



WEB COPY



A.No.2588 of 2022

in

C.S.No.735 of 2019

SENTHILKUMAR RAMAMOORTHY, J

This application is presented for release of a sum of Rs.4,90,00,000/-, which was deposited to the credit of the suit.

2. Learned counsel for the applicant states that the suit was disposed of in terms of the judgment dated 07.06.2022. By the said judgment, all the claims made by the respondent/plaintiff were rejected and the counter claim of the applicant/defendant was allowed to the extent of Rs.1,44,46,651/- with interest at 9% p.a. from the date of counter claim till the date of realization. In addition, the respondent/plaintiff was directed to pay costs of Rs.3,00,000/- to the applicant/defendant. The respondent/plaintiff carried the matter in appeal by filing OSA No.(CAD) No.114 of 2022. In spite of the respondent/plaintiff seeking an interim stay of the judgment and decree, learned counsel for the applicant/defendant points out that the interim stay was limited to the decree passed in the counter claim on condition of deposit of 50% of the amount decreed in



WEB COPY

respect of the counter claim. Therefore, it is submitted that this application is liable to be allowed.

3. Learned counsel for the respondent/plaintiff opposes this application on the ground that the Court is *functus officio* upon delivering the judgment dated 07.06.2022. By drawing reference to the judgment of the Hon'ble Supreme Court in *Dwarka Das v State of Madhya Pradesh* [1999 (I) OLR (SC)], he submits that the scope of Section 152 of the Code of Civil Procedure is limited to correcting clerical or typographical errors. The next contention is that Order XXXVIII Rule 9 CPC makes it mandatory for a court to withdraw the attachment when the suit is dismissed. Since this mandatory condition was not adhered to while delivering the judgment, it is stated that it cannot be remedied subsequently. In support of this contention, the judgment of the Hon'ble Supreme Court in *Vareed Jacob v Sosamma Geevarghese and Others* [(2004) 6 SCC 378], particularly paragraph 15 is relied upon. The judgment of this Court in *Thirugnanavalli Ammal v P.Venugopala Pillai and others* [50 LW 719 (1939)] is also relied upon for this proposition.



WEB COPY

4. As correctly contended by learned counsel for the respondent/plaintiff, the scope of Section 152 CPC is limited to correcting clerical or typographical errors. However, the present application seeks a consequential order pursuant to the dismissal of claims made by the plaintiff in the suit. Learned counsel for the respondent/plaintiff relied on Order XXXVIII Rule 9 CPC to oppose the payment out order. By relying upon the use of the mandatory expression “shall” in Order XXXVII Rule 9 and the judgment of the Hon'ble Supreme Court, it was contended that if the order of attachment is not raised while dismissing the suit, it cannot be done subsequently. This contention is untenable and liable to be rejected. Order XXXVIII Rule 9 CPC does not specify the consequences of a court failing to withdraw or raise the attachment while dismissing the suit. Multiple judgments of the Hon'ble Supreme Court instruct that a provision imposing an obligation on a court or authority and not specifying the consequences of non-compliance cannot be construed in a manner detrimental to the aggrieved party.

5. To put it differently, the person aggrieved by not raising the attachment is the defendant and the defendant cannot be put to hardship



WEB COPY

because the court or authority did not raise the attachment while the suit was dismissed. Therefore, this contention is rejected.

6. In the result, this application is allowed by directing the release of the sum of Rs.4,90,00,000/- standing to the credit of C.S.No.735 of 2019 to the applicant/defendant herein. The applicant/defendant has also enclosed a certificate of funds in this regard. The said amount shall be paid to the authorized representative of the applicant/defendant within a period of two weeks from the date of receipt of a copy of this order.

28.07.2022

kal



WEB COPY



SENTHILKUMAR RAMAMOORTHY, J

kal

A.No.2588 of 2022

in

C.S.No.735 of 2019

28.07.2022