

Renu Saagar Power Company

Vs

General Electric Company

I.A. No. 3 of 1990

(M.N. Venkatachaliah, N.D. Ojha, J.S. Verma JJ)

06.11.1990

ORDER

1. By the present I.A. No. 3 of 1990 the respondent-decree-holder seeks what is styled a "clarification" of the interlocutory order of stay dated 21-2-1990 made by this Court staying the operation of the judgment and decree under appeal subject to certain conditions. The relevant condition to which, apparently, the clarification pertains is at para 3(a) of the order dated 21-2-1990 and provides:

"3(a) that appellants, within four weeks from today, shall deposit in the trial Court, viz., the Original side of the Bombay High Court, the sums equivalent to one half of the decretal amount calculated as on date. The respondent-decree-holder shall be permitted to withdraw the deposit upon furnishment of security by way of bank guarantee for the sum to be withdrawn in excess of rupees four crores to the satisfaction of the High Court. In other words, in respect of and up to the amount of rupees four crores, no such security need be insisted upon."

The point urged in the present application assumes materiality in the context of the requirement that the appellant, in calculating the amount to be deposited in compliance with the said condition, has to convert the subject matter of the award, later made a Rule of Court, which is in terms of US dollars into Indian currency. The question is whether the Dollar-Rupee exchange rate should be ascertained as on 21-10-1988, the date of Original Decree of the High Court or the date of the order of stay dated 21-2-1990. The difference between the amounts so calculated as on 21-2-1990 and as on 21-10-1988, we are told., would be a substantial sum of Rs. 2.92 crores, to the advantage of the decree-holder. Shri Shanti Bhushan, learned Senior Advocate for the applicant-decree-holder, urged that it will be wholly unfair to the decree-holder to be denied the benefit of this sum which would logically flow from the stay order.

2. Shri Shanti Bhushan urged that the order dated 21-2-1990 which expressly, and in terms, stayed the "operation of the Judgment and decree under appeal" has had the effect of effacing the relevance of the date of the judgment and decree of the trial Court for ascertainment of the exchange rate and that the said order dated 21-2-1990 in requiring the amount to be calculated 'as on date' would substitute that date as the one with reference to which the exchange rate has to be ascertained. Even otherwise, it is urged, the date of the order of stay is the only logical substitute for the purpose.

Shri Shanti Bhushan also submitted that quite apart from the terms of or the construction to be

placed on, the order dated 21-2-1990, interests of justice in this case would require additional protection of the decree-holder's interests as the decree-holder had, under the terms of the stay order, been denied the full fruits of the decree and it was necessary to protect its interests against the fall in the value of the rupee against the dollar. Shri Shanti Bhushan sought to emphasise that the normal approach of courts in an appeal against a money decree would be to leave its operation uninterdicted and providing only such protection to the appellant-judgment-debtor for ensuring restitution in the event of the success of the appeal, as the Court would consider appropriate. In the present case, the learned counsel says, the Court had directed only one half of the decretal sum to be deposited; even that with additional restriction on the decree-holder in the matter of withdrawal of the deposit by the requirement of furnishment of security for a substantial part of it before withdrawal.

3. Dr. L. M. Singhvi, learned senior counsel for the appellant-judgment-debtor, would, however, maintain that the relevant date for calculation of the exchange-rate would continue to be the date of the original decree of the High Court as, indeed, had been made clear in the order of the Appellate Bench of the High Court and as recognised in the case of *Forasol v. O.N.G. Commission*, (1984) 1 SCR 526: (AIR 1984 SC 241). Dr. Singhvi urged that the stay order did not concern itself with the exercise of identifying any date for purpose of calculation of the exchange rate and that the expression 'as on date' indicated the point of time for the calculation of accrued interest and not for ascertaining the exchange rate. The stay order, Dr. Singhvi contends, did no more than to prevent the execution of the decree and did not seek to efface the relevance of the date of the decree which was otherwise relevant for the purpose.

4. We have considered the submissions of the learned counsel on both sides. On the *Forasol* principle the relevant date in such circumstances is the date of the decree of the trial Court or where such decree culminates and merges in an appellate decree the date of the latter. In the present case, the appeal preferred before the Division Bench was dismissed on its view that it had no jurisdiction to entertain the appeal. It appears to us unnecessary, having regard to the stage at which we make this order, to go into any general principle guiding the ascertainment of the relevant date for such ascertainment, inasmuch as all deposits to be made and all securities to be furnished were in the ultimate analysis, subject to the final result of the appeal and shall be accounted for accordingly, plus or minus. We also think that the contention of Dr. Singhvi that the order dated 21-2-1990 did not concern itself with or indicate the relevant date for exchange-rates is not insubstantial. In that sense there is really no occasion for any clarification on a point which is not covered by the order.

5. We are, however, persuaded to the view that in granting stay of the operation of a money-decree the aspect that Shri Shanthi Bhushan has highlighted as to the effect of the fall in the value of rupees against the dollar in the context of the relevance of that aspect in this case cannot altogether be put aside. We think that ends of justice would be met by supplementing the order of stay dated 21-2-1990 by directing the appellant to deposit in the trial Court a further sum of rupees one crore and to furnish a bank guarantee to the satisfaction of the Court for Rs. 1.92 crores within 8 weeks from today. This will be in addition to the deposits and securities as earlier ordered. The applicant-decree-holder shall be entitled to withdraw the amount of rupees one crore against furnishment of security under a bank guarantee for the sum to the satisfaction of the trial Court.

6. All the deposits and the guarantees already made and furnished and the deposits and guarantees to be furnished pursuant to this order shall, of course, be subject to the rights and contentions of parties in the appeal and subject to the final result of the appeal. We do not like to be understood to have laid down finally any principle or guideline for ascertaining the relevant date for exchange-rates. That matter will have to be decided at the appropriate stage in the appeal taking into consideration

the earlier pronouncements of this Court on the point. I.A. 3 of 1990 is disposed of accordingly.

Order accordingly.

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