IN THE HIGH COURT OF SINDH, KARACHI

Before: Muhammad Junaid Ghaffar &
Mohammad Abdur Rahman,JJ,

HCA No.02 of 2023

M/s New Rabia Enterprises

Vs.
Eaton Phoenixtee MMPL Col. Ltd

Appellant	:	Mr. Khalid Jawed Khan, Advocate
Respondent	:	Miss Alizeh Bashir, Advocate
Date of hearing	:	6 November 2024
Date of Order	:	6 November 2024

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. This Appeal has been maintained under Section 15 of Ordinance X of 1989 read with Section 3 of the Law Reforms Ordinance, 1980 as against an order dated 22 November 2022 that was passed on CMA No. 2530 of 2020, being an application under Order XII Rule 6 of the Code of the Code of Civil Procedure, 1908, that was maintained by the Respondent in Suit No. 1256 of 2019 and which, having allowed, resulted in a Partial Decree being passed in that Suit as against the Appellants for an amount of US $ 100,665.30 (United States Dollars One Hundred Thousand Six Hundred and Sixty Five and Thirty Cents).

2. Suit No. 1256 of 2019 is a suit maintained seeking the recovery of a sum of US $ 330,805.30 (United States Dollars Three Hundred and Thirty Thousand Eight Hundred and Five and Thirty Cents), claimed to an equivalent amount in Pakistan Rupees as at the 26 July 2019 and with “interest” at the rate of 17% per annum and which the Respondent claims was owed to by the Appellant as the balance consideration payable for the supply of 9,329 solar inverters together with associated parts.

3. The Respondent contends that it had entered into an agreement with the Appellant for the supply of 9,329 solar inverters together with associated parts and which were supplied by the Respondent to the Appellant. There is no dispute as between the Appellant and the Respondent as to the delivery of the 9,329 solar

inverters to the Respondents or as to partial payment being made by the Appellant to the Respondent; rather the dispute as between the Appellant and the Respondent is regarding the payment of an allegedly outstanding amount of US $ 330,805.30 (United States Dollars Three Hundred and Thirty Thousand Eight Hundred and Five and Thirty Cents) which it is contended the Appellant was obligated to pay to the Respondent and which the Appellant alleges is to be set off as against losses and claims suffered and claimed by the Appellant as against the Respondent.

4. The Respondent assigned the responsibility to recover the debt to a debt collection company known as Atradius India Credit Management Services Private Limited to be recovered and which resulted in legal notices and replies to legal notices being exchanged but which did not result in any payment being made. This was followed by a series of communications where, aside from claims as to defects in the quality of goods being supplied being made, certain "without prejudice" offers were made by the Appellant to the Respondent and which were rejected and which culminated in Suit No. 1256 of 2019 being maintained by the Respondent as against the Appellant who claimed therein the "outstanding" payment of US $ 330,805.30 (United States Dollars Three Hundred and Thirty Thousand Eight Hundred and Five and Thirty Cents).

5. The Appellant in response to the Plaint has in his Written Statement *inter alia* pleaded as hereinunder:

> " … *Preliminary Legal Objections:*
>
> *i. That the instant suit is not maintainable as framed and as such is liable to be dismissed with costs.*
>
> *ii. That the instant suit being not maintainable on account of being barred by law.*
>
> *iii. That the Plaintiff has not approached this court on the basis of the disclosed cause of action within time, hence the instant suit is barred by limitation. Hence, the instant suit being barred by law is not maintainable and liable to be dismissed.*
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> *iv. That the instant suit has not been instituted by a competent person having the necessary authority as per law, hence the instant suit being materially defective is liable to be dismissed.*
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> *v. That the instant suit has been instituted by a persons who is neither competent nor having sufficient authority to prosecute the instant case, hence the instant suit is liable to be dismissed under the law.*
>
> *vi. That the Plaintiffs come to this Honourable Court with unclean hands on the basis of misrepresentation and fabrications, hence the instant suit is liable to be dismissed under the law.*
>
> *vii. That the Plaintiffs have concealed material facts from this Honourable Court and as such the suit is liable to be dismissed under the law.* …
>
> *16. That in lieu of the refusal of the Plaintiff, in allowing for the reexport of the infirmed units, refusal to accept diminutive payment against the infirmed*

