Present :
Shri S. D. Singh
Judge,District Commercial Court
West Tripura, Agartala
CS-03 of 2024

M/S Shyam Sundar Jewelers Co. Pvt. Ltd.
…..Petitioner/ Plaintiff
Vs
M/S Aranyak Jewelers Pvt. Ltd. & Ors
…...Opposite Parties/ defendants

11-05-2026

Today the record is fixed for passing order.

Learned counsel Mr. Koushik Roy has filed hazira for the plaintiff.

Learned counsel Mr. H. Sarkar has fied hazira for the defendants.

Today the record is fixed for passing order on an application u/o I, Rule 10(2) of CPC, 1908 filed by defendant Nos.2 and 3 and on an application u/o XII, Rule 6 of CPC, 1908 filed by the plaintiff.

The record is taken up for passing order on an application u/o I, Rule 10(2) of CPC, 1908.

1) Brief facts of the application of the defendants No. 2 and 3 is that the present application has been filed by defendant nos. 2 and 3 under Order I Rule 10(2) read with Section 151 CPC seeking striking off of their names from the array of parties in Commercial Suit No. 03 of 2024 and for interim stay of the suit proceedings. The case

of the petitioners is that the monetary and fiduciary claims in the plaint are essentially against defendant no. 1 company and that defendant nos. 2 and 3 have been unnecessarily impleaded in their personal capacity.

It is pleaded that around 2005 defendant no. 2 started a jewellery retail business under the name “Sarada” at Khowai and later at Dharmanagar and used to procure finished hallmark jewellery from the predecessor of Shyam Sundar Co. Jewellers Pvt. Ltd. for retail sale. According to the applicants, the relationship between the parties was purely commercial and in the nature of buyer and seller. The existence of any franchise agreement, whether oral or written, has been specifically denied, and it is asserted that the plaintiff had no control over the day-to-day business of “Sarada”.

The applicants further allege that the plaintiff’s predecessor, owing to its commercial influence, induced defendant no. 2 to display the name of Shyam Sundar Co. Jewellers on invoices to create an impression of franchise for expansion of business, which defendant no. 2 agreed to due to his nascent stage in business. It is further stated that in 2008 the partnership firm was incorporated as the present plaintiff company, M/s Shyam Sundar Co. Jewellers Pvt. Ltd., and continued supplying goods to “Sarada” on the same terms.

According to the applicants, on 31.08.2018 defendant no. 1 company (Aranyak Jewellers Pvt. Ltd.) was incorporated and commenced business from 01.01.2019, and thereafter the plaintiff transacted directly with defendant no. 1 and ceased dealings with defendant no. 2 personally. The applicants rely on the plaint documents, including invoices and emails, to contend that all fiduciary transactions are between Shyam Sundar Co. Jewellers Pvt. Ltd. and defendant no. 1 and that no material shows personal liability of defendant nos. 2 and 3. It is further their case that they have been impleaded merely in their capacity as directors/officers of defendant no. 1 without any independent cause of action.

It is specifically claimed that there is no averment against defendant no. 3 in the plaint and yet she has been impleaded in her personal capacity. On these premises, the applicants contend that they are neither necessary nor proper parties and that their presence is not required for adjudication. The balance of convenience has been pleaded in their favour, along with an apprehension of prejudice if the proceedings continue.

In support of the plea for deletion, the applicants have relied on judicial precedents governing the liability of company directors. In ***Tristar Consultants v. Vcustomer Services India Pvt. Ltd. [(2007) 139 DLT 688]*,** the Delhi High Court observed that a company, being a juristic entity, acts through its Board and that an individual director does not incur personal liability toward third parties merely by virtue of holding office unless specific authorization or independent role is shown. The applicants contend that the present plaint does not disclose any such independent role. Reliance is also placed on ***Shri Suneal Mangal v. M/s Prime Maxi Mall Management & Anr*. *[2024 SCC OnLine Del 1527]*,** wherein it was held that directors ought not to be mechanically impleaded in money recovery proceedings in the absence of specific pleadings establishing personal liability. Further reliance is placed on ***Rajiv Sharma v. M/s Balaji Enterprises [2023 SCC OnLine Del 3472]***, where the Delhi High Court reiterated that the test under Order I Rule 10 CPC must be applied on the basis of the averments in the plaint and the material on record. On the strength of the said authorities, the applicants submit that their impleadment is legally unsustainable.

