

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO. 155 OF 2016

Mr. Augustine Joseph. .. Applicant
Vs.
Heranba Industries Limited. .. Respondent

Mr. Jamshed Ansari, for the Applicant.
Mr. O.S. Kutty, for the Respondent.

***CORAM : N.M. Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

In the suit filed by Respondent following order was passed -

'1. Suit is decreed to the extent of principal sum of Rs. 8,52,834/- with proportionate cost which defendant shall pay to the plaintiff within one month from the date of this order.

2. Suit to the extent of sum of Rs. 3,63,372/- claimed by way of interest @ 18% p.a. till the date of institution and further interest so claimed, transferred to the list of commercial causes.

3. Defendant shall file written statement within 30 days from the date of this order.

4. Summons for Judgment no. 129 of 2013 stands disposed off accordingly.'

2. The learned counsel for the Respondent has taken a preliminary objection that the revision is not maintainable as what is challenged is a decree. The learned counsel for the Applicant submitted that the entire Summons for Judgment has not been disposed of and therefore what is challenged is not a decree. Submission cannot be accepted. Under Order XXXVII Rule 3(6)(b) of the Code of Civil Procedure, it is permissible for the Court to permit the defendant to defend whole or any part of the claim.

Rule 6(b) reads thus -

'if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith'.

Using this power the learned Judge has decreed the suit as far as principal sum and as far as the interest portion is concerned, is transferred to commercial cause, giving the Applicant leave to defend only for that part. As far as the claim regarding the principal sum, suit has been decreed. The learned counsel for the Respondent places on record the decree drawn pursuant to the impugned order. The definition of 'decree' under Section 2 of the Code defines 'decree' as formal expression of an adjudication as regards all or any

matters of controversy. Therefore, it is clear what is challenged in the decree, therefore Civil Revision Application is not maintainable, which is accordingly rejected.

(N.M.Jamdar, J.)