

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

+ **RFA No. 12/2018**

% **5th January, 2018**

RAM BABU AGGARWAL Appellant
Through: Mr. Robin Tyagi and Mr.
Nagender Deswal, Advocates.

versus

SHREYA DEVELOPWELL PVT. LTD. & ANR. Respondents
Through: Mr. Anshuman, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 327/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 12/2018

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 22.9.2017 by which the trial court has decreed the suit of the appellant/plaintiff for recovery of moneys for a sum of Rs.17,28,200/- as against the

respondent no. 1/defendant no. 1, but the suit stands dismissed against the respondent no.2/defendant no. 2. Trial court has also not granted pre-suit interest. The present appeal is therefore filed by the appellant/plaintiff seeking two reliefs of being granted a decree against the respondent no.2/defendant no. 2 and also for grant of pre-suit interest. It is noted that respondents/defendants were *ex-parte* in the suit and thus the suit was not contested by the respondents/defendants.

2. On the issue as to whether the respondent no.2/defendant no. 2 is liable, it is seen that admittedly the contract of appellant/plaintiff was with the respondent no. 1/defendant no. 1. It was the respondent no.1/defendant no. 1/company which proposed to make a project at Hindon Heights, Ghaziabad, U.P., wherein the appellant/plaintiff had booked a flat. Therefore, appellant/plaintiff only has privity of contract with the respondent no.1/defendant no. 1. Respondent no.2/defendant no.2 is pleaded to be liable to the appellant/plaintiff on account of the fact that the respondent no.2/defendant no. 2 has taken over the project from the respondent no.1/defendant no. 1, however I have repeatedly asked the counsel for

the appellant/plaintiff to show me any document whereby the appellant/plaintiff agreed that respondent no.2/defendant no. 2 will only be liable and respondent no.1/defendant no. 1 will no longer be liable i.e the contract of appellant/plaintiff with respondent no.1/defendant no. 1 stood substituted by the contract of appellant/plaintiff with the respondent no.2/defendant no. 2 but it is seen that admittedly no evidence whatsoever, much less documentary evidence, could be pointed out to this Court as led in the trial court, to show that contract of appellant/plaintiff with respondent no.1/defendant no. 1 was substituted with respondent no.2/defendant no. 2 and appellant/plaintiff accepted this position and discharged the respondent no.1/defendant no. 1. Therefore, in my opinion trial court has committed no error in dismissing the suit by holding that there is no liability of respondent no.2/defendant no. 2.

3. On the aspect of grant of pre-suit interest, admittedly there is no contract between the parties as to appellant/plaintiff being entitled to interest. The only basis of claim of interest was on the ground of appellant/plaintiff having issued a legal notice dated 27.5.2015. It is argued that once legal notice is given, the

appellant/plaintiff hence under the Interest Act, 1978 will be entitled to interest.

4. In view of sending of the legal notice dated 27.5.2015, the appellant/plaintiff therefore under the Interest Act would be entitled to interest from the date of sending of the legal notice to the date of filing of the suit and I note that this period is not a large period but just a period of six months. In my opinion, therefore no purpose would be served in issuing any notice in this appeal in view of the fact that the respondents/defendants were *ex-parte* in the trial court. However since the issue is of grant of pre-suit interest in view of the legal notice having been issued under the Interest Act, and noting that the appellant/plaintiff has been granted *pendente lite* and future interest at 9% per annum, the impugned judgment and decree is modified by granting interest at the rate of 9% per annum from 1.6.2015 till the date of filing of the suit on 26.11.2015.

5. Appeal is accordingly dismissed so far as the relief prayed of passing of a decree against the respondent no.2/defendant no. 2 is concerned, but, the impugned judgment and decree is modified

by granting pre-suit interest from the date of legal notice till the date of filing of the suit as stated above.

6. The appeal is accordingly disposed of.

JANUARY 05, 2018

VALMIKI J. MEHTA, J

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