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

\+ RSA 398/2015

ISHWARI PRASAD

..... Appellant

Through: Mr. R.K. Bharani, Advocate

versus

SARLA RANI

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

% **27.01.2017**

<u>C.M. No.3275/2017</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>Review Petition No.32/2017 and C.M. Nos.3276-277/2017</u>

3. The appellant has preferred the aforesaid review petition to seek review of the order dated 26.11.2015 passed by this Court. The said order had been assailed before the Supreme Court by preferring S.L.P.(Civil) No.36793/2016. Before the Supreme Court, it appears that the appellant herein had contended that the transaction is covered by the Usurious Loans

Act, 1918 and hence interest should not have been awarded above 7.5%. The Supreme Court observed that the appellant/ petitioner before it should have raised it before the High Court. The S.L.P. was disposed of without prejudice to liberty to the petitioner to raise the said issue before the High Court in a review petition. The Supreme Court granted 30 days time for filing the said review petition vide order dated 09.12.2016. In terms of that order, the present review petition has been preferred.

4. Learned counsel for the appellant has, firstly, sought to contend that the loan transaction itself is non-existent. The said aspect cannot be raised in a review since, firstly, the limited aspect on which the appellant has been permitted to approach to seek review is the one taken note of hereinabove. Even otherwise, there is no merit in this submission in view of the discussion contained in the order dated 26.11.2015.

5. Learned counsel for the appellant has then sought to place reliance on Section 3 of the Usurious Loans Act, 1918, which, *inter alia*, provides that *"where in any suit to which this Act applies, whether heard ex-parte or otherwise, the Court has reason to believe:*

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may, – ... ..."

6. In the present case, the interest was claimed by the respondent/ plaintiff @ 18% per annum. Per se, this Court has no reason to believe that

the rate of interest @ 18% per annum can be said to be excessive. Also, there is no reason to suggest that the transaction as between the parties was substantially unfair.

7. Reliance has been placed by learned counsel on the Punjab Relief of Indebtness Act, 1934, and in particular on Section 5 thereof, which carried out amendment to the Usurious Loans Act, 1918. In particular, learned counsel has placed reliance on Section 5 of the Punjab Relief of Indebtness Act, 1934, whereby Section 3 of the Usurious Loans Act, 1918 has been amended and clause (e) has been inserted in Section 3(2) of the Usurious Loans Act, 1918. The said clause (e) reads as follows:

> *"(e) The Court shall deem interest to be excessive if it exceeds seven and –a-half percentum per annum simple interest or is more than two per centum over the Bank rate, whichever is higher at the time of taking the loan, in the case of secured loans, or twelve and-a-half per centum per annum simple interest in the case of unsecured loans: Provided that the court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the State Bank of India or any bank included in the Second Schedule to the Reserve Bank of India Act, 1934, or any banking company registered under the Indian companies Act, 1913, prior to the first day of April, 1937, or any co-operative society registered under the Bombay Co-operative Societies Act, 1925, as extended to the Union territory of Delhi]."*

8. Therefore, the Court shall deem the rate of interest to be excessive if it exceeds 7.5% per annum simple interest, or if it is more than 2% over the bank rate, whichever is higher at the time of taking loan in the case of secured loan, or 12.5% simple interest in the case of unsecured loans. According to the appellant, the loan was secured in the present case by

creation of an equitable mortgage. Thus, the rate of interest would be deemed to be excessive if it exceed 7.5% per annum simple interest, or it was more than 2% over the bank rate, whichever was higher at the time of taking of the loan. The appellant did not plead and did not lead any evidence at any stage to show that the rate of interest was more than 2% over the bank rate at the time when the loan was taken. The loan relates to February 2007.

9. Looking to the fact that the rate of interest agreed between the parties was 18% per annum, it cannot be said on the basis of the material on record that the rate of interest was more than 2% over the bank rate which prevailed in February 2007.

10. For the aforesaid reasons, I find no merit in the review petition.

11. Dismissed.

VIPIN SANGHI, J

JANUARY 27, 2017

B.S. Rohella