IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Review Application No.145 of 2021
and C.M.P. No.16891 of 2021

M/s.Olympic Cards Ltd.,
rep. by its Managing Director,
Mr.N.Mohamed Faizal .. Applicant

Vs.

1.Standard Chartered Bank,
Small Medium Enterprises Banking,
Consumer Banking,
rep. by its Regional Sales Manager,
Mr.K.Satish,
No.8, Haddows Road,
Chennai – 600 006.

2.Standard Chartered Bank,
rep. by its Manager,
No.19, Rajaji Salai,
Chennai – 600 001. .. Respondents

Prayer: Review Application filed under Section 114 and Order 47 Rule 1 of C.P.C. against the decree and judgment dated 25.02.2021 passed in A.S. No.947 of 2020.

For Applicant	:	Mr.K.Sankaran
For Respondents	:	Mr.M.S.Murali, for M/s.R & P Partners

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This Review Application has been filed by the plaintiff/applicant against the decree and judgment dated 25.02.2021 passed in A.S. No.947 of 2020.

2.Mr.K.Sankaran, learned counsel appearing for the applicant submitted that when the Trial Court in O.S. No.5239 of 2019 has given judgment and decree for Rs.33,13,634.39 with interest at the rate of 9% per annum from the date of plaint till the date of judgment and at 6% per annum from the date of judgment till the date of realisation, this Court in A.S. No.947 of 2020 has not mentioned any interest, which has caused huge prejudice to the plaintiff/applicant and therefore, the same has to be clarified. Learned counsel for the applicant further submitted that though the plaintiff/applicant is entitled to get interest from the date of judgment till the date of realisation as per Section 34 of the Code of Civil Procedure, this Court has failed to frame any issue with regard to the entitlement of the interest, which constiutes a mistake leading to an error apparent on the face of record. Learned counsel appearing for the applicant further submitted that this Court, relying on Ex.P4/Letter of Credit dated 24.02.2006, has held that forward contract was issued for EURO 2,16,800/- and not for EURO

1,70,000/-, overlooking the fact that Ex.P4 is only the form of letter of credit and it is not the forward contract and that Ex.D6 is only a confirmation for issue of letter of credit for EURO 2,16,800/-, which is the error apparent on the face of record because no where in the written statement of the respondents, they have mentioned that Forward Contract was issued for EURO 2,16,800/-, whereas, in the plaint, the plaintiff/applicant specifically pleaded that forward contract was issued only for EURO 1,70,000/- instead of EURO 2,16,800/-. Therefore, the same needs rectification. Learned counsel appearing for the applicant, referring to Section 9 of the Civil Procedure Code, submitted that when there is no specific bar for the review applicant to file a suit, the contra finding given by this Court that there is a failure on the part of the review applicant in not challenging the award passed by the Banking Ombudsman is liable to be recalled.

3.In reply, learned counsel appearing for the respondents submitted that as the Trial Court has framed 13 issues, this Court in Appeal, has framed 5 issues, out of the same, 1 to 4 were consequential and connected issues, which were answered accordingly by this Court and Issue No.5 is answered in favour of the applicant. Learned counsel for the respondents pleaded that the Trial Court, with regard to Issue Nos.1 and 2, has held that the plaintiff was entitled to

Rs.14,23,338/- and the same was not accepted for the reasons recorded therein by this Court. Learned counsel for the respondents further pleaded that in respect of Issue Nos.7 and 8, the Trial Court has held that the plaintiff is entitled for Rs.1,86,823.37 and Rs.2,54,029.02 respectively. In respect of Issue No.9, the Trial Court has held that the defendants are not entitled to charge the pre-closure penalty of Rs.14,49,444/- for closure of their OD account and the Trial Court has granted interest at the rate of 9% per annum from the date of filing the plaint till the date of passing the judgment and at the rate of 6% per annum from the date of judgment till the date of realisation. Learned counsel for the respondents further submitted that although this Court has made an observation that there was a failure on the part of the appellant in not challenging the award passed by the Banking Ombudsman, when the suit was filed, it was decreed partly by the Trial Court and as against the portion, partly refusing the relief, A.S. No.947 of 2020 was filed before this Court, the applicant was granted the relief. In this regard, learned counsel for the respondents, taking support from the judgments of the Apex Court in the State of West Bengal and others vs. Kamal Segupta and another reported in 2008 (8) SCC 612, Lilly Thomas and others vs. Union of India and others reported in 2000 (6) SCC 224 and Haridas vs. Usha Rani Banik (Smt) and others reported in

2006 (4) SCC 78, submitted that the review applicant cannot confer the review application to revisit all the findings given by this Court.

4.Heard the learned counsel for the applicant and the learned counsel for the respondents.

