* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 24.09.2010

\+ **CS (OS) 2079/2009**
I.A. Nos.14197, 14628/2009 & 93/2010

FUSION TOONZ ..... Plaintiff
Through: Ms. Girija Krishan Varma, Advocate.

versus

M/S BHASIN INFOTECH & INFRASTRUCTURE
PVT. LTD. & ORS. ..... Defendants
Through: Mr. S.K. Bansal, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1.	Whether the Reporters of local papers may be allowed to see the judgment?	YES
2.	To be referred to Reporter or not?	YES
3.	Whether the judgment should be reported in the Digest?	YES

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% **I.A. Nos.14197 & 14628/2009**

1. This order proposes to dispose of the above applications, moved by the plaintiff, whereby *ad-interim* injunction has been sought. The parties have completed pleadings; the plaintiff urges that the materials on record are sufficient to allow the suit in part, by the Court exercising its power under Order XII, Rule 6 Code of Civil Procedure (CPC).

2. The facts briefly are that the plaintiff sues the defendants for permanent injunction to restrain them, alleging copyright infringement by them. The first defendant (hereafter referred to as "Bhasin Infotech") and the fifth defendant (hereafter referred to as "the Architect") are principally the defendants. The plaintiff also seeks damages besides other reliefs. The suit

averments are that the Architect entered into negotiations - with the plaintiff, culminating in a purchase order dated 12.12.2008, issued by it (the Architect). In terms of the said letter which embodies the agreement (concededly arrived at for the benefit of the Bhasin Infotech), the plaintiff was to design a ten minutes 3D "walk through" compact disk (CD). The material terms of the said order - which are not in dispute, are extracted below: -

> *" Sir,*
>
> *Please refer to our discussion on the above captioned subject and your quotation for the same. We are pleased to assign you the production of 10 min 3-D walk-through on the following terms and conditions:*
>
> 1. *You shall have the responsibility of creating the entire animation work.*
> 2. *You will have to work in close coordination with us and approval taken from us at various developmental stage of modeling, camera motion, lightning and texturing etc. The production made by you or shall be discussed by us with the principals and due approval taken from them changes/suggestions made by them will have to be duly incorporated in the project.*
> 3. *The project shall have to be completed by 5th January 2009.*
> 4. *As agreed you shall be paid a sum of Rs. 10,00,000 (Rupees 10 lakhs) plus service tax for the assignment inclusive of all costs. The same shall be paid in three installments as follows:*
>   a) *25% advance*
>   b) *25% at the time of assignment of work.*
>   c) *25% at the time of submission of rough cut.*
>   d) *25% after final approval by principal.*
>
> *Please sign the duplicate copy of this letter in token of your acceptance thereof.*
> *Thanking you*
>
> *Yours faithfully*
>
> *Arcop Associates and Architect Pvt. Ltd*
> *E-106, GK Enclave-1*
> *New Delhi"*

3. The plaintiff argues that according to the terms of the contract, in case delayed payments were made, interest @ 20% per annum will be levied. The plaintiff submits that the defendants released an advance of ₹1,50,000/- on 15.03.2009 as against the invoice, which was duly approved by them (the defendants). It is contended that the project was initiated and completed after the drawings were received from the defendants particularly the Architect and with their

due approval. The plaintiff alleges that the defendants particularly Bhasin Infotech and the 2nd, 3rd and 4th defendants unilaterally changed the terms of the contract requiring its completion by 10.04.2009 and further stating that only 15% advance was payable - and the balance was payable after final approval by the Principal. These changes were indicated in the letter dated 25.03.2009, but, according to the plaintiff, were not accepted and were protested to in a meeting held with the 2nd and 7th defendant on 02.04.2009. The plaintiff also mentions about an e-mail communication of the same date to the second defendant with a copy to the Architect voicing its protest and concerns. The plaintiff submits that extension of the date of completion of project was necessitated by many reasons, one of which was fresh changes sought to be made in the original plan by the Bhasin Infotech expressly stated in the letter dated 02.04.2009. The plaintiff claims that these changes drove up the cost of the project and it demanded a revised consideration of ₹19 Lakhs.

