



2026:DHC:3089



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 6th February, 2026**Pronounced on: 15th April, 2026*

+ EX.S.A. 4/2019

BRIJ LAL & SONS

.....Appellant

Through: Tilak Raj Gogia, in-person, Partner of
Appellant-Firm.

versus

DDA

.....Respondent

Through: Mr. Tushar Sannu, Mr. Pulak Gupta
and Mr. Fajallu Rehman, Advocates.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 10 of the Delhi High Court Act, read with Order XXI Rules 11, 58 with the Sections 96/100 of the Civil Procedure Code, 1908¹, and Article 227 of the Constitution of India, 1950, seeks the following prayers: -

“a. Allow the second appeal as "an appeal u/s 10 of the Delhi high court act read with order 21rule 11,58 with the section 96/100 of the cpc and also 227- ci for quashing and setting aside against the order dated 27.11.2018, (impugned order) vide RCA 27/15, m-

¹ For short, 'CPC'



1448/16 page – 43 dt 1/6/16 passed by Mr. Surya Malik Grover adj-01, south east court, saket, new delhi.

b. and pay the interest as per the award rate from 18.01.1989 to last payment somewhere made on 19.03.2013 on Rs. 53000/- which come to approximately 1.5 lakh.

c. Allow the further interest as per the court directed.

d. Allow the cost bear in the trial court approximately 1.5 lakh.

e. Allow the any other or further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case may also be passed.”

2. The present appeal assails the impugned order dated 27.11.2018 passed by learned Additional District Judge-01, South-East, Saket Courts, New Delhi, whereby, the application under Order XLVII read with Section 114 of the CPC filed on behalf of the appellant seeking review of order dated 01.06.2016 was dismissed. The appellant is seeking pendente lite and future interest in respect of Claim No.8 in award dated 23.02.1995 which has been allegedly granted to him by learned Arbitrator and not paid to him in execution by the respondent/DDA.

3. Brief facts necessary for the disposal of the present second appeal read as under: -

i) Learned Sole Arbitrator passed an Award on 23.02.1995 in the matter of arbitration titled as, “M/s Brij Lal & Sons v. Delhi Development Authority” which had arisen out of an Agreement No.: 35/EE/SWD-5/ACS/86-87. The said agreement was in respect of work of RCC counterfort



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retaining wall at C/o 112, MS Flats at Katwaria Sarai. Learned Arbitrator adjudicated on total 15 claims and counter-claims of the parties, and awarded an amount of Rs.5,36,650/- including an amount of Rs.1,32,673/- towards interest in respect of claim Nos.15 and 7 from 11.10.1989 to 26.02.1995, *i.e.*, during the pendency of the arbitration proceedings. It is pertinent to note that Claim No.7 was for ‘compound interest for blocking of money after completion’, and Claim No.15 was for ‘Claim 20% p.a. compound interest pre-suited and back-dated from the actual date of payment to till payment’. Claim no. 8 (which is the issue in the present appeal) was for loss of business for withheld money by the respondent with effect from June, 1988 till this day. In the Arbitral Award, ‘this day’ in Claim No.8 has been mentioned as “11.06.1991”. The relevant observations of learned Arbitrator in respect of Claim No.8 read as under: -



CLAIM NO.8: This claim amounting to Rs. 4,40,000.00 pertains to loss of business for withheld money by the respondents with effect from the June, 88 till this day.

Page-26 (Twenty Six)

AWARD:-

The loss of business on account of the amounts which are due but withheld need not be proved by facts and figures in a commercial activities of the claimants.

