

(2014) 09 AHC CK 0243

Allahabad High Court

Case No: Civil Revision No. - 380 of 2013

Acurite Contractors and
Engineers

APPELLANT

Vs

Sam Higginbottom
Institute of Agriculture
Technology

RESPONDENT

Date of Decision: Sept. 23, 2014

Acts Referred:

- Arbitration Act, 1940 - Section 11
- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3, Order 37 Rule 3(5), Order 37 Rule 3(5)(6), Order 37 Rule 3(6), Order 37 Rule 37
- Income Tax Act, 1961 - Section 133(6), 226, 226(3), 226(3)(iv)

Citation: (2014) 10 ADJ 384

Hon'ble Judges: Shashi Kant Gupta, J

Bench: Single Bench

Advocate: Rajesh Kumar Singh, Advocate for the Appellant; Amit Negi and Prateek J. Nagar, Advocate for the Respondent

Judgement

Shashi Kant Gupta, J.

This revision has been filed against the order dated 25.07.2013 passed by Additional Civil Judge (Senior Division), Court No. 14, Allahabad, whereby it has unconditionally allowed the Application 18-C of the defendant/respondent to leave to defend the Original Suit No. 1014 of 2012 under Order XXXVII, Rule 3(5) of Code of Civil Procedure.

Brief facts of the case are as follows:

2. The defendant/respondent was awarded various construction works in the campus of defendant/University. A written agreement dated 16.09.2002 was executed between the

parties. Rates proposed by the revisionist firm for construction work was approved by the respondent/University.

3. The construction works were going on and payments were being made by the respondent university. However, in the year 2006 payment for the remaining bills was withheld, as a result of which construction work was stopped and could not be resumed.

4. Thereafter, the parties entered into a memorandum of understanding (in short "MOU") on 19.12.2006 whereas both the parties expressly agreed that the total value of the work executed by the revisionist firm was for Rs. 26,32,72,391 and also agreed that after deducting the payment already made to revisionist firm, remaining balance shall be paid by the respondent university to the revisionist firm under three installments. Dates for payment of installments were specified in the MOU. As per the account maintained by the revisionist firm till 19.12.2006 revisionist firm had received Rs. 15,42,55,804/- from the respondent/University, as such, dues outstanding on the said date against the respondent were Rs. 10,90,16,587/-.

5. Pursuant to the said M.O.U. Dated 19.12.2006, respondent/university made part payments to the revisionist firm for Rs. 29,02,680/- by Cheque No. 026710 in February, 2007 and Rs. 50,00,000/- by Cheque No. 041360 in August, 2007.

6. Subsequent thereto, on 30.11.2007 respondent/university again admitted the dues of the revisionist firm in reply to the notice issued by the Income Tax Department, Hyderabad u/s 133(6) of the Income Tax Act (in short "the Act"), whereby information was sought by the Income Tax Department regarding outstanding dues of the revisionist firm against the respondent/University. Respondent in its reply dated 30.11.2007 to the notice admitted before the Income Tax Department, Hyderabad that entire monetary value of the construction works completed by the revisionist firm was to the tune of Rs. 26,32,72,391/- and further admitted its liability to pay a sum of Rs. 7,06,32,830/- to the revisionist firm which was due against the respondent/University.

7. On 28.08.2008 first payment of Rs. 20 Lacs was made by the respondent university towards income tax liability of the revisionist firm u/s 226 of the I.T. Act to the Income Tax Department. Thereafter, series of such payments were made and the last one was made on 28.08.2009 by the respondent to satisfy the Income Tax liability of the revisionist. Approximately total amount of Rs. 1.71 Crores was paid by the respondent/University to the Income Tax Department u/s 226 of the Income Tax Act to satisfy the income tax liability of the revisionist firm. This fact has been admitted by the respondent/University in its letter dated 21.10.2011 written by it to the Income Tax Department.

8. Revisionist firm filed a Writ Petition No. 54194 of 2008 for a direction to the respondent to make payment of the unpaid bills (balance of admitted dues) as agreed in the MOU signed and finalized by both the parties. However, the said writ petition was dismissed on the ground of maintainability.

