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

% Judgment reserved on : 03.05.2023
Judgment pronounced on : 19.05.2023

\+ **RFA 27/2019 and CM APP Nos.9175/2019, 14121/2021, 36188/2022 & 36189/2022**

JAGAT SINGH ..... Appellant

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Ellis J D Ahuja, Dr. Naipal Singh and Mr. R.K. Joshi, Advocates along with Mr. Jagat Singh (Appellant-in-person).

For the Respondent : Mr. Ripu Daman Bhardwaj, CGSC for UOI.

Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani and Mr. Kartik Sabharwal, Advocates for ED.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a first appeal filed by the appellant/plaintiff under Section 96 of the Code of Civil Procedure, 1908 against the judgement and decree passed by the learned Trial Court in CS No. 57226/2016 (Old

No. 1276/2014) dated 30.10.2018 titled as *"Jagat Singh Vs Union of India & Ors"*, whereby the suit for recovery of Rs. 1,05,08,500/- filed by the appellant/plaintiff against the respondents/defendants was dismissed by the learned Trial Court.

2. For the purpose of convenience, the parties would be referred to, as they were referred before the learned Trial Court.

FACTS NOTED BY THE TRIAL COURT

3. It is the case of the plaintiff that he was a Senior Panel Counsel for Central Government from 28.04.2005 to 27.04.2008 and on 12.11.2009 vide order No. F24(1)/2009-Judl., of defendant No.3/ the Law Secretary, his name was further included, for a period of three years, on the panel of Senior Counsels for conducting cases filed against Public Officers while in service of Central Government, before the High Court of Delhi and Tribunals/etc.

4. It is further the case of the plaintiff that as a panel counsel, he represented defendant No.1/ the Enforcement Directorate, before the Appellate Tribunal of Foreign Exchange (hereinafter referred to as "Appellate Tribunal") at Janpath, New Delhi from 10.10.2009 to 17.10.2010 and vide letter dated 20.09.2010 issued by Directorate of Enforcement, Lok Nayak Bhawan, Khan Market, New Delhi, his services to represent defendant No.1/ the Enforcement Directorate before the Appellate Tribunal were terminated.

5. It is further the case of the plaintiff that on 01.10.2009, i.e. before the expiry of three months retainership period, he wrote to defendant No. 1/ the Enforcement Directorate that in case the defendant wanted his

services for conducting cases before the Appellate Tribunal, it would be on the terms and conditions laid down by Ministry of Law in their revised scheme for engagement of Senior Panel Counsels vide order No. F24(1)/2009-Judl., of defendant No. 1/ the Enforcement Directorate.

6. It is further the case of the plaintiff that he came to know that defendant No. 1/ the Enforcement Directorate had written a letter dated 25.01.2010 to defendant No.2/ the Secretary, Ministry of Finance to consider his appointment on the terms and conditions specified at Rs 1000/- per hearing, per day before the Appellate Tribunal with effect from 10.10.2009 till the vacant posts of Legal Officers are filled up. It is further his case that the said order contained terms and conditions contrary to the terms and conditions laid down by defendant No.3/ the Law Secretary in the letter dated 12.11.2009, so it was an arbitrary and illegal order which was not addressed to him and rather was concealed from him.

7. It is further the case of the plaintiff that on 16.04.2010, defendant No. 1/ the Enforcement Directorate sent a reminder to defendant No. 2/ the Secretary, Ministry of Finance vide a letter confirming that defendant No. 1/ the Enforcement Directorate was hell bent upon to carry one illegality after the other and this was contrary to the letter dated 01.10.2009 written by him to the defendant making his terms and conditions for further giving his services to the defendant to represent the department before the Appellate Tribunal.

8. It is further the case of the plaintiff that on 10.05.2010, defendant No. 2/ the Secretary, Ministry of Finance asked defendant No. 1/ the Enforcement Directorate vide the letter dated 10.05.2010 to furnish the

information that in case rate of Rs. 1000/- per hearing, per case, per day before the Appellate Tribunal is agreed to, what would be the remuneration in the month of November, December 2009, January 2010, February and March 2010.

9. It is further the case of the plaintiff that in reply to the above letter dated 10.05.2010, defendant No. 1/ the Enforcement Directorate furnished the requisite information vide its letter dated 15.06.2010 for consideration and sanction:

Month	**No. of Appeals/Revision Petitions, Conducted in ATFE**	**Fees**
November 2009	293	Rs. 293,000/-
December 2009	278	Rs. 278,000/-
January 2010	180	Rs. 180,000/-
February 2010	305	Rs. 305,000/-
March 2010	240	Rs. 240,000/-
	1296	Rs.12,96,000/-

10. It is further the case of the plaintiff that he came to know that Mr. Jose Cyriae, Additional Secretary of defendant No. 2/ the Secretary, Ministry of Finance, wrote a memo to the Special Director, directing him that effective hearing for which fees can be paid must last between half an hour to one hour.

11. It is further the case of the plaintiff that since nothing was heard from defendant No. 2/ the Secretary, the Ministry of Finance, as such, on 04.08.2010 and 23.08.2010, he made representations to defendant No. 1/ the Enforcement Directorate, that in case, there is any doubt regarding the fees or other bills claimed by the counsel, the matter may

be referred to the Law Secretary as mentioned in Office Memorandum dated 24.09.1999 issued by defendant No. 3/ the Law Secretary.

12. It is further the case of the plaintiff that he was discriminated, as some of the lawyers who were appearing on behalf of defendant No. 1/ the Enforcement Directorate before the Appellate Tribunal were being paid much more than the rates prescribed by the Ministry of Law and the details are as under:

Name of Lawyer Clerkage	**Fees for per effective hearing**	**Conference Fee**
1. Shri A.K. Panda (10%)	Rs. 10,000/-	Rs. 5000/-
2. Shri N.K. Matta (10%)	Rs. 10,000/-	Rs. 5000/-
3. Shri Venkatraman (10%)	Rs. 10,000/-	Rs. 5000/-
4. Shri S.K. Dholakia (10%)	Rs. 25,000/-	Rs. 5000/-
5. Ms. Sumita Kapil (10%)	Rs. 12,500/-	Rs. 3000/-

13. It is further the case of the plaintiff that defendant No. 1/ the Enforcement Directorate had paid the fees to all other lawyers well in time whereas the same has not been paid to him despite his requests and reminders and as such, he was left with no alternative but to file WP (C) 5810/2010 praying to recommend his case to defendant No. 3/ the Law Secretary, as required in office memorandum dated 24.09.1999.

