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

+ CM(M) 762/2016 & CM Nos.28689-28691/2016

LAKHI RAM Petitioner
Through Mr.Sanobar Ali Qureshi, Adv.
versus
SURINDER SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **09.08.2016**
CM Nos.28689-28691/2016

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

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1. By the present petition the petitioner seeks to impugn the order dated 27.4.2016. It is the contention of the petitioner that an ex parte decree was passed in his favour on 17.2.2016 for a sum of Rs.3,82,900/-. The cost of the suit was also awarded to the petitioner/plaintiff. However, it is the case of the petitioner that as the transaction was a commercial transaction the trial court has inadvertently by oversight not granted interest for the period prior to filing of the suit and also during pendency of the suit. The petitioner accordingly moved an application under Section 114 for review of the decree dated 17.2.2016. It was averred in the application that the interest has not been granted inadvertently.

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2. The application has been dismissed by the impugned order dated 27.4.2016 holding that in view of section 34 Rule 2 CPC the application is not maintainable.

3. Section 34 CPC reads as follows:-

“34. Interest

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, ²[with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from] the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

¹[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.”

(2) Where such a decree is silent with respect to the payment of further interest ³[on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.”

4. Hence, section 34(1) provides that where a decree is for the payment of money, the court may, in the decree, order interest as the court may deem

reasonable from the date of the suit to the date of the decree, in addition to any interest adjudged for any period prior to institution of the suit.

5. Section 34(2) CPC deals with a situation where the decree is silent regarding payment of further interest from the date of decree to the date of payment or earlier date. The section provides that where the decree is silent on the said aspect the court would deem the said interest to be refused. Hence, section 34(2) CPC was not applicable to the present facts of the case. It was not the case of the petitioner that he was seeking interest from the date of decree till recovery.

6. Accordingly, the present order dated 27.4.2016 is set aside. Trial court may dispose of the application filed by the petitioner under Section 114 CPC in accordance with law. Petition stands disposed of.

JAYANT NATH, J

AUGUST 09, 2016

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