

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3182 OF 2017
IN
FIRST APPEAL NO.417 OF 2015**

Mr. Dhanesh B. Jain ..Applicant/Orig. Respondent
No.1

In the matter between
Allcargo Logistics Ltd.

..Appellant

Mr. Dhanesh B. Jain & Ors. ...Respondent

Mr. N. J. Ratnani i/b Mr. Raval Shah for the Applicant .
Mr.Rajesh Shah a/w Mr. Nirav Barot i/b Maneksha & Sethna for the
Respondent.

CORAM : V. M. DESHPANDE, J.

DATE : 16th JULY, 2018

P.C.:

. Heard Mr. Ratnani, the learned counsel for the applicant who has taken out this application for vacating stay and also Mr.Rajesh Shah, the learned counsel for non applicant No.1, the judgment debtor and the appellant in the First Appeal No.417/2015. The present application is moved by the original decree-holder for vacation of stay granted by this Court on 2/9/2015 in Civil Application No.1665/2015 in First Appeal No.417/2015

2. After hearing the learned counsel for the parties, the following are the undisputed facts:

- i) The present applicant is the original decree-holder;
- ii) The present non-applicant No.1 is the judgment-debtor.

iii. The learned Judge of the Court below in S.C. Suit No.7175/1997 has passed the decree in favour of the present applicant directing the judgment debtor to pay the amount of US \$ 84,353.31 along with 24 % interest per annum from the date of filing of the suit till final realization of the amount.

iv. Against the said First Appeal No.417/2015 along with Civil Application No.1665/2015 for stay is carried before this Court by the judgment debtor.

v. On 2/9/2015 it was agreed between the parties that US \$ 84,353.31 will be converted into Indian rupees 52,60,272/-. On the same day stay was granted in favour of the judgment debtor on condition that he shall deposit 40% of the decreetal amount in the Trial Court and give bank guarantee for the remaining 60% of the decreetal amount to the satisfaction of the Registrar of the Trial Court within 8 weeks.

vi. On 16/9/2015 an application for speaking to minutes of the order dated 2/9/2015 was carried before this Court and on 16/9/2015 this Court ordered that instead of 40% of the decreetal amount it should be 40% of the principal amount and instead of 60% of the decreetal amount it shall be 60% of the principal amount.

vii. This order was questioned before the Hon'ble Apex Court by the decree-holder by filing SLP No.29262/2015. The Hon'ble Apex Court set aside the order

dated 16/9/2015 passed by this Court.

viii. On 21/11/2016, the Hon'ble Apex Court clarified its order dated 9/9/2016 by which the Hon'ble Apex Court clarified that the decretal amount shall be calculated as on the date when the High Court passed the order.

ix. As of today the Judgment debtor has deposited 40% of the decretal amount before the Court below as directed and also has given bank guarantee of remaining 60% of the decretal amount.

3. The dispute between the parties is about the calculation of interest till what date.

4. According to Mr.Ratnani, the learned counsel for the applicant/original decree-holder states that the interest will have to be calculated not till 2/9/2015 but has to be calculated on 40% of the amount when actually deposited.

5. Mr.Shah, the learned counsel for the Judgment debtor submits that the order passed by this Court as well as Hon'ble Apex Court are very clear and therefore the interest will have to be calculated only till 2/9/2015 and the said is already deposited.

6. The Judgment is questioned before this Court which is passed by the learned Trial Court. Appeal is already admitted by this Court. As per the decree which is impugned before this Court the decree was for US \$ 84,353.31 along with interest @ 24% p.a. The decree is dated 18/10/2014.

7. Both the parties on 2/9/2015 agreed the rate of conversion and US \$ 84,353.31 were converted to Indian Rupees 52,60,272/-. Therefore from the date of decree till 2/9/2015 the interest @ 24% p.a. was to be calculated on this amount.

8. No doubt, true the decree states that the decree-holder is entitled to claim principal amount along with interest till realization of the amount. However, we cannot forget one fact that the said judgment and order is questioned before this Court. Not only that this Court has directed stay in favour of the applicant. In that view of the matter, I am of the view that interest will have to be calculated from the date of filing of the suit till 2/9/2015 when the judgment-debtor's application for staying the judgment is considered. When admittedly till that particular time the decree amount along with rate of interest is deposited, in my view the present application is devoid of any substance. Hence, application is rejected.

9. Mr. Ratnani at this stage submits that as per the order passed by Hon'ble Apex Court dated 9/9/2016 liberty is granted to the decree-holder for early hearing of the appeal. In view of this liberty, another prayer in application is for expeditious hearing.

10. Looking to the pendency of appeals for admission before this Court, in my view presently said request cannot be granted. However, he is at liberty to renew the prayer after winter vacation. Civil Application No.3182/2017 is accordingly disposed of.

(V. M. DESHPANDE, J)