IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.160 of 2013

Pakistan Petroleum Limited ----------Plaintiff.

Versus

Byco Petroleum Pakistan Limited----------Defendant.

For hearing of CMA No. 8758 of 2015 (U/O 12 Rule 6 CPC)

Date of hearing:	**20.01.2016**
Date of Order:	**20.01.2016**
Plaintiff:	**Through Mr. Ijaz Ahmed, Advocate.**
Defendant:	**Through Mr. Salman Talibuddin Advocate.**

ORDER

Muhammad Junaid Ghaffar, J. Listed application has been filed on behalf of the plaintiff under Order XII Rule 6 CPC, whereby, it has been prayed that on the basis of admission of liability by the defendant in terms of various Annexure(s) to the plaint, a judgment and decree be passed as prayed by the plaintiff.

2. Counsel for the plaintiff submits that instant suit has been filed for recovery of Rs.1,560,577,540/-, along with Mark Up as pursuant to Rule 40 of the Pakistan Petroleum (Exploration & Production) Rules, 2001 read with Concession Agreement between the plaintiff and the President of Islamic Republic of Pakistan, the plaintiff has supplied crude oil to defendant against various orders for which Invoices were issued. Learned Counsel submits that despite such supply of crude oil, the defendant has failed to pay the outstanding amounts to the plaintiff and on various occasions has promised to pay the said amount but has failed to do so except an amount of Rs. 48,070,497/-. He further submits that the terms of supply were based on Letter dated 10.11.2009 issued by the plaintiff to the defendant, wherein, it was provided that the refinery (defendant) shall pay the seller (plaintiff) invoices for all condensate

delivered by the Sellers in the preceding Calendar month at the relevant Condensate Price, plus any duties, taxes etc. Per learned Counsel such amount was to be paid within 30 days of the month of Invoice and in case of failure, surcharges at the rate of 1.5 % points above the rate of the most recent six months Treasury Bills issued by the State Bank of Pakistan was required to be paid. He has also referred to Letter dated 12.11.2009 issued by the defendant to the plaintiff and certain other documents to support the plaintiff's contention that the defendant has admitted such liability and had shown its intention to pay off the debts. Learned Counsel has also placed reliance on Letter dated 17.10.2012 addressed to the plaintiff, wherein, the defendant had approached them for an amicable settlement of the outstanding liability with certain undertaking to make such payments. Per Learned Counsel all these letters/correspondence amounts to admission on the part of the defendant and this Court can pass a Judgment and Decree in terms of Order XII Rule 6 CPC on the basis of such correspondence. He has also referred to Articles 103 and 113 of the Qanoon-e-Shahadat Order 1984 and submits that in view of such written admission, oral evidence is to be excluded. The Learned Counsel has also referred to Order VIII rule 3 C.P.C. to support his contention that there is no specific denial of these documents as well as facts as narrated on behalf of the plaintiff, therefore, this amounts to admission. In support of his contention he has relied upon the case of *Abdul Karim Haji Issa and others Vs. Haji Sattar Haji Muhammad and others* reported as **PLD 1953 Sind 27**, *Sheikh Mahmood Ahmad Vs. Dr. Ghaith Pharaon and 3 others* reported as **1987 CLC 2131**, *G.R. Syed Vs. Muhammad Afzaal* reported as **PLD 2007 Lahore 93** and *G.R. Syed vs. Muhammad Afzal* reported as **2007 SCMR 433**.

3. Conversely, Mr. Salman Talibuddin, Counsel for the defendant submits that the listed application appears to be an afterthought as by consent, vide Order dated 16.2.2015, the Issues have already been settled between the parties and the matter is to be placed for evidence. He further submits that there is no agreement admittedly between the parties and the claim of the plaintiff is based on an agreement with the President of Pakistan, therefore, this dispute is to be resolved after recording of evidence. Insofar as the letters on which reliance has been placed by the plaintiff, the learned Counsel submits that in fact those offers of the defendant were conditional in nature and the same were required to be approved by the plaintiff, which they have failed to do so

and therefore, no judgment and decree could be passed on the basis of such correspondence. He further submits that through written statement the defendant has denied the assertions of the plaintiff, whereas, legal objections have also been raised as the claim of the plaintiff is time barred as well. He has also referred to an Order dated 21.11.2014 passed in Suit No.636 of 2012, wherein, another Company had sought similar relief against the defendant, which has been denied by learned Single Judge of this Court. He has relied upon the cases *MACDONALD LAYTON & COMPANY PAKISTAN LTD. Vs. UZIN EXPORT-IMPORT FOREIGN TRADE CO and others* reported as **1996 SCMR 696**, *Messrs GERRY'S INTERNATIONAL (PVT) LTD. Vs. Messrs QATAR AIRWAYS* reported as **PLD 2003 Karachi 253** and Messrs. *PROCON PIPELINES (PVT.) LIMITED Vs. ISLAMIC PREPUBLIC OF PAKISTAN* reported as **2002 YLR 2599**.