14. It is the case of the plaintiff that on 08.09.2010, the office of defendant No. 3/ the Law Secretary, informed him and defendant No. 1 and 2/ the Enforcement Directorate and the Secretary, Ministry of Finance, that defendant No. 3/ the Law Secretary of will hold a meeting

in his chamber to resolve the dispute and on 17.09.2010, the Department of Legal Affairs of defendant No. 1/ the Enforcement Directorate and one Under Secretary from defendant No. 2/ the Secretary, Ministry of Finance, along with him, met defendant No. 3/ the Law Secretary, and he gave a representation to him. It is further his case that vide letter dated 20.09.2010, defendant No. 1/ the Enforcement Directorate terminated his services.

15. It is further the case of the plaintiff that on 22.09.2010, one Deputy Inspector General of Police on deputation with defendant No. 1/ the Enforcement Directorate and Department of Legal Affairs came on behalf of defendant No. 1/ the Enforcement Directorate, while one Director along with under Secretary appeared on behalf of defendant No. 2/ the Secretary, Ministry of Finance and defendant No. 3/ the Law Secretary directed defendant No. 1 and 2/ the Enforcement Directorate and the Secretary, Ministry of Finance to make payments as per rates prescribed by the Ministry of Law in respect of their empanelled counsels.

16. It is further the case of the plaintiff that on the basis of orders of defendant No. 3/the Law Secretary, he presented a bill for 4845 hearings. Defendant No. 1/ the Enforcement Directorate examined all the 4845 hearings from 10.10.2009 to 17.10.2010 and found that only 2224 hearings were effective hearings. It is further his case that the department illegally and arbitrarily disallowed 1900 hearing holding, *"bench matters not justified for payment"*. It is further his case that defendant No. 1/ the Enforcement Directorate further illegally held 721

hearings as Non-effective hearings and nothing was paid to him for these hearings.

17. It is further the case of the plaintiff that defendant No. 1/ the Enforcement Directorate made part payment of Rs 6,69,000/- to him vide sanction order dated 26.05.2011, Rs 5,70,000/- vide sanction order dated 31.05.2011, Rs. 9,57,000/- vide sanction order dated 31.05.2011, totaling to Rs. 22,23,000/- and thereby, the defendants acknowledged their ability to pay the amount and alternatively, agreed for renewal of limitation for filing the suit for remaining claim.

18. It is further the case of the plaintiff that he sought copies of minutes and subsequent correspondences from all the defendants but defendant Nos. 1 and 2/ the Enforcement Directorate and the Secretary, Ministry of Finance vide letter dated 11.02.2011 & 07.02.2011 declined to give the copy on the ground that section 24 of the Right to Information Act, 2005 (hereinafter referred to as "RTI") grants safeguard to their department. It is further his case that on 07-10.06.2011, he met defendant No. 3/the Law Secretary and apprised him of everything, requesting him to review his order dated 05.10.2010 as the same was not announced by him on 22.09.2010 before all the parties and defendant No. 3/the Law Secretary has assured him that he would be calling the officers of defendant No. 1/the Enforcement Directorate and the Ministry of Revenue. It is his case that when he did not receive any reply from defendant No. 3/ the Law Secretary, he called his office and was asked to send the copy of representation again and he issued a reminder and handed over the same on 20.04.2012. It is further his case that he neither received any reply to his letter dated 07-10.06.2011 nor

the reminder dated 20.04.2012 and the order dated 05.10.2010 was not recalled to rectify the wrong.

19. It is further the case of the plaintiff that he challenged orders dated 05.10.2010 bearing file No.29(02)/2010 & F.No.DLA (A)/1/Misc/Adv/09 dated 25.01.2010 vide WP(C) No.3252/2012 and on 25.05.2012 this Court directed the defendant to produce files and the matter was adjourned for 13.07.2012. It is further his case that on 13.07.2012 certain orders were passed by this Court and he preferred an LPA No. 566/2012 which was withdrawn by him on 14.08.2012 and thereafter he filed a review petition bearing RA No. 493/2012 however the same was dismissed and a cost of Rs. 10,000/- was imposed upon him vide order dated 30.08.2012.

20. It is further the case of the plaintiff that on 22.03.2013, CM No. 3267/2013 seeking waiver of cost, was dismissed and he deposited the cost on 05.04.2013. It is his case that on 12.04.2013 defendants brought a cheque for Rs 2,86,000/- and on his request the matter was adjourned for 21.10.2013 on which date he withdrew the writ petition with liberty to approach the Civil Court.

21. It is the case of the plaintiff that on 14.11.2013, a legal notice dated 12.11.2013 was sent by him, through an advocate, to all the defendants which were duly served upon them and defendant No. 1/ the Enforcement Directorate sent the reply dated 24.01.2014.

22. It is further the case of the plaintiff that the conduct of all the defendants for non-payment of fees as per the order dated 12.11.2009 is illegal, arbitrary, unjustified and unsustainable under the law.

23. Hence the present suit.

WRITTEN STATEMENT

24. Defendant took a preliminary objection that the suit is not maintainable and the same is liable to be dismissed as the plaintiff has not come to Court with clean hands and is guilty of suppressing the true facts. It was pleaded that the present suit has been filed by the plaintiff with ulterior motives and designs to cause harassment, hardship and financial losses to defendant No. 1/ the Enforcement Directorate and for his illegal and unjustified objective/gains at the cost of the defendant No. 1/ the Enforcement Directorate.

25. On merits it was pleaded that the plaintiff was engaged by defendant No. 1/ the Enforcement Directorate on a monthly retainer-ship of Rs. 25,000/- per month with effect from 09.07.2009 for a period of three months for conducting appeals/revision petitions/review petitions before the Appellate Tribunal and the said appointment of the plaintiff was not extended, though he continued to attend the cases of defendant No. 1/ the Enforcement Directorate.

26. It was further pleaded that on 01.09.2009 plaintiff requested for raising of this amount and also asked to consider the terms & conditions of the Central Government, as applicable to the advocate for conducting cases before the High Court and Appellate Tribunal and considering the said request, it was proposed to pay Rs. 1000/- per hearing per case with effect from 01.10.2009 till the vacant posts of the Legal Officers are filled up.

27. It was further pleaded that the plaintiff had submitted a bill of Rs. 12,96,000/- on 28.05.2010 with details of cases and hearings attended by him and till then, there was no dispute regarding the above mentioned proposal. It was pleaded that in the meantime plaintiff filed a Writ Petition on 30.08.2010 and this Court while disposing of the said Writ Petition ordered that defendant No. 3/the Law Secretary will treat the said Writ Petition as representation and decide the matter within six weeks.

