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

+ **EX.P. 246/2007**

M/S RAJORA BUILDER

Through

..... Decree Holder
Mr. Sacchin Puri, Advocate with
Mr. Abhinav Sharma and Mr.Karn
Bhardwaj, Advocates

versus

DELHI JAL BOARD

Through

..... Judgement Debtor
Mr. Ashok Bhasin, Sr. Advocate
along with Ms. Sadhana Sharma and
Ms. Ginny Gawri, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **13.01.2016**

EA (OS) No.937/2012 (u/S 151 CPC)

1. This application filed by the judgment debtor/Delhi Jal Board is for restitution of an amount of Rs.31,47,198.40 on the ground that this amount is overpaid to the decree holder. Judgment debtor also claims interest on this amount which is to be refunded by the decree holder.

2. The law with regard to restitution is stated by the Supreme Court in the case of *Kavita Trehan (Mrs) and Anr. vs. Balsara Hygiene Products Ltd., (1994) 5 SCC 380*, and which is that the principle of restitution is much

EX.P. 246/2007

page 1 of 8

wider than comprised in the language of Section 144 CPC. This is so stated in paras 21 and 22 of the judgment in the case of *Kavita Trehan (supra)* and which paras read as under:-

“21. Section 144 CPC incorporates only a part of the general law of restitution. It is not exhaustive. (See Gangadhar v. Raghubar Dayal : AIR 1975 All 102 (F.B.); 1974 All LJ 751 and State Govt. of Andhra Pradesh v. Manickchand Jeevraj & Co. Bombay: AIR 1973 AP 27: (1972) 2 Andh LT 23.

22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,..." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.”

3. If therefore the decree holder has been paid an excess amount than the amount to which the decree holder was entitled to under the subject Award dated 16.06.2007, the decree holder will be liable to refund that amount i.e restitution of the extra amount received by the decree holder to the judgment debtor along with interest.

4. Before I proceed further, it is necessary to refer the order of a learned Single Judge of this Court dated 15.12.2008 in these very execution

proceedings by which it was held that interest payable under the Award is simple interest and not compound interest. This order dated 15.12.2008 reads as under:-

“Counsel for the parties have drawn my attention to page 46 of the paper book and the relevant part of the award. Interest @ 12% per annum has been awarded on claim Nos. 1 and 8 with effect from 01.7.1997.

With regard to claim Nos. 2, 3 4 and 5 interest is to be paid with effect from the date when amounts became due and payable on different dates during the period 01.4.1994 to 31.1.1997. For example if Rs.1000/- became due and payable on 01.05.1994 interest will be payable @ 12% per annum from the said date and not for the prior period. However, with effect from 1.2.1997, interest @ 12 % per annum will be payable on the entire amount due and payable on claim Nos.2,3,4 and 5. Learned arbitrator has not awarded compound interest. Simple interest has been awarded @ 12% per annum. Parties will file revise statement of accounts on the above basis with affidavits within two weeks from today.

List again on 9th February, 2009.”

5. A reading of the order leaves no manner of doubt that there is a final and binding observation that the impugned Award only gives simple interest to the plaintiff at 12% per annum with respect to claim nos.2, 3, 4 and 5.

6. The aforesaid order dated 15.12.2008 holding that only simple interest is payable was carried in an appeal but this appeal was disposed of as not pressed, as this is so recorded in the order of the Division Bench dated

22.03.3012 in EFA(OS) No.10/2009, and which order reads as under:-

“Learned senior counsel on instructions states that he does not wish to press the appeal and that in case the executing court passes an order directing refund of any amount already paid to the appellant, the appellant would be within his rights to take recourse to appropriate legal remedy.

We find there can be no doubt over the aforesaid position.

Dismissed as withdrawn.”

7. No doubt there is an observation in this order that appellant would be within his rights to take recourse to appropriate legal remedy, however, that only meant that taking that the interest is calculated at simple rate (and not at compounded rate) yet even if thereafter it is found that after calculating interest at a simple rate decree holder has not been overpaid, the judgment will not be able to claim refund. The language of the order dated 22.03.2012 cannot be read to argue that the Division Bench had by allowing a simplicitor withdrawal of the appeal resulting in sustaining the order dated 15.12.2008 yet had effectively set aside the order dated 15.12.2008 of the learned Single Judge and as is contended on behalf of the decree holder before this Court. Therefore, the limited legal remedy available to the decree holder was that taking the interest payable at simple rate, whether at all

decree holder had been overpaid or not by the judgment debtor (and as was the contention and the case of the judgment debtor) would be determined in a legal remedy/legal proceedings.

8. In my opinion nothing further needs to be decided in view of the order of the learned Single Judge dated 15.12.2008 and the order of the Division Bench dated 22.03.2012 and which has decided the controversy on the issue of payment of simple interest only. However, I have still examined, though only for academic purposes and not for legal effect, the argument of the counsel for the decree holder as to whether interest was payable at a compound rate under the Award as argued on behalf of the decree-holder. Counsel for the decree holder for this argument invited the attention of this Court to the first para of the second last page of the Award dated 16.06.2007 which records interest to be calculated from 01.04.1994 to 31.01.1997 on the basis of “monthly accrual of amounts”, and thus it is argued that this expression means payment of compound interest. In my opinion the argument of the decree holder in this regard is misconceived because the expression “monthly accrual of amounts” is found because the different

amounts under different claim nos.2, 3, 4 and 5 arose for different number of months for the period from 01.04.1994 to 31.01.1997 and hence the expression “monthly accrual of amounts”. The expression “monthly accrual of amounts” is not to be read for granting interest at compound rate because for granting interest at compound rate there necessarily had to be a specific direction of the interest being granted at compound rate, and which is deliberately and consciously not found in the subject Award dated 16.06.2007.

9. Learned counsel for the decree holder thereafter sought to argue that even if the interest is taken at simple rate of 12% per annum, decree holder has not been overpaid and attention was invited of this Court to the Annexure ‘A’ of the reply to EA No.937/2012 and as per which there are calculations showing that decree holder has not been overpaid, but clearly this argument is also misconceived because this chart filed as Annexure ‘A’ to the reply shows that the decree holder has calculated the interest on interest i.e compound interest by adding the amount which is due on principal and interest as on 31.01.1997 and thereafter charging interest on

the total amount of both principal plus interest amounts, thus effectively claiming compound interest, and which compound interest as stated above has neither been granted by the Award and much less so the decree holder so entitled after clarification of the learned Single Judge of this Court given vide order dated 15.12.2008 and which order was sustained in the appeal by the Division Bench of this Court in its order dated 22.03.2012.

10. In view of the above, I accept the figures of computation given by the judgment debtor filed as Annexure 'A' to the EA No.937/2012 and which shows that the judgment debtor paid an amount of Rs.2,65,23,286.01 to the decree holder as on 10.12.2007, whereas, decree holder had to be paid only an amount of Rs.2,33,76,087.61 i.e an extra amount of Rs.31,47,198.40 has been paid by the judgment debtor to the decree holder. Therefore, this amount of Rs.31,47,198.40 is hence liable to be restituted and refunded to the judgment debtor by the decree holder along with interest till payment at the same rate of 12% per annum which was granted to the decree holder by the Award.

11. Accordingly, this application EA No.937/2012 is allowed and disposed of by directing the decree holder to pay to the judgment debtor a sum of Rs.31,47,198.40 along with interest at 12% per annum simple from 11.12.2007 till the date of payment which should be within three months from today, failing which thereafter interest payable will become @ 18% per annum simple.

Application is allowed and disposed of accordingly, leaving parties to bear their own costs.

VALMIKI J. MEHTA, J

JANUARY 13, 2016

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EX.P. 246/2007

page 8 of 8