

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 900 / 2019

Maxim Edward Mathias

... Appellant

Versus

Vinodchanvinodchadra Prajivandas Mehta

... Respondent

Mr. Ramprakash R. Pandey, Advocate for Appellant.

CORAM : SANDEEP K. SHINDE, J.
DATE : 22nd MARCH, 2022.

P.C.

1. Appellant was Defendant in Summary Suit No. 2999/2012. The suit was decreed exparte on 19th July, 2014. On an application moved by the Defendant, the trial Court vide order dated 3rd March, 2016 directed the Defendant to deposit Rs.5,17,506/- within four weeks. Subject to deposit, the Defendant was permitted to file written statement. This order is under challenge.

2. Mr. Pandey, argued that Appellant was prosecuted

simultaneously under Section 138 of the Negotiable Instruments Act for enforcing alleged suit dues. Wherein, Appellant was convicted and sentenced to pay the compensation Rs.5,00,000/- with interest at the rate of 10% p.a. In appeal against conviction, Appellant has deposited Rs. 1,00,000/-. It is argued by learned Counsel that besides Rs. 1,00,000/-, Appellant had also paid Rs. 3,19,130/- to the Plaintiff in installment, in-part satisfaction of suit claim. However, the learned trial Court did not adjusted Rs. 3,19,130/- (Rs. 1,00,000/- deposited in appeal against conviction + Rs. 2,19,130/-) while ordering to deposit Rs. 5,17,506/-. Submission is that the not granting adjustment of Rs. 3,19,130/- against suit claim, is a mistake apparent on face of record and needs to put right. Insofar as payment of Rs. 3,19,130/- is concerned, the learned Magistrate has recorded the finding that the said amount was paid by the Plaintiff in installments to the Defendant towards interest accrued on the principal amount. Additionally, at any rate, interest paid and amount of Rs. 1,00,000/- deposited in appeal (pending) against the conviction under Section 138, could not have been adjusted, as sought by the Appellant against suit dues at this stage. Reason,

being suit to recover the debt and prosecution under Section 138 of N.I. Act, are distinct proceedings and Appellant yet to attend finality. However, in case parties compromise the claim and arrive at lawful agreement, resulting in compounding the offence under Section 138 of N.I. Act, Appellant may seek compromise of suit in terms of order XXIII, Rule-3 of C.P.C. For all that reasons, I do not see any reason to interfere with the impugned order. Appeal is dismissed.

(SANDEEP K. SHINDE, J.)

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