9. The respondent/University on 15.12.2009 constituted a Committee to settle the dues of the revisionist firm. Revisionist withdrew itself from the proceedings of committee and gave a notice for appointment of an arbitrator, filed an Arbitration Case No. 2 of 2011 before this Court. The said arbitration case was dismissed on 04.11.2011 by the Court for want of arbitration agreement between the parties.

10. Ex-parte report against the revisionist firm was submitted by the Committee in October, 2010 creating demand against the revisionist. The revisionist firm was not the party to the ex parte report of the Committee.

11. It is relevant to mention here that on 21.10.2011 respondent university wrote a letter to the Income Tax Department, Hyderabad. Under the said letter respondent university once again affirmed the execution of M.O.U. Dated 19.12.2006 between the parties and also referred to his earlier letter written by it to the Income Tax Department, wherein it had admitted his liability for payment. However, for the first time, the respondent University in order to wriggle out from the earlier admissions sought to wipe out the liability admitted by him by alleging that the revisionist firm has been already paid in excess.

12. Thus, when the revisionist failed to recover the amount instituted an Original Suit No. 1014 of 2012 under Order XXXVII C.P.C. seeking decree of Rs. 4,69,00,751/- along with the interest @ 12% from 28.08.2009.

13. The basis for filing the suit basically was M.O.U. dated 19.12.2006 and the letter dated 30.11.2007 written by the respondent to the Income Tax Department, wherein he had admitted his liability and also acted there upon by making payment of Rs. 1.71 Crores to the Income Tax Department. The Trial Court issued summons for appearance to the respondent and the respondent university put in appearance in the said suit. Thereafter, summon for judgment was issued by the revisionist firm. Respondent university applied for leave to defend. The revisionist filed his objection to the leave to defend application filed by the respondent university. Thereafter, rejoinder affidavit was filed by the respondent. By means of order dated 25.07.2013, the Trial Court granted unconditional leave to the respondent university to defend. Hence the present revision by the plaintiff.

14. Learned counsel for the revisionist has submitted that while granting leave to defend, trial Court has not considered the evidence on record in its correct prospective. The impugned order is based on a complete misreading of the case and misconception of the legal position relevant to the matter. He further submitted that the bogus plea of making excess payment has been taken at a belated stage in the year 2010 by the respondent to avoid his liability and save its skin. He further submitted that while granting unconditional leave to the defendant respondent, the Trial Court has miserably ignored the relevant document i.e. M.O.U. Dated 19.12.2006 and letter dated 30.11.2007 annexed along with the plaint as well as payment made by the respondent to the Income Tax Department u/s

226 of the I.T. Act to the tune of Rs. 1.71 Crores on behalf of the revisionist, which is evidenced by a letter dated 01.10.2009 issued by the Income Tax Department containing the details of payment made by the respondent u/s 226 of the I.T. Act. He further submitted that the Trial Court has erred in not applying the second proviso to Order 37 Rule 3(5) CPC in not directing the revisionist to deposit the amount so admitted to be due.

15. Per contra, learned counsel for respondent university has challenged the maintainability of the present revision. Learned counsel for the respondent has stated that the revisionist has already received excess amount of Rs. 4,95,03,566/- and the bills were not submitted by the revisionist as per the schedule of the Estate Division of the Institution. He further submitted that M.O.U. was not approved by the head of the Institution, as such, the said M.O.U. can not be taken into consideration. He further submitted that the letter dated 30.11.2007 was sent by the respondent/University under misconception. Later on, when the Committee submitted its report with conclusion that excess payment has already been made to the revisionist, notice was issued to him (revisionist) by the respondent University to refund of the excess money paid to it. Thus the order passed by the Court below unconditionally allowing the application 18-C of the defendant/respondent to leave to defend the Original Suit No. 1014 of 2012 under Order XXXVII does not suffer from any error of law and the revision is liable to be dismissed by this Court.

16. Heard learned counsel for the parties and perused the record.

17. Before I proceed further in the matter, it is relevant to reproduce the extract of Order 37, Rule 3(5) and (6) of the Code of Civil Procedure.

