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

+ **FAO(OS) 245/2016 & CM No.29605/2016**

HINDALCO INDUSTRIES LIMITED Appellant

Through Mr Vaibhav Joshi, Adv.

versus

MIDI EXTRUSIONS LIMITED Respondent

Through Mr Alok Krishna Agarwal, Adv. with Mr
Mayank Bushani, Adv.

+ **FAO(OS) 246/2016 & CM No.29615/2016**

HINDALCO INDUSTRIES LTD Appellant

Through Mr Vaibhav Joshi, Adv.

versus

WHITE METALS INDUSTRIES PVT LTD Respondent

Through Mr Alok Krishna Agarwal, Adv. with Mr
Mayank Bushani, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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24.01.2017

These appeals are directed against the two orders dated 02.05.2016, one each in the two suits filed by the appellant. The orders dated 02.05.2016 were passed on review applications styled as recall applications. The appellant's said applications have been rejected by the impugned orders.

Apart from the question as to whether an appeal can, at all, be maintainable against an order in review, the appellant is not entitled to any relief. The plea of the appellant is that it should be allowed to lead evidence of the authorised representative in both the suits. But from the order sheets which have been placed

before us by the learned counsel for the respondents, it is evident that the conduct of the appellant has been of complete non-cooperation to say the least. Despite numerous opportunities having been given to the appellant in both the suits, it has refrained for whatever reason from taking any steps in furtherance of the suit.

The point in issue in the present appeal is with regard to the leading of evidence of the authorised representative of the plaintiff. On 29.05.2012, an order was passed clearly stating the following:

“Since no steps have been taken for examination of any other witness, the right of the plaintiff to examine any other witness except AR for the plaintiff stands closed.

The affidavit of AR for the plaintiff be filed within eight weeks from today, failing which the opportunity to examine the AR would also stand closed without any further orders.

Adjournment is further subject to cost of Rs.10,000/-, to be paid to the learned counsel for the defendant.”

The appellant did not file the affidavit of the Authorised Representative (AR) within the period of eight weeks stipulated in the order dated 29.05.2012. As a result, the opportunity to examine the authorised representative stood closed at the end of said period of eight weeks, without the necessity of any further orders.

We may also point out that the orders dated 29.05.2012 in each of the suits have never been made the subject matter of appeals. Those orders have attained finality. A year later, sometime in July 2013, a request for mediation was made. On 27.08.2014 when the matter was taken up, it was specifically recorded by the learned single Judge who was hearing the matter that the evidence of the plaintiff had been closed and a direction was given for listing the matter before the Joint Registrar for fixing a date for evidence of the defendant on 24.11.2014.

This is the order dated 27.08.2014 which was sought to be “recalled” by

way of two separate applications being IA No.5382/2016 in CS(OS) 2058/2006 and IA No.5380/2016 in CS(OS) 2059/2006. Both these applications were rejected by identical impugned orders dated 02.05.2016. We may also note that in the meanwhile, in the suits before the learned single Judge, on 27.07.2016, the following order was passed:

- “1. The learned counsel for the plaintiff and the counsel for the defendant in both the suits state that the trial in both the suits is complete and final arguments have to be heard.
2. List together in the category of '*Finals*' as per turn.”

The above narration of facts makes it clear that the evidence of the plaintiff stood closed and the only exception that was granted to the plaintiff/appellant was for recording the evidence of the authorised representative that was also conditional, as indicated in the order dated 29.05.2012, on the affidavit being filed within eight weeks of 29.05.2012. The affidavit was not filed and in terms of the order dated 29.05.2012, that right also stood closed. The order dated 27.08.2014 merely records the state of affairs as they existed on that date that the evidence of the plaintiff has been closed. It is clear that the evidence of the plaintiff stood closed as the plaintiff did not satisfy the condition precedent which was laid down in the order dated 29.05.2012 and not by virtue of the order dated 27.08.2014. The order of 27.08.2014 merely records the fact that the evidence of the plaintiff had been closed. There is no challenge to the order dated 29.05.2012. That has become final. The attempt by the plaintiff seeking recall of the order dated 28.07.2014 two years later by moving applications in May 2016 is not only belated but would, in any event, be futile because of the subsistence of the order dated 29.05.2012 which has attained finality.

To put a lid on the appellant/plaintiff's case, the order dated 27.07.2016 clearly indicates that the plaintiff/appellant was also of the view that the trial in both the suits was complete and final arguments were to be heard.

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In these circumstances, no case has been made out by the appellant for interfering with the impugned orders.

Consequently, the appeals are dismissed.


BADAR DURREZ AHMED, J


ASHUTOSH KUMAR, J

JANUARY 24, 2017/ab