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

\+ **RFA 636/2018 and C.M. Appl. No. 31625/2018 (for stay)**

CANARA BANK ..... Appellant

Through: Mr. Shivansh Soni, Advocate (Mobile No. 9575622146).

versus

M/S CEPCO INDUSTRIES PVT LTD ..... Respondent

Through: Mr. Deepak Jain, Advocate (Mobile No. 9910505313).

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

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

% 27.11.2018

1. At the time of issuance of notice in this appeal on the last date of hearing i.e. 7.8.2018 a detailed order was passed. This order dated 7.8.2018 reads as under:-

> "**<u>C.M. Nos.31626-27/2018(exemption)</u>**
>
> 1. Exemption allowed subject to just exceptions.
> C.M.s stand disposed of.
>
> **<u>+RFA No.636/2018 and C.M. No31625/2018(stay)</u>**
>
> 2. The appellant after arguments presses this appeal only with respect to two aspects. The first aspect which is argued is that trial court as per para 20 at internal page 10 of its judgment has only granted adjustment of Rs.4,51,224/- whereas for the said period from 1.11.2006 till delivery of possession of the suit premises to the respondent/plaintiff on 29.4.2009 the appellant/defendant has paid much more which is the monthly rent/use and occupation charges at Rs.1.50 lacs per month. It is argued that therefore adjustment does not have to be only for

Rs.4,51,224/- as granted by the trial court. The second aspect which is argued is that rate of interest awarded by the trial court is excessive at 15% per annum inasmuch as in a catena of judgments, Supreme Court held that high rate of interest regime has gone and consequently appellant/defendant argues that rate of interest to be awarded should have been 8-9% per annum.

3. Limited to the aforesaid aspects, let notice be issued to the respondent, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 27th November, 2018.

4. Till further orders unless varied by the Court, there shall be stay of operation of the impugned judgment dated 20.3.2018 passed by the Court of Sh. Naresh Kumar Laka, ADJ-03, South East, Saket Courts, New Delhi in CS No.9508/2016 titled as ***M/s Cepco Industries P. Ltd. Vs. Canara Bank*** subject to the condition that appellant will deposit in this Court within three weeks from today the amount as decreed less the amount paid by the appellant to the respondent for the period from 1.11.2006 till 29.4.2009 and also that interest on arrears will be paid at 8% per annum simple. Dasti."

2. Learned counsel for the respondent has no quarrel with respect to the adjustment to be granted to the appellant/defendant and on behalf of the respondent it is only argued that the rate of interest should not be at 8% per annum as ordered on 7.8.2018.

3. It is argued that in the present case the appellant/bank when gives loan, for the relevant period from 1.11.2006 till 29.4.2009 rate of interest would not have been less than 12% per annum.

4. Accordingly in my opinion in the present case since the appellant/bank was a tenant and is in default with respect to arrears of *mesne* profits, and a bank such as the appellant would not be giving loan at less than 12% per annum simple, therefore it is ordered that the rate of interest payable by the appellant/defendant to the

respondent/plaintiff will be at 12% per annum simple instead of 15% per annum as granted by the trial court.

5. Counsel for the appellant says that the appellant has deposited the amount in this Court in terms of the order dated 7.8.2018, and therefore the amount deposited in this Court will be paid to the respondent/plaintiff in appropriate satisfaction of the impugned judgment and decree as modified by today's order.

6. Since counsel for the appellant says that the appellant was entitled to deduct TDS in accordance with law, therefore with respect to further difference of payment which has to be made since the rate of interest has been awarded at 12% per annum simple, and appellant/bank has deposited in this Court interest only at 8% per annum, before making payment of the balance amount by the appellant to the respondent within a period of six weeks from today, appellant will be entitled to deduct TDS in accordance with law, and the necessary TDS certificate will be handed over to the respondent in accordance with law.

7. Appeal is accordingly disposed of.

VALMIKI J. MEHTA, J

NOVEMBER 27, 2018

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