A HIMANI ALLOYS LTD.

v.

TATA STEEL LTD.

(Civil Appeal No. 5077 of 2011)

JULY 05, 2011

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[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Code of Civil Procedure, 1908 – Or. 12 r. 6 – Judgment on admission – Recovery suit – Respondent filed application C *praying for decree alleging that appellant had admitted liability for sum of Rs. 74.57 lakhs as per minutes of the meeting held between representatives of the respondent and the appellant – High Court holding that the minutes of the said meeting recorded an admission by the appellant in respect* D *of a sum of Rs.47.06 lakhs and made a judgment on admission u/Or. 12 r. 6 in regard to the said amount in favour of the respondent – Justification of – Held: Not justified – A judgment can be given on an 'admission' contained in the minutes of a meeting – But the admission should be* E *categorical – It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it – Or.12 r. 6 being an enabling provision, it is neither mandatory nor pre-emptory but discretionary – Since a judgment on admission is a judgment without trial which permanently* F *denies any remedy to the defendant, by way of an appeal on merits, the discretion should be used only when there is a clear 'admission' which can be acted upon – On facts, the sum of Rs. 74.57 lakhs actually figures in minutes of a subsequent meeting held between the parties, thus, the specific case of admission put forth by the respondent in its application* G *seeking a judgment on admission, incorrect – Respondent did not refer to or rely upon any other admission, nor sought judgment in regard to any other admission – High Court could not have embarked upon an enquiry as to whether there was some other admission nor given a judgment on the basis of*

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such other admission, not pleaded by the respondent – In any event, on examination it is found that the minutes of the meeting (as relied on by the respondent) did not refer to any admission by appellant to pay any amount to respondent which could result in a judgment on admission u/Or. 12 r. 6 – Thus, orders of the High Court are set aside.

Uttam Singh Duggal and Co. Ltd. vs. United Bank of India **2000 (7) SCC 120;** *Karam Kapahi vs. Lal Chand Public Charitable Trust* **2010 (4) SCC 753;** *Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha* **2010 (6) SCC 601 – relied on.**

Case Law Reference:

2000 (7) SCC 120	**Relied on**	**Para 10**
2010 (4) SCC 753	**Relied on**	**Para 10**
2010 (6) SCC 601	**Relied on**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5077 of 2011.

From the Judgment & Order dated 22.9.2008 of the High Court of Calcutta in CS No. 12 of 2003 and APO No. 89 of 2008 and GA No. 940 of 2008.

WITH

S.L.P. (C) CC. No. 7879-7880 of 2009.

K.V. Vishwanathan, Shyam Divan, Gitika Panwar, Kavita Wadia, Ajay Aggarwal, Mohit Mudgal, Nimita Kaul , Rajan Narain for the appearing parties.

The Order of the Court was delivered by

O R D E R

R.V.RAVEENDRAN, J. 1. Leave granted.

A 2. The respondent ('TISCO' for short) filed a suit (C.S.No.12/2003) in the Calcutta High Court against the appellant for recovery of a sum of Rs.2,02,72,505/40 in regard to supply of steel. In the said Suit, the respondent filed an application on 8.8.2003 praying for a decree upon admission B for Rs.74,57,074/50 alleging that the appellant had admitted liability for such sum, as per minutes of the meeting held on 9.12.2000 between representatives of respondent and appellant. The said application was resisted by the appellant contending that there was no such admission on 9.12.2000 or C any other date and pointing out that what transpired on 9.12.2000 was only a tentative agreement to have the accounts verified and not a final settlement or admission of liability.

3. A learned single Judge of the Calcutta High Court by order dated 22.2.2008, granted a judgment on admission D under Order 12 Rule 6 of the Civil Procedure Code ('Code' for short) for a sum of Rs.47,06,775/- in favour of the respondent-plaintiff, subject to respondent furnishing a bank guarantee for a sum of Rs.48,00,000/- in favour of the Registrar of the High Court. The intra appeal filed by the appellant was dismissed E by the Division Bench of the High Court by judgment dated 22.9.2008. The said judgment is under challenge in this appeal by special leave.

4. Order 12 Rule 6 of the Code provides that where F admission of facts have been made in the pleadings or otherwise, whether oral 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 G judgment as it may think fit, having regard to such admissions.