28. It was further pleaded that another Writ Petition bearing WP (C) 3252/2012 was filed by the plaintiff before this Court and he had confined his relief to payment of fee for ineffective hearing @ Rs. 500/- per day per case subject to maximum of five hearings in respect of appearance made before the Single Member of the Appellate Tribunal.

29. It was pleaded that this Court directed defendant No. 1/ the Enforcement Directorate to consider this request vide its order dated 13.07.2012 and ordered to consider payment of fee for ineffective hearing @ Rs. 500/- per day per case subject to maximum of five hearings in respect of appearance made before the Single Member of the Appellate Tribunal and accordingly, defendant No. 1/ the Enforcement Directorate calculated the amount of Rs. 3,19,000/- at the rate of Rs. 500/- for 638 non-effective hearings and after deduction of TDS and educational cess, a cheque for Rs. 2,86,143/- was handed over to the plaintiff in open Court which he had refused to accept.

30. It was further pleaded that the plaintiff challenged the said order of this Court by way of LPA No. 566/2012 which was dismissed and after the dismissal of LPA, he filed a review petition which was also

dismissed with a cost of Rs. 10,000/- on him. It was further pleaded that this Court also observed that this is a classic case of dishonest pleadings and complete abuse of the process of law and subsequently the Writ Petition was withdrawn by him.

REPLICATION

31. In the replication, the plaintiff denied the averments of the Written Statement while simultaneously reiterating and reaffirming the contents of the plaint.

ISSUES FRAMED BY THE TRIAL COURT

32. On the basis of the pleadings of the parties, the following issues were framed vide proceedings dated 10.02.2015:-

> i. Whether the plaintiff is entitled to a decree of RS 1,05,08,500/- and if so, at what rate of interest? OPP
>
> ii. Relief.

33. Vide order dated 15.02.2016 the following issue was framed as issue No. 1A:-

> Whether the plaintiff is estopped from claiming the suit amount in view of the orders dated 13.07.2012 and 12.04.2013 passed in WP (C) No. 3252/2012? (OPD)

EVIDENCE RENDERED IN THE TRIAL COURT

34. In support of his case, the plaintiff examined himself as PW1, and tendered his evidence by way of affidavit Ex. PW1/A and relied upon many documents to prove his case.

35. Defendant examined Shri Niranjan Subudhi, Deputy Director, Directorate of Enforcement as DW1, who tendered his evidence by way of affidavit as Ex. DW1/1 and relied upon a copy of order dated 15.02.2016 passed by this Court as Ex.DW1/A.

THE JUDGEMENT & DECREE OF THE TRIAL COURT

36. It is ordered that the plaintiff is entitled to an amount of Rs. 2,86,000/-. Plaintiff is also entitled to *pendente lite* and future interest at the rate of 4% per annum on the said amount till the date of its realization. No order as to cost.

CONTENTIONS OF THE APPELLANT/PLAINTIFF

37. Mr. Jagat Singh, plaintiff-in-person submits that the learned Trial Court had committed a grave irregularity amounting to a perversity of the findings on the following grounds.

38. Mr. Jagat Singh, submits that he is an advocate with long-standing in the legal profession. He further submits that he was Senior Central Government Panel Counsel from 28.04.2005 to 27.04.2008 and from 12.11.2009 to 11.11.2012. He further submits that the services of the plaintiff were utilized by the Government of India to represent Enforcement Directorate before the Appellate Tribunal from 10.10.2009 to 17.09.2010 without paying his fees fully.

39. Mr. Jagat Singh, submits that the present suit was filed in this Court for recovery of Rs. 1,05,08,500/-. He further states that it was later on discovered that there was mistake and error due to inadvertence in making calculations as @ Rs. 3000/- per hearing amounts to Rs. 1,45,35,000/-, out of which Rs. 22,23,000 had already been paid by

defendant No. 1/ the Enforcement Directorate. He further submits that the balance amount comes to Rs. 1,23,12,000/- and not Rs. 1,05,08,500/-. The additional Court fee of Rs. 17,610 was also paid. He further submits that this was the recovery suit for recovering the fees bills which were not paid by defendant No. 1/the Enforcement Directorate.

40. Mr. Jagat Singh, submits that on 07.09.2015, the Examination in Chief of the plaintiff was recorded and the plaintiff produced the documents in his possession. He further submits that the defendant did not admit certain documents since the same were photocopies.

41. Mr. Jagat Singh, plaintiff-in-person submits that on 08.02.2016 the plaintiff filed two applications. One application was under Order VII Rule 14 read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for permission to bring on record documents received in RTI from defendant No. 2/ the Secretary, Ministry of Finance. He further submits that the second application was under Order XI Rule 14 read with Section 151 of CPC, for direction to the defendant No. 1/ the Enforcement Directorate to produce all the documents pertaining to the case.

42. Mr. Jagat Singh, submits that on 08.04.2016 both the applications under Order XI Rule 14 and under Order VII Rule 14 of CPC were allowed. He further submits that the documents by the plaintiff were taken on record and the defendant was directed to produce the original record on or before the next date of hearing that is 26.05.2016.

43. Mr. Jagat Singh, submits that the learned Trial Court fell in error by deciding the two issues together. The onus of proving issue No. 1 was on the plaintiff while the onus of proving issue No. 2 was on the defendants. He further submits that the defendant did not produce any document to prove that the number of the hearings was not 4845. The defendants only expressed that 2224 were effective hearings. The defendants did not produce any order of the Appellate Tribunal to prove that the remaining hearings were non-effective hearings. The defendants did not explain how 1900 hearings which were held before the Division Bench and which were attended by the plaintiff did not justify the payment.

44. Mr. Jagat Singh, submits that the learned Trial Court held that there was no Privity of Contract. He further submits that if there was no privity of contract, then why the plaintiff was paid for 2224 hearings and why did the defendants bring a cheque for ineffective hearings.

45. Mr. Jagat Singh, submits that the learned Trial Court fell in error in holding that the plaintiff has not proved the number of hearings. He submits that the number of hearings was not specifically denied by the defendants. The defendants did not produce the documents in their possession to prove the number of hearings.