4. The suit contends that the final work submitted to the Bhasin Infotech and its associates was endorsed and approved (by the Architect) was of world class. The plaintiff in this respect relies upon the letter written by Architect on 26.08.2009 in response to a legal notice issued to it along with the Bhasin Infotech. The said letter is in the following terms: -

> *"...Sub : Your notice dated 10/8/2009 on behalf of Fusion Toonz, Noida*
>
> *Dear Sir,*
>
> *Please refer to the above notice to M/s Arcop Associates and Architects Pvt. Ltd. New Delhi, Mr. Raja Menon and Mr Jagjit Singh (addressee Nos. 5 & 7). We'll wish to state as under:-*
>
> 1. *We do confirm that we had placed the original order on Fusion Toonz, Noida on 12th of December 2008 with payment terms of 25% advance and balanced 25% at different three stages. This was done on behalf of M/s Bhasin Infotech and Infrastructure Pvt. Ltd with their consent and their architect of Grand Vanezia Project in Greater Noida.*
> 2. *Once Fusion Toonz had prepared 3-D walk-through of the above project which was shown to us and Mr Bhasin from time to time. To facilitate payment directly from M/S Bhasin Infotech, a new order was released by them directly on Fusion Toonz in the month of March with our consent.*
> 3. *Fusion Toonz continued to work with them and us and all work was shown and approved by us/them subsequently in May and June to meet requirements of Bhasin Infotech. Fusion Toonz finally submitted their final print duly approved by us in June 09 for payment to Bhasin Infotech.*
> 4. *Since they have done a very good job, Bhasin Infotech must pay Fusion*

Toonz all the pending payment as they have spent a lot of time, resources and energy to complete this project.

5. *As such we are not responsible for the payment to anybody as we have acted for and behalf of M/s Bhasin Infotech and Infrastructure Pvt. Ltde only as their architects…"*

5. It is argued that on overall consideration of the pleadings and the materials on record, the plaintiff is the copyright owner and is entitled to temporary injunction. It is also argued that the joint written statement of Bhasin Infotech and the Architech *inter alia* with the other defendants nowhere explained or sought to clarify the admissions made by the Architect who were principally instrumental in engaging the plaintiff. Being the technical body with the expertise, the plaintiff's work could be appraised by the Architect, and was indeed approved. The plaintiff also relies on a Bill issued to Bhasin Infotech, on 10th June, 2009 for ₹9,68,450/-, which remains outstanding and unpaid. It is submitted, therefore, that the Court, having regard to the pleadings and the materials on record, should decree the suit in part to the extent of ₹10,00,000/-.

6. The defendants in the common written statement (of Bhasin Infotech and the Architect, and some of the former's associates) resist the suit. It is firstly argued by the counsel that the plaintiff cannot seek a part decree since the suit, as framed is not a money claim. The defendant's counsel points out that the suit is premised essentially on copyright infringement and claims damages. It is, therefore, argued that without a full trial on the issues as to whether the plaintiff is the copyright owner, there can be no question of any decree for any amount as that would result in an interim determination on damages, which is not permissible in the facts of this case.

7. On the merits it is argued that the defendants have counter claimed against the plaintiff seeking compensation for defective work done. It is contended by the defendant/counter claimants that the plaintiff is not the copyright owner since the work was commissioned for its beneficial use and vests with the defendants exclusively in terms of Section-17 of the Copyright Act.

8. The defendants argue that the so called admissions relied on by the plaintiff, in any case, cannot impel the Court to decree, since the pleadings of all the parties are to be read as a whole, rather than in piece meal. So seen, submit the defendants, the written statement does not disclose any unambiguous admission enabling the Court to draw any decree, as is suggested by the plaintiff. It is argued that the defendants have urged in the written statement about delay in

execution of the contract by the plaintiff, as the reason why the amounts were not paid; it is urged more importantly that the written statement is based on the defence that the work - the walkthrough - submitted to Bhasin Infotech was of vastly inferior quality, which did not oblige it to pay the plaintiff. The defendants argue that this deficient work rather led to engaging another concern, which could ultimately complete the job.

