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

\+ **C.M. No.5462/2007 in FAO(OS) 93/2002 & EFA(OS)9/2007**

Judgment reserved on: 22.01.2009
% Judgment delivered on: 16.03.2009

1. **FAO(OS) 93/2002**

DELHI DEVELOPMENT AUTHORITY ..... Appellant
Through: Ms. Anusuya Salwan, Ms. Monika Sharma, Advocates

versus

BHAI SARDAR SINGH & SONS ..... Respondent
Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. P.S. Bindra, Advocate

2. **EFA(OS) 9/2007**

DELHI DEVELOPMENT AUTHORITY ..... Appellant
Through: Ms. Anusuya Salwan, Ms. Monika Sharma, Advocates

versus

BHAI SARDAR SINGH & SONS ..... Respondent
Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. P.S. Bindra, Advocate

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. The aforesaid execution appeal, namely, EFA(OS) 9/2007 has been preferred by the appellant DDA to impugn the judgment dated 20th March, 2007 passed by the learned Single Judge in Execution Application No. 81/2006 in Execution Petition No. 168/2005, whereby the said application preferred by the appellant herein, who was the judgment debtor in the execution petition, has been dismissed. EA No.81/2006 had been preferred by the appellant to seek a direction that the amount of Rs.19,95,291/- be refunded to the appellant/judgment debtor.

2. So far as FAO(OS) 93/2002 is concerned, the same was disposed of by this Court on 20th April, 2004. However, the respondent/decree holder thereafter moved CM No. 5462/2007 to permit the withdrawal of the amount of Rs.12,88,770/- lying deposited in this Court. On this application, the Court on 23rd April, 2008 passed an order that the same would be considered at the time of disposal of EFA(OS) 9/2007.

3. We may give a brief factual background giving rise to the execution appeal. In relation to a construction contract between the parties, some disputes arose. They were referred to arbitration. The Arbitrator rendered an Award. The Award dated 12.8.1998 was challenged by the appellant DDA by filing objections under Sections 30 and 31 of the Arbitration Act, 1940. The respondent took an objection that it is the Arbitration and Conciliation Act, 1996 which was

applicable and the objections preferred by the DDA were not maintainable. This submission of the respondent was accepted by the learned Single Judge who dismissed the objections preferred by the DDA as not maintainable. The DDA preferred FAO(OS) 93/2002 against the dismissal of the objections by the learned Single Judge. On 15.3.2002, in CM No. 219/2002 the Court stayed the execution of the decree which followed the dismissal of the objections preferred by the DDA, subject to the appellant DDA depositing the amount due and payable under the decree within a period of four weeks. The amount was directed to be kept in a short term deposit by the Registry. The aforesaid appeal FAO(OS) 93/2002 was admitted. An amount of Rs.58,80,380/- was deposited by the appellant DDA and this position was recorded in the subsequent order dated 20th May, 2002 passed in the appeal. During the pendency of the appeal, the respondent moved CM No.443/2003 to seek withdrawal of the amount deposited by the appellant. Counsel for the appellant DDA repeatedly sought time to file objections to this application of the respondent. The aforesaid application for seeking withdrawal of the deposited amount, however, remained pending, as no consequential orders were passed thereon.

4. Eventually, the appeal was allowed on 20th April, 2004 and the impugned judgment dated 2.8.2001 rejecting the appellant's objections to the award was set aside. The Division Bench held that the objections to the Award ought to have been considered under the Arbitration Act, 1940. It was, therefore, directed that the objections shall stand revived and that the learned Single Judge should decide the

objections afresh according to law. No specific order was passed on the aforesaid application preferred by the respondent, namely, CM No. 443/2003. However, since the appeal had been allowed and the objections restored, obviously the respondent could not have been held to be entitled to withdraw the amount deposited by the appellant. Thereafter, the learned Single Judge heard the objections preferred by the DDA and the same were dismissed on 15.7.2005. Consequently, the respondent was held to be entitled to receive a sum of Rs.14,40,386/- with interest w.e.f. 13.03.1986. The only variation made in the award was with regard to the interest granted in favour of the respondent. The learned Single Judge directed that:

> "8. Interest should be awarded at 9% per annum with effect from 13th March, 1986 to the date of decree or payment, whichever is earlier. The reduced amount of interest would be available to the DDA if the payment as per the award and the modified rates of interest is made within six weeks from the date of this judgment failing which the interest shall revert back to the rate of 18% per annum as awarded by the arbitrator."

