

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 209 OF 2023
WITH
FIRST APPEAL NO. 19 OF 2023**

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Mohit Steel Industries Pvt. Ltd. Rep. By ... Applicants
Director Sandeep Agarwal & anr.

Versus

The Chief Electrical Engineer & anr. ... Respondents

**WITH
FIRST APPEAL NO. 19 OF 2023**

The Chief Electrical Engineer & anr. ... Appellants

Versus

Mohit Steel Industries Pvt. Ltd. Rep. By ... Respondents
Director Sandeep Agarwal & anr.

Mr. Parikshit S. Sawant, Advocate *for the Applicants-
Original Respondents.*

Ms. Susan Linhares, Additional Government Advocate
for the Respondents-Original Appellants.

CORAM: PRAKASH D. NAIK, J
DATED: 26th SEPTEMBER 2023

ORDER

1. The Applicant is seeking permission to withdraw the amount of Rs.41,69,717/-, deposited by Respondents in this Court.
2. The Respondents have preferred First Appeal No. 19 of 2023 before this Court challenging the Judgment and Decree dated

23.12.2021, which has merged with Judgment and Decree dated 30.04.2008 passed in Civil Suit No. 41 of 2007 by the Court of Adhoc District Judge-2 (FTC), Panaji, Goa.

3. The Applicants filed Civil Suit no. 41 of 2007 in the Court of Adhoc District Judge-2 (FTC) Panaji, for recovery of money, injunction and for consequential relief. Initially vide Judgment and Order dated 30.04.2008 passed by Adhoc District Judge-1, the suit was dismissed. Although, the Court was of the view that the demand charges for a period of seven days between 25.03.2002 to 01.04.2002 and delayed payment charges were illegal, since the Court came to a conclusion that the suit is barred by limitation and other issues were decided against the Plaintiffs' suit was dismissed. The Applicants/Plaintiffs preferred Appeal challenging Judgment and Order dated 30.04.2008 before this Court. Vide Judgment and Order dated 30.07.2014, appeal was allowed and proceedings were remanded to District Court to determine the amount of interest to be determined on the amount that is sought to be directed to be disbursed to the Plaintiffs/Applicants. The Respondent preferred Special Leave Petition challenging Order dated 30.07.2014 before Supreme Court. Special Leave Petition was dismissed vide Order dated 17.08.2021. The trial Court vide Judgment and Order dated 23.12.2021 granted interest at the rate of 11% on the amount sought in Suit no. 41/2007. The suit was partly decreed and the Defendants

were directed to refund to the Plaintiffs a sum of Rs.5,21,613/- along with interest thereon at the rate of 11% per annum with effect from 19.10.2005 till the date of actual payment. The Defendants were also directed to refund to the Plaintiffs/Applicants a sum of Rs.9,74,173/- along with interest at the rate of 11% per annum with effect from 21.08.2007 till date of actual payment.

4. The Judgment and Decree dated 23.12.2021 is challenged before this Court by preferring the First Appeal. Vide Order dated 14.03.2023, this Court heard Civil Application no. 1985/2022(F) preferred by the Respondent-Appellant for stay of decree dated 23.12.2021. Learned Additional Government Advocate appearing for the Respondent-Appellant submitted that the decretal amount will be deposited in the Court within a period of eight weeks. This Court directed that subject to deposit of decretal amount in this Court within a period of eight weeks, the impugned Judgment dated 23.12.2021 passed in Civil Suit no. 41 of 2007 shall remain stayed. Vide Order dated 29.03.2023, this Court admitted the First Appeal no. 19 of 2023.

5. Learned Advocate for the Applicant submitted that the Applicant be permitted to withdraw the amount deposited by the Respondent-Appellant in this Court. Stay of the Decree was granted by this Court subject to Appellant depositing the decretal amount

within a period of eight weeks. The amount has been deposited by the Respondent. The District Court was pleased to hold that the Plaintiffs-Applicants are entitled for recovery of amount as sought by the Plaintiffs in Civil Suit no. 41 of 2007. However, vide Order dated 30.04.2008, the Court held that the suit was barred by limitation. The Applicants preferred Appeal challenging the Judgment dated 30.04.2008 by preferring First Appeal no. 233 of 2008 before this Court. Vide Judgment and Order dated 30.07.2014, the First Appeal was allowed and the case was remanded to the District Judge to determine the amount of interest to be determined on the amount that is sought to be directed to be disbursed to the Plaintiff. The Respondent-Appellant preferred Special Leave Petition (Civil) No. 12365 of 2015 challenging Judgment and Order dated 30.07.2014 before the Supreme Court. Vide Order dated 17.08.2021, the Special Leave Petition was dismissed and it was observed that the Applicants are entitled for decree of recovery of amount and the matter was remanded to District Court to determine the rate of interest that should be paid on the amount of money directed to be disbursed to Plaintiffs. Subsequently, the District Court vide Judgment dated 23.12.2021 granted interest at the rate of 11% per annum on the amount i.e. sought in Civil Suit no. 41 of 2007, which has been challenged by the Respondents in the First Appeal before this Court. Thus, what is under challenge before this Court is only the rate of