9. As may be seen from the above discussion, the parties do not dispute that the plaintiff was hired to prepare a "walkthrough" in favour of Bhasin Infotech, for the latters' project. The Purchase Order was issued and contract entered into, by the Architect. The defendants do not deny that in terms of the contract, the project envisaged that payments were to be released at agreed intervals; the defendants do not also deny that the plaintiff had issued a bill dated 15th March, 2009, which was paid. The plaintiff complains that despite furnishing the entire work, Bhasin Infotech did not release the payments. The defendant's argument is two-fold, i.e. that the plaintiff did not perform the work, according to the agreed standards, which resulted in the hiring of another concern to complete the job and that the plaintiff had in any case, exceeded the time period granted, which led to a separate agreement whereby the plaintiff was not entitled to any further payments.

10. The original contract between the plaintiff and the Architect stated that the walkthrough was to be approved, technically by the latter:

> *"You will have to work in close coordination with us and approval taken from us at various developmental stage of modeling, camera motion, lightning and texturing etc. The production made by you or shall be discussed by us with the principals and due approval taken from them changes/suggestions made by them will have to be duly incorporated in the project."*

The plaintiff relies on the letter issued by the Architect, in reply to the legal notice, issued on its behalf, on 26th August, 2009. This clearly mentions, at more than one place, that the work was done to its (the Architect's) satisfaction, and that the plaintiff was entitled to its money. Bhasin Infotecth's answer is two-fold; one that it has counter claimed for defective work; and two, that the original contract was substituted whereby the time, as well as payment terms were extended. Here, what is placed on the record is a letter dated 2nd April, 2009, by the plaintiff mentioning that the changes suggested by Bhasin Infotech whereby the payment terms were postponed, are in fact, adversely commented; the plaintiff tells Bhasin Infotech that this extension has led to

increased costs. Two other letters of 16th June, 2009 and 29th June, 2009 written by the plaintiff to Bhasin Infotech are also on the record. These show that the plaintiff had serious concerns, about the kind of changes in the walkthrough, suggested by Bhasin Infotech, and in fact states that the amount in view of the increased work, payable as fee, had to be increased to ₹19 lakh. For the first time, in a letter dated 17th June, 2009, Bhasin Infotech mentions about alleged defective work, and says that the plaintiff's proposal for increased consideration would be considered and decision intimated, in 2-3 days. The plaintiff has placed on record a few more letters on this aspect; in its letter of 29th June, 2009, Bhasin Infotech is informed that the project work had been approved by the Architect and the advertising agency and that the latter was using the material for printing DVDs, 3000-5000 copies of which were to be used for advertising campaign.

11. Bhasin Infotech, for the first time, in the letter of 7th July, 2009, to the plaintiff, alleges that the work done by the latter was not up to the standard. There is also a reference to a work order of 25th March, 2009, requiring completion of the walkthrough by 10th April, 2009. An allegation that since the work and design was not completed within time, Bhasin Infotech reserved its right to claim damages, was also leveled in the letter. It is therefore, urged that the defendants cannot be made liable, as there is no unambiguous admission on the pleadings enabling the Court to draw a decree.

12. Order XII, Rule 6 is intended to enable expeditious grant of decree, to a plaintiff, in a proceeding where the defendant has made any admission in the pleadings or otherwise, orally or in writing. The plaintiff, in such case, need not wait for completion of the trial. The object of such provision is to curtail the period for determination of disputes and to see that a decree on admission is passed without any unnecessary hindrance. The expression 'admission' comprehends admissions by a party in pleadings or otherwise, orally or in writing. The provisions are to be liberally construed. The Court should essentially satisfy itself that all the elements, which constitute 'admission' are present before issuing a decree. An admission to enable the plaintiff, to relief, should be unambiguous, clear and unconditional. The judgment of the Supreme Court, in *Uttam Singh Duggal & Co. v. Union Bank of India & Ors.*, AIR 2000 SC 2740 clarifies and restates the law on the point, and states that:

"As to the object of the Order 12 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 next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable."

