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IN THE HIGH COURT OF DELHI AT NEW DELHI

EX.P. 9/2008

**HARI CHAND PRAKASH WANTI
CHARITABLE MEMORIAL TRUST**

..... Decree Holder

Through: Mr. S.K. Rungta, Senior Advocate
with Mr. Prashant Singh,
Advocate.

versus

I.D.B.I BANK

..... Judgement Debtor

Through: Mr. Hemant Budakoti, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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15.11.2011

E.A. No. 632 of 2010

For the reasons stated therein, the application is allowed and the
Execution Petition No. 9 of 2008 stands revived.

The application is disposed of.

EX.P. 9/2008 & E.A. Nos. 520/2008 & 244/2011

1. An Award made by the learned Arbitrator, Mr. Justice J.K. Mehra
(Retired), on 10th May 2003 in the dispute between the Petitioner Decree
Holder ('DH') M/s Hari Chand Prakash Wanti Charitable Memorial Trust
(('HCPWCMT')) and the Respondent Judgement Debtor ('JD') arising

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EX.P. No. 9/2008

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from the lease deed dated 17th April 1997 was modified by this Court by an order dated 6th July 2006 in O.M.P. No. 337 of 2003. This Court held that the DH would be entitled to five weeks' rent for the period during which the premises was restored to its original condition. Consequent upon the modification with the Award by this Court by its order dated 6th July 2006, the DH has filed the present execution petition.

2. Under the lease deed dated 17th April 1997 the DH received an interest-free security deposit of Rs. 51,00,000/- from the JD and it was agreed that the said would be adjusted proportionately towards the lease rent payable by the lessee for the last six months prior to the termination of the lease. Admittedly, rent for four months, i.e., February to May 2002, aggregating to Rs. 42,50,000/- had to be paid by the JD to the DH upon termination of the lease. After adjusting the said amount of four months' rent against the security deposit, the DH would owe the JD a sum of Rs. 8,50,000/-. However, the JD owes the DH five weeks' rent which works out to Rs. 13,28,125/-. After adjusting the above balance security deposit of Rs. 8,50,000/-, the DH would still be owed by the JD a sum of Rs. 4,78,125/-. Further, it is pointed out that in terms of the Award dated 10th May 2003 "the arrears of water and electricity charges could be recovered by the Decree Holder out of the security deposit lying with it." Additionally, it is submitted that under Section 31(7)(3) of the Arbitration

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and Conciliation Act, 1996 ('Act') as explained by the Supreme Court in *State of Haryana v. M/s S.L. Arora & Company JT 2010 (2) SC 534* the Petitioner would be entitled to 18% simple interest per annum from the date of the Award till the date of payment.

3. The JD has filed two objections in the form of EA Nos. 520 of 2008 and 244 of 2011. It is first submitted that the JD had instituted proceedings against the DH before the Debt Recovery Tribunal ('DRT') for recovery of the balance security deposit after adjusting the four months' rent. In the said proceedings the DRT issued a recovery certificate ('RC') in favour of the JD and against the DH. The DH then approached the DRT for withdrawal of the said RC by filing M.A. No. 32 of 2008. On 2nd November 2010 the DRT passed an order allowing M.A. No. 32 of 2008 and recalling the RC issued against the DH. The DRT gave both the parties, i.e., the DH and the JD, to agitate their respective claims before this Court in the present execution petition filed by the DH. It may be mentioned that the appeal filed by the JD against the above order was dismissed by the Debt Recovery Appellate Tribunal ('DRAT') by an order dated 4th April 2011. It is submitted by the JD that for the period beyond subsistence of the lease, it is entitled to interest on the balance security deposit after adjusting four months' rent at the prevailing market rate of 24% simple interest per annum. It is further submitted that

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if the interest of the balance security deposit is so calculated then the claim made by the DH in the present proceedings would not be justified.

