ADMISSIONS IN CIVIL LAW

The Admissions in the Civil Law are spread over many of rules as envisaged in the Code. The Code describes the admissions in three categories :-

1. Actual admissions, oral or by documents;
2. the express or implied admissions from the pleadings or by non traverse by agreement;
3. By agreement or by notice.

The admissions need not be proved unless the court otherwise is of the opinion or requires the same to be proved.

Order VIII Rule 5 of the Code in this regard reads as under :-

*"**5. Specific denial :-** (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:*

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

No doubt, as per this order, if the defendant does not make

denial of the admissions, then the court will take such facts as pleaded in the plaint to be admitted. However, the court has been left with the discretion to require the facts to be proved even if these are admitted or if the party does not deny such facts. However, it has been made clear under sub-section (4) that if the court pronounces judgment over admitted facts, then the court would pass a decree.

Elements of admissions:

The admissions are not conclusive. They can be gratuitous or erroneous. The admissions can be withdrawn or explained away. The inference regarding admission could be concluded after considering the pleadings in entirety. Admissions could be proved to be wrong. Oral admissions prevail over the record of rights, or documentary evidence. Admissions of the co-defendant cannot be allowed to be used as against the other defendants. The admissions made at any time can be proved to be collusive or fraudulent.

Judgment on admissions:

Besides a judgment which could be passed under Order 8 Rule 5 CPC, Order XII Rule 6 and Order XV Rule 1 also relate to the judgment on admissions.

Rule 6 of Order XII reads as under :-

*"**6. Judgment on admissions** – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally 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 judgment as it may think fit, having regard to such admissions.*

(2) Whenever a judgment is pronounced under sub- rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

Rule 1 of Order XV reads as under :-

***"1. Parties not at issue** – Where at the first hearing of a suit it*

appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce the judgment."

Order XII Rule 6 of the Code

Relief under Order XII Rule 6 is discretionary in nature. It also confers the court with wide discretion to decree the suit and it is not bound to pass decree in a proper and reasonable case and can call for the evidence before passing the decree. Where the averments made in the written statement gave rise to the trivial issues, the judgment on admission under Order XII Rule 6 CPC cannot be passed. In case ***R.K. Markan vs. Rajiv Kumar Markan, 2003 AIHC 632 (633)*** Delhi, wherein it was observed as under :-

"For passing a decree on the basis of admission of the defendants in the pleadings, law is well settled that the admission has to be unequivocal and unqualified and the admission in the written statement should also be taken as a whole and not in part...."

Order XIV Rule 6 & 7 and Order XXIII Rule 3 of the Code

Order XIV Rules 6 & 7 and Order XXIII Rule 3 of the Code deal with the admissions by agreement, which are reproduced as under :-

"6. Questions of fact or law may be agreement be stated in the form of issues - *Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of such issue,--*

(a) a sum of money specified in the agreement or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment - *Where the court is satisfied, after making such inquiry as it deems proper,--*

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the court, and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

From bare reading of Rule 1 of Order XV of the Code, it transpires that the lis could be adjudicated only when the parties are not at issue. The intention of the legislature in introduction of the order XV Rule 1 was not to pass a decree but to decide the suit in the manner as prescribed under the law when the parties are not at issue. Had there been any intention of the legislature to decree the suit in case parties are not at issue, then there was no requirement to introduce Order XII Rule 6 or Order VIII Rule 5 of the Code. The existence of the dispute is the sine qua for the trial. When the court finds the parties prima facie at issue, in that event, the court was to hold enquiry after framing issues, otherwise, it is not open to the court to hold trial. Cause of action which is the main element of trial pre-supposes, denial or threat to the rights of the parties claiming such right.

Discretion of the court to award judgment on admissions:

Admissions before the same are relied upon, it should be clear, unequivocal, categorical and should not be vague and conditional. However, there is discretion of the court to exercise power to pass a decree on the basis

of such admissions. Similar view was taken by the Apex Court in its latest judgment delivered in case ***Himani Alloys Ltd. vs. Tata Steel Ltd. 2011 (3) Civil Court Cases 721,*** wherein it was observed as under :

> *"10. It is true that a judgment can be given on an "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 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."*

Actually, the discretion to pass the decree has its roots in the locus classicus judgment delivered by the Apex Court in case ***Nagubai Ammal and others vs. B. Shama Road and others AIR 1956 SC 593*** wherein it was observed that merely because of written admission was made in a different context, such admission may not become relevant if the party making it has a reasonable explanation of that. The Apex Court in ***Naghubai Ammal's*** case (supra), further observed as under :-

> *"18. An admission is not conclusive as to the truth of the matter stated therein. It is only a piece of evidence, the weight*

to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it is his detriment, when it might become conclusive by way of estoppel. In the present case, there is no question of estoppel, as the title of Dr. Nanjunda Rao arose under a purchase which was long prior to the admission made in 1932 and in the subsequent years. It is argued for the appellants that these admissions at the least shifted the burden on the plaintiff of proving that the proceedings were not collusive, and that as he gave no evidence worth the name that these statements were made under a mistake or for a purpose and were, in fact, not true, full effect must be given to them. Reliance was placed on the well known observations of Boran Parke in Slatterie v. Pooley (1840) 6 M and W 664 (669) © that "what a party himself admits to be true may reasonably be presumed to be so", and on the decision in 34 Ind App 27 (B), where this statement of the law was adopted. No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained.

