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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 495/2010

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Judgment Delivered on: 19.04.2011BHARTIA INDUSTRIES LTD BCH ELECTRIC
LTD & ANR

..... Appellants

Through : Mr. C. Mukund and Mr. A.K. Jain, Advs.

versus

RAJIV SALUJA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. None had appeared on behalf of the respondent on the last date of hearing. None is present on behalf of the respondent even today.
2. Present appeal is directed against the judgment and decree dated 25.2.2010 passed by learned Additional District Judge in Suit No.163/05, by which, the trial court has awarded damages/mesne profits for use and occupation of the property bearing no.119/89 (New No.89A), Sainik Farms, New Delhi-63, @ ₹85,000/-, per month, for the period commencing from 1.8.2003 to 31.3.2004 with interest @ 12%, per annum, compounded annually from the date of accrual of damages on completion of each month till its realization.

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 the digital data is as per the physical
 file and no page is missing.

3. The necessary facts, which are required to be noticed for the disposal of the present appeal, are that the respondent had filed a suit being No.163/2005 for recovery of possession, damages and mesne profits against the appellant herein in respect of the property bearing no.119/89 (New No.89A), Sainik Farms, New Delhi. As per the plaint, the suit property was let out by the respondent for the residence of appellant no.2, vide registered Lease Deed dated 1.9.1990, for a period of five years. On the expiry of the term of the said lease parties entered into another lease deed for a period of two years w.e.f 1.9.1995 to 31.8.1997 and yet another lease of the same duration was executed expiring on 31.8.1999. It was agreed that the appellants would pay rent at the rate of ₹85,000/-, per month, excluding electricity, water and maintenance charges. The tenancy was terminated by the respondent on 1.9.1999 asking for the physical possession of the suit property. As per the plaint, the appellants requested for six months' time i.e. upto 29.2.2000 to vacate the suit premises which was granted by the respondent on compassionate grounds. Since the possession of the suit premises was not handed over by the appellants to the respondent, the respondent issued a legal notice dated 8.6.2000 to the appellants, to which no reply was filed by the appellants. Respondent also claimed damages for use and occupation at the prevailing market rate of ₹2.00 lakhs, per month, and also claimed interest @ ₹24%, per annum, on the outstanding amounts due.

During the pendency of the suit, the respondent had made an application under Order XII Rule 6 CPC, which was allowed by the High Court on 7.5.2002, where the suit had initially been filed. RFA(OS)No.25/2002 filed against the said order of the Single Judge was also dismissed by a Division Bench of this Court on 11.7.2005 and Review Applications being No.160/2003 and 161/2003 were also dismissed by the Division Bench. Subsequently, as the pecuniary jurisdiction was enhanced, the case was transferred to District Court on 13.1.2004. Possession of the premises, in question, was taken over by the respondent on 1.4.2004. On 11.2.2009, following issues were framed by the trial court:

- "1. *Whether the plaintiff is entitled for damages/mesne profits? If so, at what rate and from which period?* OPP
2. *Whether the plaintiff is entitled to interest? If so, at what rate and for which period?* OPP
3. *Relief."*

4. Although, respondent had initially claimed mesne profits @ ₹2.00 lakhs, per month; on 26.10.99, the respondent restricted his claim for damages at the rate of last paid rent, i.e., @Rs.85,000/- per month and chose not to lead evidence. The trial court, finding the claim to be just and equitable, thus awarded damages to the respondent @ ₹85,000/-, per month, for the period of occupation of the premises, in question, i.e. w.e.f. 1.8.2003 to 31.3.2004.
5. Learned counsel for the appellants has strongly urged before this Court that trial court has exceeded its jurisdiction by granting

compound interest to the respondent whereas no such prayer was made by the respondent in the suit filed before the trial court.

6. It is next submitted that respondent had only prayed for interest @ 24%, per annum.
7. I have heard counsel for the appellant. In the case of State of Haryana vs. S.L. Arora & Company reported in (2010) 3 SCC 690, the Apex Court has held that specific contract or authority under a statute, is a sine qua non for award of compound interest. The relevant portion of the judgment reads as under:

"Compound interest can be awarded only if there is a specific contract, or authority under a statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest."

8. Section 26 of the Delhi Rent Control Act provides only for awarding of simple interest. Applying the law laid down by the Apex Court in St. Arora case (supra), I find force in the submission made by learned counsel for the appellants. The learned trial court has erred in awarding compound interest in exercise of its discretion in the absence of any statutory provision and without giving any rational basis for the same.
9. Having regard to the facts of this case, appellants shall pay simple interest @ 12%, per annum, to the respondent. Let the decree sheet be modified accordingly.
10. It is pointed out by learned counsel for the appellants that principle amount stands deposited and duly withdrawn. Let the interest upto

will be read
on 28-11-10
vide order dt 16.8-11

(1.4.2004) be paid by the appellants to the respondent within four weeks from today. No other ground has been pressed.

11. Appeal stands disposed of in above terms.

April 19, 2011
'msr'

G.S. Sistani
G.S. SISTANI, J.

RFA

- Disposed of

12.04.11

⇒ CM-10075/11 (for
modification)

A-4
% 16.09.2011

Present: Mr. C. Mukund with Mr. A.K. Jain, Advocates for the
appellant.
Mr. M.L. Mahajan with Mr. Gaurav Mahajan, Advocates for
the respondent.

+ CM No.10075/2011 (for modification) in RFA No.495/2010

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This is an application seeking modification of the order dated 19.04.2011 wherein in the concluding portion of para 10 of the order, this Court had directed as under:-

"It is pointed out by learned counsel for the appellants that principal amount stands deposited and duly withdrawn. Let the interest upto 1.4.2004 be paid by the appellants to the respondent within four weeks from today."

Counsel for the applicant submits that the amount of rent which was illegally withheld by the appellant was received by him only after an order passed by this Court on 26.11.2010 and thus he would be entitled to interest up to the receipt of this amount i.e. 26.11.2010 and not upto 01.04.2004. He further submits that he could not bring this fact to the notice of this Court when the order dated 19.4.2011 was passed as he did not appear on the said date.

Counsel for the non-applicant submits that the applicant is not entitled to interest up to 26.11.2010 in view of the fact that the appellant (tenant) had tendered the rent to the applicant by means of a cheque, however, the cheque was not encashed by him.

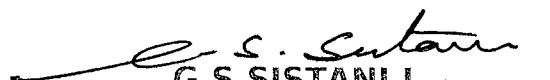
I find no force in the submission of learned counsel for the

non-applicant for the reasons that even if the cheque was not encashed by the applicant, the tenant who had issued the cheque, continued to have benefit of the amount in his bank account and thus earned interest on the same.

Accordingly, the order dated 19.04.2011 is modified. The date 01.04.2004 shall be read as 26.11.2010.

Application stands disposed of accordingly.

SEPTEMBER 16, 2011
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G.S.SISTANI, J