4. Mr. Hemant Budakoti, learned counsel for the JD further disputes the claim for interest on the awarded amount. According to him when this Court partly allowed O.M.P. No. 337 of 2003 filed by the DH by the order dated 6th July 2006 it only granted the DH five weeks' rent. Since the order of this Court was silent as regards the award of interest, no such claim could be made by the DH in the present proceedings.

5. Replying of the last submission, it is submitted by Mr. S.K. Rungta, learned Senior counsel appearing for the DH, that under Section 31(7)(b) of the Act any amount found payable under an arbitral Award would automatically carry @ 18% simple interest per annum from the date of the Award till the date of the payment. He further pointed out that the security deposit was expressly stated to be an interest-free one in the lease deed. The subject matter of the arbitral proceedings *inter alia* concerned the liability of the JD to pay rent for the period during which the premises were restored to its original position. Since some portion of that amount had to be adjusted against the security deposit as well, interest did not become payable on the security deposit till the entire amount in terms of the Award was realized.



6. The above submissions have been considered. After the order dated 2nd November 2010 of the DRT, the question of the DH having to pay any amount to the JD as a result of the RC earlier issued by the DRT did not arise. The DRT gave liberty to both parties to agitate their respective claims in these proceedings. Thereafter, the JD has filed EA No. 244 of 2011 claiming that the DH owes it money and not *vice-versa*. Admittedly, the JD owes the DH four months' rent aggregating to Rs. 42,50,000/-. Under the lease deed the security deposit of Rs. 51,00,000/- held by the DH was an interest-free deposit. After adjusting rent of four months against the said interest-free security deposit, the DH would have owed the JD a sum of Rs. 8,50,000/-. In terms of the judgment dated 6th July 2006 of this Court in O.M.P. NO. 337 of 2003, the JD further owes the DH rent for five weeks which works out to Rs. 13,28,125/- (calculated on the basis that in terms of the lease deed the rent for four weeks is Rs. 10,62,500/-). The said amount of Rs. 13,28,125/- would get reduced by Rs. 8,50,000/-, which is refundable by the DH to the JD as the balance security deposit. The sum owed by the JD to DH, *de hors* the claim for water and electricity charges, works out to Rs. 4,78,125/-.

7. There is merit in the contention of the DH that till such time the five weeks rent was not fully paid by the JD, the question of the DH paying any interest on the security deposit for the period beyond subsistence of

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the lease did not arise. Further, the issue whether the JD was liable to pay the DH rent for the period during which the premises were restored to its original position was the subject matter of arbitration. The modified Arbitral Award granting the said sum to the DH had to be enforced and the amount realised after adjusting the security deposit amount. Consequently, this Court negatives the claim of the JD for interest on the security deposit for the period beyond the subsistence of the lease deed.

8. As regards the claim of the DH for interest on the balance sum payable in terms of the arbitral Award by the JD to the DH, Section 31(7)(b) of the Act makes it clear that "a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent per annum from the date of the award to the date of payment." There is nothing in either the original Award or the Award as modified by this Court by its order dated 6th July 2006 in O.M.P. No. 337 of 2003 which indicates that interest would not be payable. Therefore, in terms of Section 31(7)(b) of the Act, the DH would be entitled to 18% simple interest per annum on the aforementioned sum of Rs. 4,78,125/- from the date of the Award, i.e., 10th May 2003 till the date of payment by the JD which should not be later than four weeks from today.

9. In terms of the Award the DH is entitled to recover from the JD arrears

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of water and electricity charges. However, the DH has to produce to the JD, the original bills in respect thereof. Accordingly, it is directed that the DH would be entitled to recover from the JD the arrears of water and electricity charges for the period upto 31st May 2002, provided the DH produces the original bills and payment proof before the JD within a period of four weeks from today. In such event, the payment by the JD of such sum to the DH shall be made within a further period of four weeks thereafter.

10. EA Nos. 520/2008 and 244/2011 are dismissed and Ex. P. No. 9 of 2008 is disposed of in the above terms.



S. MURALIDHAR, J

NOVEMBER 15, 2011

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