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

+ RFA 85/2017 and CM APPL. 2749/2017

M/S A & A ASSOCIATES Appellant
Through: Mr. Vinod Malhotra, Advocate with
Mr. Nikhil Malhotra, Advocate

versus

M/S LADLY-CO. & ANR Respondents
Through: None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
% **23.01.2017**

1. The appellant/plaintiff is aggrieved by the judgment dated 24.08.2016 passed by the trial court in its favour in a suit for recovery of Rs.18,40,000/- instituted by it against the respondents/defendants. By the impugned judgment, the trial court has awarded a decree for a sum of Rs.10 lacs in favour of the appellant/plaintiff alongwith *pendentelite* and future interest @ 9% per annum from the date of institution of the suit, till realisation.
2. Counsel for the appellant/plaintiff states that the trial court ought to have awarded interest for a period of three years reckoned backwards from the date of institution of the suit, i.e., from 23.09.2009. He further states that the rate of interest awarded by the trial court, which is 9% per annum, is on the lower side particularly when as per the agreement arrived at between the parties, the respondents were to pay interest @ 2% per month, which amounts to 24% per annum.

3. It is an admitted factual position that the cause of action to institute the suit against the respondents had arisen in favour of the appellant/plaintiff in the year 2006, when it had cancelled the order for supply of the subject machines, placed on the respondents and had demanded refund. However, the present suit was instituted in the year 2012. Counsel for the appellant explains that the said suit was instituted belatedly for the reason that under wrong legal advice, the appellant/plaintiff had filed a complaint against the respondents before the District Consumer Disputes Redressal Forum, Janakpuri in the year 2006, which was withdrawn in the year 2012 and only thereafter, was the civil suit for recovery of money instituted against the respondents.

4. On enquiring from the counsel for the appellant as to whether the respondents had taken a preliminary objection in its reply with regard to the maintainability of the aforesaid complaint before the District Consumer Disputes Redressal Forum, counsel for the appellant concedes that such an objection was taken but despite that, the appellant had continued pursuing its remedies before the said forum for a period of six years. He submits that that the said complaint was ultimately withdrawn by the appellant in the year 2012 with the consent of the respondents.

5. Knowing that a specific objection with regard to maintainability of the complaint was taken by the respondent before the District Consumer Disputes Redressal Forum, the appellant had elected to pursue the said complaint for a period of six years before the said forum. It is a different matter that the trial court has given the benefit of limitation to the appellant under Section 14 of the Limitation Act, by deciding issue No.2 in its favour. But that would not be a ground for the appellant/plaintiff to now claim

interest for the entire period reckoned from 2006, merely because it had elected to withdraw its complaint before the Forum in the year 2012 and then proceeded to institute a civil suit.

6. Furthermore, having regard to the fact that the trial court has awarded *pendendelite* and future interest @ 9% per annum from the date of institution of the suit till realisation, this Court is of the opinion that the said rate of interest is fairly reasonable and the impugned judgment and decree does not deserve interference on this count.

7. At this stage, counsel for the appellant states on instructions from his client that he does not wish to press the appeal on merits and instead, requests that the court fee affixed on the appeal may be refunded.

8. The appeal is accordingly disposed of, as not pressed, alongwith the pending application.

9. In view of the fact that the appeal is still at the stage of admission, and a request for withdrawal has been made on behalf of the appellant, the Registry is directed to issue a certificate in its favour for refund of the court fee to the extent of Rs.20,000/-.

JANUARY 23, 2017
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HIMA KOHLI, J