units, the Defendant (NRE) ***was left with no choice by elect for extinction of the USD $201,400. However, the Defendant (NRE) till date is willing to pay any amount payable after the extinction of the USD $201,400 and adjustment of any expenses or loss suffered by the Plaintiff in accordance with exchange rate applicable at the time payment was due****. This was offer was made repeatedly to the Plaintiff from time to time but to no avail. In this regard, the Plaintiff was offered to take partial payment, subject to protest, but did not avail such opportunity on account of malice. …*

17. … In this regard, the Defendant (NRE) had ***offered to extinct the amounts payable against the aforementioned infirmed units and pay USD $ 103,200 to the Plaintiff****. … In response to the aforementioned letter the Atradius then began issuing threats to the Defendant (NRE) in which it is stated that it would black list the Defendant (NRE) in the International Credit Market thereby besmirching the name and reputation of the Plaintiff. It is not out of place to mention here that the in the aforementioned reply dated 16.09.2017 the plaintiff had refused to take receipt of the same via courier but were receipt of the same via email. It is imperative note there that this was an opportunity for the plaintiff to make even partial recovery as per their own case, but the Plaintiff failed to take payment as its own loss and consequences.*

21. That in lieu of the above the Defendant (NRE) is not liable to make payment against the 3&5 KVA Solar Inverters which were to be purchased against payment of USD $201,400.00 for the reasons as outlined above. Rather, the Defendant (NRE) has incurred additional cost and liability on account of the defective products in addition to the damage and loss of goodwill suffered. ***However, the Defendant (NRE) accepts that the Plaintiff is entitled payment against those units which are acceptable and without issue or defect. However, such payment is subject lien in relation to adjustment against costs incurred to our client with respect to the defective the 3 &5 KVA Solar Inverters and costs incurred as scheduled below.***

Balance Payable to M/s. Centralion Industrial Inc.

S.NO	***Particulars***	***Amount(USD)***
1.	*Purchase Price of Orders (11 invoices)*	*(-) $1,125,016,90*
2.	*Partial Payment against latest Order (6 Invoices)*	*(-)$794,211.90*
3.	*Amount Claimed by the Plaintiff*	*(-) $330,085.00*
4.	*Purchase Price of 3 & 5 KVA Solar Inverters (824 units)*	*(-) $ 201,400.00*
5.	*Customs Duty paid against 3 & 5 KVA Solar Inverters (824 units)*	*(-) $ 23,815.00*
6.	*Cost of Demurrage, Detention, Warehousing, Logistics and clearing*	*(-) $14,000.00*
7.	*Cost of Storage Since September 2017*	*(-) $ 10,000.00*
8.	*costs of Inspections, after sales service, technical services & upgrade/repair*	*(-) $ 15,000.00*
9.	*Amounts Payable to M/s. Centralion Industrial Inc (Net).*	*(-) $ 66,590.30*
10.	*Cost against 3 KVA units sold but which have not be returned*	*(+) $ 23,575*
11.	*Cost against 5 KVA units sold but which have not be returned*	*(+) $ 10,500*
	Balance Payable to Plaintiff *Balance Equivalent (December 2017)*	*(-) $100,665.30* *PKR 11,136,602.39*

*22. **That currently the Defendant (NRE)is exercising a lien over the Balance amount of USD $ 100,665.30/ PKR 11,136,602.39** against the damages and loss suffered by the Defendant (NRE) on account of the actions of the Plaintiff and Atradius/ICIL as scheduled below:*

Schedule of Damages & Loses caused by the Plaintiff

S.NO	Particulars	Amount(USD)
1.	Loss to Reputation	$ 900,000.00
2.	Special Damages	$1,000,000.00
3.	Legal Costs	$10,000.00
Total		$1,910,000.00

Schedule of Damages & Loses caused by the Atradius:

S.NO	Particulars	Amount(USD)
1.	Special Damages	$1,000,000.00
2.	Legal Costs	$10,000.00
Total		1,010,000.00