The prayer in the application is for deletion of the names of defendant nos. 2 and 3, amendment of the cause title, interim stay of the suit proceedings, and other consequential orders.

2. In opposition, the plaintiff has taken the preliminary stand that the application is defective and that the defendants themselves have disclosed the essential connection amongst defendant nos. 1, 2 and 3; hence deletion is impermissible. The plaintiff refers to the defendants' own stand that the Kaman Choumohani store is owned by the partnership concern M/s Aranyak with defendant nos. 2 and 3 as partners and that advertisements projected the store as coming from defendant no. 1, which, according to the plaintiff, demonstrates their direct involvement.

It is the plaintiff's contention that defendant no. 2, who was known to the predecessors of Shyam Sundar Co. Jewellers and whose family ran a grocery shop under the name "Chowdhury Brothers", lacked the capacity to independently run a jewellery business and was inducted around 2000 as a franchisee by the plaintiff's predecessors to help him establish himself. After incorporation of Shyam Sundar Co. Jewellers Private Limited in 2008, defendant no. 2 allegedly continued as franchisee and was supplied jewellery on approval basis at concessional rates (about 4% below the prevailing gold rate and with reduced making charges). A running account was maintained and unsold goods were returnable.

The plaintiff further asserts that upon incorporation of defendant no. 1 on 31.08.2018 (with defendant nos. 2 and 3 as promoter directors), the entire business of defendant no. 2 was shifted to defendant no. 1, but dealings continued through defendant no. 2. According to the plaintiff, confirmations of accounts showing outstanding dues of defendant no. 1 were issued by defendant no. 2; he handled procurement, returns, payments and signing of the balance sheet and was, for all practical purposes, the face of defendant no. 1.

It is further alleged that defendant nos. 2 and 3 are representing the Kaman Choumohani outlet as that of defendant no. 1 and/or its alter ego. The plaintiff specifically denies the applicants' case of a mere buyer–seller relationship and reiterates the existence of a franchise arrangement and continuing control and connection. Denial has also been made to the plea that the plaintiff ceased dealings with defendant no. 2 after incorporation of defendant no. 1; according to the plaintiff, the business continued under defendant no. 1 through defendant no. 2.

The plaintiff disputes the contention that there is no material against defendant nos. 2 and 3 and maintains that their role is evident from the records and conduct. It is accordingly contended that defendant nos. 2 and 3 are necessary parties for complete and effective adjudication and that the application is not bona fide and deserves dismissal with exemplary costs.

3. I have already heard the learned counsel of the parties and they reiterated their contention which has been embodied in their application and objection application respectively.

Let me reproduce Order I, Rule 10(2) of CPC,1908.

Order I, Rule 10(2) of CPC,1908 reads as follows:-

“The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant , be struck out.

The purpose of this provision is to bring before the court at the same time, all persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without the delay, inconvenience and expenses of several action and trials and inconclusive adjudication.”

The provision of Rule !0(2) confers discretinary power on the court based on two prncipe for consideration. First is that the plaintiff is the dominus litis and he is best judge of his interest. It is , therefore, for him to choose his opponent from whom he claims relief and, normally, the court should not compel him to fight against a person whom he does not want to fight and from whom he does not claim any relief; and secondly if he is satisfied that the presence of any person is necessary to effectively and competely adjudicate all the disputes between the parties, irrespective of the wishes of the plaintiff, the court may exercise power and join a person as a party to the suit.

The sole purpose of the provision is to avoid multiplicity of proceeding. I have carefully gone through the averments of pleading of both sides and found that defendants had active participation in the business and documents relied upon by the plaintiff also support the active participation of defendant No.2 and 3 in the business. Hence, the application filed u/o I, Rule 10(2) for striking out defendant No.2 and 3 is hereby stands rejected on contest.

4. Now, let me to take an application u/o XII, Rule 6 of CPC, 1908 fied by plaintiff for passing order.

5. The plaintiff, M/s Shyam Sundar Co. Jewellers Pvt. Ltd., has filed an application under Order XII Rule 6 read with Section 151 CPC seeking judgment on admission against the respondents in

Commercial Suit No. 03 of 2024. The plaintiff's case is that in or about 2005 respondent no. 2 was inducted as a franchisee of the jewellery business of Shyam Sundar Co. Jewellers on oral terms, including assistance in setting up the Khowai shop, supply of jewellery on approval basis, exclusive sale of the plaintiff's products, use of the plaintiff's name in the shop and invoices, return of unsold goods and proportional participation in publicity and marketing schemes.