"(5) The defendant may at any time within ten days from the service of such summons for judgment by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend apply on such summons for leave to defend the suit. Leave to defend may be granted to him unconditionally or upon such terms as to the Judge appear just."

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

½Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court."

(6) At the hearing of such summons for judgment-

(a) if the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant be permitted to defend as to the whole or any part of the claim, the Court or the Judge shall direct that on failure to complete the security (if any), or to carry out such other directions as the Court or the Judge may have given within the time limited in the order, the plaintiff shall be entitled to judgment forthwith.

18. Perusal of the record reveals that in the year 2002 contracts were awarded to the revisionist firm for construction of buildings for Pharmacy/Medical College, Girl's Hostel, College of Education, Yesu Darbar Mandir. In the course of work from time to time the revisionist firm submitted its running bills for the construction of various buildings. The said bills were verified by the Estate Division of the respondent University and the payments were made towards them. However, in the year 2006 payment for the remaining bills was withheld, as a result of which construction work was stopped and could not be resumed. Thereafter, the parties entered into a memorandum of understanding (in short "MOU") on 19.12.2006. For ready reference the aforementioned MOU dated 19.12.2006 is reproduced herein below:-

Memorandum of Understanding

This MOU entered on this day of December the Nineteenth 2006 in and between Allahabad Agricultural Institute Deemed University (hereinafter called the first party) and M/s. Acurite Contractors & Engineers (hereinafter called the second party).

The first party had entrusted the construction of works to the second party, like (1) Construction of Yesu Darbar, (2) Construction of College of Education building, (3) Construction of College of Pharmacy building, (4) Construction of Girls hostel (200 seated) and laying of Basket Bal Court and erection of sports torch in the sports field.

The second party had submitted the bills for finished and unfinished works of the aforesaid projects. After due discussions with Hon'ble Vice Chancellor along with Er. A.K.A. Lawrence, Registrar & Chairman Estate Division, Mr. F.D.M. Andriyas, Estate Officer & Secretary Estate Division and Mr. Stephen Das, Finance Comptroller representing the first party and Mr. K.N.V. Prasad Reddy, GPA Holder and Mr. Rajvir Chikara, Chief Executive representing the second party. It was resolved that both the parties have come to an understanding and it is expressly agreed that the figures mentioned below are agreed to both the parties in full and final settlement for the works mentioned above.

The figures arrived at by both the parties are Total Rs. 26,32,72,391/- (Rupees Twenty Six Crores thirty two lakhs seventy two thousand three hundred ninety one) only and after deducting the payments made till date the balance amount will be paid back in three installments at 30% in February 2007 and 40% in August 2007 and balance 30% in the month of February 2008.

The second party is to provide NOC for all constructions, vacation of al the site premises occupied by the second party, certificate of completion of buildings.

Sd/- Er. A K A Lawrence
Registrar & Chairman Estate Division,

Sd/- F D M Andriyas
Estate Officer & Secretary Estate Division,

Sd/- Stephen Das
Finance Comptroller,

Sd/- K N V Prasad Reddy
GPA Holder,

Sd/- Rajvir Chikara
Chief Executive.

19. Thus, both the parties expressly agreed that the total value of the work executed was for Rs. 26,32,72,391 and also agreed that after deducting the payment already made to revisionist firm, remaining balance shall be paid by the respondent university to the revisionist firm under three installments. Dates were also specified for payments of the installments. As per the account maintained by the revisionist firm till 19.12.2006 revisionist firm was paid Rs. 15,42,55,804/- as such remaining balance dues on the said date was Rs. 10,90,16,587/-.

20. From the perusal of record, it is also evident that in pursuance of the notice u/s 133(6) of the Income Tax Act issued by the Income Tax Officer, Hyderabad wherein information was sought from the respondent University regarding dues which were to be paid by the respondent University to the revisionist firm, the respondent University in its reply dated 30.11.2007 equivocally admitted the liability to pay Rs. 7,06,32,830/- to the revisionist firm.

For ready reference the extract of paragraph 4 of the said letter is reproduced herein below:

"It is observed from the copies of Measurement books that the amounts claimed for the works executed by M/s. Acurite Contractors & Engineers has been verified and rates and amounts have been worked out by you and the same was sanctioned. It is requested to furnish the total amount determined for each bill and amount allowed for each work done as per Measurement Book.