Schedule of Damages & Loses caused by the ICIL

S.NO	Particulars	Amount(USD)
1.	Special Damages	$1,000,000.00
2.	Legal Costs	$10,000.00
Total		$1,010,000.00

III. That without prejudice to the above narration, parawise rebuttal to the memo of plaint is as under…"

6. The Learned Single Judge, on an application maintained by the Respondent under Order XII Rule 6 of the Code of Civil Procedure, 1908, while reading the paragraphs of the Written Statement as reproduced hereinabove, considered that as the pleadings in Paragraph 22 of the Written Statement amounted to an admission by the Appellant to pay a sum of US $ 100,665.30 (United States Dollars One Hundred Thousand Six Hundred and Sixty Five and Thirty Cents) to the Respondent and thereafter while acknowledging that in Paragraph 21 of the Written Statement a claim for an "equitable set off" had been pleaded, stated that the claim for an "equitable set off" as pleaded by the Appellant would not preclude the power of a Court, under Order XII Rule 6 of the Code of Civil Procedure, 1908 to grant such an application and which has resulted in the application being allowed and a Partial Decree for a sum of US $ 100,665.30 (United States Dollars One Hundred Thousand Six Hundred and Sixty Five and Thirty Cents) plus mark up being issued by this Court in the Suit. The Appellant, being aggrieved, has maintained this Appeal as against that Order.

7. Mr. Khalid Javed Khan entered appearance on behalf of the Appellants. After referring the Court to the Pleadings of both the Appellants and the Respondents, Mr. Khalid Javed Khan contended that the pleadings did not in any manner show an unequivocal admission having been made by the Appellant which

warranted the application being granted. Relying on the decision reported as ***Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co. and Others***,[1] ***Messrs Kuwait National Real Estate Company (Pvt.) Ltd. and Others vs. Messrs Educational Excellence Ltd. and Another*** [2]and ***Divisional Superintendent Postal Services Fasialabad and others vs. Khalid Mahmood and others***[3] each of which determine the prescriptions for granting an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 he contended that as each admission made was qualified it could be said that an unequivocal admission had been made by the Appellant in the Written Statement and hence the application under order could not have granted.

8. Miss Alizeh Bashir entered appearance on behalf of the Respondents and contended that from the pleadings the delivery of the goods and the quantum of the amount that was payable by the Appellant to the Respondent had been unequivocally admitted by the Appellant in his Written Statement. Regarding the liability to pay the amount, relying on the decision of the Supreme Court of Pakistan reported as ***Syed Niamat Ali and others vs. Dewan Jiram Dass and another***[4] she contended that the claim of "equitable set off" as pleaded could not be considered to be a qualification to the admission made by the Appellant and hence was clearly correctly discounted by the learned Single Judge. On this basis she contended that as the qualification could not be legally enforced, the unequivocal admission would remain thereby permitting the exercise of the power under Order XII Rule 6 of the Code of Civil Procedure. 1908 as was correctly done by the Learned Single Judge.

9. We have heard Mr. Khalid Javed Khan and Miss Alizeh Bashir and have perused the record. The provisions of Order XII Rule 6 of the Code of Civil Procedure,1908 read as hereinunder:

> " … *6. 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.*"

A much-interpreted provision, the Supreme Court of Pakistan and this Court has in numerous cases held that for there to be a decree on admission the admission

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[1] 1996 SCMR 696
[2] 2020 SCMR 171
[3] 2023 SCMR 354
[4] PLD 1983 SC 5

should be "unequivocal, clear, unconditional and unambiguous"[5] and the powers to be exercised by a Court under this Order are at the discretion of the Court.[6]

10. In ***Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co. and Others***,[7] the Supreme Court of Pakistan outlined the principles on the basis of which such an application was to be considered by a Court and in which it was held that:

> " … *3. Mr. Fazal Ghani Khan, learned counsel for the appellant contended that the plaint was signed and verified by an authorised person and further that the admission being unqualified attracts order XII, rule 6, C.P.C. Order XII, rule 6, C.P.C. provides a summary and speedy remedy in cases where admission is made by the defendant in the pleadings -or outside it, but in order to attract this provision it is necessary that the admission should be unequivocal, clear, unconditional and unambiguous. 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-recognised 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 tie 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*