It has been already pointed out that the tenor of the statements made by Abdul Huq, his legal representatives and the plaintiff was to suggest that the proceedings in O. S. No.100 of 1919-20 were fraudulent and not collusive in character. Those statements would not, in our opinion, be sufficient, without more, to sustain a finding that the proceedings were collusive."

It was also observed in case ***Razia Begum v. Sahebzadi Anwar Begum, 1958 SC 886*** that order 12 Rule 6 should be read along with proviso to Rule 5 of Order 8 CPC. In this case it was observed that the court is not bound to grant declaration prayed for on the mere admission of the claim by the defendant, if the court has reason to insist upon a clear proof apart from admissions. The result of a declaratory decree confers status not only on the parties but for generations to come and so it cannot be granted on a rule of

admission and, therefore, insisted upon adducing evidence independent of the admission. The Apex Court in ***Razia Begum's*** case (supra), further observed as under :-

> *"9. It is also clear on the words of the Statute, quoted above, that the grant of a declaration such as is contemplated by S. 42, is entirely in the discretion of the court. At this stage, it is convenient to deal with the other contention raised on behalf of the appellant, namely, that in view of the unequivocal admission of the plaintiff's claim by the Prince, in his written statement, and repeated as aforesaid in his counter to the application for intervention by the respondents 1 and 2, no serious controversy now survives. It is suggested that the declarations sought in this case, would be granted as a matter of course. In this connection, our attention was called to the provisions of R.6 of O. 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with R. 5 of O. 8 of the Code ...."*

As a matter of fact, Section 44 also refers to word "collusion" In a decree passed by way of fraud or collusion could be challenged before the civil court and the admission could imply collusion between the plaintiff and the defendant which could prevent the court to pass a decree that is why the Apex Court in ***Razia Begum's*** case (supra) discouraged to pass the decree which affects not only the parties, but the generations to come.

However, the provisions of Order XII Rule 6, Order VIII Rule 5 and 10 of the Code are meant for commercial transactions and not otherwise where the claim is based on such documents which need proof. It is also settled that normally admissions on the Will, gift, sale or co-parcenary can be proved to be erroneous and cannot be treated as proved on the basis of such admissions. Similarly, if the property is alleged to be co-parcenary, the admissions in this regard is not sufficient to treat it as co-parcenary as the question of co-parcenary is a matter of fact to be proved on evidence. However, when the case is regarding commercial transactions, admission in a notice, minutes of meetings, resolutions passed by the Board of Directors,

pleadings or other admission of signatures, then such admissions could be accepted and made the basis of the decree Similar view was taken by the Apex Court in case ***Uttam Singh Dugal and Co. Ltd. vs. United Bank of India 2000 (4) R.C.R. (Civil) 89*** wherein it was observed as under :-

> *"10. As to the object of the Order XII Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed."*

The object of the provisions of Order XII Rule 6 of the Code were also interpreted in the judgment delivered in case ***M/s Puran Chand Packaging Industrial Pvt. Ltd. vs. Smt. Sona Devi and another, 2009 (2) C.C.C. 39***. This judgment also indicates that: (a) the admissions before being placed reliance must be made by the defendant or party to the proceedings; (b) it should be unequivocally made in unambiguous manner; and © it should not be conditional one or on a different context. The documents containing admissions should be read as a whole and the court is not to take out one or two sentences so as to treat it as admission. Admissions made by a party in its own favour has no value. The Apex Court in ***Sona Devi's*** case (supra), made the following observations :-

> *9. A perusal of the aforesaid provision would show that before a decree on the basis of admission in the pleadings can be passed, the admission must be made by the defendant or a party*

to the proceedings in an unequivocal, unambiguous manner. In other words the admission should not be vague or equivocal. Converse of it would mean that if there is an admission made by a party which is conditional wherein certain objections which go to the root of the matter have been raised then it could not be treated as an admission. Reliance in this regard can be placed in ***State Bank of India Vs. M/s Midland Industries and Others AIR 1988 Delhi 153****. Though this is a judgment of the learned Single Judge of this Court but as this judgment lays down the correct proposition of law we have no hesitation in approving the same. Another point which has to be borne in mind while passing a judgment on the basis of an admission is that the document is to be read as a whole and the Court is not to take out one or two sentences so as to treat it as an admission. Moreover passing of a judgment on this basis by the Court is a matter of discretion and not a matter of course. Reliance in this regard is placed on* ***Maniisha Commercial Ltd. Vs. N.R.Dongrre and Anr. AIR 2000 Delhi 176.***

Though the party can press for judgment on admissions as a matter of legal right on an admission made by the party. However, provisions of Order XII Rule 6 as well as Order VIII Rule 5 of the Code, are enabling provisions conferring the court discretionary power to pass a decree over the same or call the parties for evidence to prove the fact or claim as raised by the plaintiff. The Apex Court discussed the Order XII Rules 1 & 6 and Order 8 Rule 5 of the Code in detail in the judgment delivered in case ***Karam Kapahi & others vs. M/s Lal Chand Public Charitable & Another, (2010) 4 SCC 753*** and laid down the following guidelines :-

1. *While comparing Order 12 Rule 6, it is made out that the order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing', but Order 12 Rule 6 is wider enough to include all the pleadings or otherwise by documents. Similar observations were made in* ***Uttam Singh's*** *case (supra).*
2. *Any answers to the interrogatories are also covered*

under this rule.