4. I have heard both the learned Counsel and perused the record. Insofar as admission on the part of the defendant is concerned, the plaintiff relies upon certain Annexure(s) filed with the plaint, which according to the plaintiff are documents signed and issued by the defendant, and therefore, these are admissions on the part of the defendants. The plaintiff's further case is that since there is no specific denial about these documents, therefore, in terms of Order VIII read with Order XII rule 6 CPC; this is a fit case for passing Judgment and Decree on the basis of such documents. However, it appears that it is not the case of the plaintiff that there is any specific admission in the pleadings i.e. written statement. The Plaintiff's case is premised on the word "*or otherwise*" mentioned in Order XII Rule 6 CPC, as according to the learned Counsel for the Plaintiff, this is in addition to admissions in the pleadings and would cover the admissions in the correspondence exchanged between the parties. It would be advantageous to refer Order XII Rule 6 CPC, which reads as under:-

> "6. Judgment on admissions. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just."

The aforesaid provisions provides for judgment on admissions and it is open to any party, at any stage of the Suit, where admission of fact is made either in the pleadings ***or otherwise*** apply to the Court for such judgment or order as upon such admissions he may be entitled to

without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment as the Court ***may think fit***. The precise case as set up on behalf of the plaintiff is that any admission even beyond pleadings and through correspondence would fall in Order XII rule 6 CPC, as the same provides for admissions on fact made on pleadings or otherwise and since this correspondence falls within the word "or otherwise" a judgment and decree can be passed. There is no cavil to the proposition that the Court may, in the facts and peculiar circumstances of a case, if it thinks fit, can pass a judgment and decree on the basis of admission beyond pleadings. However, as stated the Court has to exercise such discretion judicially and after having been satisfied to that effect. The word "or otherwise" as appearing in Order XII Rule 6 CPC has been interpreted by a learned Division Bench of this Court in the case of ***Syed Waqar Haider Zaidi Vs. Mst. Alam Ara Begum & Others*** **(PLD 2015 Sindh 472)**. The issue in that case was that the appellant had filed an application before a learned Single Jude of this Court under Order XII Rule 6 CPC, for passing of judgment and decree on the basis of some admission in pleadings (written Statement) filed by respondent No.1 in some other Suit. Though the Court came to the conclusion that the use of the word "or otherwise" in Order XII Rule 6 CPC, permits the Court to take in to consideration any other material placed before it in addition to the pleadings, but dismissed the appeal as the admission was not specific and clear. The relevant finding reads as under:

> "Perusal of Order XII, Rule 6, C.P.C. reflects that it empowers the Court to pass judgment on the basis of admission made by the parties in their pleadings or otherwise at any state of the proceedings without waiting for the determination of any other question that may arise between them. However, the admission on the basis whereof a decree is sought must be specific, clear, unambiguous, categorical and definite. There is no denial that the admission made by the original respondent No.1 reproduced above does not meet criteria of an admission on the basis whereof a decree can be passed, except that such admission is in the connected suit. In our opinion if the provisions of Order XII, Rule 6, C.P.C. are read in a manner to restrict the admission only to the extent of pleading in the suit wherein the Court is asked to enter a decree in favour of the plaintiff on the basis of admission then the words "or otherwise would become redundant, therefore, there does not appear to be any justification to confine the admission to the extent of pleadings only."

5. On perusal of the documents relied upon by the plaintiff though it appears that these are part of certain correspondence exchanged between the plaintiff and the defendant, wherein, the matter regarding supply of crude oil and its payment have been discussed. It is also evident on perusal of such correspondence that the defendant has made