5. The specific case of the respondent-plaintiff in the application was that at a meeting held on 9.12.2000 for reconciling the accounts as on 31.3.1999, the appellant admitted that a sum of Rs.74,57,074/50 was outstanding to the H respondent and therefore it was entitled to a judgment on

admission for that amount. The learned single Judge found that there was no such admission in regard to Rs.74,57,074/50 in the minutes of the meeting dated 9.12.2000. He however held that the minutes of the meeting dated 9.12.2000 recorded an admission by the appellant in respect of a sum of Rs.47,06,775/70 and consequently made a judgment on admission in regard to Rs.47,06,775/70 against the appellant. The question is whether such judgment on admission was justified.

6. The sum of Rs.74,57,074/50 described as the amount admitted to be due by the appellant, has nothing to do with appellant (Himani Alloys Ltd.). It is an amount that actually figures in the minutes of a meeting held on 23.2.2001 between the representatives of the respondent and another company by name Himani Ferro Alloys Ltd. Thus the specific case of admission put forth by the respondent in its application seeking a judgment on admission, was found to be incorrect. The respondent did not refer to or rely upon any other admission, nor sought judgment in regard to any other admission. Once the claim of the respondent regarding admission was proved to be incorrect, its application for judgment on admission ought to have been rejected by the High Court. The High Court could not have embarked upon an enquiry as to whether there was some other admission nor given a judgment on the basis of such other admission, not pleaded by the respondent-plaintiff. If the respondent wanted to rely upon some other admission, it ought to have made a separate application, so that the appellant could have filed its objections to the same. That was not done.

7. Assuming that the High Court could have examined whether there was some other 'admission' in the minutes of the meeting dated 9.12.2000 relied on by the respondent, let us examine whether there was in fact any admission, on the basis of which a judgment on admission could have been passed. The minutes of the meeting dated 9.12.2000 no doubt starts by noting that the "As per Himani's records: credit TISCO

A Rs.47,06,789.00" as on 31.3.1999. It also records that as per TISCO's records, as on 31.3.1999, the amount due by Himani(appellant) was Rs.61,49,449/30 and if three deductions (which were yet to be checked) were made, the amount due would be Rs.47,06,775/70. Thereafter, in paragraphs 3,4 and
B 5, there is a reference to both parties agreeing to provide particulars, agreeing to hold further discussions on 26.12.2000 and respondent agreeing to check up its records to find out the correctness of certain entries. Thereafter the minutes conclude that the "final figure will be arrived at the meeting accordingly".
C When the minutes merely notes certain figures and states that they are tentative and both parties will verify the same and says that the final figure will be arrived at the next meeting, after discussions, we fail to understand how the same could be termed as an "admission" for the purpose of Order 12 Rule 6
D of the Code.

9. Another aspect regarding the minutes dated 9.12.2000 requires to be noticed. The Minutes do not refer to any admission by HIMANI (appellant) to pay any amount to TISCO
E (respondent). If a buyer states on 9.12.2000 that his account as on 31.3.1999 shows a balance of amount 'X' to the credit of the supplier, it can not be treated as an admission that the said amount 'X' was due to the supplier on 9.12.2000. In a continuing account, it may be possible that between 31.3.1999 and 9.12.2000, there may be debits to the account, or 'reveral
F of credits' or 'settlement of the account'. We therefore hold that there was no admission on 9.12.2000 which could result in a judgment under Order 12 Rule 6 of the Code.

10. It is true that a judgment can be given on an
G "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 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The
H 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. (See also *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India* [2000 (7) SCC 120], *Karam Kapahi vs. Lal Chand Public Charitable Trust* [2010 (4) SCC 753] and *Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha* [2010 (6) SCC 601]. There is no such admission in this case.

11. In view of the above, we allow this appeal, set aside the orders of the learned Single Judge and the division bench of the High Court dated 22.2.2008 and 22.9.2008. We make it clear that we have not recorded any finding nor expressed any opinion in regard to the merits of the case or in regard to any part of the suit claim. It is possible that on evidence being led, the respondent is able to establish that Rs.47,06,775/70 was in fact due as on 31.3.1999 and that it continues to be due. We request the High Court to dispose of the suit expeditiously.

N.J. Appeal allowed.