46. Mr. Jagat Singh, submits that para 18 of the plaint specifically lays down the number of the hearings. The aforesaid paragraph is extracted hereunder:-

> *"18. That on the basis of orders of Law Secretary, the plaintiff presented his bills for 4845 hearings. The defendant No. 1 Enforcement Directorate examined all the 4845 hearings from 10.10.2009 to 17.10.2010. The defendant No. 1*

> *found that 2224 hearings were effective hearings. The department illegally and arbitrarily disallowed 1900 hearings holding "Bench matters not Justified for payment". The defendant No. 1 further illegally held 721 hearings as non-effective hearings and nothing was paid for these hearings."*

47. Mr. Jagat Singh, submits that in the written statement filed by defendant No.1/ the Enforcement Directorate, the reply to the above paragraph 18 is as under:-

> *"That the contents of para No. 18 are wrong, baseless and devoid of any merit. It is submitted that plaintiff was paid Rs. 22,23,000/- for effective hearings and also offered a cheque of Rs. 2,86,143/- for non-effective hearing which he did not accept. This amount of non-effective hearing @ Rs. 500/- per day/per case was admitted by him, before the Hon'ble Court High Court of Delhi as per order dated 13.07.2012 as such the suit deserves to be dismissed at this very threshold."*

48. Mr. Jagat Singh, plaintiff-in-person relies upon the judgement of the Supreme Court in ***Union of India Vs. Ibrahim Uddin &Anr***, reported in **(2012) 8 SCC 148,** it held that when the Court issues a direction to any party to produce the documents in its possession and the party chooses not to produce any document then adverse inference must be drawn against that party.

49. Mr. Jagat Singh, submits that in the present case, the learned Trial Court had issued direction to the defendant to produce all the documents pertaining to the case. He further submits that the defendant did not produce any document to disprove the number of hearings which were attended by the plaintiff. He submits that the defendant did not produce the file in which it was specifically mentioned that defendant No. 3/ the Law Secretary had directed that the plaintiff be paid as per the rates given to the counsels on the panel of the Central Government. He

further submits that it is clear from the order dated 13.07.2012 passed by this Court in W.P.(C) No.3252/2012 that defendant No. 3/ the Law Secretary had directed the plaintiff be paid fees as payable to the Central Government Advocates on Senior Panel.

50. Mr. Jagat Singh, submits that the Writ Petition bearing No. W.P. (C) 3252/2012 was withdrawn by the plaintiff for liberty to approach the Civil Court was allowed. The order of the Court is extracted hereunder:-

> *"Mr. Jagat Singh, petitioner in person, after some arguments, seeks to withdraw the writ petition and the application with liberty to approach the Civil Court for ventilation of all his grievances.*
>
> *The Writ petition and the application are accordingly dismissed as withdrawn. Liberty as sought is granted."*

51. Mr. Jagat Singh, submitted that in view of the submissions made above the plaintiff has established his case for the decree of the amount claimed in the suit for all the 4845 hearings @ Rs. 3000/- per date per case per hearing which comes to Rs. 1,45,35,000/- out of which Rs. 22,23,000/- has been paid by defendant No. 1/ the Enforcement Directorate and the plaintiff is entitled to be paid along with interest at the rate this Court deems fit and proper in the facts and circumstances of the case and in the interest of Justice of the plaintiff with effect from 17.10.2010 when the amount has become due and payable.

52. To conclude, Mr. Jagat Singh, submits that this Court may graciously be pleased to pass a decree in favour of the plaintiff and against the defendants for the sum of Rs. 1,23,12,000/- alongwith interest at the rate which this Court deems fit and proper in the interest of Justice to the plaintiff with effect from 17.10.2010.

<u>CONTENTIONS OF RESPONDENT NO. 1/ENFORCEMENT DIRECTORATE</u>:

53. *Per Contra,* Mr. Zoheb Hossain, learned counsel appearing for defendant No. 1/ the Enforcement Directorate contends that all the allegations made by the plaintiff against the defendants are incorrect and denied all of them.

54. Mr. Hossain, submits that vide the Department of Revenue Ministry of Finance, Government of India's letter dated 09.07.2009, the plaintiff was engaged on behalf of Union of India on a retainership basis of Rs. 25,000/- per month for a period of three months for conducting appeals/revisions petitions of Enforcement Directorate before the Appellate Tribunal, which came to end on 08.10.2009.

55. Learned counsel submits that before the expiry of the three-month period, the plaintiff sent a letter dated 01.10.2009 stating that if the defendant No. 1/ the Enforcement Directorate wanted to continue his engagement after the expiry of the said period of engagement, the same should be as per terms and conditions of at least that of Central Government.

56. Learned counsel submits that the plaintiff submitted that after the expiry of three months i.e., 08.10.2009, the plaintiff without any confirmation of engagement was rendering his services before the Appellate Tribunal from 10.10.2009 to 17.10.2010. To fees payable to the plaintiff for the said period of 10.10.2009 to 17.10.2010 is in dispute.

57. Learned counsel submits that vide Order No. F249(1)/2009-Judl., Government of India, Ministry of Law and Justice, Department of Legal

Affairs dated 12.11.2009 the plaintiff was further engaged for a period of three years as Senior Central Government Panel Counsel *"for conducting the Central Government cases (other than the cases of Income-tax and Railway Departments) and for the conduct of the cases filed against Public Officers while in the service of the Central Government before the High Court of Delhi at Delhi"* for a period of three years or further orders whichever is earlier.

58. He submits that defendant No. 1/the Enforcement Directorate sent a letter dated 25.01.2010 to defendant No. 2/ the Secretary Ministry of Finance to consider the appointment of the plaintiff for appearing before the Appellate Tribunal at the rate of Rs. 1000/- per hearing per case per day with effect from 10.10.2009 till the vacant posts are occupied.

59. He submits that defendant No. 2/ the Secretary, Ministry of Finance in response to the above mentioned letter dated 25.01.2010, sent a letter dated 10.05.2010 to defendant No. 1/the Enforcement Directorate stating that if the plaintiff is considered to be appointed at Rs. 1000/- per hearing per case, what shall be the remuneration payable to the defendant for the period of November 2009 to March 2010.

60. Mr. Hossain, learned counsel submits that the plaintiff had submitted a bill of Rs. 12,96,000/- on 28.05.2010 with details of cases and hearings attended by him till that date. The bill was sent as per the proposed fee of Rs. 1000/- per effective hearing per case. The same was never disputed by the plaintiff.