5. Therefore, the concession granted to the appellant in the rate of interest was conditional upon the amount being paid within six weeks from the date of the judgment dated 15.7.2005.

6. The respondent preferred an Execution Petition No. 168/2005 to execute the decree dated 15.7.2005. Notice was issued in the execution petition on 7th October, 2005 returnable on 11th November, 2005. On that date counsel for the judgment debtor—appellant herein

sought time to take instructions and the matter was adjourned to 28th November, 2005. On 28th November, 2005 once again the matter was adjourned to 14th December, 2005 at the request of the judgment debtor. On 14th December, 2005 the judgment debtor made a statement that money had already been deposited and is lying deposited in FAO(OS) 93/2002, and that the judgment debtor has no objection if the decree holder moves for withdrawal of the said amount. The decree holder contended that the amounts, even if deposited by the judgment debtor, are short of the decretal amount. The Court directed that the decree holder may withdraw the amount deposited after seeking orders of the competent court and thereafter file the execution, if necessary. The Court observed that in the event the deposited amount is short, the decree holder/respondent herein would be at liberty to file execution for the remaining amount.

7. In the light of the aforesaid order, the respondent decree holder preferred CM No. 3680/2006 in FAO(OS) 93/2002 dated 28.2.2006 for permission to withdraw the money lying deposited in Court. On the other hand, the appellant DDA preferred EA 81/2006 in Execution Petition No. 168/2005 on 10th February, 2006 seeking refund of Rs.19,95,291/- to the judgment debtor. The basis of the aforesaid application filed by the judgment debtor was that, whereas the judgment debtor had deposited the amount of Rs.58,80,380/- by calculating the interest granted upto 2nd August, 2001 @ 18% per annum in the aforesaid FAO(OS) 93/2002, the liability of the judgment debtor stood reduced on account of remission in interest granted by

the learned Single Judge upon hearing the objections after the earlier decree dated 2nd August, 2001 had been set aside, and a fresh decree was passed on 15th July, 2005. The appellant also contended that the amount having been deposited in court, the interest had stopped running from the date of deposit.

8. The judgment debtor opposed CM No.3680/2006 preferred by the respondent decree holder seeking withdrawal of the deposited amount on the ground that the amount which had been deposited is more than what was payable by the judgment debtor to the decree holder. However, on 27.4.2006 the Division Bench directed that the amount deposited by the judgment debtor be released in favour of the decree holder since the issue whether the amount deposited by the judgment debtor was more or less had to be decided by the executing court. Accordingly, the amount deposited in the Court was released to the respondent to the extent of Rs.58,80,380/-

9. The learned Single Judge dismissed EA No. 81/2008 preferred by the judgment debtor by the impugned order out of which EFA 9/2007 arises. Thereafter, the respondent preferred C.M.No.5462/2007 dated 18.4.2007 stating that the respondent had received Rs.58,80,380/- and the respondent is entitled to further amount of Rs.12,88,770/-. It was stated by the respondent-applicant in para 8 as follows:-

> "It is submitted that the Petitioner is entitled to a sum of Rs.12,88,770/- (i.e. Rs.14,40,386/- plus interest w.e.f. 13.3.1986 @ 18% p.a. less Rs.58,80,380/- already

withdrawn). However, since the order whereby the Respondent was permitted to withdraw the money did not state that the Respondent was entitled to the sum along with interest, the Respondent was only paid the amount deposited by the Appellant."

