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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 202/2018

SANJAY KRIPALANI & ANR

..... Appellants

Through : Mr.Jeevesh Nagrath, Ms.Vishakha Gupta,
Mr.Chitvan Singhal, Mr.Chandan Dutta,
Advocates.

versus

WHITEFIELD MOTORS (P) LTD

..... Respondent

Through : Mr. I.S. Alag, Senior Advocate with
Mr.J.S. Lamba, Mr.R.S. Bisht,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

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10.10.2018

1. The present appeal is directed against the order dated 5th July, 2018, passed by a learned Single Judge of this court, while deciding IA No. 17555/2014, filed by the respondent/plaintiff, under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of the Civil Procedure in CS(COMM) No. 1132/2016.

2. The plaintiff/respondent herein has instituted a suit for recovery of Rs.3,37,50,000/-(Rupees Three Crores Thirty Seven Lacs and Fifty Thousands) against the appellant. According to the plaint, the respondent herein had given a loan in the sum of Rs.2 Crores to the appellant herein. The amount remained unpaid which led to the filing of the suit. The stand of the appellant herein is that in fact, out of the sum of Rs. 2 Crores, Rs. 1 Crore was pocketed by the son-in-law of the plaintiff and in view thereof, the son-in-law, on behalf of the company, entered into a Memorandum of Understanding (MOU) with the appellant herein for full and final settlement in the sum of Rs.94 Lacs, and a cheque in the said amount was

handed over but when presented in the bank was dishonoured.

3. The submissions made by learned counsels for the appellant are vehemently denied by Mr. Alag, learned Senior counsel appearing for the respondent.

4. After some hearing in the matter, learned counsel for the appellant submits that the rights of the appellant be protected to the extent that should the suit be dismissed and an order is passed for refund of Rs.2 Crores, which stands deposited by the appellant and released in favour of the respondent on his furnishing a bank guarantee, the respondent would be liable to pay interest.

5. We find this submission of the learned counsel appearing for the appellant to be fair and just. Accordingly, while the appeal is dismissed as not pressed, the order of the learned Single Judge dated 5th July, 2018 is modified to the extent that should the suit of the respondent/plaintiff be rejected and an order passed for refund of Rs.2 Crores, the respondent/plaintiff would also be directed by the learned Single Judge to pay interest from the date of deposit at such rate as may be decided by the learned Single Judge.

6. With these directions, as prayed, the appeal is disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 10, 2018

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