

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

+ **EFA(OS) 21/2015**

% **Date of decision : 30th November, 2015**

MANGAT RAI Appellant

Through: Mr. Vinod Tyagi, Adv.

versus

M/S ESPERANTO MEDIA & ORS Respondent

Through: Mr. V.K. Kapur, Mr. Sanjeev
Sabharwal, Mr. K.K. Khurana and
Mr. A.K. Mehta, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J

1. The appellant assails the order dated 18th May, 2015 passed in Execution Petition No. 38/2015 by the learned Single Judge.
2. We have heard learned counsel for the parties. The facts giving rise to the present appeal are within a narrow compass. The plaintiff had filed a suit under the provisions of the Order XXXVII of the CPC. Initially, the defendant no. 2 did not enter appearance. The suit was consequently decreed in favour of the plaintiff and against all defendants on 12th November, 2013. Subsequently, this judgment was recalled.
3. During the pendency of the application under Order IX Rule 13 of the CPC of the CPC by the defendant nos. 1 and 2, an amount

of Rs.10 lakhs was paid to the plaintiff. In the proceedings in the suit, on 20th November, 2014, the defendants informed the court that another sum of Rs.8 lakhs would be paid to the plaintiff in equal monthly instalments “within six months in full and final settlement of all claims and dues” which is the subject matter of the suit.

4. As such, on 20th November, 2014, the court recorded the plaintiff’s acknowledgement of the receipt of Rs.10 lakhs. The defendants agreed to pay another sum of Rs.8 lakhs to the plaintiff within “six months” in six monthly instalments. In clause 2 and 3, the court specifically recorded as follows:-

“2) Defendants agree to pay another sum of Rs.8.00 lakhs to the plaintiff within six months from today in six monthly instalments.

3) In case Rs.8.00 lakhs are paid within the agreed time the decree would stand satisfied, however, in case of two consecutive defaults the plaintiff would be entitled to a decree of the suit amount with 8% interest pende lite and future.”

5. The thrust of the order therefore was that the agreed amount of Rs.8 lakhs was to be paid within the period of six months upon which the decree would stand satisfied. The defendants sought to pay this amount in instalments. In as much as the court was seeking to protect the payment of Rs.8 lakhs, it has been noted that in case of two consecutive defaults of instalments, the plaintiff would be entitled to a decree of the suit with 8% pendente lite and future interest.

6. Though the matter had been resolved in court, however, the learned Single Judge directed refund of the court fee in view of the

settlement between the parties.

7. It appears that the instalments were not paid as directed and the plaintiff filed the execution petition being Ex.Pet.No.38/2015 on 27th January, 2015.

8. It is noteworthy that the period of six months was coming to an end on 20th May, 2015 by which date the amount was to be paid. Before the expiry of the period, on 18th May, 2015, the defendants tendered the amount of Rs.8 lakhs by two bankers' cheques to learned counsel for the decree holder in court. It cannot be denied that this payment was within the period stipulated by the learned Single Judge on 20th November, 2014.

9. One important factor which deserves notice is that the amount was received by the appellants unconditionally on 18th May, 2015. As recorded in the order dated 20th November, 2014, this amount was in full and final settlement of all claims and disputes which were the subject matter of the suit. The amount was received on 18th May, 2015 with prejudice.

10. In view thereof, nothing further remained to be done. Despite the payment of the agreed amount, the learned Single Judge was of the view that there has been default in making payment of the monthly instalment, the defendants deserve to compensate the same by payment of costs of interest of Rs.25,000/-. This amount was also tendered to the appellant by way of a banker's draft dated 6th July, 2015. The amount was received by learned counsel for the appellant without prejudice.

11. The above narration would show that the amount of Rs.8 lakhs

directed to be paid was in full and final settlement of the appellant's claims by the order dated 20th November, 2014 to be paid within the period of six months. The amount was tendered in full and within this period. The appellant accepted the same without objection, obviously waiving any objection to the lumpsum tender, instead of tender by instalments.

12. The submission of learned counsel for the appellant that the order dated 18th May, 2015 tantamounted to re-opening of the decree is therefore completely misconceived especially having received the amount unconditionally without any reservation. Furthermore, the appellant has secured the certificate for recovery of the amount of the court fee on the plaint and is stated to be pursuing this recovery with the authorities.

In these facts, the order dated 18th May, 2015 in our view is not appealable and the present appeal is completely misconceived.

The same is dismissed with costs of Rs.30,000/- to be distributed between three defendants. The costs shall be paid within a period of two weeks from today.

GITA MITTAL, J

I.S.MEHTA, J

NOVEMBER 30, 2015

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