interest to be paid to the Applicants. The Appeal has been admitted. It may not come up for hearing immediately. The Applicant cannot be deprived of the decretal amount. Atleast, it may be directed that substantial amount be permitted to be withdrawn by the Applicant.

6. Learned Additional Government Advocate Ms. Susan Linhares, submitted that the Appeal challenging the Judgment dated 23.12.2021 passed by the Adhoc District Judge, is pending before this Court. The Appeal is admitted. It is yet to be heard. On a condition that the Respondent-Appellant deposits the entire amount, the impugned Judgment has been stayed by this Court. Hence, the Applicant is not entitled for withdrawal.

7. It is pertinent to note that the Applicants-Plaintiffs filed Civil Suit no. 41 of 2007 for recovery of money against the Respondent/Defendant/Appellant. Vide Judgment and Order dated 30.04.2008, the Adhoc District Judge, Panaji, dismissed the suit. The Judgment and Decree dated 30.04.2008 was challenged by the Applicants before this Court by preferring First Appeal no. 233 of 2008. Vide Judgment dated 30.07.2014, the Appeal was partly allowed. It was held that the Plaintiffs have proved their entitlement for the refund of their respective amounts. However, to determine the question as to what rate the Plaintiffs are entitled for both the paid amounts under protest and as such for this purpose in order to

pass final order and alter the decree accordingly, the matter was remanded back to the trial Court. The Judgment dated 30.07.2014 passed by this Court was challenged by the Respondent-Appellant before the Apex Court by preferring Special Leave Petition (Civil) No. 12365 of 2015. Vide Order dated 17.08.2021, the Special Leave Petition was dismissed. The Court did not find any ground to interfere with the orders of remand passed by the High Court. The trial Court was requested to view the fact that suits were of the year 2007 and to dispose of the suits within six months. Thereafter, the District Court has passed Judgment dated 23.12.2021 and held that the Plaintiffs are entitled for the sum of Rs. 5,21,613/- along with interest at the rate of 11% per annum and the amount of Rs.9,74,173/- with interest at the rate of 11% per annum w.e.f. 21.08.2007 till the actual payment.

8. Thus, the Order dated 30.07.2014 which was challenged before the Apex Court has not been disturbed by the Apex Court and in view of the Judgment and Order passed by this Court, the trial Court decided the rate of interest. Hence, the Applicant can be permitted to withdraw the substantial amount deposited by the Respondents before this Court.

9. At this stage, learned Additional Government Advocate submitted that the Applicant may be directed to issue bank guarantee

in respect to the quantum of amount which would be allowed to be withdrawn by the Applicant.

10. Learned Counsel for the Applicant however submitted that in the event the Applicant is allowed to withdraw the amount, the Applicant is willing to file an undertaking before this Court that in the event the Applicant is held to be entitled for the amount lesser than the amount withdrawn by the Applicant, he shall re-deposit the same in this Court.

11. The suit was filed in 2007. The Applicant has been contesting the proceedings since long. It is directed that Applicant is entitled for amount as aforesaid with interest. Hence, the Applicant can be permitted to withdraw an amount of Rs. 30 Lakhs.

12. Considering the aforesaid circumstances, I pass the following order :

ORDER

(i) Misc. Civil Application No. 209 of 2023 is partly allowed.

(ii) The Applicant is permitted to withdraw the amount of Rs.30 Lakhs which has been deposited by the Respondents in this Court.

(iii) The Applicant shall file an undertaking before this Court that, in the event at the time of final disposal of the Appeal, this Court orders that the Applicant is entitled for an amount lesser than Rs. 30 Lakhs, he would re-deposit the excess amount in this Court.

(iv) Filing of aforesaid undertaking is condition precedent for withdrawal of amount.

(v) Application stands disposed of.

PRAKASH D. NAIK, J

ANDREZA PEREIRA

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