10. The learned Single Judge in the impugned judgment held that the issue that arose for consideration was whether the amount deposited by the DDA satisfied the requirement of payment being made to the decree holder within six weeks. If the answer to this question is in the affirmative, the decree holder would be liable to pay interest only @ 9% per annum. On the other hand, if the date on which the decree holder received the amount is to be the date reckoned, the payment not having been made within six weeks of the passing of the decree, the decree holder would be entitled to interest @ 18% per annum and then no question of over payment to the decree holder would arise. The learned Single Judge held that the issue is no longer *res intigra* and had been decided in ***Hindustan Construction Corporation v. DDA and Ors.***, 2002 (65) DRJ 43 and ***A. Tosh & Sons India Ltd. v. N.N. Khanna***, 2006 (89) DRJ 248.

11. In ***Hindustan Construction Corporation***(supra) the DDA had deposited the amount pursuant to orders of the Division Bench before which appeal of the DDA was pending. It was held by a learned single Judge of this Court that the deposit of the decretal amount by the judgment debtor under the orders of the appellate court could not be construed as payment to the decree holder, as it does not satisfy the requirements of Order XXI Rule 1 CPC. The learned Single Judge

relied upon ***P.S.L. Ramanathan Chettiar & Ors. v. O.R.M.P.R.M. Ramanathan Chettiar***, AIR 1968 SC 1047. Similar was the position in ***A. Tosh & Sons India Ltd.*** *(supra)* also decided by another learned Single Judge of this Court.

12. The submission of learned counsel for the appellant DDA is that the decretal amount computed with interest @ 18% per annum, amounting to Rs. 58,80,380/- having been deposited even before the passing of the decree on 15th July, 2005 there was no question of the appellant judgment debtor incurring any further interest, and that the interest stopped accruing against the appellant from the date the said deposit was made. Since the deposit existed on the date of passing of the decree dated 15th July, 2005, it is contended that the appellant was entitled to avail of the concessional rate of interest granted in the said decree. Learned counsel for the appellant has also sought to place strong reliance upon the decision of the Constitution Bench of the Hon'ble Supreme Court in ***Gurpreet Singh v. Union of India***, 2006 (1) Scale 393. She places particular emphasis on paragraphs 20 and 21 of the aforesaid judgment which read as follows:

> *"20. Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree holder claiming a*

re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

21. As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs. 5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs. 10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs. 5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs. 10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been

> *awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited."*

13. On the other hand, learned counsel for the respondent decree holder places reliance upon ***P.S.L. Ramanathan Chettiar & Ors.*** (supra) and also on the decision of the Supreme Court in ***Mathunni Mathai v. Hindustan Organic Chemicals Ltd.***, (1995) 4 SCC 26 to submit that the mere fact that the appellant-judgment debtor had created the aforesaid deposit in FAO(OS) 93/2002, it does not relieve the appellant of its liability to pay interest for the period after the deposit was made and also does not entitle the appellant to avail of the concessional rate of interest of 9% p.a. in accordance with the decree dated 15th July, 2005. The said deposit did not enure for the benefit of the respondent, and the respondent could not have withdrawn any part of the amount deposited in Court on its own, without either the no objection from the appellant, or by pursuing an execution petition.

14. Order XXI CPC deals with Execution of Decrees and Orders. Rule 1 prescribes the modes of paying money under a decree. It reads:

> "**1. Modes of paying money under decree** – (1) All money, payable under a decree shall be paid as follows, namely: -
>
> (a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
>
> (b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
>
> (c) otherwise, as the Court which made the decree, directs.
>
> 2. Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgement due.
>
> 3. Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:-
>
> (a) the number of the original suit;
>
> (b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;
>
> (c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;
>
> (d) the number of the execution case of the Court, where such case is pending; and
>
> (e) the name and address of the payer.

> 4. On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).
>
> 5. On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:
>
> Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be."

15. Therefore, the issue that needs consideration is whether the amount lying in deposit in FAO(OS) 93/2002 would by itself tantamount to payment of decretal amount to the decree holder in accordance with Rule 1 of Order XXI. If yes, the appellants would be right in claiming a refund, if not, the appeal would be liable to be dismissed.

