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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.02.2023

\+ CM(M) 211/2023

M/S INTERMOLDE INDIA THROUGH
ITS SOLE PROPRIETOR SH J K SRIVASTAVA ..... Petitioner

versus

M/S SUPREME INDUSTRIES LTD ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anup Kumar, Mr. Satyaprakash, Ms. Neha Jaiswal and Ms. Shruti Singh, Advocates

For the Respondent : None

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 6304/2023 (for exemption)

1. This is an application seeking exemption from filing certified copies of the annexures.

2. Exemption is allowed, subject to all just exceptions.

3. The application stands disposed of.

CM(M) 211/2023 & CM APPL. 6303/2023 (Stay)

4. The petitioner challenges the orders dated 06.12.2022 and 22.12.2022 passed by the Executing Court in Ex.799/2018 titled '***M/s***

Supreme Industries Ltd vs. M/s Intermolde India' whereby the learned Trial Court, on the failure of the petitioner/JD to comply with its own undertaking, had imposed cost of Rs.5,000/- for each day of delay in compliance of the undertaking w.e.f. 07.12.2022 onwards.

5. Mr. Anup Kumar, learned counsel for the petitioner vehemently argued that there is no provision under Order 21 of CPC whereby the learned Trial Court could have imposed such cost.

6. Mr. Kumar, learned counsel submits that there are other measures that the Executing Court could have taken to ensure compliance but the order of payment of cost per day of delay was not within its jurisdiction.

7. This Court has perused the orders dated 06.12.2022 as well as 22.12.2022 and is of the opinion that the imposition of such cost and that too prohibitive cost per day would not be appropriate in the facts of the case in view of the absence of any such provisions under Order 21 CPC empowering the Executing Court to pass any such order.

8. However, it is observed that the petitioner/JD has failed to comply with its own undertaking for a couple of hearings before the impugned order was passed and anguish of the Court is displayed clearly in the impugned order.

9. The petitioner/JD had itself given an undertaking to deposit an amount of Rs.15.05 Lacs by way of a Demand Draft on 16.06.2022 in compliance of order dated 06.11.2020. It appears that it is in these circumstances that the learned Trial Court was constrained to pass the impugned order.

10. Mr. Kumar, learned counsel for the petitioner submits that an amount of Rs.3 Lacs has already been deposited and leaving the balance

of Rs.12.05 Lacs as on today. Mr. Kumar submits that the petitioner/JD would be depositing the sum of Rs.12.05 Lacs within next 15 days.

11. The petitioner may do so.

12. In view of the submissions of Mr. Kumar, regarding the deposit of Rs.12.05 Lacs within 15 days from today before the learned Executing Court, nothing further survives in the present petition.

13. The petitioner is bound by the statement.

14. The learned Trial Court shall give the benefit of such deposit in accordance with law.

15. It would do well for the Executing Court not to take any coercive measure atleast till the next 15 days within which the petitioner/JD would deposit the aforesaid amount.

16. Simultaneously, it is made clear that the direction in regard to costs as directed vide orders dated 06.12.2022 and 22.12.2022, is set aside and shall not be given effect to.

17. The petition is accordingly disposed of in the aforesaid terms.

TUSHAR RAO GEDELA, J.

FEBRUARY 09, 2023
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