61. Learned counsel submits that in reply to the letter dated 28.05.2010, defendant No. 1/the Enforcement Directorate vide letter

dated 15.06.2010 clarified to defendant No. 2/ the Secretary, Ministry of Finance, that for the period November 2009 to March 2010 the fees payable to the plaintiff shall be Rs. 12,96,000/- for the 1296 number of Appeals/ Revision Petitions conducted by the plaintiff before the Appellate Tribunal.

62. He submits that the plaintiff had sent a representation dated 23.08.2010 as a reminder of the previous representation. The plaintiff in this representation requested the release of the fees for 2513 effective hearings, conducted by the plaintiff for the period of October 2009 to August 2010. It is important to note that the plaintiff had raised bills for 2513 hearings only, and the amount claimed is for 4845 hearings.

63. Learned counsel submits that the plaintiff preferred a Writ Petition bearing No. WP. (C) 5810/2010 before this Court seeking payment of the said outstanding bills. That vide Order dated 30.08.2010 this Court observed that as per Paragraph 5 of the O.M. dated 24.09.1999; defendant No. 3/ the Law Secretary of the Government of India has final power to decide any dispute with regard to differences or doubts arising in respect of fee or other bills and the decision of the same shall be binding. Further, this Court directed defendant No. 3/the Law Secretary to decide the grievance within 6 weeks and disposed of the Writ Petition.

64. Learned counsel submits that pursuant to the Order dated 30.08.2010 passed by this Court, defendant No. 3/ the Law Secretary conducted various meetings to decide the grievance raised by the plaintiff. That vide Order dated 05.10.2010 defendant No. 3/the Law Secretary held that the plaintiff may be allowed Rs. 1000/- per case for

each effective hearing, as the same was proposed by defendant No. 1/the Enforcement Directorate to Department of Revenue and was also agreeable to plaintiff at one point of time.

65. He submits that the plaintiff was duly paid for 2224 hearings in the following manner;-

i. Rs 6,96,000/- was sanctioned to the plaintiff vide sanction order dated 26.05.2011.

ii. Rs 5,70,000/- was sanctioned to the plaintiff vide sanction order dated 31.05 2011.

iii. Rs 9,57,000/- was sanctioned to the plaintiff vide sanction order dated 31.05.2011.

66. Mr. Hossain, learned counsel submits that the plaintiff challenged the Order dated 05.10.2010 passed by defendant No. 3/ the Law Secretary by way of W.P.(C) No.3252/2012. This Court vide order dated 13.07.2012 was pleased to hold and observe as under:

> *"Pursuant to the meeting of 22.09.2010, the representation of the petitioner was disposed of by the Law Secretary vide order dated 05.10.2010. In the said order briefly, the Law Secretary has taken into account the petitioner's contention as regards the applicability of the circular dated 22.09.1999 (in short Circular). The Law Secretary, it appears, has come to the conclusion that the circular is not applicable to the petitioner as the rate of fee sought for by the petitioner of Rs.3,000/- per day per case would get triggered vis-a-vis Tribunals such as Appellate Tribunal for Foreign Exchange, if and only if, the engagement had been by the Litigation Department and/or the Ministry of Law. Undoubtedly, there was no such engagement by the Litigation Department and/or the Ministry of Law. However, keeping in mind the fact that the petitioner had rendered the services, the Law Secretary directed that he should be paid at the rate of Rs.1,000/- per day per case for effective hearing.*
>
> *The respondents have brought to my notice, the fact that, the petitioner appears to have accepted this order as he has submitted bills in accordance with the said order and*

received a sum of Rs.22,23,000/-. The learned counsels submitted that this fact has not been disclosed in the writ petition and that the writ petition ought to be dismissed on this short ground alone.

Having considered the matter, I put to learned counsel for respondents that if the circular was not applicable to the petitioner then even the rate of Rs.1,000/- per day per case has no basis. The fact that the petitioner has been paid at the rate as indicated in the order of the Law Secretary only for effective hearings, the department could consider paying the petitioner even for ineffective hearings as that parameter which finds mention in the said circular. The rate indicated in the said circular for ineffective hearing is Rs.500/- per day per case. This of course is subject to maximum of five (5) hearings in each case.

The petitioner before me today has made a categorical statement that he is confining his relief to payment of fee for in effective hearing at the rate of Rs.500/- per day per case subject to a maximum of five (5) hearings in respect of appearance made before a Single Member of the Appellate Tribunal for Foreign Exchange. The respondents shall consider this request of the petitioner at the earliest."

67. Learned counsel further submits that W.P. (C) No.3252/2012 was taken up on 12.04.2013, and the defendant No. 1/ the Enforcement Directorate was ready to hand over a cheque of Rs. 2,86,000/- in terms of the directions issued by this Court on 13.07.2012, however, the plaintiff sought an accommodation to consider the same.

68. Learned counsel submits that it was observed by the learned Trial Court that the plaintiff did not place on record any document to corroborate the statement/averment made in the plaint, and no document was filed to prove that he had furnished bills for 4845 hearings or that they were scrutinized and some of the hearings were held to be non-effective and thus no payment was proposed to be made against them. He did not place on record the alleged bills in respect of 4845 hearings and in fact, did not place any bill whatsoever which might have been

furnished by him to the defendants. He further submits that the learned Trial Court rightly held that it was for the plaintiff to prove that he had in fact appeared on 4845 dates for defendant No. 1/ the Enforcement Directorate, copies of proceedings/order/order sheets were not brought on record.

69. He submits that it was observed by the learned Trial Court that the letter dated 25.01.2010 was an internal document and it did not create any obligation upon No. 1/ the Enforcement Directorate to pay the amount demanded by the plaintiff. Further, merely because the plaintiff continued to appear before the Appellate Tribunal, it did not create any contractual obligation whatsoever upon the defendants to pay him the amount as demanded by him in the said letter. The defendants had never agreed to pay remuneration at the rate of Rs. 3000/-.

70. Learned counsel submits that it was observed by the learned Trial Court that in the present suit also no details of bills, copy of bills, order sheets or even dates of such bills, showing his appearances have been filed by the plaintiff.

71. He submits that it was observed by the learned Trial Court that a mere proposal does not give a right to the plaintiff to claim the amount at the rate of Rs. 3000/-. He submits that in fact, defendant No. 3/ the Law Secretary was considerate enough to reimburse the plaintiff at the rate of Rs.1,000/- per case per hearing per day, despite there being no obligation. In fact, this Court had also observed in the order dated 13.07.2012, as discussed above, that if the circular was not applicable to the plaintiff then even Rs. 1000/- had no basis.

