IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO. 29 OF 2025

Sizer Metals Pvt. Ltd. … Appellant

V/s.

VIR Electro Engineering Pvt. Ltd & Ors. … Respondents

Ms. Priti Shah for Appellant.

None for the Respondents.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

DATE : 19th DECEMBER 2025

ORDER :

1. By this Commercial First Appeal, the Appellant/original Plaintiff is impugning the *ex-parte* Judgment dated 17th January 2025 passed by the learned Judge Shri. A.S. Kazi, Additional Sessions Judge, City Civil & Sessions Court, Mazgaon, Gr. Mumbai **("Trial Court"),** decreeing Commercial Suit No. 470 of 2023. The challenge in the above Commercial First Appeal to the *ex-parte* Judgment dated 17th January 2025 is limited to the extent of awarding of interest at the rate of 9% p.a. instead of the contractual rate of interest viz. 18% p.a. on the principal amount of Rs. 56,43,169/- from the due date of each invoice till its realization.

2. Ms. Priti Shah, the learned Counsel appearing for the Appellant has referred to the Affidavit-of-Service dated 12th December 2025 which shows that Respondent Nos. 2 to 4 have been served. The service on Respondent No. 1 – Company had been returned with the remark "returned as company is closed". She has submitted that the Respondents / original Defendants had also not made an appearance before the Trial Court and the Judgment had proceeded *ex-parte* against them.

3. Ms. Priti Shah has submitted that by the impugned *ex-parte* Judgment, the learned Judge had inspite of holding that the Plaintiff is entitled for the amount of Rs. 56,43,169/- (being the principal amount) with interest from the Defendants upon the pleading and evidence adduced by the Plaintiff, having been proved, has awarded payment of interest rate at 9% p.a. from the due date of each invoice till its full realization. The contractual rate of interest is 18% p.a. as mentioned in the purchase order (Exhibit - 34). She has submitted that the impugned judgment in awarding of interest at 9% p.a. which is not the contractual rate of interest agreed to between the parties is erroneous and requires setting aside and for this Court to modify the said judgment by awarding interest at the contractual rate of interest viz. 18% p.a. .

4. We have considered the submissions. The Respondents inspite of service have failed to make an appearance. The Respondent Nos. 2 to 4 are Directors of Respondent No. 1 – Company. The Respondents had also failed to make an appearance before the Trial Court and the Commercial Summary Suit No. 470 of 2023 was proceeded *ex-parte* against them.

5. The learned Judge of the Trial Court inspite of having held that the Plaintiff had proved its case through pleading and evidence adduced and awarding an amount of Rs. 53,78,877/- claimed by the Plaintiff from the Defendants towards recovery of unpaid balance principal amount for goods sold, supplied and delivered at the request of the Defendants alongwith the Bank Charges of Rs. 4,130/-, CGST amount of Rs.1,30,081/- and SGST amount of Rs. 1,30,081/- paid by the Plaintiff, did not grant the contractual rate of interest viz. 18% p.a. as mentioned in the Purchase Order (Exhibit – 34).

6. The reasons of the learned Judge for non-grant of contractual rate of interest viz. looking at the present Bank rate of interest and considering the nature of the transactions apart from being specious is contrary to his finding in para 7 viz. in view of Order XXXVII, Rule 3 of the Code of Civil Procedure the Plaintiff is entitled to interest at the rate specified. The contractual rate of interest agreed to between the parties could

thus not have been departed from by the learned Judge. The impugned judgment to the limited extent of awarding interest at the rate of 9% p.a. from the due date of each invoice till its full realization requires to be set aside as being contrary to the material on record as well as the proven case of the original Plaintiff.

7. We accordingly set aside the impugned *ex-parte* Judgment dated 17th January 2025 of the learned Additional Sessions Judge, City Civil & Sessions Court, Mazgaon, Gr. Mumbai to the limited extent of awarding of interest at the rate of 9% p.a. from the due date of each invoice till its full realization.

8. We further modify the impugned ex-parte judgment by awarding the Appellant the contractual rate of interest viz. 18% p.a. from the due date of each invoice till its full realization.

9. The decree shall be drawn up by the Trial Court accordingly.

10. The Commercial First Appeal is disposed of in the above terms.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**

Ajay Jadhav
10.COMFA/29/2025

JYOTI PRAKASH PAWAR
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Date: 2025.12.23 11:44:36 +0530