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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.281 OF 2017

WITH

CIVIL APPLICATION NO.1213 OF 2013

M/s. Amber Processors

..Appellant.

V/s.

M/s. Sunita Chemicals

..Respondent.

Mr.D.P.Barretto for the appellant.

Mr.Rajeshchandra M.Kanojia for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 4, 2017

PC.:-

Heard Mr.Barretto, learned counsel for the appellant / original defendant and Mr.Rajeshchandra Kanojiya for respondent.

2. The appellant / original defendant suffered a money decree vide judgment and order dated January 21, 2010 passed by the Civil Judge, J.D. Ulhasnagar in Summary Suit No.3/2007 whereby the present appellant was directed to pay an amount of Rs.37,173/- along with interest thereon at the rate of 24% p.a. with effect from the date of filing the suit i.e. from March 9, 2007 till realization, which was the

date of signing the decree. The appeal preferred by the appellant being Civil Appeal No.115/2010 came to be dismissed by the learned District Judge, Kalyan vide judgment and order dated October 8, 2011. As such, the Second Appeal.

3. Learned counsel Mr.Baretto invited my attention of this Court to the claim allowed by the learned trial Court and tried to impress upon this Court to frame a questions of law on the following two grounds :-

- (a) Whether the Courts below have committed an error in decreeing the claim of the respondent by awarding interest at 24% p.a. on the principal amount plus the amount of interest added therein which formed the principal for the purposes of the Act ?
- (b) Whether the Courts below have committed error in discarding the evidence of the witness of the appellant-defendant ?

4. With the assistance of learned counsel for the respective parties, I have perused the impugned judgment.

5. It is required to be noted that the principal amount in the

present case is Rs.23,829/- and after notice was issued to the appellant / defendant, after 24% interest was raised on the principal amount, the total claim was made.

6. The trial Court appreciated the said aspect of the matter, considered the original principal amount plus the amount of interest added therein on the date of filing of the suit and proceeded to award the money decree in favour of the respondent.

7. If the said submissions of the appellant are examined in the backdrop of the provisions of section 34 of the Code of Civil Procedure, it is required to be noted that the transaction entered into between the parties is commercial one and the terms of the said transaction are to be borne out of an invoice which was duly proved by respondent / plaintiff. That being so, the claim as is ordered by the learned Court below awarding the interest at the rate of 24% which was reflected in the invoice in terms of the contract cannot be faulted with and the basis thereof could be noticed from the provisions of section 34 of the Civil Procedure Code.

8. So far as the next contention of the learned counsel for the appellant is concerned, the evidence of the witness of appellant was

discarded by both the Courts below on the ground that the said witness has appeared on behalf of the appellant, a registered company, without there being no resolution or authorization to that effect. Just because the witness of the appellant was an employee, does not *ipso facto* confer any legal right in favour of such witness who deposed on behalf of the appellant company. The mode and manner prescribed under the provisions of the Evidence Act to appreciate the evidence of an individual who represented a registered company, is already recognized under the law.

9. In the wake of the above even such submissions of the appellant needs to be rejected.

10. As a consequences of the above, the appeal filed by the appellant against concurrent findings lacks merits and stands dismissed.

11. It will not be out of place to observe here that pursuant to the order of this Court, the appellant has deposited the entire decretal amount before the learned trial Court with interest. It is brought to our notice that that when the First Appeal was filed at that time the appellant deposited the interest whereas the principal was deposited when leave to defend was granted in favour of the appellant in a

summary suit.

12. That being so, the Court below when permitting the respondent / plaintiff to withdraw the amount, shall take into account the amount withdrawn by the respondent / plaintiff and shall permit the respondent / plaintiff to withdraw the balance amount.

13. The respondent is at liberty to take out appropriate proceedings for withdrawal to the amount in the backdrop of the above referred observations.

14. The trial Court with whom the amount is deposited shall deal with such application in the light of the observations made hereinabove.

15. In view of the disposal of the appeal, the civil application is also dismissed.

(NITIN W.SAMBRE, J.)