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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 450/2016

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RFA 411/2016

SOLAN FOOD PRODUCTS (P) LTD

..... Appellant

Through: None.

versus

BREWERIES ENGINEERING PVT LTD & ANR..... Respondents

Through: Mr. Sudhir Kumar Sharma and Mr.
Aakash Varma, Advocates for R-1.
(M: 9811232930)
Ms. Jaya Tomar, Advocate for R-2.
(M: 9810522962)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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04.04.2018

RFA450/2016 is connected with RFA 411/2016. The file of RFA 411/2016 was called with RFA 450/2016 vide the last order. These two appeals arise out of the same impugned judgment dated 24th February, 2016 by which the suit for recovery filed by the Respondent/Plaintiff was decreed in the following terms:

*“(30) In view of my findings on the various issues, I hereby hold that the plaintiff is entitled to the recovery of **Rs.6,96,770/-** from the defendant no. 1 along with **interest @ 10% per annum** from the date of filing of the suit till the date of its realization.*

(31) In so far as the defendant no.2 is concerned, the plaintiff has not been able to prove and establish the liability of the defendant no.2 State Bank of India to pay any amount to the plaintiff and hence I hold that the plaintiff is not entitled to recover any amount from the defendant no.2 State

Bank of India.

(32) In so far as the Counter Claim filed by the defendant no.1 is concerned, the same is hereby Dismissed.”

RFA 411/2016 impugns the decree insofar as the suit for recovery is concerned. RFA450/2016 relates to the dismissal of the counter claim. Counsel for the Respondent No.1 points out that the counter claim filed by the Appellant was dismissed in default on 24th February, 2016 in the Trial Court and was never restored. Under these circumstances it is his submission that the appeal itself is not maintainable as the counter claim was not in existence.

In RFA 411/2016, initially an interim order was granted staying the execution of the decree on 18th July, 2016 subject to deposit of the entire decretal amount along with the interest thereon. The Appellant did not make the deposit and on 14th July, 2017, the stay was also lifted.

On the last date, counsel for the Appellant had put in appearance and the delay in filing of the appeal had been condoned. On the said date itself, file of RFA 411/2016 was requisitioned to be put up along with RFA 450/2016.

None appears for the Appellant today in the first call. Matter was passed over. Even on the second call, none appears for the Appellant. Under these circumstances, both the appeals are dismissed in default.

PRATHIBA M. SINGH, J

APRIL 04, 2018

Rahul