

IA No.GA 3 of 2023
In
CS-COM 412 of 2024
(Old No.CS 182 of 2022)
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

MAADHAWA REALPRO PRIVATE LIMITED
VS.
SUSHILA JAIN & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 4th March, 2024.

Mr. Rupak Ghosh, Mr. Kuldip Mallik, Mr. Arun Kumar Upadhyay, Mr.
Dyutimoy Paul, Mr. Shantanu Mishra, Advocates for the plaintiff.

Mr. Sarosij Dasgupta, Mr. Javed K. Sanwarwala, Mr. S. A.
Sanwarwala, Advocates for the defendant no.1.

The Court : This is an application for judgment on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 (in short CPC). The plaintiff says that the defendant/respondent no.1 affirmed an affidavit on 3rd April, 2023 to deal with the contents of the plaintiff's injunction application being GA 1 of 2022. The plaintiff refers to paragraph 5 and various sub-paragraphs thereunder to demonstrate the admission made by the said defendant no.1. The plaintiff further says that in the said affidavit-in-opposition a reference is there to a supplementary agreement dated 2nd March, 2016 which is annexed at page 43 of this application. It will appear from the supplementary agreement as also the affidavit so served on the plaintiff as to the following admission:-

i) The defendant/respondent no.1 for the purpose of availing a loan of Rs.2.5 crores executed a deed of mortgage dated 17th February, 2016 in favour of the plaintiff company. Relying upon this portion of the affidavit the plaintiff says that the availing of loan for Rs.2.5 crores and the same being secured by a mortgage are admitted facts.

ii) The plaintiff then refers to the supplementary agreement, a portion whereof is quoted in the said affidavit-in-opposition. By showing paragraphs 5(c) and (d) of the said opposition the plaintiff says that certain amounts have been admitted in the said affidavit.

The defendant no.1, according to the plaintiff, has contended that the affidavit which forms the basis of the admission was an incomplete affidavit and inadvertently served. The fact remains that the affidavit is an affirmed affidavit. The existence of the supplementary agreement wherein the payments are agreed to be made in a particular mode is neither disputed nor the existence thereof has been challenged. The plaintiff, therefore, submits that there is an admission of fact by the defendant no.1 which is in form of pleading. If the admission in the pleading is disputed then it amounts to an admission "or otherwise" particularly when the existence of the supplementary agreement has not been denied and refund of the money in terms thereof has not been demonstrated. This is, therefore, according to the plaintiff a fit case where the Court is not required to wait for the determination of any other question between the parties.

On a perusal of the argument in support of the application, I find that there is an admission as to the receipt of the loan amount, the mortgage deed and repayment as per the supplementary agreement

The defendant no.1 is represented by an Advocate who submits that due to change in advocate he is appearing for the first time and requires a day's time at least to get himself ready.

The learned Advocate-on-record, namely, Mr. Javed K. Sanwarwala who says that he has received instruction from the defendant no.1 to appear has not even filed the Vakalatnama. In absence of the Vakalatnama, the learned Advocates do not have any right of audience. A copy of the affidavit-in-opposition placed before the Court for the purpose of argument is retained with the records as the original is not found on record which indicates that the same may not have been filed by the defendant no.1.

On the prayer of the parties, the matter is adjourned and shall appear on 6th March, 2024.

Mr. Javed K. Sanwarwala is permitted to file his Vakalatnama in the department prior to the next date, failing which the present of advocate now having the instruction to represent the defendant no.1 shall have no right of audience on the next date.

(ARINDAM MUKHERJEE, J.)