16. Before adverting to the judgments relied upon by both the sides, it is necessary to analyze a few relevant facts. To ward off a possible execution of the decree that followed the dismissal of the objections to the Award by the learned Single Judge on 2nd August, 2001, the appellant judgment debtor deposited the decretal amount of Rs. 58,80,380/- in this Court in terms of order dated 15th March, 2002 in CM No. 219/2002 in FAO(OS) 93/2002. This FAO(OS) 93/2002 was allowed, as aforesaid, on 20th April, 2004 reviving the objections of the appellant. Therefore, there was no question of the amount deposited in the Court being available for appropriation to the respondent decree

holder after the judgment dated 20th April, 2004. Even when the fresh decree was passed on 15th July, 2005, the amount already lying deposited in the FAO(OS) 93/2002 did not become available to the decree holder for appropriation automatically. It is not the appellant's case that it communicated its consent to the respondent for the withdrawal of the amount lying in deposit in the disposed of FAO(OS) 93/2002 at any point of time within a period of six weeks from the date of the passing of the decree dated 15th July, 2005. In fact, the appellant appears to have taken no steps whatsoever to either tender the decretal amount with concessional rate of interest within six weeks, or even otherwise to facilitate the withdrawal of the amount deposited in the disposed of FAO(OS) 93/2002 by the decree holder to the extent of the decretal amount. It was only after the decree holder had preferred Execution Petition 168/2005 well after the expiry of the six weeks period from 15th July, 2005, the appellant judgment debtor for the first time gave its no objection to the decree holder withdrawing the amount deposited in the aforesaid FAO(OS) 93/2002 on 14th December, 2005. Consequently, even if one were to assume that the giving of the no objection by the judgment debtor to the withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002 amounted to making payment within the meaning of Order XXI Rule 1 CPC, the said no objection came well after the expiry of the period of six weeks from 15th July, 2005.

17. In our view, the act of making payment to the decree holder under Rule 1 of Order XXI CPC would require a positive act on the part

of the judgment debtor of either depositing "*into the Court whose duty it is to execute the decree*" or to make payment out of court to the decree holder through a postal money or through a bank or by any other mode "*wherein payment is evidenced in writing*", unless the Court which made the decree otherwise directs. The payment made under a decree, to fall within the ambit of Order XXI Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than an executing Court can never amount to "payment" and even where the decretal amount is deposited in the executing court, the judgment debtors liability to pay interest does not cease until notice contemplated by sub-rule(2) of Rule 1 of Order XXI is given. This is evident from sub-rule(4) above. Order XXI Rule 1 CPC does not contemplate the decree holder having to chase the judgment debtor to realize the decretal amount by seeking attachment of one or the other accounts of the judgment debtor or the properties of the judgment debtor. If resort to the execution process of the Court is required to be made by the decree holder, and the decretal amount is recovered in pursuance of the order of attachment of the accounts of the judgment debtor, and/or sale of assets of the judgment debtor, such realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order XXI.

18. When the learned Single Judge, while passing the decree dated 15th July, 2005, granted remission in interest to the judgment debtor on the condition of the payment being made to the decree holder within six weeks, the Court did not intend that the decree holder should have to take out execution proceedings, or to chase the judgment debtor to realize the payment under the decree. It was for the judgment debtor to itself come forward and tender the decretal amount, or at least to facilitate the withdrawal of the amount deposited by the judgment debtor in Court, within the time granted by the Court. It is not the appellants case, and it could not have been its case that upon passing of the decree dated 15th July, 2005, the decree holder could have on its own approached the appellant Court for withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002. The amount lying deposited in FAO(OS) 93/2002, which was allowed in favour of the judgment debtor, could not have been accessed by the decree holder without the consent/no objection of the judgment debtor, or through the medium of the execution of the decree holder by obtaining orders from the executing Court.

