

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (LODG.) NO. 1753 OF 2016
WITH
SUMMONS FOR JUDGMENT NO. 61 OF 2015
IN
SUMMARY SUIT NO. 596 OF 2015**

M/s. Orion Steel Corporation SUNARC .. Applicant

In the matter between :

M/s. Nimit Steel & Alloys Pvt. Ltd. .. Plaintiff

Vs.

M/s. Orion Steel Corporation SUNARC .. Defendant

Mr.Advait M. Sethna a/w. Ms. R. Thakker i/b Shri D.P. Singh for applicant/defendant.

Mr.Girish B. Kedia a/w. Mr.M.G. Agre for plaintiff.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST JULY, 2016

P.C.

1 This notice of motion is primarily to vary/modify/alter the order dated 23rd February 2016 passed by this Court. The order dated 23rd February 2016 was passed taking on record the consent terms signed by the parties and the advocates appearing for the plaintiff and the defendant sought decree in terms of the consent terms. There were statements and undertakings contained in the consent terms, which were accepted. Paragraph 2 of the order dated 23rd February 2016 provides “*there will be decree in terms of*

the consent terms”. ‘*Refund of Court fees*’ was also ordered.

2 As per the consent terms, the claim in the suit which was for Rs.1,15,40,519/- together with interest @ 18% per annum on Rs.1,01,67,859/-, was settled at Rs.1,01,67,859/-. The plaintiff agreed to forego interest in its entirety though this principal amount was due payable on or about 25th September 2014. The counsel for the defendant states that in view of the consent terms, the defendant had also waived all interest, costs, charges and expenses. As per the consent terms, the defendant gave 19 post dated cheques. Only 3 cheques have been honoured and the time to pay the 4th cheque is on 23rd July 2016.

3 At this point of time, the defendant has taken out the present notice of motion. According to the counsel for the applicant, the reason why they are seeking for modification is mentioned in paragraphs 11, 12 and 13 of the affidavit in support. The counsel submits that (a) they were expecting infusion of funds into the defendant which has not happened; (b) the person, who signed the consent terms, was under pressure perhaps not properly comprehending the implications, legal and/or otherwise of signing such a document; and (c) the consent terms was signed to avoid unnecessary litigation and further costs.

4 The counsel for the plaintiff Shri Kedia submits that all these grounds, which have been taken, are all prior to filing the consent terms. He also opposes any modification to the consent terms. Shri Kedia submits that for months together the parties were negotiating and finally his clients agreed to waive all interests and costs and also agreed to 19 installments whereby the payments were to be made from March 2016 to February 2017. The counsel submits that this is nothing but an attempt to avoid honouring the consent terms.

5 At the outset, it should be noted that the suit has been decreed in terms of consent terms. The consent terms also provides that the defendant will pay the amounts in 19 installments. It also provides that if there is a default of any installment and/or dishonour of cheque a grace period of 15 days was to be given to the defendant to make good of the default and to make payment of the said amount, failing which there shall be decree in favour of the plaintiff.

6 The suit having been decreed in terms of the consent terms, in my view, there is no provision in law whereby I can modify the decree. The counsel for the applicant Shri Sethna submits that this Court should exercise its power under Section 151 of the Code of Civil Procedure, 1908 (CPC). In

my view, the powers under Section 151 of the CPC is not to be used in such situation. Section 151 is only to be exercised where the situation so warrants for the ends of justice or to prevent abuse of the process of the Court. In my view, this application taken out by the defendant, itself, is an abuse of the process of the Court. The defendant having once admitted the liability, having agreed to settle the matter and having given undertaking to the Court that they will honour the settlement, the suit also has been decreed by consent as per the order dated 23rd February 2016.

7 In the circumstances, the notice of motion stands dismissed.

The defendant also to pay Rs.10,000/- as costs to the plaintiff within one week from today.

(K.R. SHRIRAM, J.)