72. To conclude, Mr. Hossain, learned counsel submits that the learned Trial Court after hearing both the parties in detail, passed a decree in favour of the plaintiff to the extent that he shall be entitled to an amount of Rs. 2,86,000/- only, which had already been offered to the plaintiff previously. The same decree was awarded with a nominal interest of 4% *pendente lite* and future interest.

REBUTTAL OF APPELLANT/PLAINTIFF

73. Mr. Jagat Singh, plaintiff-in-person denies all the contentions raised by the defendants. He submits that all the orders of the Appellate Tribunal and bills of the plaintiff were with the defendant No. 1/ the Enforcement Directorate and the plaintiff was not entitled to keep them with him. Defendant No. 1/ the Enforcement Directorate and Ministry even declined to give the copy of minutes 22.09.2010 before defendant No. 3/ the Law Secretary on the ground that section 24 of the RTI, grants safeguard to their department.

74. Mr. Jagat Singh, submits that defendant No. 1/ the Enforcement Directorate is correct that the plaintiff did not accept the cheque of Rs. 2,86,143/- which was brought by defendant No. 1/ the Enforcement Directorate

75. Mr. Jagat Singh, submits that defendant No. 1/ the Enforcement Directorate wrote a letter to the Ministry proposing a fee of Rs. 1000/- per hearing per case per date. The plaintiff most humbly submits that he was not a part of this interdepartmental communication. He further submits that he was neither apprised of this fact nor informed about the

fee proposed by defendant No. 1/ the Enforcement Directorate to the Ministry.

76. Mr. Jagat Singh, submits that the Writ Petition had not been decided on merits and therefore the issue raised therein has not been decided between the parties substantially and finally for all practical purposes, so no *Res Judicata* under Section 11 CPC, or *Estoppel* under Section 116 of Evidence Act, 1872 can be invoked or applied against the suit filed by the plaintiff when the defendants failed to establish the same according to law. Therefore it is most humbly submitted that no *Estoppel* or *Res Judicata* is applicable to the case of the plaintiff underhand.

77. After hearing the detailed arguments, sifting through the evidence on record and considering the judgements, this Court deems it appropriate to formulate the following issues which arise in the present appeal for adjudication.

QUESTIONS FOR CONSIDERATION OF THIS COURT:

> 1. *Whether the appellant/plaintiff was able to establish if he had attended 4845 hearings in all?*
>
> 2. *Whether the appellant/plaintiff was entitled to reimbursement of 4845 hearings at the rate of Rs.1000/-?*
>
> 3. *Whether the appellant/plaintiff was able to establish that he was entitled to reimbursement at the rate of Rs.3,000/- ?*

78. This Court deems it appropriate to consider the present appeal issuewise as framed above and proceeds to deal with the same as under:-

1. Whether the appellant/plaintiff was able to establish if he had attended 4845 hearings in all ?

79. This Court is not referring to the factual narrations submitted on behalf of the plaintiff or the defendant No. 1/ the Enforcement Directorate as the same has already been covered in detail in the preceding paragraphs. Suffice it to note the fact that the plaintiff was a Panel Counsel for the Union of India, nominated for the Delhi High Court, is not disputed by either of the parties. It is also undisputed that the plaintiff had represented defendant No. 1/ the Enforcement Directorate, before the Appellate Tribunal during the relevant period. Thus, keeping in view the admitted factual position, the controversy lies within the confines of the aforesaid three issues.

80. So far as the issue regarding the number of hearings is concerned, on one hand, the plaintiff submits that the total number of hearings he had attended to in respect of the cases of defendant No. 1/ the Enforcement Directorate before the Appellate Tribunal would number upto 4845 hearings, whereas according to defendant No. 1/ the Enforcement Directorate, plaintiff had appeared only in 2224 effective hearings.

81. It is the claim of the plaintiff that the defendant did not produce even a single document to show that the plaintiff had appeared only to the extent of 2224 effective hearings. It is also claimed by the plaintiff that the defendant neither produced any document nor were they able to explain as to why 1900 hearings which were held before the Appellate Tribunal and attended by the plaintiff, did not justify the payment. In fact, according to the plaintiff, vide applications under Order XI Rule 14

and Order VII Rule 14 of CPC, the plaintiff had sought production of the entire file relating to such hearings and despite the directions passed by the learned Trial Court vide the order dated 08.04.2016, defendant No. 1/ the Enforcement Directorate failed to produce the same.

82. The plaintiff also submitted that when the defendant had not specifically denied nor was able to produce any document in support of its defense that the plaintiff had not attended hearings more than 2224, the provisions of Order VIII Rule 5 CPC, would get attracted and the denial being evasive, the assertions made by the plaintiff ought to be considered as having been admitted. The plaintiff also relies on Section 58 of the Indian Evidence Act, 1872 to buttress his arguments that what is not denied, be considered as having been admitted.

83. For the aforesaid submissions and propositions, the plaintiff also relies on the judgement of the Supreme Court in *Ibrahim Uddin (supra)* wherein it was held that when a Court issues a direction to any party to produce documents in its power and possession and the party chooses not to produce such document, then adverse inference must be drawn against the defaulting party. Plaintiff submits that the failure to produce the file by defendant No. 1/ the Enforcement Directorate wherein the then defendant No. 3/ the Law Secretary had directed that the plaintiff be paid as per the rate given to the counsel on the panel of the Central Government, as also the file pertaining to his bills and attendance sheet, an adverse inference ought to be drawn against defendant No. 1/ the Enforcement Directorate and in favour of the plaintiff.

84. The plaintiff also submitted that he had in fact submitted the bills in respect of 4845 hearings which were not paid by defendant No. 1/ the

Enforcement Directorate. The plaintiff submits that only an amount of Rs.22,23,000/- had been paid by the defendant that too at the rate of Rs.1,000/- per hearing whereas the plaintiff was entitled to 4845 hearings at the rate of Rs.3,000/- per hearing. On this basis, the plaintiff submits that his claim is sustainable and a decree for 4845 hearings at the rate of Rs.3,000/- against defendant No. 1/ the Enforcement Directorate along with interest at the rate of 12% per annum be passed in his favour.

85. In contrast, Mr. Hossain, learned counsel appearing for defendant No. 1/ the Enforcement Directorate submits that the bills that the plaintiff had raised were only in respect of 2513 hearings and not for 4845 hearings. Learned counsel further submits that the plaintiff had failed to produce even a single document much less any bill which he claims to have been submitted to defendant No. 1/ the Enforcement Directorate in respect of 4845 hearings. On that basis, learned counsel submits that the plaintiff had miserably failed to prove that he had attended 4845 hearings. Learned counsel submits that having failed to produce relevant documents and proving the same in accordance with law, no decree as sought can be at all passed in favour of the plaintiff.