21. From the aforesaid letter dated 30.11.2007, it is thus quite evident that the respondent University equivocally admitted the dues of the revisionist firm. In the said letter it was inter alia stated that entire monetary value of the construction work completed by the revisionist firm was for the tune of Rs. 26,32,72,391/- and further admitted that the respondent University was still liable to pay Rs. 7,06,32,830/- to the revisionist firm.

22. At this juncture, it is also relevant to note that the letter 01.10.2009 was written by the Income Tax Officer, Hyderabad to the revisionist firm enclosing detailed list of the amount paid by the respondent university u/s 226(3) of the Income Tax Act. It is quite clear from the detailed list attached thereto that the respondent university paid more than Rs. 1.71 Crores to the Income Tax Department towards the income tax liability of the revisionist firm u/s 226(3) of the Income Tax Act. u/s 226(3)(iv) of the Income Tax Act, there was an option to respondent university to deny the dues on oath but such course was not adopted by the respondent university. Pursuant to their admission made in Letter dated 30.11.2007 before Income Tax Department, Hyderabad, respondent university continuously deposited the amount towards the income tax liability of the revisionist firm/assessee.

23. From the perusal of record, it also appears that on 28.08.2008 first payment of Rs. 20 Lacs was made by the respondent university towards income tax liability of the revisionist firm u/s 226 of the I.T. Act. Thereafter, series of such payments were made and the last one was made on 28.08.2009 by the respondent to satisfy the Income Tax liability of the revisionist. As such, Rs. 1.71 Crores was paid to the Income Tax Department by the respondent to satisfy the Income Tax liability of the revisionist.

24. When the respondent-University failed to pay the balance due of the revisionist as agreed in M.O.U. between the parties, the revisionist firm filed a Writ Petition No. 54194 of 2008. However, the said writ petition was dismissed on the ground of maintainability leaving scope for settlement of account and recovery of its dues. For ready reference the operative portion of the aforementioned judgment and order is reproduced herein below:-

"Therefore, the writ petition can not be held to be maintainable and as such the same is dismissed. However, passing of this order will in no way affect the right of the petitioner to proceed on the basis of letter of the respondent with regard to the settlement of dispute and recovery of amount. If the petitioner so approaches then it will be decided as expeditiously as possible.

No order is passed as to costs."

25. After the passing of the order dated 16.11.2009 by this Court in Civil Misc. Writ Petition No. 54194 of 2008, respondent university by means of the order dated 15.12.2009 passed by the Registrar of the respondent university under the direction of Vice Chancellor constituted a Committee to review and settle the financial matters of revisionist firm. Mr. K.N.V. Prasad Reddy, Attorney of the revisionist firm was nominated as Member of the said Committee. Dr. B.B. Rai was appointed as Chairman of the Committee. Chairman of the Committee by its letter dated 16.12.2009 intimated the constitution of committee to various concerned members. When the plaintiff/revisionist realized that it will not get any justice from the Committee, it withdrew itself from the Committee and filed an Arbitration Application u/s 11 of the Arbitration Act for appointment of Arbitrator before this Court but it was dismissed for want of arbitration

clause in the agreement.

26. Perusal of the record further shows that the Committee constituted by the University consisted of members of their choice belonging to the University. The so called Committee submitted its report dated 22.10.2010 with the conclusion that revisionist has already received excess amount of Rs. 4,95,03,566/-, as such, instead of making payment which was admitted by them in the MOU as well as letter given to the Income Tax Department, they created demand against the revisionist. Right from the year 2007 up to the month of September, 2010, the University was admitting its liability to pay the dues to the University to the tune of Rs. 7 Crores and not only this, the University also paid Rs. 1.71 Crores to the Income Tax Department to satisfy the income tax liability of the revisionist firm and had also made part payment directly to the revisionist after the execution of MOU. The respondent University is now taking shelter behind the ex parte report of the Committee comprising of the members of their choice employed in the respondent's Institute.

