

OD-3

ORDER SHEET

RVWO 36 of 2023
WITH
CS 91 OF 2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

POWER TOOLS & APPLIANCES COMPANY PVT. LIMITED
VS.
EXHIBITORS SYNDICATE LIMITED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 16th April, 2024.

Mr. Chayan Gupta, Mr. Shouveek Ray, Mr. Shameek Ray, Mr. Pourush
Bandhopadhyay, Mr. Niket Ojha, Advocates for review applicant.
Mr. Shaunak Ghosh, Mr. Subrata Goswami, Advocates for respondent.

The Court : This is an application for review of the judgment and order dated 13th December, 2022 filed by the plaintiff in the above suit. By the said order after scrutinising the documents I found that a sum of Rs.1 crore was due to the review applicant being the plaintiff in the suit on which a further sum of Rs.73,43,238/- had accrued till 31st December, 2021. The interest component was also clearly demonstrated by the review applicant vide TDS certificate and the balance confirmation. The TDS certificate clearly showed that 15% interest was chargeable on Rs.1 crore, the computation on the basis whereof matched with the facts and figures provided by the plaintiff. However, only to afford the defendant an opportunity to contest the suit, I had directed the defendant/respondent to secure a sum of Rs.1,73,43,238/- within a timeframe, failing which there shall be an automatic decree. The defendant did not furnish the security as directed, as a consequence whereof a decree followed.

The review applicant/plaintiff says that since no interest pendente lite and interest upon judgment was directed to be paid, the plaintiff even though is holding a decree but may lose such interest. On this background a review was preferred.

A review application is made in terms of the provision of Order 47 of the Code of Civil Procedure, 1908 when a new and important matter or evidence is discovered which was not within the knowledge of the review applicant or could not be produced even after the exercise of due diligence. It can also be made lastly for any mistake or error apparent on the face of record.

In this case while the Court had the occasion to pass the judgment and order dated 13th December, 2022 the Court was not aware or could presume that the defendant/respondent will not put in the security money. The entire amount claimed by the plaintiff upto 31st December, 2021 was, therefore, directed to be secured. The Court had no occasion to deal with interest pendente lite or interest upon judgment. The Court, therefore, neither refused interest pendente lite or interest upon judgment which can or could be termed as an error apparent on the face of record. It also cannot be said that the review applicant could not place any evidence or material before the Court when such judgement and order was passed. No new or important matter has also been brought by the review applicant by judgment and or in question.

In the facts and circumstances as aforesaid, the review application fails and is disposed of without passing any further order.

The disposal of the review application will, however, not stand in the way of the plaintiff review applicant in seeking interest pendente lite and interest upon judgment in accordance with law.

(ARINDAM MUKHERJEE, J.)

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