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[5] See ***Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co. and Others*** 1996 SCMR 696; ***Amir Bibi though Legal Heirs vs. Muhammad Khurshid and others*** 2003 SCMR 1261; ***G.R. Syed vs. Muhammad Afzal*** 2007 SCMR 433; ***Messrs Kuwait National Real Estate Company (Pvt.) Ltd. and Others vs. Messrs Educational Excellence Ltd. and Another*** 2020 SCMR 171; ***Divisional Superintendent Postal Services Faisalabad and Others vs. Khalid Mahmood and Others*** 2023 SCMR 354; ***Izzat Khan and another vs. Ramzan Khan and others*** 1993 MLD 1287; ***Gerry's International (Pvt.) Ltd vs. M/s Qatar Airways*** PLD 2003 Karachi 253; ***Soaleh Muhammad vs. Cantonment Board*** 2007 CLD 1459; ***City District Government, Karachi Through District Coordination Officer, Through Authorized Officer District (Hrm), C.D.G.K. and 3 Others vs. Faqir Muhammad*** 2008 CLC 645; ***Messrs Shadab Developers through Managing Partner and Another vs. Abdullah Through Attorney And 9 Others*** 2009 MLD 397; ***Habib Bank Limited and others vs. Rafiq Ahmed and others*** 2012 CLD 170; ***Khalil (Pvt.) Limited through Authorised Officer vs. MV. Wales II and 3 others*** 2012 CLD 276; ***Syed Waqar Haider Zaidi vs. Mst. Alam Ara Begym through Legal heirs and others*** PLD 2015 Sindh 472; ***Hussain Developers vs. 1st Senior Civil Judge, Karachi South and 2 others*** PLD 2018 Sindh 274; ***Selat Marine Services Co. Llc Through Authorized Attorney Vs. M.T. Bofors And 2 Others*** PLD 2019 Sindh 533.

[6] See ***Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co. and Others*** 1996 SCMR 696; ***Bashir Ahmed Khan vs. Shamas-ud-din and another*** 2007 SCMR 1684; ***Divisional Superintendent Postal Services Faisalabad and Others vs. Khalid Mahmood and Others*** 2023 SCMR 354; ***Izzat Khan and another vs. Ramzan Khan and others*** 1993 MLD 1287; ***Khalil (Pvt.) Limited through Authorised Officer vs. MV. Wales II and 3 others*** 2012 CLD 276; ***Mst. Ghazala Rehman through Attorney vs. Najma Sultana through Legal Heirs and 2 others*** 2012 MLD 188; ***Farida Saeed vs. Khurram Zafar*** 2016 CLC 1251; ***Hussain Developers vs. 1st Senior Civil Judge, Karachi South and 2 others*** PLD 2018 Sindh 274;

[7] 1996 SCMR 696

> *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*

The Supreme Court of Pakistan has in this decision determined the perimeters for the interpretation of this provision and has *inter alia* held that an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 can only be granted where the admission made is "unequivocal, clear, unconditional and unambiguous."

11. In the circumstances of payments to be made, what is considered as "unequivocal, clear, unconditional and unambiguous," has been prescribed by a Division Bench of this Court in a decision reported as ***Gerry's International (Pvt.) Ltd vs. M/s Qatar Airways***[8] wherein it was held that:

> " … *16. 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. He has relied upon the judgment of the Honourable Supreme Court in the case of Macdonald Layton (supra), reported in 1996 SCMR 696, which fully supports the submission of the learned counsel. We are also not persuaded by the reasoning of the learned Single Judge that the counsel for the appellant/defendant had admitted/conceded during arguments and/or candidly admitted that statement Annexure "H" of the plaint was prepared by the respondent on the basis of the periodical statement of sales of air tickets supplied by the appellant. This argument in no way place the case of the respondent on a higher pedestal* ***as we are of the opinion that "admission" of a party should not merely be confined to the figure claimed but should also include the liability to pay****."*