The claimants have indicated that they lost about Rs.12,000.00 P.M. The Claimant has furnished some detail but not fully. I consider a reasonable figures of Rs. 6,000.00 P.M. as the damages. And this amount when considered for the period of time from 11.10.89 till 11.06.91 i.e. period of 20 months would work out to Rs. 1,20,000.00. I, therefore, considering all the facts carefully and in fairness and equity award an amount of Rs.1,20,000.00 to the claimants against this claim.

| Claim No. | Claim of the Claimants | Amount claimed (in Rs.) | Amount awarded (in Rs.) |
|-----------|--|-------------------------|-------------------------|
| 8. | This claim pertains to loss of business for withheld money by the respondents with effect from the June, 88 till this day. | Rs: 4,40,000.00 | Rs. 1,20,000.00 |

ii) Thereafter, the appellant moved an application before learned Arbitrator for rectification of some typographical errors in the aforesaid



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Award by way of a corrigendum in exercise of powers under Section 13 of the Arbitration and Conciliation Act, 1940, (for short, 'A&C Act). Learned Arbitrator in exercise of power under Section 13(d) of the A&C Act on 04.03.1995 issued a corrigendum in respect of Award dated 23.02.1995 rectifying certain typographical errors. The said corrigendum to the arbitral award dated 23.02.1995 is reproduced hereinbelow: -

REGISTERED A.D.
CORRIGENDUM
UNDER SECTION 13(d) OF ARBITRATION ACT, 1940

Ref No: ARB/SCK/DDA-BLS/10-23 New Delhi
Dated 4/3/95

BEFORE
SHRI S C KAPOOR
ARBITRATOR
IN THE MATTER OF ARBITRATION BETWEEN:

(i) M/s. Brij Lal & SonsClaimants.
C-97 A, Kalkaji, New Delhi-110 019

V/S

(ii) Delhi Development AuthorityRespondents
Executive Engineer, S.W.Dn.-5, DDA, Opposite Masoodpur Dairy
Farm, Vasant Kunj, New Delhi-1100

Name of Work: The work of C/o 112 MS flats at Katwaria Sarai,
BH: C/o RCC counterfort retaining wall.

Agreement No: 35/EE/SWD-5/Acs/84-87.

The award was made and published on 23.2.95, following typographical errors have been noticed which are corrected as per this order in accordance with the powers conferred to the arbitrator under section 13(d) of Arbitration Act-1940:-

Page no.2, line no.12 : date of hearings are corrected as 3.9.94
and 24.9.94 instead of 4.9.94 and 24.4.94.

Page no.7, line no.20 : date of completion should be read 18.1.89
instead of 18.11.89.

Page no.10, line no.1 : amount of award is Rs.41,520+1,364/- i.e.
an amount of Rs.42,884.00 instead of Rs.
41,540+1362 i.e.an amount of Rs.42,902.00

Page no.23, line no.20 : Date of completion should be read 18.1.89
instead of 10.11.89.

Page no.24, line no.19 : Date of completion should be read as
18.1.89 instead of 11.10.89.

Umar
S. C. KAPOOR,
Sole Arbitrator.

CC.

| | |
|---|--|
| 1. M/s. Brij Lal & Sons, C-97-A, Kalkaji, New Delhi-110 019 with reference to their letter no. nil dated 2.3.95 | 2. Ex.Engineer, SWD-5, DDA, Vasant Kunj, Sec.-B, Opposite Masoodpur Dairy Farm New Delhi-110 017. |
|---|--|



iii) The appellant then filed a Suit No.1573/95 before this Court for making the said Award Rule of the Court. In the said suit, respondent/DDA raised certain objections to the award with respect to Claim Nos.1, 2, 3, 4, 6, 7, and 15, 8, 11, 12, and 13. Learned Coordinate Bench of this Court *vide* judgment dated 24.09.2001 dismissed the objections filed on behalf of the respondent/DDA and the aforesaid Award dated 23.02.1995 was made Rule of the Court. Decree in terms thereof was passed, and it was observed that the appellant/petitioner shall be entitled to interest @ 12% p.a. from the date of decree till its realisation. Decree of the even date was drawn in favour of the appellant in terms of this judgment.

