

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 13 OF 2009
[Arising out of SLP(Crl.)No.22272 of 2007]

M/S HIND PAINTS & CHEMICALS

... Appellant(s)

Versus

M/S ACCURATE TRANSFORMERS LTD.

... Respondent(s)

ORDER

Leave granted.

In a Winding Up proceeding, it was alleged that the respondent company was required to pay an amount of Rs.3,17,352/- to the appellant. It appears that on being provisionally appointed the Official Liquidator went to the premises of the respondent-company to take possession thereof. Thereafter, the respondent filed an application before the Company Judge for recalling the order of appointment of the Official Liquidator on the ground that the respondent-company had already paid the principal amount and that only the question of interest remains to be decided. The matter was heard by the Company Judge, who

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also recorded the said fact and having regard to the provisions of the Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, directed

the respondent to pay to the appellant interest on the principal amount @ 9 per cent per annum, with liberty to the appellant herein, to move the civil court in order to establish its claim under the provisions of the aforesaid Act. An appeal was preferred by the respondent herein before the Division Bench, which modified the order of the learned Company Judge by withdrawing the leave granted to the appellant to move the civil court for claiming higher interest.

Having heard learned counsel for the respective parties, we are of the view that the Division Bench committed an error in withdrawing the liberty which had been granted by the learned Company Judge, to approach the civil court, having particular regard to the provisions of Section 4 of the aforesaid Act of 1993.

We, therefore, allow the appeal and modify the order of the Division Bench of the High Court impugned herein by restoring the liberty which had been granted by the learned Company Judge to the appellant to move the civil court for

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higher interest. The appellant will be at liberty to move the civil court in terms of the liberty granted by the Company Judge.

(ALTAMAS KABIR)

.....J.

.....J.
(CYRIAC JOSEPH)

New Delhi,
January 06, 2009.

JUDIS