19. The submission of the appellant judgment debtor that the mere deposit of the amount in the FAO(OS) 93/2002 resulted in the stoppage of accrual of any further interest from the date of deposit is also meritless. Even in cases where the decretal amount flows into the coffers of the decree holder, subject to the decree holder being required to furnish a security during the pendency of an appeal, the Supreme Court has held in ***P.S.L. Ramanathan Chettiar & Ors.***

(supra) that such payment does not tantamount to payment of money under the decree. In paras 12 and 13 of ***P.S.L. Ramanathan Chettiar & Ors.*** (supra), the Hon'ble Supreme Court held as follows:

> *"12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.*
>
> *13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor. "*

20. The situation in the present case is still worse for the appellant, inasmuch as, the amount deposited in FAO(OS) 93/2002 was not released to the respondent till after the passing of the order dated 27.4.2006. The amount lying in deposit in the disposed of FAO(OS) 93/2002 was not a deposit made in the executing court in terms of Order XXI Rule 1 CPC. Admittedly, the said deposit could not be construed as direct payment made to the decree holder. As noticed by the learned Single Judge, when the decree dated 15th July, 2005 was passed, it was not informed by the judgment debtor to the learned

Single Judge passing the decree, that the amount of Rs. 58,80,380/- stood deposited in FAO(OS) 93/2002. Had the same been intimated, possibly the Court may have passed an order directing payment of the decretal amount to be made to the decree holder from out of the said amount deposited in the Registry of the Court, which would have been amounted to payment under Order XXI Rule 1 CPC.

21. In ***Mathunni Mathai*** (supra) though the judgment debtor had made the deposit in the executing Court, but intimation in respect thereof was not given to the decree holder. The Supreme Court held that the payment could not be deemed to have been appropriated towards principal unless the decree holder admits it to be so. While examining Order XXI Rule 1,2 and CPC, the Supreme Court observed:

> *".....The amended Sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree-holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression, 'either through court directly or by registered post acknowledgment due' is that the judgment-debtor should not only give notice of payment but he must ensure that the decree holder has been served with the notice. The ratio laid down in Meghraj case applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the judgment-debtor provide for cessation of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of the notice referred to in sub-rule (2)."*

22. In our view, the decision of the Constitution Bench of the Supreme Court in ***Gurpreet Singh*** (supra) is of no avail to the appellants in the facts of this case. In this case, the Supreme Court was considering the aspect of the right of the decree holder to claim interest and to appropriate the amount deposited by the judgment debtor in pursuance of a Court decree, in different situations. The Supreme Court while stating the legal position in paras 20 and 21 quoted above was dealing with a situation where the judgment debtor makes a deposit in the executing Court. This is clear from a plain reading of the above extract. However, in the present case it cannot be said that the appellant had made the deposit in the executing Court since the deposit had been made in FAO(OS) 93/2002.

23. Therefore, we are of the view that the mere fact that the deposit of Rs.58,80,380/- was made by the appellant in FAO(OS) 93/2002 as a condition for grant of stay for execution of the decree dated 2.8.2001 (which was eventually set aside on 20.4.2004), does not entitle the appellant to claim that interest in terms of the decree had stopped running from the date of deposit. No doubt, the interest earned on the deposit made in FAO (OS) 93/2002 would enure for the benefit of the appellant. We are also of the view that the appellant did not avail of the conditional remission of interest granted in the decree dated 15.7.2005 by making payment within six weeks, and the mere fact that the money was already lying deposited in FAO(OS) 93/2002 does not have the effect of payment of the decretal amount to the respondent decree holder.

24. Consequently, we find no merit in the appeal preferred by the appellant DDA, namely, EFA No.9/2007 and we dismiss the same. So far as C.M. No.5462/2007 in FAO(OS) 93/2002 is concerned, we accordingly allow the same while making it clear that the respondent would be entitled to payment of only so much of the amount lying in deposit in this Court, as is necessary to satisfy the decree in favour of the respondent for Rs.14,40,386/- plus interest w.e.f. 13.03.1986 @ 18% p.a. upto the date of release of the amount in favour of the respondent in terms of the Order dated 27.04.2006, and after taking into account the amount released to the respondent in terms of the aforesaid order dated 27.04.2006. Balance amount, if any remaining in deposit in this Court shall be released to the appellant. The registry is directed to compute the amount due to the respondent strictly in the aforesaid terms.

25. With these directions the aforesaid EFA 9/2007 and the C.M. No.5462/2007 in FAO(OS) 93/2002 stand disposed off.

(VIPIN SANGHI)
JUDGE

(MUKUL MUDGAL)
JUDGE

March 16, 2009
rsk/dp