

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

+ FAO (OS) No. 658/2009

% Reserved on: 4th August, 2010

Decided on: 6th September, 2010

Mr. Sunil Gupta,
Sole Proprietor of M/s Joy Export and also
Sole Proprietor/Karta of M/s J. K. International,

Having its office at
78, Shradhanand Marg,
Delhi-110 006 and also at 42/78,
Punjabi Bagh West,
New Delhi-110 026.

Through: Mr. Vinod Tyagi, Mr. Ashok
Rajagopal and Ms. Madhu Tyagi,
Advocates.

..... Appellant

versus

1. M/s Polar Industries Ltd.
through its Managing Director Mr. Anil Kumar
Agarwal and/ or its any Director/ Principal/
Authorized Officer

Having its Regd. Office situated at
113, Park Street, Poddar Point, Kolkata-700
016, West Bengal and having E-mail address
polar@pil.polarinc.com.

2. M/s Angelo Brothers Company (India) Ltd.
through its Director Mr. S.K. Yadav

Having its Regd. Office at
118-A, Arjun Nagar, Safdarjung Enclave, New
Delhi-110 016.
(Represented by Mr. Vijay Kumar Sehgal,
Advocate Ch. No. 558, Western Wing, Tis
Hazari, Delhi-110 054).

3. Mr. Anil Aggarwal,
Son of Late Sh. Sajjan Kumar Aggarwal,

Resident of A-2, FF, Maharani Bagh,
New Delhi.
(Defts. 1 & 2 represented by Ms. Meera
Mathur, Advocate, 192, Jagriti Enclave, Delhi-
110 092.

..... Respondents
Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. R.K. Modi, Advocate.

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. The present Appeal arises out of the order dated 10th November, 2009 in CS (OS) No. 2402/2008 directing the Plaintiff/Appellant herein to pay ₹13,03,944/- and subject to deposit of the said amount the decree to be drawn.

2. A brief narration of the relevant facts for the adjudication of the present Appeal are that the Appellant/Plaintiff brought a Suit under Order 37 CPC inter alia praying for a decree of ₹1,38,79,026/-. The Suit was valued for the amount claimed and the requisite court fee was paid thereon. However, during the pendency of the Suit Shri Anil Aggarwal, Chairman and Managing Director of the Respondent No.1/First

Defendant was impleaded as a party and it was stated that the parties have entered into a fresh agreement settling all their disputes.

3. Two Applications being I.A. Nos. 707/2009 and 7794/2009 requesting for a compromise to be recorded and a decree to be drawn thereon were moved. The learned Single Judge vide order dated 1st June, 2009 allowed the Applications in the following terms:

“1. The parties have entered into a compromise agreement dated 13th January, 2009 which has been filed along with IA 707/2009. The agreement is signed by both the parties. The agreement was not recorded earlier as the permission of AAFIR had not been received. The learned counsel for the plaintiff submits that the permission from AAIFR has now been received. Order of the AAIFR has been passed on 27th May, 2009 and, therefore, the compromise dated 13th January, 2009 be recorded.

2. In agreement dated 13th January, 2009, the defendant No.1 agreed to pay a sum of Rs.14.75 crores to the plaintiff along with future interest @14% per annum in the mode and manner mentioned therein. The learned counsel for the defendant submits that the payments and other obligations mentioned in Clause 1(i) to (iv) have already been complied with by the defendant. With respect to the schedule of payment of Rs. 4.5 crores mentioned in Clause 1(v), the first instalment has already been paid and with respect to the remaining payments, the instalments shall start from 1st July, 2009 onwards instead of 1st March, 2009. The learned counsel for the plaintiff agrees to the modification of the schedule of payment mentioned in Clause 1(v) to the aforesaid extent.

3. The agreement dated 13th January, 2009 is signed by all the parties. The application for recording of the compromise shall be supported by the affidavit of all the parties.

4. I am satisfied that the agreement is lawful. The agreement dated 13th January 2009 is, therefore, recorded and the suit is decreed in terms of the compromise. The agreement dated 13th January, 2009 shall form part of the decree. All parties shall remain bound by their respective obligations made under the said agreement.

5. All applications stand disposed of.

6. Copy of this order be given 'Dasti' to learned counsel for the parties under signature of the court master.

JUNE 1, 2009

(J.R. MIDHA)
VACATION JUDGE"

4. Thereafter, the Registry of this Court sought a clarification as to the payment of additional court fee of ₹1,03,3944/- since the decretal amount being ₹14.75 crores with interest was far more than the relief sought for, that is, a decree of ₹1,38,79,061/-. The learned Single Judge held that the Court had power to interfere with the arbitrary violation to avoid payment of proper court fee and that the provisions of Sections 7 and 11 of the Court Fees Act, 1870 (in short the 'Act') compelled the Plaintiff to deposit the entire court fee before execution.