86. Learned counsel further submits that defendant No. 1/ the Enforcement Directorate had in fact paid to the plaintiff at the rate Rs.1000/- as directed by the then defendant No. 3/ the Law Secretary, for 2224 hearings which came to Rs.22,23,000/- which already stands paid and admitted by the plaintiff. Even while accepting the aforesaid amount, the plaintiff never raised any objection nor appropriated the amount under protest.

87. Moreover, learned counsel submits that even for 638 number of ineffective hearings, in compliance of the order dated 13.07.2012 in W.P.(C) No.3252/2012, passed by this Court, the defendant was ready to hand over a cheque of Rs.2,86,000/- which the plaintiff refused to accept.

88. The defendant No. 1/ the Enforcement Directorate has admitted that the plaintiff had raised bills for 2513 hearings only out of which defendant No. 1/ the Enforcement Directorate found the plaintiff eligible only to 2224 hearings which it considered to be effective and had paid the plaintiff accordingly. It was only after this Court in W.P.(C) No.3252/2012 passed order dated 13.07.2012, that defendant No. 1/ the Enforcement Directorate had paid at the rate of Rs.500/- for 638 hearings which came to Rs.3,19,000/- and after deduction of TDS and Educational Cess, a cheque for sum of Rs.2,86,143/- was prepared, on the basis that the said hearings were ineffective.

89. The plaintiff had by the letter dated 07.06.2011 (Ex. PW 1/21) made a representation to defendant No. 3/ the Law Secretary, that though he was entitled to 4845 hearings, however, the defendant No. 1/ the Enforcement Directorate was not processing the said bills and thereby sought a direction to that effect. Since there was no response from defendant No. 3/ the Law Secretary, the plaintiff repeated his request vide the letter dated 20.04.2012 (Ex PW 1/22) to defendant No. 3/ the Law Secretary that he was entitled to 4845 hearings, however, no response thereto was received yet again. When the plaintiff found no response to any of the correspondence made with defendant No. 1/ the Enforcement Directorate or even defendant No. 3/ the Law Secretary, he

was constrained to issue a legal notice dated 12.11.2013 to defendant No. 1/ the Enforcement Directorate as also to the defendant No. 2 and 3/ the Secretaries, Ministry of Finance as well as Ministry of law, Justice and Company Affairs, reiterating in para 31 thereof, that he was entitled to 4845 hearings out of which the defendant had illegally held that 1900 hearings were not eligible to be paid for the reason that '*Bench matters not justified for payment*'. He had further claimed that he was entitled to the 1900 hearings at the rate of Rs.3,000/- per hearing. The defendant No.1/ the Enforcement Directorate responded to the aforesaid legal notice by its reply dated 24.01.2014 (Ex.PW1/29) and in para 6 categorically stated that in compliance of the order dated 13.07.2012 in W.P.(C) No.3252/2012, the defendant is paying for 638 hearings at the rate of Rs.500/- per hearing, what it considered as ineffective hearings.

90. After considering the facts, it is clear that though defendant No. 1/ the Enforcement Directorate admits that the bills raised by the plaintiff were restricted to 2513 hearings, yet it cleared only 2224 hearings as claimable. It is intriguing to note that consequent upon the order dated 13.07.2012 in W.P.(C) No.3252/2012, the defendant paid the plaintiff at the rate of Rs.500/- for 638 hearings, considering the same as ineffective. Yet, if one were to calculate the bills that were cleared for 2224 hearings with 638 ineffective hearings, the total comes to 2862 hearings, which is way beyond 2513 hearings. There is no explanation either in the Written Statement or any document to explain, as to why the department would pay to the plaintiff, for the so called ineffective hearings more than the bills raised for 2513 hearings. In other words, if one were to consider that it was only 2513 hearings for which the

plaintiff had admittedly raised bills, there was no reason or occasion for the defendant No.1/ the Enforcement Directorate to pay for more than 289 hearings (arrived at by deducting 2224 from 2513). Applying logic and common sense to the aforesaid calculation, it is evident that defendant No. 1/ the Enforcement Directorate has clearly paid for 349 hearings over and above 289 hearings, which is inexplicable.

91. From the aforesaid calculations of the hearings on admitted facts, the lack of reasoning for payment made beyond 2513 hearings, coupled with the fact that despite order dated 08.04.2016 having been passed by the learned Trial Court on the application under Order XI Rule 14 and Order VII Rule 14 of CPC, and non-compliance thereof, this Court has no choice but to draw an adverse inference against the defendant No.1/ the Enforcement Directorate and in favour of the plaintiff on the issue of the total number of hearings that the plaintiff may be entitled for payment. This Court finds support from the judgment of the Supreme Court in ***Ibrahim Uddin (Supra)*** wherein it was held that a party which is in possession of the evidence, does not produce it, despite specific orders of the Civil Courts, adverse inference against such party ought to be drawn in favour of the other party. The relevant paras of the ***Ibrahim Uddin (Supra)*** are extracted hereunder:-

> *"12. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse inference under Section 114 Illustration (g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. [Vide Murugesam Pillai v. Manickavasaka Pandara, Hiralal v. Badkulal, A. Raghavamma v. A. Chenchamma, Union of India v. Mahadeo Lal Prabhu Dayal,*

Gopal Krishnaji Ketkar v. Mohd. Haji Latif, BHEL v. State of U.P., Mussauddin Ahmed v. State of Assam and Khatri Hotels (P) Ltd. v. Union of India]

16. In Srinivas Ramanuj Das v. Surjanarayan Das, this Court held that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case the party in possession does not produce it, adverse inference may be drawn: (AIR p. 263, para 28)

"28. It is true that the defendant-respondent also did not call upon the plaintiff-appellant to produce the documents whose existence was admitted by one or the other witness of the plaintiff and that, therefore, strictly speaking, no inference adverse to the plaintiff can be drawn from his non-producing the list of documents. The court may not be in a position to conclude from such omission that those documents would have directly established the case for the respondent. But it can take into consideration in weighing the evidence or any direct inferences from established facts that the documents might have favoured the respondent's case.

24. Thus, in view of the above, the law on the issue can be summarized to the effect that the issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party was asked the court to direct the other side to produce the document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary."

