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

Date of Decision: August 17, 2016

+ EX.F.A. 12/2014 & C.M.No.8638/2014

BABY RADHIKA GUPTA & ANR.Appellants
Through: Mr. Kailash Pandey, Advocate

versus

ORIENTAL INSURANCE CO. LTD. Respondent
Through: Mr. Pradeep Gaur, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In execution proceedings, impugned order of 4th January, 2014 directs appellants to refund the excess amount withdrawn by them with interest @9% p.a. The Executing Court has also directed appellants to refund the excess amount of Tax Deduction at Source (TDS) to the respondent- Insurance Company.

2. At the hearing, both the sides submit that the excess amount received by appellants has been already refunded. However, dispute is about the interest component and the excess amount of TDS received by appellant.

3. Learned counsel for appellants submits that neither this Court in appeal nor the Supreme Court in the order of 24th November, 2009 has

directed the appellants to refund the excess amount received with interest nor there is any direction to refund the excess amount of TDS received by the appellant and so impugned order rendered by the Executing Court deserves to be set aside.

4. Learned counsel for respondent-Insurance Company controverts the stand taken on behalf of appellants and submits that it is quite clear from the order of 9th July, 2007 (*Annexure P-3*) of this Court in appeal that the interest component is the integral part of the awarded amount which was released to appellants and otherwise also, equity demands that when appellants have received the excess payment with interest, the appellants ought to refund the excess amount with interest which they have already received.

5. Upon hearing and on perusal of the impugned order and the material on record, I find that the learned Executing Court cannot go beyond the decree. It is a matter of record that neither this Court in appeal nor the Supreme Court has directed that the refund by appellant has to be with interest.

6. Apex Court in *Shivshankar Gurgar v. Dilip* (2014) 2 SCC 465 has reiterated as under:-

“13.2. In our opinion, the order dated 23-11-2005 virtually amounts to the modification of the decree and is without jurisdiction on the part of the executing court, therefore, a nullity. It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is.”

7. In the face of the afore-noted factual position and the facts of this case, this Court finds that the impugned order of 4th January, 2014 is unsustainable on the face of it and is accordingly set aside.

8. The appeal and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 17, 2016

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