It is pleaded that respondent no. 2 had meagre capital and that the plaintiff provided stock, manpower training, business know-how and even shop décor and interior, thereby enabling establishment of the franchise outlet. The plaintiff asserts that the franchise arrangement was continuously acted upon by respondent nos. 1 and 2 by acknowledging the franchisor relationship in invoices and shop displays, procuring jewellery from the plaintiff, selling only the plaintiff's jewellery from the Khowai and Dharmanagar outlets, returning unsold goods and making payments against sales.

Particular reliance is placed on the format of invoices which, according to the plaintiff, described the outlets as "Sarada (A franchisee of Shyam Sundar Co. Jewellers Pvt. Ltd.)" and later "Aranyak Jewellers Pvt. Ltd. (A franchisee of Shyam Sundar Co.

Jewellers Pvt. Ltd.)". The plaintiff further pleads that after the introduction of GST, supplies earlier on approval basis were invoiced at concessional rates (about 4% below the prevailing gold rate and with reduced making charges) and that a running and continuous account was maintained between the parties.

According to the plaintiff, from 2019 the respondents gradually started disassociating themselves by not contributing to advertisement and promotional schemes, retaining large outstanding dues and, after June 2020, issuing invoices omitting the plaintiff's name, thereby creating confusion among customers regarding authenticity and after-sales service. It is also alleged that in May 2024 the respondents failed to extend benefits of the plaintiff's promotional schemes (including Akshoy Tritiya schemes), leading to customer complaints, and that the respondents are intending to sell the plaintiff's jewellery independently from a new outlet at Kaman Choumuhani in breach of the longstanding franchise arrangement.

The plaintiff states that the last sale/return transaction between the parties occurred in February 2024 and alleges that the respondents have mala fide severed the franchisor–franchisee relationship while continuing to deal with the plaintiff's jewellery and designs. Reference is made to the substantive suit for monetary and injunctive reliefs and to the interim order dated 29.06.2024 freezing specified bank accounts of the respondents. On the basis of what are described as admissions emerging from invoices, accounts and the course of conduct, the plaintiff seeks a decree on admission under Order XII Rule 6 CPC.

6. The primary contention of the respondents is that there is no clear, unequivocal or unconditional admission of liability, which is an essential precondition for invoking Order XII Rule 6 CPC. The respondents submit that the application is an attempt to circumvent a full trial despite the existence of serious triable issues involving disputed facts, accounts and electronic records.

In support of the above objection, the respondents rely upon settled principles governing the exercise of power under Order XII Rule 6 CPC. In ***Himani Alloys Ltd. v. Tata Steel Ltd. [(2011) 15 SCC 273],*** the Hon'ble Supreme Court held that a judgment on admission can be passed only where the admission is clear, unambiguous and unconditional, and that the provision should not be invoked where serious questions of fact require trial. Similarly, in ***S.M. Asif v. Virender Kumar Bajaj [(2015) 9 SCC 287],*** the Supreme Court cautioned that where the defence raises substantial triable issues, the Court ought not to exercise the power under Order XII Rule 6 merely because some statements are relied upon as admissions. The respondents also rely on ***S.P. Brothers v. Biren Ramesh Kadakia [2008 SCC OnLine Bom 430]***, wherein it was reiterated that the power under Order XII Rule 6 is discretionary and must be exercised judiciously, particularly in commercial disputes involving contested accounts.

It is specifically claimed that the electronic ledger relied upon by the plaintiff is disputed, was not issued by respondent no. 1 and cannot be relied upon without strict proof in accordance with law. Reliance is further placed on ***Anvar P.V. v. P.K. Basheer [(2014) 10 SCC 473]***, wherein the Hon'ble Supreme Court held that electronic records are admissible in evidence only upon strict compliance with the requirements of Section 65B of the Evidence Act. The respondents contend that in the absence of a valid Section 65B certificate, the unilateral electronic ledger relied upon by the plaintiff lacks evidentiary value and cannot form the basis of a decree on admission.