12. We have in this context considered the order passed by the Learned Single Judge in light of the pleadings of the Appellant. While considering that in Paragraphs 16, 21 and 22 of the Written Statement the Appellant had admitted that there was no dispute as between the parties ***as to the quantum of the amount*** i.e. a sum of US $ 100,665.30 (United States Dollars One Hundred Thousand Six Hundred and Sixty Five and Thirty Cents) that was payable by the Appellant to the Respondent it was noted that the Appellant had ***qualified his liability to pay such an amount*** in his pleadings as hereinunder:

> " … 16. … *was left with no choice by elect for extinction of the USD $201,400. However, the Defendant (NRE) till date is willing to pay any amount payable after the extinction of the USD $201,400 and adjustment of any expenses or loss suffered by the Plaintiff in accordance with exchange rate applicable at the time payment was due*
>
> 21 … *However, the Defendant (NRE) accepts that the Plaintiff is entitled payment against those units which are acceptable and without issue or defect. However, such payment is subject lien in relation to adjustment against*

[8] PLD 2003 Karachi 253

> *costs incurred to our client with respect to the defective the 3 &5 KVA Solar Inverters and costs incurred as scheduled below. …*
>
> *22 … That currently the Defendant (NRE)is exercising a lien over the Balance amount of USD $ 100,665.30/ PKR 11,136,602.39."*

13. The approach that was thereafter followed by the Learned Single Judge to overcome the qualified admission was to consider the meaning of the expression "*without waiting for the determination of any other question between the parties"* as used in Order XII Rule 6 of the Code of Civil Procedure, 1908 and which was interpreted on the basis of two orders passed by learned Single Judges of this Court reported as ***Khalil (Pvt.) Limited through Authorised Officer vs. MV. Wales II and 3 others***[9] and ***Qatar Airways v. Genyis International (Pvt.) Ltd.***[10] to conclude that an admission qualified by a claim for an "equitable setoff" on the basis of the pleadings of the Appellant, in the particular circumstnaces, would not amount to a qualified admission and hence he granted the application.

14. We have considered the two orders on the basis of which the Impugned Order was premised. In ***Qatar Airways v. Genyis International (Pvt.) Ltd.***[11] the Plaintiff claimed an amount due to it and which amount was represented by a percentage of the sale proceeds of airline tickets determined on the basis of a statement of sales that were provided to the Plaintiff by the Defendant and which were therefore considered not to be disputed and which resulted in an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 being maintained seeking a decree to be passed on this "undisputed amount." The Defendant had conversely maintained a Suit for Damages as against the Plaintiff for a sum of Rs. 158,000,000 and which was yet to be adjudicated. A Learned Single Judge of the Court considered that the pendency of the Suit maintained by the Defendant would not impede the grant of the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 and allowed the application and partly decreed the Suit. The order of the Learned Single Judge was appealed in HCA No.226 of 2002 and which appeal was allowed in the decision reported as ***Gerry's International (Pvt.) Ltd vs. M/s Qatar Airways***[12] and by which order the decision of the learned Single Judge was set aside. We are of the opinion that reliance on the order reported as ***Qatar Airways v. Genyis International (Pvt.) Ltd.***,[13] which had been set aside, was therefore misplaced.

15. That being said, a similar view was taken by another Learned Single Judge of this Court in the decision reported as ***Khalil (Pvt.) Limited through Authorised***

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[9] 2012 CLD 276

[10] 2002 CLC 449; There are typographical errors in the citation in the Law Reports and which should be read as ***Qatar Airways v. Gerry's International (Pvt.) Ltd.***

