GUPTA STEEL INDUSTRIES

v.

M/S. JOLLY STEEL INDUSTRIES PVT. LTD. AND ANR.

SEPTEMBER 23, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 :

Compromise decree—Modification of—Pending the first appeal in the High Court, a compromise decree was passed whereunder respondents were required to deposit in trial court certain amounts and the appellants to hand over possession of the land and machinery to the receiver—Respondents did not deposit the amount within time—High Court accepted delayed payment by the respondents and directed the appellant to pay damages for use and occupation as may be determined by civil court—Held, as a principle of law, High Court was incorrect in interfering with and modifying the consent decree unless parties agree for the same—However, it would not be justified to interfere with the order at this distance of time—Directions given to trial court to conduct an inquiry whether the appellant was prevented by the respondents to remain in possession from working out the factory and decide the question of damages accordingly—If the amount deposited to the credit of the suit had not been invested in interest earning security, respondents would pay interest at the commercial rate from the date of deposit till date of judgment of the High Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12995-13000 of 1996 Etc.

From the Judgment and Order dated 18.7.96 of the Bombay High Court in C.A. Nos. 3588/91, 1686, 3580/92 1415 and 1414 of 1993.

Bhimrao Naik and A.M. Khanwilkar for the Appellant.

Soli J. Sorabjee, J.K. Das and J. Savla for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

A These appeals by special leave arise from the order of the Division Bench of the High Court of Bombay made on July 18, 1996 in Civil Application Nos. 3588-89/91 in FA No. 1 & 2/90.

The admitted position is that pursuant to a compromise entered into between the parties, pending the first appeal in the High Court, a com-
B promise decree came to be made by the Division Bench on 12.4.1991. Clause (2) of the Compromise Decree reads as under :

> "2. (a) The parties agree that Jolly Steel Industries Pvt. Ltd. and Jolly Torsteel Pvt. Ltd., the respondents herein and the Original
> C plaintiffs in Suit No. 446 of 1987 and Suit No. 447 of 1987, respectively, shall between them deposit in the Trial Court, a sum of Rs. 15,00,000 (Rupees Fifteen Lakhs only) in the aggregate on or before 31st May, 1991 and a further sum of Rs. 10,40,000 (Rupees Ten Lakhs and forty thousand only) on or before 29th June, 1991;
>
> D
>
> (b) These amounts are to be deposited in Suit No. 446 of 1987 in the Court of Additional Civil Judge, Senior Division, Pune, on account of over payment by the Appellants (Original defendants) as the defendants were not liable to pay and the Respondents
> E (Original plaintiffs) were not entitled to receive the same.
>
> (c) The Appellants (Original Defendants) are at liberty to withdraw the aforesaid amounts."

Admittedly, Rs.12 lakhs was deposited after expiry of the last date,
F namely, June 29, 1991, after one month. In the meanwhile, the respondents filed an application for extension of time in the trial Court. That was dismissed on the ground that it had no jurisdiction. Consequently, the application came to be filed in the High Court. Similarly under Clause 5(a) the appellants also agreed to hand over possession of the disputed land and the machinery to the receiver on or before 31st March, 1992. In view
G of the default committed by the respondent, the appellants came to file an application, on the basis of which the High Court passed an order to maintain the *status quo* on March 27, 1992. The appellants have taken out contempt proceedings against the respondents in which another Division Bench of the High Court passed an order on July 18, 1996 stating that the
H respondents have prevented the appellants from taking possession due to

the factory having been locked by the respondent. Nonetheless, no action was taken on the contempt petition. In the impugned order, the Division Bench passed an order accepting the delayed payment by the respondents and directed the appellants to pay damages for use and occupation as may be determined by the civil Court. Thus, these appeals by special leave.

As principle of law, the High Court was obviously incorrect in interfering with and modifying the consent decree unless parties agree for the same. Though it is contended by Shri Bhimrao Naik, learned senior counsel for the appellants, that the High Court has no power after the expiry of the period to extend the time for the compliance on the facts and circumstances, we do not think that we would be justified to interfere with this order at this distance of time. However, as regards the direction to make payment of compensation, we do not think that it would he appropriate at this stage to give any finding; however, the trial Court is directed to conduct an enquiry whether the appellant was prevented by the acts of the respondents to remain in possession and work out the factory. In the event of the finding being recorded that the appellant was prevented by the acts of the respondent for working out the factory, the appellant will not be liable to pay damages whatsoever. On the other hand, if it is found that the appellant had worked out the factory in view of the fact that the High Court had granted the order of *Status quo*, we think they are liable to pay @ Rs. 2,500 p.m.

It is stated by Mr. Soli J. Sorabjee, learned senior counsel for the respondents, that Rs. 12,00,000 (Rupees Twelve lakhs only) deposited by the respondents before the expiry of the period six months by way of a demand draft, has been encashed by the appellant. The appellants are denying the same. The trial Court is directed to verify whether the amount was subsisting till the date of the order passed by the High Court and whether the amount stands deposited in any interest earning security, within a period of six months from the date of receipt of this order. In case the amount was deposited to the credit of the suit and it had not been invested in interest earning security then the respondents are directed to pay interest at the commercial rate from the date of the deposit till date of the Judgment of the High Court. In case the appellant was found to have withdrawn it, the need to pay interest does not arise.

Mr. Bhimrao Naik further requests that the amount of Rs. 20,00,000

A (Rupees twenty lakhs only) standing to the credit of the suit, may be directed to be withdrawn by the appellant. We are not inclined to give any direction. After the enquiry into *mesne profits* is conducted by the trial Court and if there is any amount due to either party, the same may be worked out accordingly by way of adjustment.

B The appeals are accordingly disposed of. No costs.

R.P. Appeals disposed of.