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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 492/2015

UCO BANK

..... Appellant

Through: Mr I.S. Chauhan & Mr Manoj Kumar,
Advs. with Mr R.K. Nagpal, Sr. Manager of the
appellant.

versus

ANITA & ANR

..... Respondents

Through: Mr Jugal Bagga, Adv. with Mr Rakesh
Swani, Attorney of the respondents.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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30.09.2015

CM No. 21676/2015 (condonation of delay)

1. This is an application seeking condonation of delay of 44 days in complying with the directions issued by this court on 28.07.2015. On the said date, the court had, inter alia, directed the appellant /defendant to deposit the decretal amount with the registry of this court within a period of two weeks.

2. For the reasons given in the application, the delay is condoned. The application is, accordingly, disposed of.

CM No. 21675/2015 (for directions)

3. This is an application filed by the appellant / defendant to bring on record the FDR bearing no. 016753 dated 16.09.2015, in the sum of Rs. 13,50,910/-. The FDR has been drawn in favour of "MS Registrar General,

Delhi High Court”. The said FDR has been submitted pursuant to direction issued by this court on 28.07.2015 to deposit the decretal amount.

4. As prayed, the FDR is taken on record. Counsel for the appellant /defendant assures the court that in case any difficulty is faced by the registry of this court in liquidating the FDR, on account of the nomenclature given therein, corrective measures will be taken, on due intimation by the registry.

5. The application is, accordingly, disposed of.

RFA 492/2015 & CM Nos. 13217/2015 (Stay) & 21685/2015 (by resp. for directions)

6. On the previous date, the counsel for the appellant / defendant after arguing for some time, had confined the challenge qua the impugned judgement and decree only in respect of the rate of interest awarded.

7. Mr Jugal Bagga, who enters appearance on behalf of the respondents /plaintiffs, says that the respondents are willing to scale down the interest awarded by the trial court to simple interest at the rate of 9% per annum.

8. Presently, the operative part of the impugned judgement and decree reads as follows:

“.....The suit of the plaintiff is decreed for the mesne profit @ Rs. 40,000/- P.M. w.e.f 01.07.2008 till 07.02.2013. The difference of amount of mesne profit has to be paid by the defendant along with 12% P.A. interest till its realization. The FDRs which are kept on record and filed by the defendant be released to the plaintiffs. Cost of the suit is also awarded in favour of the plaintiff against the defendant. The possession of the suit property has already been handed over to the plaintiffs.....”

8.1 The judgment and decree will now get varied, as agreed to by the

counsels for the parties and shall accordingly read as :

“.....The suit of the plaintiff is decreed for the mesne profit @ Rs. 40,000/- P.M. w.e.f 01.07.2008 till 07.02.2013. The difference of amount of mesne profit has to be paid by the defendant along with 9 % P.A. interest till its realization. The FDRs which are kept on record and filed by the defendant be released to the plaintiffs. Cost of the suit is also awarded in favour of the plaintiff against the defendant. The possession of the suit property has already been handed over to the plaintiffs.....”

9. I am informed by the counsel for the respondents /plaintiffs that as per the judgement of the trial court, the appellant/ defendant was required to pay mesne profit at the rate of Rs.40,000/- per month for the period 01.07.2008 till 07.02.2013. It is submitted by the counsel for the respondents /plaintiffs that the appellant / defendant has paid mesne profits for the aforesaid period at the rate of Rs. 15,438/- per month. It is thus submitted that, in effect, in terms of the decree of the trial court, the appellant/ defendant would have to pay mesne profits at the rate of Rs. 24,562/- p.m.

9.1 Counsel for the respondents says that the respondents /plaintiffs are willing to forego a further sum of Rs. 2562/- per month on the awarded mesne profits and, therefore, in effect the appellant/ defendant would have to pay mesne profits for the aforementioned period at the rate of Rs. 22,000/- per month along with interest at the rate of 9% p.a., as indicated above.

10. Learned counsel for the appellant / defendant accepts and affirms this position.

11. Accordingly, the registry will release to the respondents/ plaintiffs, the amount deposited by the appellant/ defendant in the form of an FDR,

bearing in mind, the aforesaid position.

11.1 The amount will be released by the Registry to Mr Rakesh Swani, who I am told by the counsel for the respondents, is the power of attorney holder of the respondents.

11.2 Counsel for the respondents, Mr Jugal Bagga, whose Vakalatnama is on record, will present himself before the registry at the time when the amount is released.

12. Learned counsel for the appellant /defendant assures the court that in case the amount available with the Registry is not sufficient to achieve satisfaction of the decree, the balance decretal amount will be paid to the respondents/ plaintiffs within two weeks from today.

13. The appeal and the applications are, accordingly disposed of, in the aforementioned terms.

RAJIV SHAKDHER, J

SEPTEMBER 30, 2015

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