

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO. 1061 OF 2022
IN
SECOND APPEAL NO. 539 OF 2019

M/s. International Combustion (India) Ltd., Nagpur thr. Vice President, Shri Swapan Kumar Goswami

...VERSUS...

Stellar Industries, Nagpur thr. Partner Ashok S/o. Anantram Chourasia and ors.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.V. Bhutada, Advocate for appellant.

Shri S.M.Pande, Advocate for respondent no. 1/applicant.

CORAM : SMT. M. S. JAWALKAR, J.

DATE : 01st DECEMBER, 2022

The present application is filed by the respondent for dismissal of the instant appeal on the sole ground that the appellant has not deposited 75% of the decretal amount as per the order dated 26/4/2022 passed by this Court.

2. By the said order, the appellant was directed to deposit 75% of the decretal amount by 10/06/2022. The appellant had filed the pursis on 07/06/2022 and brought to the notice of this Court that a demand draft of Rs. 57,79,349.41 is deposited in compliance with the order of the Court.

3. It is contended by the learned counsel for the applicant that in the said pursis, it is not made clear that, what is the rate of interest, and all the material facts are deliberately kept as vague.

Hence, with the assistance of Chartered Accountant, the applicant has calculated the interest part and found that, the amount deposited by the appellant is much less than the amount calculated by the Chartered Accountant. However, during the course of argument, it is admitted that 75% of decretal amount deposited by the appellant is based on @ 18% simple interest.

4. The learned counsel for the appellant pointed out that in view of Section 34 of the Civil Procedure Code, the Court has discretion to grant interest as per the rate deems fit to the Court.

5. The learned counsel for the applicant/respondent relied on the following citations:-

i) *Dadu Dayalu Mahasabha, Jaipur (Trust) V/s. Mahant Ram Nivas and another* reported in (2008) 11 SCC 753.

ii) *Philomina Josf V/s. Federal Bank Ltd. and ors.* reported in (2006) 2 SCC 608.

6. This Court vide order dated 28/10/2021 framed two substantial questions of law, and additional substantial question of law was framed on 18/11/2021. The additional substantial question of law is in respect of interest part, which reads as under:-

“Whether in the given facts and circumstances of the present case, more particularly, in view of the pleadings as regards the waiver of interest, made in the plaint, the plaintiff can subsequently claim interest for the period for which the interest was waived ?”

7. The contention of the applicant is that as per para 27 of the judgment dated 23/08/2019 passed in RCA No. 282/2016, the learned Appellate Court observed that the provisions of The Interest

on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 is applicable and the plaintiff is entitled to recover the amount of Rs. 17,64,856.63/- as per the provisions of said Act.

8. It is the contention of the learned counsel for the appellant that in the decree, there is no specific order regarding granting of compound interest @ 18%. As such, what is therein, decree is complied with as per order dated 26/04/2022. The substantial question of law is already framed in this regard and it will be appropriate to hear the matter finally.

9. As the appellant has already deposited 75% of the decretal amount by calculating simple interest, this issue, whether the decree has to be read along with the judgment and whether there was any waiver of interest, will be decided finally after hearing the parties on merits. There is no dispute over the ratio laid down in the citation relied on. The citation will be considered at the time of final hearing. As such, there is no necessity at this stage to pass any order directing the appellant to deposit 75% of decretal amount along with 18% compounding interest. Accordingly, the application stands disposed of.

CIVIL APPLICATION (CAS) NO. 1147/2022

The present application is filed by the respondent for withdrawal of the amount deposited by the appellant.

2. At present, the respondent is not pressing this application. Hence, the application is allowed to be withdrawn with liberty to file it

at the appropriate stage. Accordingly, the application stands disposed of as withdrawn.

SECOND APPEAL NO. 539 OF 2019

List the matter on 09/01/2023 for final hearing.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar