

Unreportable  
\*                                    IN THE HIGH COURT OF DELHI AT NEW DELHI  
  
+                                    RFA (OS) No. 45 of 2008  
  
%                                    Decided on : July 29, 2008

Associated Switchgears & Projects Pvt. Ltd.                                    . . . Appellant

through :                                    Mr. Shiv Khorana, Advocate

***VERSUS***

Emerson Network India (P) Ltd.                                    . . . Respondent

through :                                    Mr. Chetan Sharma, Sr. Adv.  
with Ms. Ramni Taneja, Advocate

**CORAM :-**

**THE HON'BLE MR. JUSTICE A.K. SIKRI  
THE HON'BLE MR. JUSTICE MANMOHAN SINGH**

1.     Whether Reporters of Local newspapers may be allowed to see the Judgment?
2.     To be referred to the Reporter or not?
3.     Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J.            (ORAL)**

1.     A conditional leave to defend was granted to the appellant herein in the suit filed by the respondent under Order XXXVII of the Code of Civil Procedure, 1908. Order to this effect was passed on 3.11.2003. The condition stipulated was that the appellant is to furnish a security in the sum of Rs.20,00,000/- to the Registrar of this Court within 15 days of the said order and thereafter written statement was to be filed within four weeks. The learned Single Judge has ultimately passed judgment and decree dated 27.3.2006 on the ground that the appellant did not furnish adequate security in the sum of Rs.20,00,000/-, as directed. The appellant filed review application,

which was also dismissed by the learned Single Judge vide order dated 25.1.2008, though decree was modified to some extent insofar as adjustment of amount to the tune of Rs.2,25,000/-, which was given by the appellant to the respondent on 31.1.2003, is concerned. Challenging these orders, the present appeal is preferred.

2. The main ground on the basis of which the impugned judgment and decree is challenged is that adequate security was furnished by the appellant and, therefore, the condition stipulated in the order dated 3.11.2003 was satisfied. Before we consider this aspect, it would be necessary to take stock of few material facts.
3. The respondent herein filed Suit No. 2598/2001 on the Original Side of this Court, under Order XXXVII of the CPC, for recovery of a sum of Rs.22,36,260.44p. with costs and interest. It was averred in the plaint that the appellant placed six purchase orders with the respondent for installation of UPS systems at the premises of M/s. Hyundai and Daewoo companies. The respondent is the successor-in-interest of M/s. Tata Liebert Ltd. The respondent has supplied those UPS systems and thereafter raised invoices. The appellant only made part payments, but failed to pay the balance in spite of repeated requests and demands. The principal amount payable, according to the respondent, was Rs.12,55,460.02p. Rest of the amount claimed was on account of overdue interest. As per the invoices, interest payable was 18% p.a. in case payment of the invoices is not made within 30 days of their presentation. The

appellant filed an application for leave to defend questioning the territorial jurisdiction of this Court as according to the appellant, the suit should have been filed in Ghaziabad courts (UP). The *locus* of the respondent to recover the amount in question was also challenged as the supplies were made by M/s. Tata Liebert Ltd.

4. In the order dated 3.11.2003, the Court observed that these were triable issues. On the other hand, it was also noted that insofar as the appellant is concerned, it had received full payment from M/s. Daewoo Motors with regard to the equipment supplied by the respondent. It was for this reason, while granting leave to defend the suit, the condition for furnishing a security in the sum of Rs.20,00,000/- was imposed upon the appellant.
5. The appellant herein did not furnish the security within 15 days, as directed, and only filed application seeking further time. Thereafter, the appellant furnished immovable property at Nainital as security. Without going into the details, it would be sufficient to point out that the security, as furnished, was not found adequate and ultimately on 6.2.2006, the Registrar General rejected the said security observing that it was highly inadequate to secure the amount of Rs.20,00,000/-. No doubt, the appellant has filed the valuation report in respect of the said property. The respondent had also filed the valuation report as per which the value of the property offered was Rs.14.40 lacs. Another objection of the respondent was that security was offered by one Shri Prakash Jain, who had not disclosed

his interest in the appellant company. After rejecting this security as offered by the appellant, the Registrar General posted the case before the Court for further orders on 24.2.2006.

