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

+ **EX.P. 123/2012**

DELHI DEVELOPMENT AUTHORITY Decree Holder

Through Mr Pawan Mathur, Advocate Standing
Counsel for DDA.

versus

PREM CHAND SHARMA & CO Judgement Debtor
Through Mr Sandeep Sharma, Advocate with
Mr Amit Choudhary, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **22.11.2016**

VIBHU BAKHRU, J

1. The Delhi Development Authority (hereafter 'DDA') has filed the present petition for execution of the order dated 20.01.2009 passed by a Division Bench of this Court whereby the Judgment Debtor (hereafter 'JD') was directed to refund the excess amount paid by DDA in satisfaction of an arbitral award. The said order of the Division Bench was subsequently modified by an order dated 17.04.2009 passed by the Supreme Court (in SLP (C) 8289/2009) and the time for making the payment was extended for a further period of eight weeks from the date of the order.

2. The short question that arises for consideration is whether the JD is liable to pay interest for the period 11.03.2005 to 05.06.2009 on the part payment admittedly made within the time as extended by the Supreme

Court.

3. Briefly stated the relevant facts necessary to address the controversy are as under:-

3.1. Certain disputes had arisen between the parties which were adjudicated by a sole arbitrator, Mr M.S. Bhatia, who conducted the arbitration proceedings under the Arbitration Act, 1940 and rendered the arbitral award dated 27.03.1991 (hereafter 'the award'). DDA being aggrieved by the same filed objections against the award under Section 30 and 33 of the Arbitration Act 1940. The said objections were disposed of by this Court by a judgment dated 04.02.2005 (in CS (OS) 1326/1991) and the award as modified was made the rule of court.

3.2. In terms of the said judgment dated 04.02.2005, DDA was liable to pay the amount awarded along with *pendente lite* interest @ 18% per annum from the date of the arbitrator entering upon the reference till the date of the award.

3.3. The aforesaid decision dated 04.02.2005 was carried in appeal by the DDA before a Division Bench of this Court in FAO (OS) 122/2005. The Division Bench disposed of the aforesaid appeal by a judgment dated 20.01.2009 upholding the decision of the Single Judge but modifying the rate of interest from 18% per annum to 12% per annum. Consequent to reduction of interest, certain sums were refundable by the JD to the DDA as DDA had already paid the amount in accordance with the decision of the Single Judge. The relevant extract from the decision of the Division Bench is set out below:-

“The award is modified and the quantum of interest is reduced to 12% p.a. Learned Counsel for the respondent states that the entire payment in terms of decree was made three years ago along with interest @ 18% p.a. Consequently, due to the lowering of rate of interest from 18% p.a. to 12% p.a. the respondent would now be liable to refund the difference in the interest amount. In the interests of justice, we direct that in case the respondent refunds the excess amount within a period of 60 days, the respondent shall not be liable to pay any interest on the amount to be refunded. However, in case, the said payment is not made, the respondent shall refund the amount with interest at the rate of 12% p.a. from the date of receipt of the amount by the respondent till realization.”

3.4. Admittedly, a sum of ₹19,60,704/- was paid in excess by DDA to the JD and the same was liable to be refunded in terms of the order passed by the Division Bench on 20.01.2009.

3.5. The JD filed a Special Leave Petition against the aforesaid decision of the Division Bench, which was rejected by the Supreme Court by an order dated 17.04.2009. However, the Supreme Court extended the time for making the refund by a further period of eight weeks from the date of its order.

3.6. The JD made a payment of ₹14,86,275/- on 06.06.2009 and thereafter, made a further payment of ₹9,95,552/- on 07.06.2014.

4. According to DDA, since the payment of ₹14,86,275/- made by the JD on 06.06.2009 was only a part payment, the JD would be liable to pay interest on the sum of ₹19,60,704/- (the sum admittedly paid in excess by

DDA). In terms of the order passed by the Division Bench, the said sum was to be refunded within a period of two months from the date of the order passed by the Supreme Court, that is, 17.04.2009 failing which the JD was liable to pay interest @ 12% per annum. It is not disputed that the sum of ₹14,86,275/- was paid within the aforesaid period. However, DDA claims that since the entire sum of ₹19,60,704/- was not paid by the JD within the time specified, the JD would be liable to pay interest @ 12% per annum on the entire sum of ₹19,60,704/- even though it had made a substantial payment of ₹14,86,275/- within the specified period.

5. The learned counsel appearing for the JD submits that there is no dispute that if the excess amount paid was not refunded within the time as granted by the Supreme Court, the JD would be liable to pay interest on the said sum from 11.03.2005 till the date of payment. However, he submits that since the sum of ₹14,86,275/- was paid within the prescribed period, at least to that extent no interest would run. He, however, does not dispute that for the balance amount not paid within the specified time, the JD would be liable to pay interest from 11.03.2005 upto the date of payment.

6. In view of the above, the controversy is limited to considering the question, whether the JD would be liable to pay interest for the period from 11.03.2005 to 05.06.2009 even on the sum of ₹14,86,275/- which was paid by the JD within the prescribed time.

7. The Division Bench had granted the JD 60 days time to refund the amount failing which the JD would be liable to pay interest at the rate of 12% per annum. This period was extended by the Supreme Court by a

further period of eight weeks from 17.04.2009. The entire object of the said direction was to incentivise the JD to refund the amounts to DDA within the period of 60 days. It is also necessary to bear in mind that the question of refund had arisen only on account of the Division Bench reducing the rate of interest decreed by the Single Judge from 18% to 12%. Thus, in my view, the order dated 20.01.2009 must be interpreted to mean that to the extent, the JD refunds the sum within the prescribed period it would not be liable to pay any interest. This is the only reasonable interpretation possible because to hold otherwise would mean that the JD would be liable to pay interest even if a single rupee was not paid within the specified time. As indicated above, the object of the direction issued by the Division Bench was to incentivise the JD to refund the excess payment expeditiously and not to inflict a punitive measure.

8. Since the JD had admittedly paid the sum of ₹14,86,275/- within the time prescribed by the Division Bench (as extended by the Supreme Court), no interest on the said sum is payable by the JD. However, to the extent that the JD did not refund the aforesaid amount, that is, a sum of ₹4,74,429/- (₹19,60,704/- less ₹14,86,275/-), the JD would be liable to pay interest from 10.03.2005 (the date on which excess payment had been made by the DDA) till the date of payment.

9. The JD had made a payment of ₹9,95,552/- on 07.06.2014 (by a cheque dated 21.04.2014) and, admittedly, the sum includes the principal amount of ₹4,74,429/- plus interest on the said amount from 11.03.2005 till the date of payment.

10. It is not disputed that if no interest is payable on ₹14,86,275/- as has been held above - no further sum is payable to DDA. The learned counsel for the JD also confirms that no sum is due from DDA.

11. In view of the above, no further orders are required to be passed in this petition. The same is, accordingly, disposed of.

NOVEMBER 22, 2016
pkv

VIBHU BAKHRU, J