27. Perusal of the record also shows that as per the MOU, both the parties expressly agreed that the total value of the work executed was for Rs. 26,32,72,391 and also further agreed that after deducting the payment already made to revisionist firm, remaining balance shall be paid by the respondent university to the revisionist firm under three installments by the end of February, 2008.

No definite reply has been given by the respondent as to why the huge amount of Rs. 1.71 Crores was given to the Income Tax Department towards the income tax liability of the revisionist firm, if there be no dues payable to the revisionist.

28. The Court below adopted entirely erroneous and superficial approach in not considering the real issue and the vital facts going to the root of the matter which has resulted not only in vitiating the findings returned by it but has also resulted in manifest miscarriage of justice.

29. The Court below while granting leave to defend the suit has totally ignored the effect of MOU and letter dated 30.11.2007 of the respondent university and the payments made by the University to the Income Tax Department to the tune of Rs. 1.71 Crores towards the income tax liability of the revisionist firm and part payment made to the revisionist after the execution of MOU. It is thus clear that the amount claimed by the revisionist was admitted on so many occasion by the University but the Court below ignored the admissions of the respondent.

30. A Full Bench of this Court in the case of [Shambhu Dayal and Others Vs. Pt. Basdeo Sahai](#), has held that If a Court omits to consider a material on record having a bearing on the question to be decided by it or fails to apply its mind to or to record a finding on a crucial aspect of the case which can not be ignored in the determination of the controversy before the Court, if certainly acts illegally or at least with material irregularity

in the exercise of its jurisdiction u/s 115 CPC. In the present case also, the Court below has omitted to consider the material evidence on record having a bearing on the question to be decided by it and failed to apply its mind to record a finding on a crucial aspect of the case, which can not be ignored in the determination of the controversy before the Court, as such, it acted illegally in the exercise of his jurisdiction. Therefore, the present revision u/s 115 CPC is clearly maintainable.

31. At this juncture, it is also relevant to refer the decision of the Apex Court in the case of [Southern Sales and Services and Others Vs. Sauermilch Design and Handels GMBH](#), wherein the Court has observed as follows while taking into consideration the object intended to be achieved by the introduction of Sub-rules (4), (5) and (6) in Rule 3 of Order 37 of the Code. Whereas in the unamended provisions of Rule 3, there was no compulsion for making any deposit as a condition precedent to grant of leave to defend a suit by virtue of the second proviso to Sub-rule (5), the said provision was altered to the extent that the deposit of any admitted amount is now a condition precedent for grant of leave to defend a suit filed under Order 37 of the Code. Relevant extract of the judgment of the case in Southern Sales and Services and others (Supra) is reproduced herein below:

"14. Having considered the submissions made on behalf of the respective parties and the decisions cited, there appears to be force in Mr. Sharma's submissions regarding the object intended to be achieved by the introduction of Sub-rules (4), (5) and (6) in Rule 3 of Order 37 of the Code. Whereas in the unamended provisions of Rule 3, there was no compulsion for making any deposit as a condition precedent to grant of leave to defend a suit by virtue of the second proviso to Sub-rule (5), the said provision was altered to the extent that the deposit of any admitted amount is now a condition precedent for grant of leave to defend a suit filed under Order 37 of the Code. A distinction has been made in respect of any part of the claim, which is admitted. The second proviso to Sub-rule (5) of Rule 3 makes it very clear that leave to defend a suit shall not be granted unless the amount as admitted to be due by the defendant is deposited in Court.

15. The High Court has come to a finding that a certain portion of the plaint has been duly admitted by the appellant herein and accordingly directed 55% thereof to be deposited as a pre-condition for grant of leave to defend the suit.

16. As has been pointed out by Mr. Sharma, it is now well established as a principle of law that even if a wrong order is passed by a Court having jurisdiction to pass an order in such cases, the revisional Court will not interfere with such an order unless a jurisdictional error is pointed out and established by the person who questions such order.

