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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4372 OF 2018

Thatte Associates Pvt. Ltd. & Ors.	...Petitioners
V/s.	
Indian Bank	...Respondent

Mr.A.M. Kulkarni with Mr.Gaurav Sharma for the Petitioners.

Mr.Dipak Rane I/b Mr.Jitendra Patil for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 18TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 24th November, 2017 passed by the learned Second Joint Civil Judge, Senior Division, Sangli below Exhibit – 88 in Special Darkhast No.82 of 2007 directing the petitioners to pay a sum of Rs.7,71,414/- to the judgment debtor within two months from the date of the said order.

2. Mr.Kulkarni, learned counsel appearing for the petitioners invited my attention to the decree dated 4th January, 2007 passed by the learned Second Joint Civil Judge, Senior Division, Sangli and more particularly paragraphs 2 and 4 thereof by which the learned Trial Judge directed both the parties to pay certain amount to each other from the date of the suit till realization of the entire amount.

Learned counsel also invited my attention to paragraphs 25 to 27 of the impugned order dated 24th November, 2017 and would submit that the Executing Court has not considered the payment of interest upto the date of realization of the entire amount and has considered the period only upto the date of passing of the decree.

3. In my view, the calculations made by the Executing Court are *ex-facie* perverse and not in compliance with the order dated 4th January, 2007. The order dated 4th January, 2007 clearly indicates that both the parties were entitled to receive interest at the rate of 10% p.a. with yearly rests from the date of the suit till realization of the entire amount. However, the Executing Court has computed interest upto the date of the decree. The impugned order passed by the Executing Court dated 24th November, 2017 is accordingly quashed and set aside. The Application (Exhibit – 88) filed by the petitioner is restored to file. The Executing Court shall pass a fresh order and shall comply with the directions issued by the learned Trial Judge on 4th January, 2007 and more particularly in paragraphs 2, 4 and 5 and also in line with the directions issued by this Court in this order within four weeks from the date of communication of this order.

4. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

5. If any other issues are raised in the said application below

Exhibit – 88, the Executing Court shall consider those objections also on its own merit.

6. All the parties as well as the Executing Court to act on the authenticated copy of this order.

Vasant Anandrao
Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.09.25 15:21:26 +0530

(R.D. DHANUKA, J.)