3. *Admissions would have to be read along with first proviso to Order 8 Rule 5 (1) of the Code and the court may call upon the parties relying on such admissions to prove its case independently.*
4. *Where it is commercial transaction, like dispute with regard to rent, admission of non payment of rent, judgment can be rendered on admissions by the court.*
5. *The provisions of Order XII Rule 6 of the Code is enabling, discretionary and permissible and it is neither mandatory n or it is preemptory since the word "may" has been used.*

Order XIV Rule 6

Rule 6 of Order XIV of the Code deals with the issue where the parties are in agreement on some issues of fact or law. If the parties agree and limit the question of fact or law to be decided between them, they may state the same in the form of issues and enter into an agreement in writing that, upon findings of the court, negative or affirmative, on such issues, the court would ascertain the right of the parties. Some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them or as that other may direct; or one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Order XIV Rule 7:

Rule 7 of Order XIV of the Code indicates that when the court is satisfied:-

a) *that the agreement was duly executed by the parties;*
b) *that the parties have a substantial interest in the decision of such question as aforesaid; and*
c) *If the court finds that such agreement is fit to be tried and decided,*

Then the court shall proceed to record and try the issue and state its findings or decision thereon and thereafter decide the case according to

the terms of the agreement.

Order XXIII Rule 3 of the Code reads as under :-

> ***"3. Compromise of suit -*** *Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:*
>
> *Provided that where it is alleged by one party and denied by the other than an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment."*

Scope of the Rule:

As a general rule, any matter which can be decided by a court can also be settled by a compromise. The scheme of this rule is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and is a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. This rule gives a mandate to the record, to record a lawful adjustment or compromise and pass a decree in terms of such adjustment or compromise. It is a provision for making a decree on any lawful agreement or compromise between the parties during the pendency of the suit by which the claim is satisfied or adjusted. The agreement, compromise or satisfaction may relate to the whole of the suit or a part of the suit or may also include matters beyond the subject-matter of the suit. However, it clearly envisages that a decree being passed in respect of a part of the subject-matter on a compromise.

Remedy where compromise is alleged to have been entered into between the parties as a result of fraud or under influence.

Rule 3-A of Order XXIII of the Code refers to such suit. Rule 3-A of Order XXIII of the Code reads as under :-

> *"Rule 3-A: No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

Where the agreement or the compromise itself is fraudulent, it should be deemed to be void within the meaning of the explanation to proviso to Rule 3 and as such not lawful. As such, no separate suit for setting aside the compromise decree was maintainable. However, application could be moved in the said case that the decree was the result of fraudulent compromise. If the suit was filed, then the plaint could be directed as an application for setting aside the compromise decree. Similar observations were made in case ***Brajesh Kumar Awasthi vs. State of M.P. AIR 2007 M.P. 139***, ***Surendra Ojha v. Panpati Kaur, AIR 2008 Pat. 128***.

A decree passed on admission/consent would be covered by Order XII Rule 6 CPC and not by Order XXIII Rule 3 of the Code. Therefore, a suit to set aside such decree would be maintainable and in that case provisions of Order XXIII Rule 3-A of the Code, would not be attracted. Similar observations were made in ***Rajinder v. Randhir AIR 2010 P&H 117***.

In a suit where the compromise was entered into by a guardian, where no guardian had been appointed by the court, it was held that the uncle of the defendant was not competent to enter into compromise, as such, compromise entered into by such uncle is not binding on the defendants.

A suit challenging the said compromise was maintainable as it was observed in case ***Santosh Kumar v. Hachchu, AIR 2011 MP 21***. It is also fundamental that no agreement or compromise could be entered in a representative suit without leave of the court.

Difference between fraud and collusion

There is a fundamental distinction between a proceedings which is collusive and one which is fraudulent, "Collusion in judicial proceedings

is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose." (Wharton's Law Lexicon, 14th Edn. p.212). In such a proceeding, the claim put forward is fictitious the contest over it is unreal and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties. But when a proceedings is alleged to be fraudulent, what is meant is that the claim made there is untrue, but that the claimant had managed, to obtain the verdict of the court in his favour and against his opponent by practicing fraud on the Court. Such a proceeding is started with a view to injure the opponent, and there can no question of its having been initiated as the result of an understanding between the parties. While is collusive proceedings the combat in a mere sham, in a fraudulent suit it is real and earnest. These observations were made by the Apex Court in ***Nagubai Ammal's*** case (supra).

(A.N. Jindal)
Judge