17. In the instant case, the High Court did not lack jurisdiction to pass an order with regard to the subject matter of dispute, though the order itself may be incorrect. There is, therefore, little scope for this Court to interfere with the directions given to the appellant herein to deposit in Court 55% of the admitted dues as a pre-condition to grant of leave to

defend a suit. The judgment of the High Court impugned in this appeal does not warrant any interference since the trial Court had exercised its jurisdiction under the second proviso to Sub-rule (5) of Rule 3 of Order 37 of the Code. The earlier concept of granting unconditional leave when a triable issue is raised on behalf of the defendant, has been supplemented by the addition of a mandate, which has been imposed on the defendant, to deposit any amount as admitted before leave to defend the suit can be granted. The question as to whether leave to defend a suit can be granted or not is within the discretionary powers of the High Court and it does not appear to us that such discretion has been exercised erroneously or with any irregularity which warrants interference by this Court."

32. In the case of Mechelec Engineers & Manufacturers versus Basic Equipment Coprn., the Apex Court inter alia has observed as follows:-

"If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit disclosed that at the trial he may be able to establish a defence to the plaintiff claim, the court may impose conditions at the time of granting leave to defend-the conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend. (e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured."

33. It may also be noted that MOU was duly signed by the authorised, competent and very senior Officers of the University and the MOU would be binding between the parties, even if any of the signatory to the MOU later on resigned from the University. The Court below although has taken into consideration the MOU but has not even referred to or discussed about the effect of the admission made by the respondent before the Income Tax Department.

34. No cogent and convincing reason has been given by the Court below in not considering the clinching documents available on record for the purpose of passing an order under Order 37 Rule 3 CPC. The entire case of the respondent is based on the exparte report of the so called Committee constituted in the year 2010 (constituted after several years after the execution of MOU) comprising of members of their choice belonging to the respondent-Institute which took an unilateral decision carving out a new case in favour of the respondent by taking a complete somersault by going back on its previous statement/admission made in the MOU and Letter dated 30.07.2011 and payment made by respondent to the Income Tax Department to the tune of Rs. 1.71 Crores to satisfy the Income Tax liability of the revisionist. Ex parte committee report is of

the year 2010 after the execution of the MOU i.e. 2006.

35. The said ex parte report was nothing but obviously an after thought and appears to have given for the purpose of escaping liability and it was not explained as to how a huge amount running in Crores was paid by the respondent to the Income Tax Department to satisfy the Income Tax liability and what action the University had taken against their Officers, who were allegedly responsible for the payment.

36. The defence taken by the respondent did not exonerate the respondent-University from the payment of the entire amount claimed by the revisionist. There is inherent implausibility and inconsistency in the defence of the respondent. Defence put up by the respondent does not appear to be prima facie bonafide, genuine and tenable even if it is presumed that the defence set up by the respondent was not sham, moonshine or illusory as the respondent acknowledged and confirmed the liability in writing on so many occasions.

37. Finding of fact should not ordinarily be disturbed in revision but if the Trial Court proceeds on illegal and unwarranted assumption or if the finding of fact is based on non-consideration of material evidence or finding recorded is perverse and there is material irregularity in exercise of jurisdiction, then it is open to the Court in revision to interfere with the finding of fact and set aside the decision of the Court below. Ordinarily I would have remanded the case with a direction to the Court below to pass an order afresh keeping in view the observations made in this judgment but as it is an old matter and the entire proposed evidence is on record, I preferred to decide the matter itself on merits.

38. In view of the above discussions, the impugned order dated 25.07.2013 passed by the Additional Civil Judge (Senior Division) Court No. 14, Allahabad, unconditionally allowing the Application 18-C of the defendant/respondent to leave to defend the Original Suit No. 1014 of 2012 under Order XXXVII, Rule 3(5) of CPC filed by the plaintiff revisionist requires modification. It would be in fitness of the things to direct the defendant/respondent to deposit the substantial amount which was admitted by it to be due as already discussed in detail herein above and for the balance amount the defendant respondent be further directed to give security in terms of Rule 3(6) Order 37 CPC.

39. Thus keeping in view the provisions of Order 37 Rule 3(5)(6) of the Code of Civil Procedure, leave to defend the suit in respect of the claim of the plaintiff/revisionist is subject to the condition that the defendant/respondent will deposit 50% of the total amount in cash as claimed by the revisionist in the suit and furnish adequate security for the remaining half to the satisfaction of the Court below within six weeks from today.

40. With this observation, the present revision stands partly allowed. No order as to costs.