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

+ EFA(OS) 14/2015 & CM No.7110/2015

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Date of decision: 31st August, 2015

SAIL ISP

..... Appellant

**Through : Mr. Sudhir Nandrajog, Sr.
Adv. with Ms. Meena
Choudhary and Mr. Hirein
Sharma, Advs.**

versus

M/S ALPHA STEEL INDUSTRIES & ORS.. Respondents

**Through : Mr. Sanjeev Bhandari, Adv.
for R-1.**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (Oral)

CM No.7110/2015

**Heard. For the reasons stated, delay in filing the appeal is
condoned.**

The application is allowed.

EFA(OS) 14/2015

**1. Record of Ex.Pet.No.25/2005 has been received. With the
consent of the parties, the appeal is taken up for consideration. We
have heard Mr. Sudhir Nandrajog, learned senior counsel for the
appellant and Mr. Sanjeev Bhandari, learned counsel for**



respondent no.1.

2. The appellant is aggrieved by the orders dated 30th January, 2014 and 23rd February, 2015.

3. A perusal of the order dated 30th January, 2014 passed in Ex.Pet.No.25/2005 would show that on 30th October, 2013, the court had directed the judgment debtor to pay an amount of Rs.30,00,000/- out of the decretal amount of Rs.63,85,549.37 with interest @12% per annum by the 30th of January 2014. It appears that in the hearing on 30th January, 2014, the learned counsel for the judgment debtor handed over a draft in the sum of Rs.7,00,000/- and three post-dated cheques each dated 28th February, 28th March and 28th April, 2014 towards the remaining amount of Rs.21,00,000/-. It is submitted by learned counsel for the respondents that much more sum than the amount recorded stands paid to the decree holder.

4. Be that as it may, so far as the calculation of the amounts due and payable are concerned, the same would be effected in the execution proceedings.

5. The appellant has assailed before us the direction on 30th January, 2014 by the learned Single Judge to the effect that the question of payment of interest would be considered only after the principal amount is realized by the decree holder by way of the aforesaid draft and cheques. Mr. Sudhir Nandrajog, learned senior counsel for the appellant relies on the pronouncement of the Supreme Court reported at *AIR 1999 SC 1036, Industrial Credit and Development Syndicate Now called I.C.D.S. Ltd. v.*

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Smithaben H. Patel (Smt.) & Ors. wherein it has been held that the amount of money paid by the judgment debtor, has to be adjusted, firstly against the interest, then against the costs and only thereafter against the principal amount. It is submitted that this well settled principle had to apply and the amount paid by the judgment debtor had to be adjusted firstly against the interest due and payable in terms of the judgment and decree. Once the interest stood paid, the payments had to be adjusted against the costs awarded in favour of the appellant and only thereafter would the payments be adjusted against the principal amounts due.

6. The appellant filed Execution Application (OS)No.250/2014 praying for recalling of the said impugned direction as made in the order dated 30th January, 2014.

7. We find that so far as this well settled principle of law is concerned, in the order dated 23rd February, 2015 passed on Execution Application (OS)No.250/2014, even the learned Single Judge notes the same. However, the learned Single Judge had refused to recall the direction in the order dated 23rd February, 2015 on the ground that it would not be permissible to recall the order merely because the appellant had failed to show the said case law on the 30th January, 2014 when the order came to be passed.

8. It is trite that a direction which is not in consonance with the law laid down by the Supreme Court would be an error in law and amenable to recall even in exercise of review jurisdiction.

9. In the present case, learned counsel for the respondents does not dispute the legal position. Therefore, the direction by the

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learned Single Judge that the amount paid by the judgment debtor would be firstly adjusted towards the principal amount and only thereafter against the interest, is not sustainable in law.

10. It is submitted by Mr. Sanjeev Bhandari, learned counsel for respondent no.1 that he has objection to the impleadment of respondent nos.2 and 3 in this appeal for the reason that respondent nos.2 and 3 are not parties in the execution proceedings.

11. Mr. Sudhir Nandrajog, learned senior counsel for the appellant explains that in the execution petitions, the judgment debtor has taken the stand that the respondent no.1 was a partnership firm and that the same stands dissolved.

12. Learned senior counsel would submit that it is an admitted position that respondent nos.2 and 3 are the partners of the respondent no.1 and that an application for their impleadment is pending (Ex.App.No.390/2012) adjudication.

13. Be that as it may, the respondent nos.2 and 3 could not have been arrayed as parties in the present matter. However, given the well settled legal position and the submissions thereon by the learned counsel for the respondents, we are not adjudicating upon the maintainability of the execution against these respondents. Their impleadment in the execution has to abide by the decision on Ex.App.No.390/2012 by the learned Single Judge.

The decision on this appeal shall not be treated as an adjudication on the legality, necessity or propriety of the presence of respondent nos.2 and 3 before the court.

14. In view of the above, the order dated 30th January, 2014 to

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the extent that it directs that the payments by the judgment debtor would be first adjusted against the principal amount and only after payment of the principal amount, adjustment would be effected towards the interest and the order dated 23rd February, 2015 are hereby set aside and quashed. It is directed that all payments which are made by the judgment debtor after the decree, including those in the Execution Petition No.25/2005 shall be first adjusted towards the interest, then costs and only thereafter would the payments be adjusted against the principal sum due and payable by the judgment debtor.

The appeal is allowed in the above terms.


GITA MITTAL, J


I.S. MEHTA, J

AUGUST 31, 2015

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