6. The appellant herein challenged the order of the Registrar General by filing OA No. 3/2006. This OA, along with the main suit, was listed before the learned Single Judge on 23.2.2006. It seems that some arguments were addressed on the adequacy of the security and the orders passed by the learned Registrar General inasmuch as order dated 23.2.2006 records: *“At the request of Mr. Khorana, who wants to seek instructions in this matter with regard to providing additional security for an amount of Rs.5 lacs, list on 27.3.2006.”* No doubt, the learned Single Judge did not specifically remark that he was endorsing the view of the Registrar General. But the tenor of the aforesaid order clearly suggests that report of the Registrar General was accepted as the counsel for the appellant herein was asked to seek instructions for providing additional security for an amount of Rs.5 lacs which was obviously to cover up the shortfall as the property offered by the appellant herein was valued at Rs.14.5 lacs as per the valuation report submitted by the respondent. When the matter came up on 27.3.2006, counsel for the appellant herein made the statement that additional security had not been furnished. From this the learned Single Judge opined that no serious attempts were made by the appellant to furnish the security in terms of orders dated 3.11.2003 though more than three years had passed. Even on that date, instead of furnishing additional security, no satisfactory

explanation was coming forth from the counsel for the appellant herein and in these circumstances holding that the condition for grant of leave to defend had not been satisfied, the suit of the respondent herein was decreed. In the review application filed against this order, the appellant had additionally submitted that by allowing interest of 9% on Rs.22,36,260.44p., the Court had granted interest on interest and further that a sum of Rs.2,25,000/- paid by the appellant to the plaintiff on 31.1.2003 had not been adjusted. This review application was disposed of on 25.2.2008. The only modification which is done is to give adjustment of Rs.2,25,000/- thereby reducing this amount to Rs.22,36,260.44p.

7. In view the of the narration of events disclosed by us, we are in agreement with the findings arrived at by the learned Single Judge that the appellant could not furnish the security, as directed, while granting the conditional leave to defend. We do not find any force in the argument of learned counsel for the appellant that the order of the Registrar General was challenged by filing OA No. 3/2006, which had not been decided by the learned Single Judge before passing the order. Order sheet dated 24.2.2006 as well as 27.3.2006 (on which date the decree is passed) clearly record that these orders are not only in the suit but also in OA No. 3/2006. It is clear that the order of the Registrar General was accepted by the learned Single Judge though there is no specific stipulation to that effect in the order. However, this is a legitimate inference that can be drawn from the reading of order dated 23.2.2006, as pointed out above. Therefore,

we are of the opinion that the learned Single Judge has rightly passed the decree in the present case.

8. However, we are of the opinion that the interest @ 9% p.a. granted to the respondent herein from the date of decree on entire amount of Rs.22,36,260.44p. – Rs. 2,25,000/- would not be proper. The interest should have been awarded on principal amount alone, i.e. Rs.12,55,460.02p. Mr. Chetan Sharma, learned senior counsel appearing for the respondent, fairly concedes to this course of action. We may clarify that the amount of Rs.2,25,000/- paid by the appellant on 31.1.2003 is to be appropriated first towards interest and not towards the principle while calculating the interest.
9. Mr. Khorana also submitted that though in the invoices, rate of interest is stipulated at 18%, but the interest, at the rate it is calculated, comes to 21%. Mr. Chetan Sharma himself pointed out that interest chargeable as per the invoices is 18% and he has no objection if the pre-suit period interest is awarded at 18% on the principle amount.
10. Having regard to these facts, the appeal is partly allowed and the decree of the learned Single Judge is modified as under :-

“There shall be a decree of Rs.12,55,460.02p. The plaintiff shall also be entitled to interest @ 18% p.a. on all the six invoices, which shall be calculated 30 days after the dates mentioned in each invoice. The plaintiff shall also be entitled to *pendente lite* and future interest @ 9% p.a. on the principal amount of Rs.12,55,460.02p. The defendant shall be entitled

to adjust a sum of Rs.2,25,000/- give on 31.1.2003, which shall first be appropriated towards interest. The plaintiff shall also be entitled to proportionate costs.”

11. The appeal is disposed of in the aforesaid terms.

(A.K. SIKRI)  
JUDGE

(MANMOHAN SINGH)  
JUDGE

July 29, 2008  
nsk