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

Date of Decision : 28th September, 2015

\+ **RFA(OS) 52/2015 & CM No. 9543/2015**

SIMBHAOLI SUGAR MILLS LIMITED ..... Appellant

Through: Mr. Pankaj Kumar, Advocate along with Mr.Surinder Kumar Tyagi, AR of the appellant.

versus

CHEMICAL SYSTEMS TECHNOLOGIES (INDIA) PVT LTD ..... Respondent

Through: Mr. Sanjiv Bahl, Mr.Udit Gupta, Advocates with Mr.Narinder Singh Rawat, AR of respondent.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

CM No. 21473/2015 in RFA(OS) 52/2015

1. The present appeal assails the judgment and decree dated 2nd March, 2015 as corrected by the order dated 20th March, 2015, whereby, the respondent's suit being CS(OS) No. 1480/2009 stood decreed in its favour for a sum of Rs.1,80,91,564 (Rupees One Crore Eighty Lacs Ninety One Thousand Five Hundred Sixty Four) with interest @ 9 % per annum from the date of filing of the suit till realization.

2. When the appeal first came to be listed on 22nd May,2015, while

issuing notice for 31st August, 2015, learned counsel for the parties had submitted that they might be given opportunity to explore the possibility of a negotiated settlement by recourse to mediation.

3. On the next date of hearing i.e. on 31st August, 2015, it was informed that despite several efforts before the Delhi High Court Mediation and Conciliation Centre, the mediation failed. It appears that the mediation process had opened the path of negotiation for the parties engaged proactively with each other. For the reason, on 31st August, 2015, an adjournment was jointly requested by the parties as there were now attempting to resolve their disputes mutually. Such a pro-active engagement appears to have resulted in settlement which has been placed before us by way of CM No. 21473/2015 duly filed by the parties under Order 23 Rule 3 of the CPC.

4. The terms of settlement were reduced to writing in the minutes of the parties' meeting held on 29th August, 2015 between the authorized representatives of the parties. These terms were also incorporated in a settlement/compromise deed dated 15th September, 2015, a photocopy thereof has been placed on record as Annexure A1 to this application.

5. So far as recording of the settlement is concerned, we find that the terms of settlement have been extracted in para 6 of the joint application filed before us. The application has been duly signed by Sh. Satinder Kumar Tyagi, the authorized representative of the appellant as well as by Mr.Narinder Singh Rawat, the authorized representative of the respondent.

These two persons have also sworn the affidavits in support of the application which are also enclosed therewith.

6. Learned counsel for the parties submitted that there is an error in recording the date of the orders in the application which have been permitted to be corrected in court and initialled by the parties.

7. Additionally, we find on record, a copy of the letter dated 16th September, 2015 whereby the details of the payment to be made by the appellant by way of six post dated cheques as detailed in para 10(b) of the application towards the balance sum of Rs. 90,08,475/- (Rupees Ninety Lacs Eight Thousand Four Hundred and Seventy Five) is given.

8. A perusal of the settlement would show that the parties have agreed to stand by the decree. However, the respondent herein has agreed to receive a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs) in full and final settlement of all the disputes between the parties as per settlement deed dated 15th September, 2015, if the appellant makes the payments strictly as per the schedule and manner set out in the settlement.

9. In Para 10 (a) of the application, it is being noted by the parties that pursuant to the orders passed in CS(OS) No. 1480/2009, the appellant had deposited a sum of Rs.50,00,000/- (Rupees Fifty lacs) with the Registrar General of this court and the same is being maintained in a Fixed Deposit Receipt along with interest accrued @ 9 % per annum thereon. The respondent shall receive Rs.59,91,525/- or the full amount of the Fixed

Deposit Receipt on its discharge as on today.

10. So far as the balance amount of Rs.90,08,475/-, after adjustment of Rs.59,91,525/- is concerned, the appellant has handed over six post dated cheques detailed in para 10 (b) (i) to (vi) of the application. An undertaking is given by the appellant that these cheques would be honoured on presentation.

11. Apart from these terms of payment, in para 11, we find that it has been agreed between the parties that in case, the appellant makes the payment in terms of para 10 of the application, the respondent has no right to execute the judgment and decree dated 20th March, 2015 passed in CS(OS) No. 1480/2009. However, in case any of the post dated cheques are dishonoured on presentation to the bank, the respondent would be entitled to execute the impugned judgment and decree in the full after adjusting the amounts received so far from the appellant from the date of dishonour.

12. The parties have also agreed to withdraw all the cases, civil as well as criminal, filed against each other in para 13 of the application. The parties have undertaken to cooperate with each other for the quashing of FIR No. 138/2010 and all the proceedings arising therefrom in para 14 of the application.

13. We accept the undertaking given by the parties in para 16 of the application to remain bound by the terms of the settlement.

14. Learned counsel for the parties had identified the signatures of their

respective clients and had also confirmed the correctness of the contents of the application.

15. The settlement is in writing and appears to be bonafide and entered into without coercion, undue pressure and influence. There is no legal impediment in accepting the prayer made in the application. We accordingly accept the prayer made in the application and dispose of the same in terms thereof.

16. In view of above, so far as the appeal is concerned, the same has to be dismissed. However, in view of settlement placed before us by way of CM No. 21473/2015, the execution of the impugned judgment and decree dated 20th March, 2015 shall stand postponed till after the encashment of the last post dated cheque dated 1st May, 2016 . It is however, made clear that in case any of the post dated cheques which are handed over to the respondent is dishonoured, the consequences stipulated in para 12 of the application would follow and the respondent would become entitled to execute the judgment and decree dated 20th March, 2015 passed in CS(OS) No. 1480/2009 after adjusting the amounts so received by the respondent till the date of dishounoured cheque. In case the payments are made by the appellant in terms of the settlement between the parties, the same shall tantamount to satisfaction of the full amount of the decree. Inasmuch as, the respondent has agreed to receive an amount lesser than the full amount of the decree in full and final satisfaction of its claims, however, subject to payment being made by the appellant on terms which have been recorded in the application, the challenge of the decree has to fail.

17. The prayer made by way of CM No. 21473/2015 is accepted. The parties shall remain bound by the terms of the settlement as agreed between them.

18. The Registry is directed to forthwith release the full amount of Rs.50,00,000/- (Rupees Fifty Lacs) along with all accruals thereon lying as Fixed Deposit Receipt with the Registrar General of this court in CS(OS) No. 1480/2009.

19. The appellant shall be entitled to benefit under Section 16 (a) of the Court Fee Act. The Registry shall issue the requisite certificate for the refund of half of all the court fees made.

20. CM No. 21473/2015 is allowed in the above terms.

21. In view of order passed in CM No. 21473/2015, the appeal has to be dismissed. In view thereof, CM No. 9543/2015 would stand disposed of.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

SEPTEMBER 28, 2015
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