IN THE COURT OF SH. UMED SINGH GREWAL
ADDITIONAL DISTRICT JUDGE-02 (WEST)
TIS HAZARI COURTS, DELHI

<u>Civ. No. 609335/16</u>
<u>CNR No. DLWT01-000009-2005</u>

M/s Instromedix India Pvt. Ltd. .... Plaintiff

Versus

M/s Surgi Aid Pharma .... Defendant

<u>16.03.2022</u>

<u>O R D E R</u>

1. This order shall decide an application of plaintiff under section 114 read with Order XLVII Rule 1 CPC for reviewing the order dated 21.12.2018 vide which its application under Order XII Rule 6 CPC was dismissed.

2. Ld. counsel for plaintiff argued that in the impugned order dated 21.12.2018, the court relied upon High Sea Sale Agreement dated 11.02.2002 which was executed in relation to transaction based on the purchase order dated 28.02.2002. That purchase order was not only delivered but also fully paid and hence, was not subject matter of the dispute. So, the denial of execution of that Order by the defendant should not have been of any consideration in the impugned order. He next submitted that regarding denial of sale consideration by the defendant, the court did not consider in impugned order the

rate at which the defendant had made payment against the purchase order dated 28.02.2002 of the same ventilator and the rate given by the defendant in purchase order dated 28.09.2002, set up as 4th purchase order by the defendant, is infact, a combined purchase order in lieu of purchase order dated 28.06.2002 for 16 ventilators and 16.07.2002 for one ventilator. Next submission is that in the impugned order, the court did not refer the admissions made by the defendant.

The counsel next argued that the total cost of 17 ventilators ordered by the defendant vide two purchase orders dated 28.06.2002 and 16.07.2002, at the rate of Rs. 6,60,000/- per ventilator was Rs. 1,12,20,000/-. Before that purchase, order for 17 ventilators @ Rs. 6,60,000/- was given alongwith four portable ventilator at the additional cost of Rs. 14,76,000/-. The defendant has admitted to have made that payment of Rs. 61,94,280/-. The said payment was made in two installments one on 20.06.2002 for Rs. 51,94,280- and another on 30.07.2002 for Rs. 10 lacs. He further submitted that there was no scope of dispute about the rate of ventilators. The story set up by the defendant regarding setting up of determination of rate by custom authority is scandalous. He next submitted that the purchase order dated 28.09.2002 set up by the defendant as 4th purchase order, was infact, not an independent order and rather, it was a substitute of earlier purchase orders dated 28.06.2002 and 16.07.2002 of 17 ventilators. It has been termed by the defendant as 4th purchase order in order to create a moonshine defence. Had it been a 4th purchase order, the same would have been referred in its complaint dated 18.08.2003 filed in Magistrate Court in Raipur, Chhatisgarh, where in para no. 3, only three purchase orders dated 28.02.2002, 28.06.2002 and 16.07.2002 have been mentioned.

Counsel for plaintiff next argued that it has been admitted by the defendant that it had issued purchase orders dated 28.06.2002 and 16.07.2002 for 17 ventilators. It has also been admitted that those 17 ventilators had already been received by it and installed in various hospitals of Chhatisgarh. The defendant did not deny to have not received the payment from the Director of Health Services, Raipur, Chhatisgarh for installation of 17 ventilators.

On limitation, counsel argued that Article 124 of the Limition Act comes into force only for review of final judgment. The period of limitation of 30 days prescribed under that Article is not applicable to the order passed on an interim application. In this regard, he relied upon ***Tasnemul Haq vs. Union of India & Anr., 2007 SCC Online Del 448***.

3. Ld. counsel for the defendant argued that the review application is hit by the period of limitation because as per the mandate of Article 124 of Limitation Act, such application is to be filed within 30 days of the order. The impugned order was passed on 21.12.2018 and the review application has been filed on 30.03.2021.

4. In, ***Tasnemul Haq vs. Union of India & Anr. (supra),*** following was the observation of Hon'ble Apex Court:-

"20. The next question which arises for consideration is as to what is the share of the petitioner since indisputably the petitioner has been compensated for land on the basis that his share is 7/24th. There is no doubt that the share of the petitioner was declared as 1/3rd by the order dated 18.03.1955 by the competent authority. The matter remained as such till the second order was passed on 27.01.1967 reviewing the earlier order dated 18.03.1955. The question, thus, arises is whether such a power of review could have been exercised after a period of 12 years. In my considered view the answer to this question is in the negative for the reasons set out hereinafter.

"24. The other aspect is the question of limitation for exercising such powers. Rule 29 of the Administration of Evacuee Property (Central) Rules provided for a review within a period of 30 days. The rule reads as under:-

> *"29. Appeals, Review, Revision –*
>
> *(6) An application for review of any order may be made within thirty days of the date of such order and shall be presented either in person or through a legal practitioner or a recognised agent.*

"25. The power has been exercised after 12 years have lapsed. Not only that, even if the residuary Article 137 of the Limitation Act would apply, certainly the review power could not be exercisable beyond a period of three years. I am, thus, of the considered view that there was no jurisdiction to review the order which was passed on 18.03.1955 and any exercise was certainly much behyond time..."

5. Perusal of above observation shows that it was not held by the Hon'ble Apex Court that period of limitation was three years for filing review application against the order passed

on interim application. The position has been made clear by Hon'ble Delhi High Court in ***Veena Duggal vs. H.S. Vedi & Ors., 110(2004) DLT 747*** to the effect that period of limitation was 30 days even for review of orders passed on interim application. It further held that if review application filed beyond 30 days of the order, is not accompanied by an application u/s 5 of Limitation Act, the same should be dismissed.

(i). In the case in hand, the impugned order was passed on 21.12.2018.

(ii). On 23.03.2019, first review application was filed.

(iii). On 27.02.2020, after hearing part arguments on review application, it was transpired that it was neither signed by the plaintiff nor by its counsel. It was submitted by counsel for the plaintiff that he shall file fresh application and thereafter, first application be disposed off as withdrawn.

(iv). It is mentioned in the order dated 05.10.2020 that the signed application had not been filed by the plaintiff.

(v). On 12.01.2021, proxy counsel for plaintiff had sought adjournment for filing signed application.

(vi). The signed application u/s 114 read with Order XLVII Rule 1 CPC was filed ultimately on 30.03.2021.

6. So, the first application which was neither signed by the plaintiff nor by the counsel, was filed on 23.03.2019 for

reviewing the impugned order dated 21.12.2018. The period of limitation for filing such application is 30 days and hence, the first application was clearly barred by the period of limitation.

After several adjournments, the present signed application was filed on 30.03.2021 i.e. after two years three months and nine days of the impugned order and hence, it is patently barred by the period of limitation.

7. In view of the above discussion, the review application is dismissed as it is barred by the period of limitation.

Announced in the open court
Today on 16th March 2022

(Umed Singh Grewal)
Addl. District Judge-02 (West)
Tis Hazari Courts, Delhi