

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 849 OF 2017**

M/s. India Tin Industries Pvt. Ltd. ...Appellant
Versus
M/s. Modi Metal ...Respondent

Mr. Ramgopal Tripathi, for the Appellant.
Mr. Jay Yadav, a/w Hetal Vakil, i/b J. R. Vakil and Associates,
for the Respondent.

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**CORAM: N. J. JAMADAR, J.
DATED : 20th DECEMBER, 2021**

PC:-

1. Heard the learned Counsels for the parties,
2. At the outset, the learned Counsel for the appellant prays for setting aside the order dated 6th August, 2019, whereby the appeal came to be dismissed for non-compliance.
3. The learned Counsel for the respondent submits that he has no objection to restore the appeal as the parties have, in the intervening period, resolved the dispute.
4. In view of the aforesaid statement, order dated 6th August, 2019 stands set aside.
5. The appeal stands restored to file.
6. The learned Counsels for the appellant – defendant and

respondent – plaintiff submit that the parties have amicably resolved the dispute and executed Consent Terms.

7. The learned Counsels have tendered the Consent Terms. The Consent Terms are signed by the Director of the appellant company and the partner of the respondent. The Consent Terms are also signed by the Counsels for the respective parties. The learned Counsel for the appellant submits that an amount of Rs.1,45,000/- has already been paid to the respondent – original plaintiff, in accordance with the Consent Terms

8. In view of the aforesaid submissions, the Consent Terms are taken on record and marked “X”.

9. Paragraphs 1 to 4 of the Consent Terms (“X”) read as under:

“1. By consent, the Decree dated 9th January, 2017 passed in Suit No.8401 of 1995 (H.C. Sum. Suit No.1118 of 1995) filed in the Bombay City Civil Court, Bombay, is fully marked and satisfied on payment of Rs.7,58,000/- by the appellant – the original defendant to the respondent – original plaintiff as under:

(i) Out of Rs.7,58,000/-, the appellant shall pay the sum of Rs.1,45,000/- by Demand Draft payable to the Respondent on signing of this consent terms.

(ii) The appellant has deposited the sum of Rs.5,00,000/- in the Suit No.84/01 of 1995 in the Bombay City Civil court as per order dated 27th September, 2018 of the Hon’ble High Court passed in Civil Application No.610 of 2018 in F.A.No.849 of 2017 in the Hon’ble High Court, Bombay. The respondent – original plaintiff is entitled to withdraw the sum of Rs.5,00,000/- as deposited with interest accrued thereon forthwith for which the appellant has no objections for withdrawing the said deposit amount with interest accrued thereon.

2. The appellant herein – the defendant has no objections for withdrawing of the deposited money with interest accrued thereon by the Respondent herein in the said suit.

3. The Registrar, Bombay City Civil Court, Bombay, be ordered and directed to encash the said fixed deposit with interest accrued thereon in the Suit No.8401 of 1995 in the Bombay City Civil Court, Bombay, and shall pay the deposited money with interest accrued thereon as mentioned in clause No.1(ii) hereinabove to the respondent within seven days of the receipt of this consent terms.

4. The respondent has filed the Execution Application/Case No.983 of 2018 in the Court of the City Civil Judge at Bengaluru City, respect of the said Decree against the appellant and the respondent shall unconditionally withdraw the said execution application / case within seven days from the date of signing of this consent terms.”

10. It appears that the parties have arrived at a comprehensive settlement.

11. Thus, the appeal stands allowed in terms of the Consent Terms (“X”).

12. The impugned decree stands modified in accordance with the Consent Terms (“X”).

13. The parties shall act in conformity with the undertakings in the Consent Terms (“X”).

14. The appellant is entitled to refund of Court fees, in accordance with Rules.

15. All concerned shall act in conformity with the Decree in accordance with the Consent Terms (“X”).

[N. J. JAMADAR, J.]