply to this application is not a part of the written statement, hence, same cannot be taken into consideration. The defendants have admitted in his written statement that a sum of Rs. 2,58,271/80p is due against the defendants. However, this application U/o XXXIX rule 10 CPC is moved under the wrong provisions of law and the same be treated under Order XII rule 6 CPC. The application is allowed. Defendants are directed to pay the amount of Rs. 2,58,271/80p alongwith interest @ 6% per annum to the plaintiff from the filing of the suit till its realization. Decree sheet be prepared accordingly.

Announced in an open court
on 11.03.2022

(Manish Sharma)
ADJ-01/West/THC/Delhi