IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 222 OF 2023 (REVIEW)
IN
CIVIL APPLICATION (S) NO. 1061 OF 2022 (D)
IN
SECOND APPEAL NO. 539 OF 2019

Stellar Industries and others

vs.

M/s. International Combustion (India) Limited Company

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri. S. M. Pande, Advocate for appellant.
Shri. S.V. Bhutada, and Shri. Y. J. Maheshwari, Advocates for respondent.

CORAM : SMT.M.S.JAWALKAR J.

DATE : 31/03/2023

Present application is filed for review of the order dated 01/12/2022, passed by this Court whereby rejected the application for dismissal of the appeal as it has contended that the appellant has not deposited 75% of the decreetal amount as per order dated 26/04/2022 passed by this Court.

2. On perusal of the decree passed by the learned appellate Court it reveals that the defendant was directed to pay an amount of Rs.17,64,856.63/-

(Rupees Seventeenth Lacs Sixty Four Thousand Eight Hundred Fifty Six and Sixty Three paise only) along with interest thereon @18%p.a. from the date of filing of the suit till its realization within three months from the date of judgment and order.

3. Learned counsel for the respondent submitted that the said amount should be calculated along with compounding interest thereon @18%p.a., therefore, the amount deposited is not as per the decree.

4. There was application bearing Civil Application (CAS) No.1061/2022 filed by the respondent for dismissal of the appeal on the sole ground that appellant had not deposited 75% of the decreetal amount as per the order dated 26/04/2022 passed by this Court.

5. At the time of argument, the learned Counsel for appellant then pointed out that he has placed pursis on 07/06/2022 and it was brought to the notice of this Court that amount of Rs.57,79,349.41 is deposited in compliance with the order of the Court. During the course of argument, the learned Counsel for respondent admitted that 75% of decreetal amount deposited by the appellant calculating 18% interest. It is a matter of record that initially, two substantial questions of law were framed by this Court vide order dated 28/10/2021 and additional substantial question of law framed on 18/11/2021. The additional substantial question of law framed on 18/11/2021 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 ?* "

6. The contention of the applicant herein is that in view of Section 5 of the Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993, liability of buyer to pay compound interest on delayed payment at the rate mentioned in Section 4 of the said Act on the due amount. It also need to be noted that one of the substantial question of law is the effect of repeal of the Interest on Delayed Payment of Small Scale and Ancillary Industrial Undertaking Act, 1909 is in question. In view of all these facts and in absence of any specific decree to make payment by compounding interest, 75% of decreetal amount along with interest @18% p.a. is a sufficient compliance.

7. Learned counsel for the applicant has relied upon the decision in the case of ***Assistant***

Commissioner, Income Tax Rajkot vs. Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171, wherein the Hon'ble Apex Court held as follows :-

> *"Sub-Section (2) of Section 254 enacts that the Tribunal may, at any time within four years from the date of the order, rectify any mistake apparent from the record suo motu. The Tribunal shall rectify such mistake if it is brought to the notice of the Tribunal by the assessee or the assessing officer….."*

With due respect to the principal laid down by the Hon'ble Apex Court, it is not applicable in the present set of facts. It is a statutory provision.

8. Learned counsel for the respondent/appellant relied upon the case of ***Parsion Devi and others vs. Sumitri Devi and others (1997) 8 SCC 715,*** wherein the Hon'ble Apex Court held as follows :-

> ***"9.*** *Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."*

9. The learned counsel for the appellant vehemently argued that in view of the order passed by this Court on 12/04/2022, the appellant ought to deposit 75% of the decreetal amount along with compound interest for entertaining the appeal itself. However, on perusal of the order dated 12/04/2022, it is clear that that there is no reference of any compound interest.

10. As such, the appellant has deposited 75% of decreetal amount. The order is rightly passed and there is no mistake or error apparent on the face of record to review the same, specifically in view of the substantial question of law raised in the appeal. As such, the application is rejected.

11. The Misc. Civil Application is disposed of.

12. The Second Appeal to be heard finally.

JUDGE

Signed By:RANJANA SAMEER SAHARE

Signing Date:06.04.2023 16:24