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

+ **RFA 805/2017**

ASHOK AGGARWAL Appellant
Through: Mr. Dushyant Chaudhary, Advocate.

versus

M/S DPL BUILDERS PVT LTD & ANR Respondents
Through: Advocate (*appearance not given*).

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

ORDER

% **06.02.2018**

1. There is a very limited issue in this appeal. The issue is only with respect to claim of pre-suit interest. Trial court has decreed the suit for the principal amount of Rs.3,00,000/- along with *pendente lite* and future interest but has not granted pre-suit interest.
2. Learned counsel for the appellant has drawn the attention of this Court to the legal notice dated 22.7.2015 issued by the appellant/plaintiff to the respondents/defendants and which has been proved on record along with the postal receipts as Ex.PW1/4 and PW1/5. It is stated that legal notice has to be taken as a proved document because original of the legal notice cannot be with the appellant/plaintiff but has to be with the noticee being the defendant to whom the legal notice is sent and therefore trial court has wrongly marked this legal notice as Mark B whereas it stands proved on

account of proving of the postal receipts.

3. Learned counsel for the appellant/plaintiff also draws the attention of this Court to paragraph 10 of the plaint which refers to sending of the legal notice and response thereof in paragraphs 10 and 11 of the written statement and which show that there is no denial of serving of the legal notice dated 22.7.2015. Paragraph 10 of the plaint and paragraphs 10 and 11 of the written statement read as under:-

Paragraph 10 of the plaint:-

“10. That being constrained, the Plaintiff further issued legal notice dated 22.07.2015 through Sh. Anuj Jain, Advocate thereby demanding the refund of the aforesaid amount of Rs.3,00,000/-, interest and damages. The Defendants despite receipt of the same notice, however failed to pay any heed to the same legal notice. The plaintiff is accordingly also entitled for the recovery of legal notice charges of Rs.11,000/-”

Paragraphs 10 and 11 of the written statement:-

“10-11. That the contents of para no. 10-11 of the plaint are wrong, false, vague, fabricated, concocted, baseless and vehemently denied. It is denied that the plaintiff is accordingly also entitled for recovery of legal notice charges of Rs.11,000/-. It is also denied that in total, as aforesaid, besides the principal sum of Rs.3 lacs, the plaintiff is entitled for the interest amounting to Rs.1,53,000/- calculated as above and the legal notices of Rs.11,000/- i.e. in total a sum of Rs.4,64,000/- for which the present suit for recovery is filed. However it is submitted that the plaintiff did not comply the terms and conditions of the project as such he is not entitled for any relief and also any interest or damages from the respondents in any manner, hence the present suit is liable to be dismissed with heavy costs.”

4. It is argued that once a legal notice is served then under provision of Section 3 of the Interest Act, 1978 pre-suit interest has to be granted to the appellant/plaintiff.

5. In my opinion, trial court has committed a legal error in not

granting pre-suit interest despite of serving of legal notice dated 22.7.2015, and therefore, it is directed that appellant/plaintiff will be entitled to interest at the rate of 9% per annum simple from the date of the legal notice being 22.7.2015 till the filing of the suit on 14.3.2016.

6. Appeal is, accordingly, allowed to the extent as stated above with granting pre-suit interest to the appellant/plaintiff and a decree to this extent is passed in favour of the appellant/plaintiff and against the respondent no. 1/defendant no. 1 i.e. interest on the principal amount of Rs.3,00,000/- at the rate of 9% per annum from 22.7.2015 till the date of filing of the suit on 14.3.2016.

7. The appeal is allowed and disposed of accordingly as stated above, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 06, 2018

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