

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

H.C.A. No.301 of 2021

Karachi Metropolitan Corporation
Versus
M/s Sui Northern Gas Pipeline Ltd.

Date of Hearing: 21.02.2024

Appellant: Through Mr. S. Hassan M. Abidi Advocate.

Respondent: Through Mr. Asim Iqbal Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This appeal is arising out of an order dated 12.10.2021 passed in Suit No.716 of 2013 whereby on the basis of alleged admission the suit in the sum of Rs.1,66,93,729/- was decreed under order XII Rule 6 CPC.

2. It is appellant's case that on the crucial day when the impugned order was passed the matter was fixed only for examination of parties and settlement of issues. Neither any application under order XII Rule 6 CPC was filed nor written statement discloses any unambiguous or unequivocal admission on the part of the defendant/appellant who filed written statement through its Assistant Director.

3. Mr. Asim Iqbal on the other hand submits that Order XXI Rule 23A CPC is to be seen first as without the amount of the decree being secured, this appeal cannot be heard. He further argued that it was not obligatory upon the respondent to have obtained a decree on admission

only after filing an application under Order XII Rule 6 CPC, as the Court can take notice of such admission on its own.

4. We have heard the learned counsel for parties and perused the record.

5. The respondent has filed a suit for recovery of Rs.1,66,93,729/- and notices and summons were served upon the appellant. On it being served, written statement was filed by the appellant without resolution/ authorization wherein respondent's claim in general was denied. Even the maintainability of suit was questioned including assertion that the respondent had no cause to file suit, apart from pointing out defect under Limitation Act and provisions of Specific Relief Act.

6. Perusal of written statement further reveals that in numerous paragraphs, in the earlier part of the written statement, which described brief history, the claim of the appellant was denied. Paragraph, which was relied upon while passing impugned order, is not an admission which could be visualized under Order XII Rule 6 CPC. The admission under order XII Rule 6 has to be clear, unambiguous and unequivocal and without which decree in terms of Order XII Rule 6 CPC could not be passed. We have further gone through the written statement and it shows that apart from one paragraph, which is relied upon in the impugned order, entire written statement has disputed the amount one way or the other.

7. In all fairness it requires trial or if the decree is to be passed, the admission has to be clear, unambiguous and unequivocal. Even prayer clause in the written statement was denied that the plaintiff therein (respondent) was not entitled to the relief as claimed against KMC/ appellant. There was no such application as well of which the appellant could have taken a notice and would have responded. It was otherwise fixed for framing of issues and examination of parties only.

8. As to the objection that decretal amount has to be deposited before this Court as without it appeal could not be heard and decided, we are of the view that Order XXI Rule 23-A PC, as relied upon by the learned counsel for respondent, does not demonstrate an embargo on powers being exercised by the appellate Court while hearing appeal; it only demonstrates that the executing Court hearing objections, filed by judgment debtor to the grant of execution, shall not proceed unless the decretal amount is secured. We are not executing Court who is hearing the objections of judgment debtor, rather an appellate authority and Mr. Asim has not shown us any provision of law in this regard which could restrict this appellate Court from hearing appeal without amount being deposited first.

9. We, therefore, deem it appropriate to observe that the impugned order is not sustainable under the law. The appeal as such is allowed and the impugned order is set aside. The matter be taken up for examination of parties and settlement of issues and the trial be concluded at the earliest, preferably in about six months' time. In case it is so desired, after settlement of issues, parties may opt to record evidence through commission.

Judge

Judge