5. It is contended by learned counsel for the Appellant that on a proper interpretation of Section 7 of the Act, read with Order 23 Rule 3 CPC there was no need for the Appellant to pay the court fee. In support of this, reliance is placed on *Phipson & Co. Ltd. vs. Gayco Private Ltd.*, AIR 1977 Delhi 88, *Lal Khosla vs. Randhir Khosla and another*, 76 (1998) DLT 953 and *Ravinder Kumar Rishi vs. Sushma*

Rishi, 102 (2003) DLT 219. It is contended that the Court after the disposal of the Suit had become *functus officio* and thus, could not have passed such a direction. It is urged that once the suit is disposed of, the preparation of the decree thereon is a ministerial act and cannot be interdicted by any direction.

6. The learned Single Judge felt itself compelled to pass the directions for payment of court fees of ₹13,03,944/- for two important reasons as stated in para 9 as under:

“9. There are two very important reasons, which seem to have escaped the notice of the Court, which have a crucial bearing on the question of payment of proper court fees. The first is that the provision compelling payment is Section 7 (of the Court Fees Act); it mandates that court fees “shall” be payable according to the calculation required under its provisions. The internal indications in the Act, by way of Section 11 are categorical about the nature of the obligation (to pay court fees); the court has no choice in the matter; even at the stage of execution, an insufficiently stamped decree cannot be proceeded with further, or not entertained. The second important aspect, in the case of compromise decrees is, that Order 23, Rule 3, in substantial particulars, was amended in 1976. The crucial amendment enables a court to direct a decree not only as regards matters and claims before it, but also in relation to other matters. Thus for example, if a person sues for Rs. 20 lakhs, and during the proceeding, is beneficiary of an overall settlement, which enables him to payment of 10 times that amount, the fact that such larger claims are not part of the suit, does not constrain the court from making a decree to effectuate the overall settlement. This provision did not exist earlier. It has been conceived in public interest, to avoid multifariousness, and promote overall resolution of disputes. However, by this, it is possible that the plaintiff’s original claim, upon which a much smaller amount is paid as court fee, can be enlarged, to entitle him to a decree for a greater amount,

which was not thought of by him, and for which court fees was not paid. Had the plaintiff, in such cases not received the benefit of the amended Order 23, he would have well been compelled to file a separate suit, to recover the larger amount, and naturally, have paid the court fees. The amendment procedurally enables parties to give effect to an overall settlement. This aspect did not engage the attention and notice of the Court when it delivered judgments, in the three cases, cited by the plaintiff.”

7. There is no denial to these important aspects of the matter. The Appellant/Plaintiff is bound to pay the court fees. However, the issue before us is, which is the appropriate Court to compel it to make the said payment, the Court which disposed of the suit and is now *functus officio* or the executing Court.

8. The issue as to whether after disposal of a Suit the Trial Court either suo motu or on an Application moved can pass effective directions which are not corrections of clerical or arithmetical mistakes in the judgments, decrees or orders or errors arising therein from any accidental slip or omission in terms of Section 152 CPC is no longer res integra. The Hon’ble Supreme Court in *Dwarka Das vs. State of Madhya Pradesh*, AIR 1999 SC 1031 held:

“6. Section 152, C.P.C. provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes

functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial Court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the Court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial Court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.”

9. Section 11 of the Court Fee Act, 1870 states as under: -

“11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed - In suits for *mesne* profits or for immovable property and *mesne* profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of *mesne* profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed."

Thus, even if the decree was drawn it could not have been executed without payment of additional court fee in view of Section 11 of the Act. Order 23 Rule 3 CPC and Section 11 of the Act furnish an exception to the rule that the Plaintiff is only entitled to the amount claimed by him in plaint.

10. This issue came up for adjudication before the Division Bench of this Court in *G.C. Kumar and others vs. Ashok Kumar and others*, AIR 2001 Delhi 338, wherein this Court held that once the judgment is delivered and signed there is no option left to the Court except to draw the decree in terms of the judgment. Drawing up of a decree cannot be postponed and while allowing the Appeal it was directed that the decree be drawn in terms of the judgment of the Court, however, the same will bear endorsement that the same shall not be executed till the difference of court fee is paid.

11. In the facts of the case we feel that the course adopted by the Division Bench in *G.C. Kumar* (Supra) is an appropriate course since on the disposal of the Suit, the preparation of the decree cannot be stayed and the Court which passed the decree having become functus officio is

incapacitated to give any effective determinative directions. The Act of the Registry making an endorsement on the decree that the same shall not be executed till the difference of court fee is paid is not a determination of the right but a ministerial act in conformity with Section 11 of the Act. We therefore, direct that the decree in terms of the judgment dated 1st June, 2009 be drawn by the Registry, however the same will bear the endorsement that the same shall not be executed till difference in court fees is paid.

12. The Appeal is disposed of in terms of these directions.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

SEPTEMBER 06, 2010
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