certain offers for payment in part; however, such offers were also made with condition that the same may be accepted in return. In one of the Letters dated 17.10.2011 at Pg: 623 addressed by the defendants, though an offer has been made, but it has been further stated that *we have offered you a stable and accelerated payment schedule vide our letter dated August 23, 2011 (copy enclosed) for which* your *concurrence is still awaited*, which apparently was not accepted by the plaintiff. Even the letter dated 10.11.2009 on the basis of which according to the Plaintiff the terms and conditions of supply were settled, was not approved and accepted by the defendant. In the circumstances, even if such correspondence, without prejudice, is taken as an admission, the same is not unequivocal and unconditional and therefore cannot be regarded as an unqualified admission on the basis of which judgment and decree could be passed. Moreover, the defendant through their written statement has not only raised legal objections but have categorically denied assertions of the defendant in Para-15 of the Para-wise response at page-699, Para-16 at Page 701, and Para-17 at Page 703 of instant file. This specific denial in the pleadings by the defendant cannot be regarded as an admission nor could any reliance be placed on correspondence exchanged between the parties before filing of the suit. It is also pertinent to observe that certain legal objections including objection of limitation has been raised on behalf of the defendant as according to them the claim as set-up by the plaintiff pertains to the years 2008-2009 and when the suit was filed such claims were apparently time barred.

6. A Division Bench of this Court in the case of Messrs ***GERRY'S INTERNATIONAL (PVT.) LTD. (Supra)*** while deciding an appeal filed against an order passed by learned Single Judge, whereby, an application under Order XII Rule 6 CPC was allowed by partly decreeing the Suit has been pleased to observe as under:-

> "Mere non-denial of a fact in the written statement could not be construed as an admission and that too to be equated as "unequivocal", "clear" and "unambiguous". Mr. Zahid Ebrahim is correct to the extent that statement, Annexure "H", which the respondent have filed along with the plaint, has not been commented upon by the appellant in its written statement but this would not lead to constitute admission of the appellant nor any inference of the nature could be drawn to believe something for which law requires proof through leading evidence by the parties nor could this be treated as admission of the liability of the appellant.
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> Mr. Kazim Hasan has rightly pointed out that non-denial of a document in the Written Statement in no way amounts to admission of the liability of the claim, which otherwise required settlement through documentary evidence."

7. Similarly, the Hon'ble Supreme Court in the case of ***MACDONALD LAYTON & COMPANY (Supra)*** has observed as under:-

> 3……."Such admission should not only be in respect of the amount but the liability to pay the same as well to the plaintiff. The Court in deciding such application exercises its discretion which is regulated by the well-recognized principles. In this regard, reference can be made to Tahilram Tarachand v. Vassumal Deumal and another (AIR 1926 Sindh 119) wherein it has been held that to pass judgment on admission of the defendant is within the discretion of the Court which should be exercised in judicial manner and is not a matter of right. However, if it involves questions which cannot be conveniently disposed of in an application, the Court may exercise discretion in rejecting the application. Reference can be made to Premsuk Das Assaram v. Udairam Gungabux (AIR 1918 Calcutta 467). Same view has been taken in Izzat Khan and another v. Ramzan Khan and others (1993 MLD 1287), a Full bench decision of the Sindh High Court.
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> 4. Another principle which regulates the exercise of discretion is that even, if an admission has been made, but it is subject to qualifications regarding maintainability of the suit or any such legal objection which goes to the very root of it, then it would not be proper exercise of discretion to grant decree on such admission. In this regard reference can be made to Kassamali Alibhoy v. Sh. Abdul Sattar (PLD 1966 (P.W.) Karachi 75) in which Justice A.S. Faruqui, laid down the rule in the following words:--
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> > *"Shortly put the question is this. When a defendant makes an admission on a point of fact but asserts that the claim is not recoverable in the suit because of the legal objections raised therein, can the court then take the factual admission as an unqualified one and pass a decree on that admission? Having given my careful consideration to the question I have reached the conclusion that the answer to it must be in the negative. An admission in order to be made the basis of a decree under Order XII, rule 6, of the C.P.C. must be unqualified and unconditional. Therefore, when factual admission is accompanied with a qualification that the suit itself is not maintainable or that the claim suffers from a legal difficulty, it cannot be said that the admission is unqualified. When such a legal defence is raised the consideration of it must wait until the suit itself comes to be tried. The Court cannot in such a case proceed under Order XII, rule 6 of the C.P.C."*

8. It is of utmost importance to note that an admission on the basis whereof a judgment and decree is being sought from the Court under Order XII Rule 6 CPC, before recording of evidence, must be specific, clear, unambiguous and definite in nature. After perusing the material relied upon by the Plaintiff, I am of the view that all these ingredients are lacking in the instant matter, whereas, pertinent legal issues have been raised on behalf of the defendant including the objection in respect of limitation and delay in filing of Suit.

9. In view of hereinabove facts and circumstances, I am of the view that listed application is not only misconceived but frivolous in nature, resulting in wastage of precious time of this Court, and therefore, the same was dismissed through a short order dated 20.1.2016 with cost of Rs.50,000/= to be deposited in Sindh High Court Bar Library. The above are the reasons for the short order.

Judge