13. A court, considering whether to decree a claim, under Order XII, Rule 6, has to see the written statement as a whole; the order cannot also be claimed as a matter of course, since it is discretionary, and the Court has to base its exercise of discretion on sound principles. The Supreme Court, in a recent judgment reported as *M/s Jeevan Diesels & Electricals Ltd v. M/s Jasbir Singh Chadha (HUF) & Anr* (decision dated 07.05.2010 in CA No. 4344/2010) relied on several older decisions, including *Gilbert v. Smith* reported in 1875-76 (2) Ch. D 686; *Koramall Ramballav v. Mongilal Dalimchand* reported in 23 CWN (1918-19) 1017, reiterated the previous observations in *Uttam Singh.* The Court also relied on the observations in *Gilbert* to the following effect:

"if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the Court at once to have that thing done, without any further delay or expense"

14. The undisputed facts discernable from the pleadings are that the plaintiff was engaged for preparing a "walkthrough" for Bhasin Infotech's project; the consideration amount was to be paid at specific intervals. The plaintiff was paid ₹1.5 lakhs; it had issued bills having claimed that the total work had been performed. The purchase order/contract, of December 2008 stated that the Architect was to approve the concept, the drawings and the product. Bhasin Infotech did receive the product; however its case is that the contract term was extended, as well as the payment terms. There is however no clear document supporting this contention; the exchange of correspondence shows that the contract terms were approved, and indicated by the Architect. Bhasin Infotech's communications to the effect that the contract terms were extended, and that payment was confined only to 15% initially (covered by the March 2009 bill, which was paid to the extent of ₹1.5 lakhs) was not accepted by the plaintiff, in its letters. It kept insisting that the work had been performed to its specifications, and that it was entitled to the entire balance amount of ₹9.68 lakhs (balance consideration with the tax component) from Bhasin Infotech. Undoubtedly, two of Bhasin Infotech's letters, written in June 2009, do allege that the plaintiff's work was of poor quality. However, neither in the pleadings nor in the documentary material has it been indicated as to what was the worth of the product supplied by the plaintiff. Likewise, Bhasin Infotech does not show or support its allegation of having got the job performed by some other concern, with any documentary evidence. These are to be taken and read together with the Architect's response to the plaintiff's legal notice, (given on 26.08.2009) which in unequivocal terms testifies to the quality of the plaintiff's work:

> *"3. Fusion Toonz continued to work with them and us and all work was shown and approved by us/them subsequently in May and June to meet requirements of Bhasin Infotech. Fusion Toonz finally submitted their final print duly approved by us in June 09 for payment to Bhasin Infotech.*
> *4. Since they have done a very good job, Bhasin Infotech must pay Fusion Toonz all the pending payment as they have spent a lot of time, resources and energy to complete this project.*
> *5. As such we are not responsible for the payment to anybody as we have acted for and behalf of M/s Bhasin Infotech and Infrastructure Pvt. Ltd only as their architects…"*

15. Most interestingly, Bhasin Infotech and the Architect have filed a joint written statement. There is no attempt in that written statement to dispute the contents of the above reply. The defendants also do not deny that the control over quality was subject to guidance and supervision

of the Architect. In view of these, and the absence of any documentary evidence, Bhasin Infotech's plea comes across as unspecific, and unfounded on any objective material. The admissions therefore, outweigh the pleadings. This situation would not alter even if the defendant counter claims; the Court would even then give effect to the unambiguous admissions, and refuse to exercise discretion only if there is some material warranting trial on the point in issue.

16. As regards the other aspect urged by Bhasin Infotech, that the suit is founded on a copyright claim, which cannot be converted into one for money, the Court notices that the requisite averments and documents seeking a money decree have been made in the averment. Though couched as a claim for damages, the pleadings do point to alleged default by Bhasin Infotech in the payment of money, for the work done.

17. In the light of the above discussion, the Court is of the opinion that a decree for the sum of ₹9,68,000/- ought to be drawn, based on admissions in the written statement. The suit is decreed to the above extent, in favour of the plaintiff, and against the first defendant, Bhasin Infotech. The applications are disposed of in the above terms.

CS (OS) 2079/2009

List before the Joint Registrar on 16.11.2010, for admission/denial of documents. List before the Court on 16.03.2011, for framing issues.

S. RAVINDRA BHAT
(JUDGE)

SEPTEMBER 24, 2010
/dh/