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

\+ EFA(OS) 17/2016, C.M. APPL.27130-27131/2016

M/S RAJORA BUILDERS ..... Appellant
Through : Sh. N.K. Kantawala and Sh. Abhinav Sharma, Advocates.

versus

DELHI JAL BOARD ..... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

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

% 01.08.2016

This is a Decree Holder's appeal questioning the order of complete restitution made by the executing court. The short point urged on behalf of the Decree Holder/appellant is that since the Judgment Debtor deposited amounts voluntarily, they do not attract interest in the event a restitutionary order is made. The essential facts briefly are that the Decree Holder was successful in arbitration proceedings; the respondent/Judgment Debtor's challenge to the award failed. During the course of the proceedings, by an order dated 15.12.2008, learned Single Judge clarified that the order carried simple interest and not compound interest. The Judgment Debtor had deposited and paid over the decreetal amount on the assumption that it was bound to comply with the award and on the assumption that the award carried compound interest. The appellant's challenge to the order under Section 34 of the Arbitration and Conciliation Act, 1996 failed. Eventually, in the execution proceedings, the Judgment Debtor contended that it was entitled to restitution not only of the excess amounts (i.e. the differential interest amount or the differential between the amount reflecting the compound interest on the one hand and simple interest on the other) but also interest on such amount. The Judgment Debtor's opposition to this contention failed; the learned Single Judge ruled on 13.01.2016 that such simple interest on the differential amount, i.e. ₹31,47,198.40/- was payable by the appellant/Decree Holder. The Decree Holder had approached this Court but was granted liberty to initiate review proceeding which it unsuccessfully did. In these circumstances, it has approached this Court yet again in appeal – now both against the order of 13.01.2016 as well as the subsequent order claiming modification of the learned Single Judge's order of 09.05.2016. It is contended by Sh. N.K. Kantawala, learned counsel on the strength of *Mooka, Naicker v. A.K. Venkatasami Naidu and Anr.* AIR 1950 Mad 807, that when a party voluntarily deposits or hands over amounts to another, there is no principle of law which mandates payment of interest upon the return of money. It is pointed out that the Madras High Court too was strengthened with an application under Section 144 of the CPC.

This Court is unpersuaded with the contention of the appellant. It is now settled law – after *Mrs. Kavita Trehan v. Balsara Hygiene Products Ltd.* 1994 (5) SCC 380, that the principle of restitution is not exhaustively spelt out in Section 144 which merely contains some elements thereof. Taken to its logical conclusion, monies known to be held in excess would quite naturally carry interest upon discovery that one is not entitled to it. If one follows such train of thought, it follows that upon determination – in December 2008, that the appellant was not entitled to such amount, it was reasonably accepted that they would be returned as early as possible. Its failure to do so necessarily meant that either it had appropriated it or put it to profit – which the rightful owner can, in the opinion of the Court, claim legitimately. That is precisely what happened in this case. The Court, therefore, is of the opinion that there is no merit in the appeal. It is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 01, 2016
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