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

\+ CM(M) 25/2013

GOODYEAR INDIA LIMITED ..... Petitioner

Through: Mr. B. Mohan, Advocate.

versus

BHARAT BHUSHAN JAIN & ORS. ..... Respondents

Through: Mr.V.K. Srivastava with Mr. B.B. Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% **01.02.2018**

CM(M) 25/2013 & CM No.400/2013 (stay)

1. The order impugned in this petition was passed in execution proceedings taken out by the respondents (decree holders) to enforce the decree passed on 11.08.2011 in RSA No. 187/2010, the petitioner concededly being the judgment debtor. The operative part of the decree of the first appellate court around which the present controversy revolves, to the extent relevant here, reads as under:-

> "*....the appellants are entitled to interest at 7-1/2% simple pendent lite and future till payment from the respective months mesne profits became payable*

> *till the date of payment. If however, the respondent no.1 in terms of the present decree makes payment of the decretal amount within a period of 2 months from today, then the rate of interest shall only be 6% per annum simple.*"

2. The judgment debtor deposited an amount of Rs.50,01,989/- towards interest calculated at 6% per annum well within the stipulated period of two months. The decree holders objected on the ground that there was a shortfall and thus sought the benefit of enhanced rate of interest at 7-1/2 % per annum. The application under Section 151 of the Code of Civil Procedure, 1908 moved to such effect by the decree holders (except Smt. Vijay Jain) on 10.01.2012 was considered by the executing court and by order dated 20.10.2012 passed on the file of Execution No. 76/2004, the submission of the decree holders was upheld and the judgment debtor was called upon to deposit further amount of Rs.12,63,699.29, the calculations having been made towards interest at the rate of 7-1/2 % per annum.

3. Aggrieved with the said direction, the petitioner has approached this Court by the petition at hand, the argument raised at the hearing primarily being that the *mesne* profits which had already been paid were to be adjusted and no interest thereupon could have been calculated, the computation submitted by the decree holders to the executing Court in this view being erroneous.

4. It is noted that the executing Court has actually not gone into the correctness of the calculation of the interest to the decree holders. In above facts and circumstances, the proper course would be to remit the matter to the executing Court for calculating the liability of the judgment debtor

towards interest in terms of the decree under execution with assistance of both the parties. The executing Court will pass a reasoned order reflecting the deficiency in the amount deposited, if any, within the period granted and if there has been a deficiency it would have the liberty to enforce the enhanced rate of interest at 7-1/2 % per annum.

5. With these observations, the petition and the application are disposed of.

6. Copy of order *dasti* to both the parties.

R.K.GAUBA, J

FEBRUARY 01, 2018
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