The respondents also place reliance on ***Life Insurance Corporation of India v. Gangadhar Vishwanath Ranade [(1989) 4 SCC 683]***, wherein the Hon'ble Supreme Court emphasized that statutory consequences and financial liability must flow from a legally established position and cannot be fastened on the basis of assumptions or incomplete compliance with the governing legal framework. The respondents invoke this principle to submit that, in the present case, where the very liability and correctness of accounts are disputed, a summary decree under Order XII Rule 6 CPC would be legally unwarranted.

The respondents further contend that the alleged claim already stands secured pursuant to the order dated 11.02.2025 of the Hon'ble High Court of Tripura, in terms whereof respondent no. 1 has furnished a bank guarantee of Rs. 50,00,000/- and jewellery valued at Rs. 1,91,86,671/- has been secured, thereby negating the need for any summary decree. It is also pleaded that the TDS entries relied upon by the plaintiff merely reflect statutory deductions on payments made and do not constitute acknowledgment of any outstanding liability.

On merits, the respondents categorically deny the existence of any franchise arrangement and assert that respondent no. 2's enterprise "Sarada" and thereafter respondent no. 1 functioned as independent retailers purchasing finished jewellery from Shyam Sundar Co. Jewellers Private Limited. The relationship is stated to be purely buyer–seller governed by the Sale of Goods Act. The respondents maintain that the plaintiff exercised no control over the day-to-day business; upon purchase, title in goods passed to the respondents and the plaintiff retained no proprietary or fiduciary interest. Personal liability of respondent nos. 2 and 3 is specifically denied.

Allegations are also made that the plaintiff approached the Court with unclean hands and obtained the ex parte order dated 29.06.2024 on misrepresentation regarding jurisdiction and the proposed outlet at M.B.B. Choumuhani. The respondents reiterate their case that business under “Sarada” commenced around 2005, goods were procured for resale, no franchise agreement (oral or written) was ever executed, and use of the plaintiff’s name on invoices was allegedly at the plaintiff’s insistence for its own market expansion.

It is further stated that after incorporation of respondent no. 1 in 2018, purchases continued on the same buyer–seller basis without any operational control of the plaintiff, and that a separate partnership firm “Aranyak Jewellers” has commenced independent manufacturing of hallmarked jewellery. The respondents additionally submit that the claim of the plaintiff already stands substantially secured pursuant to orders of the Hon’ble High Court, and therefore invocation of the discretionary jurisdiction under Order

XII Rule 6 CPC at this stage would be inequitable and unwarranted.

The final prayer of the respondents is that, in the absence of any unequivocal admission and in view of seriously disputed questions of fact and law, the application under Order XII Rule 6 CPC is liable to be rejected.

7. I have carefully gone through the written statement filed by the defendants. I have already heard learned counsel of both sides who reiterated their contention which hwas been produced in their pleading.

Let me reproduce Order XII, Rule 6 of CPC which are read as hereunder:

“Judgment on admissions-(1) Where admissions of fact have been made either in the pleading or otherwise,whether orally or in witing, 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 suc admissions.”

The scope of provision is, the admission must be such which is complete, clear, unequivocal and sufficient to pass decree which the court proposes to pass on the basis of admission.

It is also not in dispute that when an application is filed u/s XII, Rule 6, objection are filed by the defendant denying in toto, the said documents would partake the character of a disputed documents and under Section 18 of the Indian Eveidence Act, an opportunity is to be given to explain the said admission and in what situation those documents were made.

The documents relied upon by the plaintiff/petitioner in support of admission of defendant are electronic evidence which was specifically denied and disputed by defendant in their pleading and which also requires to be proved under provision of electronic evidence under Indian Evidence Act and Information Technology Act. So, at this stage admitting those documents as admission will lead to injustice to defendants.

Moreover, the passing of ex parte interim injunction on the basis of those documents are totally on footing of consideration of prima facie case, balance of convenience and inconvenience and irreparable injury which cannot be cosidered at the time of admission u/o XII, Rule 6,CPC which requires to prove before passing order of decree.

After going through the entire pleading of defendants this court is not convinced to grant the petition filed u/o XII, Rule 6 of CPC. So, the said petition stands rejected.

Let the matter fixed for draft issue.

Fix 30-07-2026 for documents, if any/draft issue.

As dictated.

SURYA DEO SINGH

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