[11] *Ibid.*

[12] PLD 2003 Karachi 253

[13] *Ibid.*

Officer vs. MV. Wales II and 3 others.[14] In this case a ship docked at Karachi Port for refueling and pursuant to which the Plaintiff was obliged to supply 300 Metric Tons of Furnace Oil and 100 Metric Tons of Marine Gasoline Oil to the Defendant. Allegations were made by the Defendant No. 1 that there was a shortfall in the supply of the Marine Gasoline Oil and additional allegations that the Plaintiff was never in a position to supply the Furnace Oil compelling the Defendant No. 1 to allege material breach. When the Plaintiff maintained a suit for recovery and damages, the Defendant No. 1 pleaded a counter claim for damages and the amount of which counter claim offset the claim of the Plaintiff. The Plaintiff maintained an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 seeking payment of the amount of Marine Gasoline Oil that the Defendant had admitted receiving. The Learned Single Judge outlining the process to be adopted when considering an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 opined that:

> " … *8. In my view, learned counsel for the contesting defendants has conflated two separate aspects of Order XII, Rule 6, C.P.C. namely, the admission of the relevant fact on the one hand, and the legal consequences, if any, that flow from such an admission. As already noted, the starting point of the entire exercise must be to determine whether there has been an admission of fact. If there is no such admission, then there is no need to proceed further. In the present case, I am of the view that the extract from the written statement reproduced above does amount to the admission of a fact, namely, that 83.8 Metric Tons of MGO were supplied by the plaintiff to the defendant-vessel. The next point to consider is whether this admission is specific, clear, unambiguous, categorical and definite (as held in the Amir Bibi case). In my view, this determination itself has two aspects. Firstly, the pleadings of the parties, and in particular the written statement of the concerned defendant, have to be examined to ascertain whether the admission of the fact is not qualified in any manner. Such a qualification may, for example, be found if an objection has been taken that the suit itself is not maintainable. However, in my view, the objection of maintainability must itself be categorical and specific and cannot be of a general nature. In the present case, in my view the objections as to maintainability taken by the contesting defendants in their written statement are only vague and general in nature. The second aspect of the exercise is to determine whether any legal consequences clearly flow from the admission in question. If the legal consequences that flow are not clear and definite and, for example, require determination of some other fact which has not admitted or is in issue, then the admission of fact cannot be held to be specific, clear and unambiguous for purposes of Order XII, Rule 6. However, if there is, or are, any legal consequences that flow directly and unambiguously from the admission in question, then the second part of the exercise would be regarded as having been completed.* ***In other words, for Order XII, Rule 6 to apply, there must be an admission of fact that is not qualified in any manner, and an admission will be so regarded if the admission is clear, specific and categorical, the pleadings in question do not contain any specific or categorical objection to the maintainability of the suit, and a clear legal consequence flows directly from such admission****."*

As has been correctly considered by the Learned Single Judge in the decision reported as ***Khalil (Pvt.) Limited through Authorised Officer vs. MV. Wales II and 3 others,***[15] the process that has to be followed in deciding an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 has been clarified in the above quoted order as follows:

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[14] *Ibid.*
[15] *Ibid.*

(i) First one has to see as to whether there is an admission? If there isn't, there is no need to look further to see *whether is any other issue for determination as between the parties* and the application should be dismissed forthwith;

(ii) If there is an admission, then one should consider as to whether or not the admission is "specific, clear, unambiguous, categorical and definite?"

(iii) to consider as to whether the admission is or isn't "specific, clear, unambiguous, categorical and definite" the Court should begin by looking at the pleadings of the parties to see whether the pleadings are qualified in any way;

(iv) if the admissions are qualified by "categorical and specific" objections, then such objections have to be sustained and the application dismissed;

(v) if the admissions are not qualified or qualified by "vague and general" objections, then such objections can be ignored and the Court should then consider the "legal" consequences of the admission;

(vi) If the legal consequences of the admission are "clear and definite" and do not require any further determination of a fact the application can be allowed,

(vii) if the admission is found to be specific, clear, unambiguous, categorical and definite and the legal consequences of such admission are found to be "clear and definite," it is irrelevant as to whether or not *there is any other issue for determination as between the parties e.g. a counter claim, or a counter suit,* the application must be allowed on its own merits.