5.This Court, while partly allowing the Appeal Suit, has framed the following issues:

> *'1.Whether the defendants were negligent in opening forward contract on 26.04.2006 for Euro 1,70,000/- instead of Euro 2,16,800/- mentioning due date of letter of credit as 24.07.2006, falling for payment on 18.08.2006 and resulting in loss of Rs.14,23,338/- to the plaintiff?*
>
> *2.Whether the defendants failed and neglected to open forward contract in respect of documentary letter of credit dated 24.02.2006 as per the letter of credit?*
>
> *3.Whether loss of Rs.3,19,651.84 is incurred by the plaintiff on account of delayed opening of forward contract on 23.11.2007, instead of 28.09.2007?*
>
> *4.Whether the defendants delay in opening forward contract on 23.11.2007 in respect of letter of credit for Euro 1,24,864.00 resulted in loss of Rs.3,19,651.84 to the plaintiff, despite acknowledging the receipt of margin money on 28.09.2007.*

5.Whether the defendants are entitled to charge the plaintiff pre-closure penalty of Rs.14,49,449/- for the closure of their overdraft account?'

6.With regard to the contention raised by the learned counsel for the applicant that Ex.P4 is only the form of letter of credit and not the forward contract, this Court, after framing the issues, relying upon Ex.P4/Letter of Credit dated 24.02.2006, has held that forward contract was issued for EURO 2,16,800/- and not for EURO 1,70,000/-. When there was a specific question in the Cross Examination, while P.W.1 stepping into the witness box, namely,

Are you aware of the fact that the payment for the first letter of credit was effected on 18.08.2006 for the value of EURO 2,16,800/-?

He has answered 'yes' affirming the said question. Again, when he was posed one another question, namely,

Whether the Bank has effected the payment as instructed in EURO 2,16,800/- and that there is no discrepancy, he has answered in the negative.

7.Therefore, the contention raised by the learned counsel appearing for the applicant that in the written statement of the respondents, no where they have mentioned that Forward Contract was issued for EURO 2,16,800/- whereas, in the plaint, the plaintiff/applicant specifically pleaded that forward contract was issued only for EURO 1,70,000/- instead of EURO 2,16,800/- is liable to be rejected as devoid of any merit.

8.With regard to the contention raised by the learned counsel for the applicant that this Court has failed to frame any issue with regard to the entitlement of the interest, since Issue Nos.1 and 2 are disallowed by this Court in appeal, the connected Issue Nos.3 and 4 are also answered against the plaintiff/applicant. As the pre-payment charges said to have been levied on the applicant by the respondents is not justified, the issue No.5 is answered in favour of the applicant. Therefore, now we make it clear that the review applicant is entitled to get interest at the rate of 9% per annum from the date of plaint till the date of judgment and at the rate of 6% per annum from the date of judgment till the date of realisation.

9.With regard to the contention raised by the learned counsel for the applicant that there was a failure on the part of the appellant in not challenging the award passed by the Banking Ombudsman, when the matter was taken up, on merits, all the issues raised by the review applicant before this Court have been judiciously considered. Therefore, the argument made by the learned counsel for the applicant does not have any leg to stand as the review applicant cannot convert this review application to revisit all the findings given by this Court, as submitted by the learned counsel for the respondents. Useful reference can be had from the judgment of the Hon'ble Apex Court in the case of Lilly Thomas and others vs. Union of India and others reported in 2000 (6) SCC 224, which is extracted as under:

> *'58... Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment.'*

10.A perusal of the above judgment would clearly show that the error contemplated under the rule should be apparent on the face of the record. Since errors have not to be searched and fished out, the review applicant cannot confer this review application to revisit all the findings given by this Court.

11.In another judgment in the case of Haridas vs. Usha Rani Banik (Smt) and others reported in 2006 (4) SCC 78, the Hon'ble Apex Court has held as under:

'13.... Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should excercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P. held as follows:

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal is disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error..'

12.A perusal of the above judgment also shows that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case or error apparent on the face of the record would be made out. In the present case, since no such errors apparent on the face of the record, the contention made by the learned counsel for the applicant cannot be accepted.

13.For the above reasons, this review application stands disposed of. Accordingly, the respondents shall pay the applicant a sum of Rs.18,90,296.57 with interest at the rate of 9% per annum from the

T.RAJA,J.
and
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date of plaint till the date of judgment and at the rate of 6% per annum from the date of judgment till the date of realisation.

(T.R.,J.) (D.B.C.,J.)
25.01.2022

Index : Yes / No
Speaking/Non Speaking order
vga

To

1.The VI Additional Judge,
City Civil Court, Chennai.

2.The Section Officer,
V.R. Section, High Court, Madras.

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