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## **BIPS Systems Ltd. Vs Tata Infotech Ltd.**

### **Regular First Appeal 69 of 2003**

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**Court:** Delhi High Court

**Date of Decision:** July 16, 2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) â€” Section 144

**Hon'ble Judges:** Rajiv Sahai Endlaw, J

**Bench:** Single Bench

**Advocate:** Amit, for the Appellant; Munindra Dulvedi, Ms. Preeti Yadav and Ms. Divya Bhall, Advocates., for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

Rajiv Sahai Endlaw, J

CM No. 12828/2012 (of appellant u/s. 144 of CPC)

1. This appeal was preferred against a money decree in favour of the respondent and against the appellant. Vide interim order dated 25th

November, 2003 as modified on 16th December, 2003, the operation of the judgment and decree was stayed subject to the appellant depositing

the decretal amount of Rs. 2,35,110/- with the Registrar General of this Court and the respondent was granted liberty to withdraw that amount on

furnishing security to the satisfaction of the Registrar General of this Court. The amount was so deposited by the appellant and withdrawn by the

respondent by furnishing a Bank Guarantee. The appeal was ultimately allowed vide judgment and decree dated 10th July, 2012.

2. This application has been filed by the appellant for restitution, seeking direction to the Registrar General to invoke the Bank Guarantee furnished

by the respondent and to refund the amount of Rs. 2,35,110/- deposited by the appellant in this Court. Directions are also sought for payment by

the respondent of interest @ 12% per annum on the said amount of Rs. 2,35,110/-, with effect from May, 2004 and till the period the respondent

has enjoyed the said amount.

3. The counsel for the respondent states that the sum of Rs. 2,35,110/- has since been refunded to the appellant. The counsel who appears for the

appellant has no knowledge. There is however no reason to doubt the statement of the counsel for the respondent.

4. The dispute which remains is qua interest only.

5. The only contention of the counsel for the respondent in this regard is that the restitution can be ordered only by the court of first instance and

which in this case is the court of the learned Additional District Judge which had passed the decree and the application before this Court is

misconceived. Reliance in this regard is placed on State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another, and on judgment dated

20th January, 2011 of this Court in RFA No. 224/2000 titled M/s. Mehta Brothers Vs. Bank of India.

6. Undoubtedly, the principle laid down by the Supreme Court in State Bank of Saurashtra supra is that u/s 144 of Civil Procedure Code, 1908,

restitution can be ordered only by the Court of first instance. However, the said judgment has to be considered in the context in which it was

pronounced. The applicants in that case who were seeking restitution had paid the entire decretal amount in compliance of the decree and it was

the restitution thereof which was held to lie before the court of first instance only. This Court in M/s. Mehta Brothers merely followed the said

judgment of the Supreme Court.

7. However, the amount of Rs. 2,35,110/- subject matter here, was not realised by the respondent from the appellant in execution of the decree

but vide interim orders of this Court in this appeal. It is not as if the decree which was challenged in this appeal was executed. The appellant had

sought the stay of execution during the pendency of the appeal and which was granted subject to deposit of the decretal amount aforesaid by the

appellant and further with liberty to the respondent to withdraw the same. The restitution, in my view, in such a situation can be ordered only by

this Court under whose orders the amounts were got deposited and released to the respondent and cannot be by the Trial court which cannot be

expected to interpret and construe the orders of this Court.

8. I am, therefore, of the view that the restitution can be ordered by this Court only.

9. I may even otherwise note that the Supreme Court in South Eastern Coalfields Ltd. Vs. State of M.P. and Others, has held that Section 144 of

the CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play and therefore

even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. It was further

held that undoing the effect of an interim order by resorting to principles of restitution is the obligation of the party who has gained by the interim

order of the Court, so as to wipe out the effect of the interim order passed, which in view of the reasoning adopted by the Court at the stage of

final decision, the court earlier would not or ought not to have passed. It was yet further held that there is nothing wrong in an effort being made to

restore the parties to the same position in which they would have been if the interim order would not have existed. Naturally, such restitution has to

be done by the Court which passed the interim order and not by any other Court. Subsequently also the Supreme Court in *Abhimanyoo Ram Vs.*

*State of U.P. and Another, , Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., , Indian Council for Enviro-Legal Action Vs. Union of India*

*(UOI) and Others, and Nava Bharat Ferro Alloys Ltd. Vs. Transmission Corporation of A.P. Ltd. and Another*, has held that it is the bounden

duty and obligation of the Court to neutralize any unjust enrichment and undeserved gain accruing from interim orders.

10. The Supreme Court in *South Eastern Coalfields supra* has also held that once the doctrine of restitution is attracted, interest is a necessary

concomitant. Again, in *State of Rajasthan and Another Vs. J.K. Synthetics Ltd. and Another*, it was held that if the obligation to make restitution

by paying appellant interest on withheld amounts is not strictly enforced, the litigant succeeding may end up a loser. Neither counsel has however

addressed any argument on the rate at which the interest should be awarded.

11. However, considering that the release of the said amount of Rs. 2,35,110/- to the respondent was subject to furnishing of Bank Guarantee and

furnishing of which Bank Guarantee also costs money and considering the rate of interest paid by the Nationalized Banks on fixed deposits, it is

deemed appropriate to award interest to the appellant on the said sum of Rs. 2,35,110/- @ 6% per annum from the date when the amount was so

withdrawn by the respondent from this Court and till the date when the amount of Rs. 2,35,110/- was refunded by the respondent to the appellant.

12. The respondent to pay the said amount to the appellant within four weeks. The application is disposed of.