92. The aforesaid finding is further reiterated by the provisions of Section 114 illustration (g) of the Indian Evidence Act, 1872. It would be apposite to extract the provision of Section 114 illustration (g) of the Indian Evidence Act, 1872 which is as under:-

> *"**114. Court may presume existence of certain facts.-** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
>
> *Illustrations*
>
> *The Court may presume –*
> *(a) xxx*
> *(b) xxx*
> *(c) xxx*
> *(d) xxx*
> *(e) xxx*
> *(f) xxx*
> *(g) That evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it;*

93. Applying the ratio of the aforesaid judgment as also the provisions of Section 114 (g) of the Indian Evidence Act, 1872, to the facts of the present case, it is apparent that the best evidence which was available with the defendant No.1/ the Enforcement Directorate was not produced despite specific order of the learned Trial Court and since there is no other evidence or impediment to conclude to the contrary, an adverse inference ought to and is drawn against the defendant No.1/ the Enforcement Directorate to the aforesaid extent.

94. It is apparent from the perusal of the aforesaid admission that the defendant No.1/ the Enforcement Directorate had paid the plaintiff for what it called, ineffective hearing, for more than 2513 bills stated to have been raised by the plaintiff as observed above. The same did not

have any reason why the payments were made. This coupled with the adverse inference drawn against the defendant No.1/ the Enforcement Directorate, this Court concludes that the plaintiff is entitled to 4845 hearings. Going by the aforesaid logic, it is clear that the plaintiff is entitled to payment of 1983 hearings (arrived at by deducting 2862 from 4845) over and above the hearings for which the plaintiff has already been paid.

95. The issue No.1 is decided accordingly.

96. This Court now proceeds to deal with Issue Nos.2 and 3 which are interrelated:-

2. Whether the appellant/plaintiff was entitled to reimbursement of 4845 hearings at the rate of Rs.1000/-?

3. Whether the appellant/plaintiff was able to establish that he was entitled to reimbursement at the rate of Rs.3,000/- ?

97. In so far as the aforesaid two issues are concerned, it is not disputed by the plaintiff that vide the order dated 05.10.2010 (Ex.PW1/39), passed by defendant No. 3/ the Law Secretary, Government of India, Ministry of Law & Justice, Department of Legal Affairs, Judicial Section in compliance of the order dated 30.08.2010 in W.P.(C) No.5810/2010, titled '***Sh. Jagat Singh Vs. Union of India & Ors.***', defendant No. 3/ the Law Secretary had held that the plaintiff was entitled to Rs.1,000/- per case for each effective hearing as the same was also proposed by the defendant No.1/ the Enforcement Directorate.

98. The plaintiff submitted a representation against the aforesaid order dated 05.10.2010 to defendant no. 3/ Law Secretary, vide the letter

dated 07.06.2011 (Ex.PW1/21) and finding no response thereto, had preferred to file a petition bearing W.P.(C) No.3252/2012. The said Writ Petition was disposed of by this Court *vide* the order dated 13.07.2012 passed noting the statement of the plaintiff to the effect that he is confining his relief to the payment of fees for ineffective hearings at the rate of Rs.500/- per day per case subject to a maximum of five (5) hearings in respect of appearances made before a Single Member of the Appellate Tribunal. The Review Application bearing R.A. No. 493/2012 filed by the plaintiff against the order dated 13.07.2012 was dismissed with costs.

99. However, the defendant No.1/ the Enforcement Directorate, in accordance with the order dated 13.07.2012 passed in W.P.(C) No.3252/2012, prepared a cheque of Rs.2,86,143/- calculating the same at the rate of Rs.500/- per hearing for 638 ineffective hearings after deduction of TDS and Educational Cess.

100. The plaintiff has not been able to produce on record anything to show that any of the defendants had agreed to the payment at the rate of Rs.3,000/- as was being offered to the Central Government Panel Counsel nominated for the Delhi High Court. Though the plaintiff attempted to show various payments at different rates being paid to the other counsel, however, failed to establish the same by cogent evidence. Moreover, there is no reliable evidence which would lead this Court to come to a conclusion that the defendant had any stage agreed to pay to the plaintiff for the hearings at the rate of Rs.3,000/- per hearing. In fact, the defendant No.1/ the Enforcement Directorate had vehemently denied it and resisted the said submission in no uncertain terms.

101. As already held above, the plaintiff was entitled to a payment at the rate of Rs.1,000/- for effective hearing as was ordered by the then defendant No. 3/ the Law Secretary vide the order dated 05.10.2010 which was honoured and complied with by the defendant No.1/ the Enforcement Directorate in its true spirit. The payment had, admittedly, been accepted and appropriated by the plaintiff.

102. Since there is no material on record to show or establish as to whether the hearings beyond 2513 were or were not effective or ineffective, it is not possible for this Court to firmly conclude that the plaintiff would be entitled to payment per hearing per case at the rate of 1,000/- for the hearings beyond 2224. Holding the same logic, as also going by the fact that the defendant No.1/ the Enforcement Directorate itself, had admittedly, as also in compliance of the order dated 13.07.2012 in W.P.(C) No.3252/2012 attempted to pay at the rate of Rs.500/-, for what it considered as ineffective hearings, this Court is of the considered opinion that the plaintiff would be entitled to a payment at the rate of Rs.500/- per hearing for 1983 hearings considering the same as ineffective hearings. This would be calculated in the manner as directed vide the order dated 13.07.2012 in W.P.(C) No.3252/2012.

103. Though the plaintiff had sought a relief of interest at the rate of 12% per annum, however, this Court is of the considered opinion that it would subserve the interests of justice to hold that the plaintiff is entitled to the interest at the rate of 7 % per annum on the aforesaid amount to be reckoned from the date when such payment was due till the date of realization.

104. The issue Nos. 2 and 3 are decided accordingly.

105. In view of the aforesaid conclusions drawn by this Court in respect of Issue Nos.1, 2 and 3, it is held that the plaintiff is entitled to a payment at the rate of Rs. 500/- per hearing for 1983 hearings considering the same as ineffective hearings alongwith interest at the rate of 7 % per annum on the aforesaid amount to be reckoned from the date when such payment was due till the date of realization.

106. The plaintiff would also be entitled to a sum of Rs.2,86,000/- admittedly payable by the defendant no.1/ the Enforcement Directorate to the plaintiff with interest at the rate of 4% *per annum* from the date of the impugned judgment and decree as granted by the learned Trial Court.

107. Accordingly, decree sheet be drawn up.

108. The appeal is disposed of in the above terms with no order as to costs.

109. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J.

MAY 19, 2023/*rl*