

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

+ FAO 9/2012

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Date of decision: October 10, 2012

M/s. ICON CONTROLS PVT LTD Appellant
Through Mr Parvinder Chauhan, Adv.

versus

M/s. ALSTOM PROJECTS INDIA LTD Respondent
Through Mr M.K. Begg, Adv.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this appeal a challenge has been made to the impugned order dated 7.12.2011 passed by the learned Addl. District Judge, Saket Courts, New Delhi wherein the recovery suit filed by the appellant has been returned being beyond the pecuniary jurisdiction of the said court.

2. A recovery suit was filed by the appellant/plaintiff before the Id. trial court wherein it was prayed that money decree in the sum of Rs.20 lacs along with pendent lite and future interest @ 24% per annum be passed in its favour. Upon the service of summons, the respondent/defendant had filed written

statement. Thereafter, the court listed the matter for arguments on its pecuniary jurisdiction. After hearing the arguments, the learned trial court was of the view that appellant/plaintiff had prayed for a money decree in the sum of Rs.20 lacs along with pendent lite and future interest @ 24% per annum, as such, value of subject matter of suit was above Rs.20 lacs. Ld.trial court further held that the appellant/plaintiff had not paid court fee on all the reliefs claimed by it, accordingly, the learned trial court vide impugned order dated 7.10.2011 returned the suit to the appellant/plaintiff for filing the same before this court. Aggrieved with the said order, present appeal is filed.

3. The learned counsel for the appellant has contended that the amount claimed in the suit is Rs.20 lacs and accordingly suit has been valued in respect of the said relief. It is contended that the relief of pendent lite and future interest does not carry any value on the date of filing of the suit as nothing had accrued on the said date under the said head and that the grant of interest has to be considered by the court in terms of provisions of Section 34 of the CPC. Learned counsel has prayed that the impugned order is illegal and is liable to be set aside.

4. The relevant provisions of the Court-fees Act, 1870 dealing with suit for recovery of money is reproduced as under:-

“7. Computation of fees payable in certain suits- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows-

for money- (i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)-according to the amount claimed;”

5. Under section 34 of CPC, award of interest is discretionary. The court may or may not award the interest. Learned counsel for appellant has referred to the judgment of Commercial and Industrial Bank Vs. Afzal Ali Khan and ors reported in AIR 1960 AP 319 wherein it is held that in a suit for recovery of money, the plaintiff need not pay court fee on the amount of future interest. The relevant portion of judgment is as under:-

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In a case where a plaintiff filed a suit for the recovery of money, he need not pay court fee on the amount of future interest for two obvious reasons: firstly, that at that stage he cannot compute with precision a sum due to him prospectively, and secondly: because the grant of such interest is wholly discretionary.”

6. Learned counsel for the appellant has relied upon **State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Ors: AIR 1964 sc 457** which is in the context of valuation for the purposes of court fees in an appeal. The Supreme Court has construed the expression ‘amount or value of the subject-matter in dispute’ in Art. 1 of Schedule 1 of the Bombay Court-fees Act, 1959 for purposes of determination of court-fee due on a memorandum of appeal.

Learned counsel for the appellant has submitted that the Constitutional Bench of the Supreme Court has held that pendent lite interest decreed not to be included in the subject matter in appeal for the purpose of computation of court fee as the dispute in said appeal was that part of decree which awarded principal amount and interest upto the date of institution of the suit.

Nothing contrary is pointed out by learned counsel appearing for the respondent/defendant.

In view of the above discussion, the impugned order dated 7.12.2011 is set aside. The subject matter of the suit filed is Rs. 20 lakhs and the same is within the pecuniary jurisdiction of the learned Addl. District Judge. Accordingly, parties shall appear there on 7th November, 2012 and the learned trial court shall proceed with the matter in accordance with law.

Appeal stands allowed accordingly.

Trial court record be sent back along with copy of this order.

VEENA BIRBAL, J

OCTOBER 10, 2012

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