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

\+ **<u>RFA No. 211/2017</u>**

% **21st August, 2018**

RAMESH CHANDER ..... Appellant

Through: Mr. Anil Kumar Chunduru, Advocate (Mobile No. 9811335435).

versus

M/S SHIV INFRA PROMOTERS PVT LTD ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 26.10.2016 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.4,30,860/- being interest for the period of delay from 29.9.2011 till 4.11.2011 with respect to encashment of the cheque for an amount of Rs.1,82,01,960/-,and which cheque amount was the

consideration with respect to selling of the property of the appellant/plaintiff to the respondent/defendant.

2. The facts of the case are that appellant/plaintiff sold his property being 1/5th share in agricultural land bearing khatoni no. 40/35, out of khasra nos. 27/5 (5-05), 28/1 (4-16), 2 (4-16), 3 (4-16), 4 (4-16), 5 (4-16), 6 (4-16), 7 (4-16), 8 (4-16) and 9 (4-16), total land 43 bighas 13 biswas situated in the area of village Chandpur, Delhi, to the respondent/defendant. The total sale consideration was Rs.1,82,01,960/- and this was paid by the respondent/defendant/buyer by a cheque bearing no. 106335 dated 29.9.2011 drawn on Syndicate Bank, I.P. Estate, New Delhi. This cheque however on presentation was returned with the remarks that the account was blocked. Ultimately, the appellant/plaintiff represented the cheque which was cleared on 4.11.2011 and therefore claiming interest at 2% per month for the period of delay of encashment of the cheque, the subject suit was filed.

3. Though respondent/defendant originally contested the suit by filing written statement, however no evidence was led on behalf of the respondent/defendant. The respondent/defendant as per

its written-statement denied any liability to pay interest on account of delay, including by pleading that there is no such agreement to this effect.

4. After pleadings were complete trial court framed issues and appellant/plaintiff led evidence, and this is recorded in paras 17 to 22 of the impugned judgment and these paras read as under:-

> "17. On the basis of pleadings, Ld Predecessor has framed following issues:-
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> > (i)Whether the plaintiff is entitled to recover a sum of Rs.4,30,860/- from the defendant as prayed? OPP
> > (ii)Whether the plaintiff is entitled for pendentelite and future interest as prayed? OPP
> > (iii)Relief.
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> 18. During evidence, plaintiff examined himself on his affidavit, and also relied upon documents mentioned therein as Ex.PW1/1 to Ex.PW1/3 i.e. legal notice issued by the plaintiff, postal receipts thereof, and also AD card. Further, he relied upon certain documents, that were copy of return memo, certificate from the bank and statement of account. Though they were later on proved through witness of the bank, initially these were marked as Mark B to D.
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> 19. Apart from himself, the plaintiff also examined three other witnesses, and out of whom one was his childhood friend namely Sh. Bijender Singh who examined himself on his affidavit Ex.PW2/A as PW2, and stated that in his presence, the defendant had given assurance for payment of interest @ 2% per month on the delayed payment.
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> 20. PW3 Sh. Naresh Kumar was an official from banker of the plaintiff itself, and he produced record regarding cheque in question i.e. consisting of four pages which were Ex.PW3/1, and he proved certificate issued by bank as Ex.PW3/2.
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> 21. Besides this, the plaintiff also examined PW4 Sh. Ramesh Chander Pandey who was an officer in the bank of defendant. This witness was not

able to produce any record showing that the account of defendant had been blocked by any supporting order in this regard from any authority whatsoever.

22. PW5 Mrs. Rashmi Rajput was also examined on behalf of the plaintiff on her oral testimony. She has proved authority letter issued by Sh.Vijay Kumar Gulati, executed in her favour as Ex.PW5/A. Apart from that, she also produced minute book on the basis of which, copy of extracts of board resolution Ex.PW5/B (OSR) was admitted."

5. The only aspect to be considered by this Court is whether the appellant/plaintiff is entitled to interest for the period of delay in encashment of the cheque from 29.9.2011 to 4.11.2011.

6. No doubt there is no agreement between the parties, but counsel for the appellant/plaintiff rightly relies upon paragraph 21 of the judgment of the Supreme Court in the case of ***South Eastern Coalfields Ltd. Vs. State of M.P. and ors., (2003) 8 SCC 648*** and which holds that interest is payable in equity in certain circumstances. This paragraph 21 of the judgment in the case of ***South Eastern Coalfields Ltd. (supra)*** reads as under:-

"21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement. Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many."

7. Learned counsel for the appellant/plaintiff is also justified in arguing that Section 80 of the Negotiable Instruments Act, 1881, provides for interest @18% per annum whenever a cheque is dishonoured, and that though it is stated that ultimately the subject cheque was cleared, but there was a period of non-payment on account of dishonour of the cheque, and therefore Section 80 of the Negotiable Instruments Act applies.

8. In view of the arguments urged on behalf of the appellant/plaintiff, and the ratio of the judgment of the Supreme Court in the case of ***South Eastern Coalfields Ltd. (supra),*** and Section 80 of the Negotiable Instruments Act, it is ordered that appellant/plaintiff is entitled to interest at 1½% simple per month from 29.9.2011 till 4.11.2011 on the amount of Rs. 1,82,01,960/-. Money decree is accordingly passed in favour of the appellant/plaintiff and against the respondent/defendant. Appellant/plaintiff will also be entitled to costs throughout. Decree sheet be prepared.

9. The appeal is disposed of accordingly.

AUGUST 21, 2018 **VALMIKI J. MEHTA, J**

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