IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 5 OF 2023
IN
APPEAL FROM ORDER NO. 327 OF 2021

Kavis Fashions Private Limited ....**Petitioner**

V/s.

Rupani Spinning Mills Private Ltd. ....**Respondent**

Mr. Naushad Engineer a/w. Mr. Tushad Kakadia, Mr. Vacham Bodke, Mr. Vaibhav Gaikwad, Mr. Hitesh Gupta i/by. V & M Legal, for the Petitioner.

Mr. Dinyar Madon, senior advocate with Mr. Abhineet Sharma, Mr. Kandarp Trivedi i/by. RHP Partners, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 22 December 2023.

P.C. :

1. The Review Petitioner has filed this Petition seeking review of the Judgment and Order dated 1 November 2023.

2. Three broad errors are sought to be pointed out for seeking review of the Order. It is pointed out that this Court has erroneously assumed monthly license fees payable at Rs.19,32,606/- when infact the correct amount of license fees payable is only Rs.16,37,802/- and the rest of the amount is towards GST. Secondly, it is sought to be pointed out that this Court has erroneously considered the amount payable by the Appellant (in Appellant) towards license fees from March 2020 to August 2022 at Rs.66,99,692/- when infact the correct amount payable in respect of the said period is only Rs.39,67,085/-. Thirdly, it is sought to be pointed out that while considering the various payments made by the Appellant to the Respondents, this Court has not factored in the amount of Rs.19,31,250/- already deposited by the Appellant towards TDS to the credit of the Respondent.

3. I have heard Mr. Engineer the learned counsel appearing for the Review Petitioner who would submit that all the three errors in the Order are apparent and need to be corrected. He would submit that Respondent's entitlement is only to receive the amount of license fees and the amount of GST is payable to the Government. He would submit that on account of liberty granted to the Respondent to withdraw the deposited amount, the Respondent would infact be enjoying the amount of GST which is actually required to be paid to the Government. He would further invite my attention to paras-43 and 44 of the Order of the Trial Court to demonstrate that out of amount of Rs.66,99,692/-, the Appellant has already paid an amount of Rs.27,32,607/- and the amount payable towards license fees from March 2020 to August 2022 is only Rs.39,67,085/-. He would submit that this Court has not considered this factual position reflected in para-4 of the Trial Court's Order and has erroneously assumed that the entire amount of Rs.66,99,692/- is payable towards license fees for the period March 2020 to August 2022. He would further invite my attention to various Form-16A of TDS deposited in support of his contention that an amount of Rs.19,31,250/- has indeed been deposited by the Appellant to the credit of the Respondent towards TDS.

4. *Per-contra*, Mr. Madon, the learned Senior Advocate appearing for the Respondents would oppose the Review Petition. He would submit that under the guise of seeking review, the Appellant is attempting to re-argue the entire petition. That there is no error apparent on the face of the record in the order under review. In support of his contention about limited scope of review, Mr. Madon would reply upon the judgment of the Apex Court in ***Perry Kansagra Versus. Smriti Madan Kansagra*** 2019 20 SCC 753 and ***Kamlesh Verma Versus. Mayawati and Others*** 2013 8 SCC 320. He would further submit that none of the three points sought to be agitated in the Review Petition were ever argued during the course of hearing of the petition. He would submit that what is directed by this Court is payment of deposit which is subject to the final outcome of the suit and therefore presentation of some different calculations by the Petitioner in Review Petition cannot be a reason for seeking review of the Order. According to Mr. Madon, the Appellant is actually attempting to call upon this Court to trace out non-existent errors in the order by undertaking a detailed enquiry which is not permissible under the scope of review. Mr. Madon would further submit that the Appellant is attempting to rely upon additional documents and additional evidence in support of the

Review Petition which is impermissible in law. He would pray for dismissal of the Review Petition.

5. Rival contentions of the parties now fall for my consideration.

6. So far as points relating to GST and TDS are concerned, it must be observed at the very outset that the said points were never argued in any manner on behalf of the Appellant at the time of decision of the Writ Petition. Therefore the Review Petitioner cannot be permitted to argue something which was never brought to the notice of this Court when the Writ Petition was decided. The Trial Court has considered the total monthly license fees payable at Rs.19,32,606/-. It was never pointed out to this Court that any amount of GST was deductable in respect of the said amount of Rs.19,32,606/-. Be that as it may, it would be the liability of the Respondent to pay GST in respect of the license fees receivable by him. The amount of deposit directed to be made by this Court need not be reduced on the specious plea of non-payment of GST by the Respondent out of license fees received by him.

7. So far as the issue of TDS is concerned, this issue was again not argued when the petition was decided. The dispute is with regard to the non-payment of license fees as well as liability to pay damages for the period after March 2020. This Court will have to undertake a detailed enquiry to match the amount of Rs.19,31,250/- sought to be claimed by the Petitioner towards deposit of TDR to find out whether the concerned Form-16A sought

to be relied upon by the Review Petitioner would actually match various payments made by the Appellant to the Respondent. Such an exercise cannot be undertaken in a review petition. Even otherwise, those Form-16A were not produced before this Court when the Appeal was decided.

8. It must be borne in mind that this Court has decided the limited issue of payment of deposit under the provisions of Order XV-a of the Code of Civil Procedure during pendency of the suit. Actually the amount directed to be paid by the Trial Court by Order dated 4 January 2021 was substantially higher which is already reduced by this Court. Therefore, this Court cannot be called upon to undertake a detailed enquiry as to whether the amount could be further reduced on the considerations now sought to be raised for the first time about GST or TDS.

9. This leaves the last point of this Court not taking into consideration the amount of Rs.27,32,607/- already deposited by the Appellant towards license fees in respect of the period from March 2020 to August 2022. My attention is invited to para-44 of the Order of the Trial Court which reads thus :

> 44] From above tabular form, it can be revealed that, defendants are liable to pay the arrears of the amount for the March-2020, June-2020, July-2020, August-2020 of Rs.66,99,692/-. As per the contention of defendant and admitted facts of the plaintiff that, defendant has paid the amount of

Rs.10 Lakhs on 10-06-2020 and amount of Rs.9,32,607/- on 13-07-2020 as well as on 12-08-2020 paid the amount of Rs.8 Lakhs, total comes to Rs.27,32,607/-. Therefore, total due amount was Rs.66,99,692/- and defendants have paid for above period of Rs.27,32,607/-, it comes to Rs.39,67,085/-. From above this fact, it can be revealed that for the above period, there is liability of defendants to pay the amount of Rs.39,67,085/- to the plaintiff as a licensee fees.

10. However while in para-32 of the Order under review, this Court has considered that the Trial Court has determined the license fees payable from the period from March 2020 to August 2022 as Rs.66,99,692/-. This Court has not taken into consideration the fact that the Appellant had already paid amount of Rs.27,32,607/- towards license fees for the period from March 2020 to August 2022. In my view, there is an error on the part of this Court in treating the entire amount of Rs.66,99,692/- as payable when infact what is actually payable towards license fees from March 2020 to August 2022 is Rs.39,67,085/-. To this limited extent, some solace can be extended to the Petitioner in the present Review Petition.

11. The Review Petition is accordingly partly allowed by modifying Clause-(i) of para-35 of the Judgment and Order dated 1 November 2023 by directing that the Appellant-Defendant shall deposit in the Trial Court further amount of Rs.75,00,000/- under the provisions of Order 15A of the Code. The rest of the prayers in the Review Petition are rejected.

12. The Review Petition is accordingly **disposed of**.

SANDEEP V. MARNE, J.

NEETA SHAILESH SAWANT

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