16. The Learned Single Judge while applying these principles, opined that where the admission was "unambiguous, categorical and unconditional" a qualification to such an admission in the form of an "equitable set-off" would not preclude the grant of the application under Order XII Rule 6 of the Code of Civil Procedure 1908 as to do otherwise would be to attribute redundancy to the words "without waiting for the determination of any other question between the parties" as contained in that rule and held as hereinunder:

> " … *12. From the discourse above, the juridical position that emerges is that **where the admission is unambiguous, categorical and unconditional**, then the mere presence of a plea of set-off would not suffice to defeat an application under Order XII Rule 6 CPC lest the words "without waiting for the determination of any other question between the parties" appearing therein become meaningless. However, in the final analysis, a decree under Order XII Rule 6 CPC remains a discretion of the Court, and it may well be that given the facts of a particular set-off before it, the Court is not inclined to exercise such discretion."*

(Emphasis is added)

17. Now, in the decision reported as ***Gerry's International (Pvt.) Ltd vs. M/s Qatar Airways***[16] a Division Bench of this Court, in respect of an amount claimed, has opined that for an admission to be sustained as the basis for an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 there must be an unqualified admission by the Defendant **both as to the quantum as well as to the liability to pay such an amount** and which finding aside from being binding on us, we also find ourselves in agreement with.

18. When one is to consider the qualifications made by the Appellant in the Suit, the first are objections as to the maintainability of the Suit and which are, to use the language of the learned Single Judge in the decision reported as ***Khalil (Pvt.) Limited through Authorised Officer vs. MV. Wales II and 3 others,***[17] "general" and not "categorical and specific." We are also of the opinion that the objections as taken by the Appellant being general in nature would not impede an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 from being granted.

19. As to the other admissions made in the Written Statement, while to our mind there is no dispute as to the fact that the Appellant has admitted the quantum of the amount to be paid to the Respondent; regarding the **liability to pay** such an amount, the Appellant has pleaded in Paragraph 16 of the Written Statement that: "*the Defendant (NRE) **till date is willing to pay any amount payable after the extinction of the USD $201,400 and adjustment of any expenses or loss suffered by the Plaintiff**" and* in addition in Paragraph 21 of the Written Statement has also stated that: ***"However, such payment is subject lien in relation to adjustment against costs incurred to our client with respect to the defective the 3 &5 KVA Solar Inverters and costs incurred as scheduled below."*** If one is to therefore consider the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 maintained by the Respondent in the Suit as against the threshold indicated hereinabove, one could only come to the conclusion that while the admission made by the Appellant as to the **quantum of**

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[16] PLD 2003 Karachi 253
[17] *Ibid.*

the amount payable was not qualified, the **liability to pay such an amount** to the Respondent clearly was.

20. The query that comes before the court is that if the admission made by the Defendant as to the liability to pay was itself qualified, can such a qualified admission be discounted when determining an application under Order XII Rule 6 of the Code of Civil Procedure, 1908? The Learned Single Judge was of the opinion that this was possible; and by determining that the equitable setoff as pleaded was not available to the Appellant, he negated the qualification. To our mind, there being no unqualified admission as to the liability to pay the amount, no further inquiry was warranted to consider as to whether the qualification made by the Appellant as to the liability to pay, amounted to an "*other issue for determination as between the parties"* and the application should have therefore been dismissed as it was not open to the Learned Single Judge, under Order XII Rule 6 of the Code of Civil Procedure, 1908, to adjudicate as to the veracity of the qualification. Respectfully, we are of the opinion that the order therefore went beyond the prescriptions of deciding an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 and hence cannot be sustained. We are also of the opinion that the interpretation made by us herein would not attribute redundancy to the expression *"without waiting for the determination of any other question between the parties"* as contained in Order XII Rule 6 of the Code of Civil Procedure, 1908 as clearly where the admission is not qualified then circumstances such as a counter claim being pleaded may well be discounted on the basis of the language as used in the section. The Appeal must therefore be allowed.

21. For the foregoing reasons, we had on 6 November 2024, through a short order, allowed this appeal thereby setting aside the order dated 22 November 2022 that was passed on CMA No. 2530 of 2020 Suit No. 1256 of 2019 and the Partial Decree that been passed in Suit No. 1256 of 2019 and these are the reasons for that order.

JUDGE

JUDGE

Karachi dated 2 December 2024