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

+ **CS(OS) 1551/2005**

M.S. SHOES EAST LTD. CO.

..... Plaintiff

Through: Mr. Pavan Sachdeva. Managing
Director of plaintiff in person.

versus

HUDCO LTD. & ANR.

..... Defendants

Through: Ms. Meenakshi Arora, Sr. Adv. with
Ms. Misha, Mr. Vijayant Paliwal and
Mr. Ranjeev Khatana, Advs. for D-1.
Mr. Rajeev Sharma and Ms.
Radhalakshmi Radhakrishnan, Advs.
for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.12.2017

IA No.9075/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

IA No.13077/2017 (of the plaintiff under Section 151 CPC).

3. Allowed.
4. The application stands disposed of.

Review Petition No.313/2017.

5. The plaintiff seeks review, of the order dated 13th January, 2017 disposing of the suit, to the extent of the same denies refund to it of Earnest Money Deposit (EMD) of Rs.3,85,00,000/- and qua the rate of interest awarded therein.

6. Though notice of the Review Petition has not been issued but the counsels for both the defendants i.e. Housing & Urban Development

Corporation Ltd. (HUDCO) and Union of India (UOI) have been appearing on advance notice on all the dates on which the Review Petition was adjourned for some reason or the other.

7. Today, Mr. Pavan Sachdeva, Managing Director of the plaintiff / review applicant appears in person and states that he will argue in person.

8. Mr. Pavan Sachdeva, Managing Director of the plaintiff / review applicant has been heard.

9. The circumstances leading to the disposal of the suit vide order dated 13th January, 2017 of which review is sought are set-out in the order itself as well as in the order sheet in the suit w.e.f. 10th August, 2016. The proposal for settlement of the dispute subject matter of the suit which had then been pending since 1997 with an earlier litigation having commenced in the year 1995, had emanated from the senior counsel for the plaintiff / review applicant during the hearing on 10th August, 2016. It was stated on that date that subject to the entire amount paid by the plaintiff / review applicant to the defendant no.1 HUDCO Ltd. being refunded to the plaintiff / review applicant with interest at such rate as may be fixed by the Court, the plaintiff / review applicant was willing to settle the matter. The proceedings w.e.f. 10th August, 2016 resulted in a settlement on most of the issues being reached between the plaintiff / review applicant on the one hand and the defendant no.1 HUDCO Ltd. on the other hand, leaving some aspects on which no settlement could emerge. It was in this context that the decision on the said aspect was left to this Court and which onus this Court took up on itself finding that valuable immovable property comprising of nine Guest House Blocks, nine Restaurants and twenty five shops in Andrews Ganj

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Project of defendant no.1 HUDCO Ltd. was lying waste since 1995. The order dated 13th January, 2017 thus, though not recorded to be a consent order was in the nature of consent order in the circumstances reflected in the order sheet of this suit w.e.f. 10th August, 2016.

10. For this reason alone, the plaintiff / review applicant is not entitled to review thereof.

11. However Mr. Pavan Sachdeva, Managing Director of the plaintiff / review applicant having been heard in person and for the sake of completeness, it is deemed appropriate to record his submissions.

12. Mr. Pavan Sachdeva, Managing Director of the plaintiff / review applicant has contended that this Court has erred in para 25 of the order dated 13th January, 2017, while passing a decree in favour of the plaintiff / review applicant and against the defendant no.1 HUDCO Ltd. for a principal sum of Rs.35,75,40,000/-, in not including therein EMD of Rs.3,85,00,000/- also paid by the plaintiff / review applicant to the defendant no.1 HUDCO Ltd. It is stated that under the terms and conditions of allotment, the EMD was to be treated as part of the first instalment to be paid by the plaintiff / review applicant and thus has to be treated as part of the said first instalment which vide para 25 has been ordered to be refunded. He has further drawn attention in this regard to pages 7 to 9 of the review application.

13. The second ground of which Mr. Pavan Sachdeva seeks review is qua the rate of interest awarded. It is contended that this Court has awarded interest at 6% per annum, justifying the same owing to the waste of the property in the interregnum. He has contended that the waste of the property was not for any fault of the plaintiff / review applicant and has in this regard

referred to paras 34 and 35 of the judgment dated 20th January, 2003 of this Court in OMP No.308/2002 titled ***Housing & Urban Development Corporation Ltd. Vs. Leela Hotels Limited*** and to the para 43 of the judgment dated 9th November, 2014 of the Division Bench of this Court in FAO(OS) No.59/2003 titled ***Housing & Urban Development Corporation Ltd. Vs. Leela Hotels Ltd.*** preferred thereagainst.

14. It is also argued that as per the valuation given by the defendant no.1 HUDCO Ltd. itself, the defendant no.1 HUDCO Ltd. has not suffered any loss.

15. The senior counsel for the defendant no.1 HUDCO Ltd. has drawn attention to an affidavit dated 8th November, 2017 of Ms. Arti Tygai, Joint General Manager (Projects) of the defendant no.1 HUDCO Ltd. filed in this proceeding. It is contended that the defendant no.2 UOI has now issued a notice to the defendant no.1 HUDCO Ltd. to show cause as to why the compromise was entered into. It is further stated that owing to the circumstances created by the defendant no.2 UOI and as detailed in the said affidavit, the defendant no.1 HUDCO Ltd. is unable to pay the monies which were to be paid by the defendant no.1 HUDCO Ltd. to the plaintiff / review applicant under the order dated 13th January, 2017 of which review is sought.

16. I have enquired from the counsel for the defendant no.2 UOI also present in the Court and in whose presence the entire proceedings resulting in the order dated 13th January, 2017 took place.

17. The counsel for the defendant no.2 UOI states that the said aspect has

no relevance as far as the present Review Petition is concerned.

18. The senior counsel for the defendant no.1 HUDCO Ltd. also states that she will take appropriate remedies with respect thereto.

19. In view of the aforesaid, all that can be clarified is that the observations in para 9 hereinabove of the defendant no.1 HUDCO Ltd. having consented to the order shall not affect the proceedings as recorded in the order sheet of this Court w.e.f. 10th August, 2016 and as recorded in the order dated 13th January, 2017.

20. No ground for review is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 12, 2017

‘pp’..