

GAHC010170542021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2446/2023

M/S JATINGA TEA LTD.
HAVING ITS REGISTERED OFFICE AT 17 R.N. MUKHERJEE ROAD
KISHORE BHAVAN
KOLKATA. OWNER OF LARSHINGA TEA ESTATE
P.O. UDHARBOND
CACHAR
ASSAM AND JATINGA VALLEY TEA ESTATE
P.O. DAMCHERRA (N.F. RAILWAY)
CACHAR
ASSAM REP. BY ITS ATTORNEY AND MANAGER LARSHINGA ESTATE
P.O. UDHARBOND
CACHAR
ASSAM

VERSUS

PANNA LAL ROY
S/O- LATE PARESH CHANDRA ROY
R/O- UDHARBOND BAZAR
P.O. AND P.S. UDHARBOND
CACHAR
ASSAM

Advocate for : MR G N SAHEWALLA
Advocate for : MR. S D PURKAYASTHA appearing for PANNA LAL ROY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.10.2023

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Ms. S. Todi, learned counsel for the applicant and Mr. S.D. Purkayastha, learned counsel for the opposite party.

2. The applicant is the plaintiff in MS 23/2011, which was decreed for a sum of Rs.21,78,711.25 with interest @9% per annum from the date of institution of suit till realization.

3. The opposite party is the defendant in the said suit, who upon being aggrieved by the decree has preferred the connected appeal.

4. The appeal was admitted for hearing and this Court by order dated 14.12.2022 passed in I.A.(C) 1714/2022, stayed the execution by imposing a condition that the "*Stay order shall be subject to deposit of 50% of the decretal amount with the Registry of this Court. The opposite party/appellant/ defendant shall provide solvent security for 50% of the balance amount. The amount shall be deposited within 6(six) weeks from the date of this order*".

5. Accordingly, the opposite party has deposited a sum of Rs.11.00 lakh before the Registry of this Court and has also submitted a registered security bond against solvent security as required by the aforesaid order of this Court for a sum of Rs.5,44,677.82 being the 50% of the principal decretal sum.

6. By this application, which is filed under Section 151 CPC, the plaintiff, who is the respondent in the connected appeal has prayed for permitting the applicant to withdraw the amount of Rs.11.00 lakh lying deposited with the Registry of this Court, which was deposited on 20.06.2023.

7. The learned counsel for the opposite party has referred to the objection

filed in connection with I.A.(C) 1714/2022 and it is submitted that the deposit which has been made by the opposite party is only as a security and not as a part of decretal amount. Accordingly, he has objection to permit the applicant to withdraw the said deposited amount. It is submitted that if the appeal is allowed, then it may not be possible for the opposite party to recover the amount from the applicant. It is further submitted that even if the Court is inclined to allow the applicant to withdraw the amount, the same may be considered as withdrawal adjustable against principal.

8. The said contention is opposed by the learned senior counsel for the applicant.

9. The first point which is required to be determined by this Court is whether the amount which is lying before this Court can be permitted to be withdrawn by the applicant. In the said connection, the Court finds that under the provisions of Order XLI Rule 1(3) CPC, it is provided that where the appeal is against the decree for recovery of money, the appellant shall, within such time, as the appellate court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may deem fit. Having regard to the said provision, this Court has already issued a direction to the opposite party to deposit 50% of the decretal amount and to furnish 50% security in respect of the balance 50%.

10. On a query of this Court, the learned senior counsel for the applicant has submitted that if interest is computed on the decretal amount from the date of institution of the suit, on a rough estimate the interest alone would be more than Rs.20.00 lakh. Considering the quantum of the decree and the interest which might have accumulated thereon, the Court is of the considered opinion that subject to furnishing of bond, that may be acceptable by the Registry, by

the applicant to refund the sum of Rs.11.00 lakh to the Registry, in the event the appeal is decided against them, the applicant be permitted to withdraw the sum of Rs.11.00 lakh lying deposited before the Registry of this Court since 20.06.2023.

11. The second question that has come up for determination by the Court is as to whether the applicant-plaintiff/ decree holder can be permitted to appropriate the amount against the principal alone. In this regard, it would be appropriate to quote the provision of Section 60 of the Contract Act, 1872, which is as follows:

“60. Application of payment where debt to be discharged is not indicated- Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.”

12. It may also be referred to the decision of the Constitution Bench of the Supreme Court of India in the case of *Gurpreet Singh Vs. Union of India, (2006) 8 SCC 45* where it has been held that the payment made by the judgment debtor to decree holder has to be appropriate first towards interest and cost and then towards a principal amount. The said principle has been reiterated by the Supreme Court of India in the case of *Bharat Heavy Electrical Ltd. Vs. R.S. Avatar Singh, (2013) 1 SCC 243*. Therefore, in the considered opinion of this Court, as the manner of appropriation is not contained in the decree nor documented in transactions between the parties, it would be open to the applicant (i.e. the decree holder) to appropriate the payment first towards the interest and cost and then towards principal amount or in any other manner it is deemed fit.

13. At this stage, the learned senior counsel for the applicant has submitted that whether the appropriation can be made first towards interest be kept open. Accordingly, the said issue is kept open for a decision of this Court. Nonetheless, it would be permissible for the applicant to appropriate the withdrawal against interest, which would be subject to further order of this Court.

14. As both the questions for determination has been answered, this application stands allowed by permitting the applicant to withdraw the sum of Rs.11.00 lakh lying deposited with the Registry of this Court since 20.06.2023 which was being deposited by the opposite party pursuant to order dated 14.12.2022 passed in I.A.(C) 1714/2022, subject to submission of bond and its acceptance by the Registry.

15. Accordingly, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant