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

+ CM(M) 544/2016

VINAYAK INDUSTRIES LTD & ORS Petitioners
Through Mr.T.P.s.Kang, Mr. Shwetank
Sharma and Mr. Upasana Kang, Advocates.

versus

ESS AAR UNIVERSAL PVT LTD Respondent
Through Mr. Sanjay Rastogi and Mr. Aman
Rastogi, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
07.11.2016

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn a limited part of the order in decree passed by the trial court on 11.08.2009.
2. The respondent had filed the suit for recovery of Rs. 15,45,380.58/-. The trial court after the evidence, by the detailed judgment dated 11.08.2019 decreed the suit for Rs. 15,45,380.50/- in favour of the respondent along with pendente lite and future interest @ 24% p.a..
3. Now, in 2016 i.e. about 7 years after passing of the decree, the petitioner has filed the present petition under Article 227 of the Constitution of India relying upon the judgment of the Division Bench of this court in RFA (OS) No. 78/2011 titled as "***P.K.Gupta & Anr. vs. V ESS AAR Universal Pvt. Ltd. & Anr.***" to claim that in similar circumstances", the

Division Bench had granted simple interest @ 8% p.a. He submits that the subject matter of the suit in RFA (OS) No. 78/2011 was also a money decree and in the present case also, it is a money decree. The respondents in that case and in the present case are the same. Hence, he submits that the facts of the present case being akin to the case dealt with by the Division Bench, the same principle would apply.

4. I am not inclined to interfere in the present petition for the various reasons. Firstly, the petitioner has chosen to bypass the provisions of the Code of Civil Procedure Code, namely, Sections 96 and 100 and instead of filing a regular first appeal, has chosen to file the present petition under Article 227 of the Constitution of India. Secondly, there is a delay of six years in approaching this court. The impugned order was passed on 11.08.2009, even the judgment of the Division Bench relied upon by the petitioner was passed of 2011. The petition is belated.

5. Accordingly, there is no merit in the present petition and the same is dismissed.

6. All pending applications also stand dismissed.

JAYANT NATH, J

NOVEMBER 07, 2016

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