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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.122 OF 2016  
WITH  
CIVIL APPLICATION NO.158 OF 2016

|                                     |               |
|-------------------------------------|---------------|
| M/s.Nac Advertising India Pvt. Ltd. | ...Appellant  |
| V/s.                                |               |
| M/s.Zenith Outdoors Pvt. Ltd.       | ...Respondent |

Mr.Bhushan Deshmukh i/b Mr.Anand Talreja for the Appellant.

Mr.F. Dubash with Ms.Natasha Wadia i/b Hariani & Co. for the Respondent.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 9TH FEBRUARY, 2016.**

**P.C. :-**

1. By this appeal from order, the appellant (original defendant) has impugned part of the order dated 23<sup>rd</sup> December, 2015 thereby imposing a condition that the appellant shall deposit the decretal amount of Rs.41,64,699/- within four weeks from the date of the said order while setting aside the decree passed in favour of the original plaintiff.

2. Learned counsel appearing for the appellant submits that the appellant could not file any reply to the summons for judgment for the reasons beyond the control of the appellant and though the

learned trial Judge was satisfied that an opportunity should be granted to the appellant, the learned trial Judge has imposed very harsh condition of deposit of the entire decretal amount which would amount to passing a decree against the appellant once again though the notice of motion filed by the appellant came to be allowed.

3. Learned counsel appearing for the original plaintiff on the other hand submits that the learned trial Judge while granting conditional leave to the defendant to defend the suit on deposit of Rs.24,41,716/- before the learned trial Judge within six weeks by an order dated 7<sup>th</sup> January, 2015, the learned trial Judge had considered the matter on merits after considering the plaint and affidavit. He submits that admittedly the said order was neither stayed nor set aside. My attention is also invited to the Roznama of the learned trial Judge dated 20<sup>th</sup> February, 2015 to show that the defendant had applied for extension of time to comply with the said conditional order of deposit made by the learned trial Judge on 7<sup>th</sup> January, 2015. He submits that since the appellant did not deposit the amount as directed by the said order dated 7<sup>th</sup> January, 2015, the plaintiff applied for a decree before the learned trial Judge.

4. Since there was non-compliance on the part of the defendant to deposit the amount, the learned trial Judge passed a decree against the appellant. The appellant challenged the original

order dated 7<sup>th</sup> January, 2015 only after the decree came to be passed by the learned trial Judge. This Court accordingly disposed of the appeal filed by the appellant in this Court and granted an opportunity to make an appropriate application before the learned trial Judge. The appellant thereafter filed two notices of motion before the learned trial Judge *inter-alia* praying for setting aside the decree and the earlier order passed by the learned trial Judge.

5. It is submitted by learned counsel for the original plaintiff that the plaintiff has already applied for execution of the decree and the order is already passed by the learned trial Judge for freezing the bank account in the Bank of Baroda, Bandra (West) Branch. The appellant therefore filed a notice of motion for de-freezing the bank account of the appellant. The original plaintiff has also applied before the learned trial Judge for Garnishee Notice. The said application is pending.

6. It is submitted that though the order passed by the learned trial Judge on 7<sup>th</sup> January, 2015 passing a conditional order of deposit and thereafter a decree had attained finality, in the notice of motion filed by the appellant which was opposed by the original plaintiff, the learned trial Judge took a liberal view in the matter and directed the appellant to deposit the decretal amount.

7. This Court has also enquired with the learned counsel for

the appellant if his client is agreeable to deposit the amount as directed by the learned trial Judge, his client can be granted an opportunity to defend the suit by filing the written statement before the learned trial Judge, the appellant is not agreeable to this suggestion.

8. A perusal of the record clearly indicates that the learned trial Judge had disposed of the summons for judgment by passing an order of deposit and granting conditional leave to defend was after considering the merits of the matter. The appellant admittedly did not deposit the amount and thus the learned trial Judge passed a decree in view of the default committed by the appellant. The said decree has attained finality.

9. It is not in dispute that the plaintiff has already made an application for execution of the said decree and has obtained an order freezing the bank account of the appellant (original defendant). In my view, the learned trial Judge has taken into consideration all the relevant facts and the default committed by the appellant and has rightly imposed a condition of deposit of the decretal amount. A perusal of the record indicates that the appellant had applied for extension of time to comply with the order of deposit as directed in the order dated 7<sup>th</sup> January, 2015. It is thus clear that the appellant has accepted the validity of the said order dated 7<sup>th</sup> January, 2015 but

did not deposit the amount. The learned trial Judge was, in my view, right in passing the impugned order of deposit while setting aside the decree.

10. The said order of setting aside the decree on deposit of the amount is not impugned by the original defendant and thus this Court need not interfere with that part of the said order.

11. The appeal from order is devoid of merits and is accordingly dismissed.

12. In view of dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

**(R.D. DHANUKA, J.)**