iv) In terms of the aforesaid decree, the respondent made a total payment of Rs.8,93,227/- including interest as awarded by this Court to the Appellant *vide* cheque No.830720 dated 09.08.2002, and the same is also admitted case of the appellant. Thereafter, the appellant again moved to Court *vide* execution petition, **Ex. No.226/2002**, demanding Rs.4,00,479/- plus 18% interest on the said amount. In response filed by the respondent/DDA (judgment debtor), it was admitted that earlier the interest was calculated upto 30.06.2002 whereas payment was made on 09.08.2002, and therefore, after calculating the remaining interest again, which came out to be Rs.5,313/-, the same was paid to the decree holder(s)/appellant *vide* cheque No.359056 dated 28.06.2004.

v) On 16.09.2007, the appellant approached Chairman, DDA/respondent, Vikas Sadan, by way of notice of the even date, and claimed Rs.80,000/-



along with interest 12% per annum w.e.f. 18.01.1989 till the date of actual payment. In this letter, he stated that a sum of Rs.8,93,227/- had been paid to him in 2002 out of the decretal amount. But due to inadvertence, the aforesaid corrigendum dated 04.03.1995 was not taken into consideration while calculating the decretal amount, which was paid to him, and request was made to make payment of Rs.80,000/- along with 12% p.a. w.e.f. 18.01.1989 till the date of actual payment within one month from the date of receipt of the letter, failing which he should be compelled to file an execution petition for the said amount.

vi) Another execution petition, **Ex.P.No.348/08**, was filed by the appellant before this Court seeking total balance amount of Rs.80,000/- along with 12% p.a. from the date of award, *i.e.*, 23.02.1995, till the date of actual payment. In this execution petition, it was contended on behalf of the appellant that the full amount of the Award dated 23.02.1995 was not recovered in the earlier execution. This execution petition was disposed of by learned Coordinate Bench of this Court *vide* judgment dated 14.10.2011, by observing that the respondent/judgment debtor has already paid full amount against the orders dated 24.09.2001 and 20.01.2004 to the appellant-decree holder and nothing more is due against the respondent/DDA in this respect. The relevant portion of the judgment dated 14.10.2011 reads thus: -

“3. In a nutshell, the facts of the case are that vide agreement No.35/EE/SWD-5/DDA/ACS/86-67 the decree holders were awarded the work for execution C/o 112 M.S Flats at Katwaria Sarai, S/H C/o R.C.C.



4. Thereafter, certain disputes arose between the parties which were referred to the Sole Arbitrator.

5. After considering all the submissions made by the parties, the learned Arbitrator vide award dated 23.02.1995 awarded an amount of Rs.5,36,650/- in favour of the decree holders and against the judgment debtor alongwith simple interest @ 12% p.a. from the date of award i.e. 23.02.1995 till the realization of the amount to the decree holders.

6. As per the decree holders till the filing of this petition, they had received part payment of Rs.8,93,227/- (Rs.5,36,650/- plus simple interest from the date of award till the date of actual payment).

7. In the counter affidavit on behalf of the judgment debtor it is stated that the award dated 26.02.1995 passed by the arbitrator was challenged by the DDA. This court, after hearing the case dismissed the objections of the department and the award was made a rule of the court along with interest @ 12% from the date of decree till the realization of the amount to the decree holders.

8. Therefore, total amount of Rs. 8,93,227/- was paid to the decree holders vide cheque No.830720 dated 09.08.2002.

9. Thereafter, the decree holders again moved to court vide Ex. No.226/2002 demanding Rs.4,00,479/- plus 18% interest on the said amount. In response filed by the judgment debtor/DDA it was admitted that the earlier the interest was calculated upto 30.06.2002 whereas payment was made on 09.08.2002 and therefore, after calculating the remaining interest again, which came out to be Rs.5,313/- the same was paid to the decree holders vide cheque No.359096 dated 28.06.2004.

10. It is further stated by the JD that the decree holders vide their letter dated 16.04.2007 addressed to the Chairman/DDA. Vikas Sadan, claimed Rs.80,000/- alongwith interest @12% p.a. w.e.f. 18.01.1989 till the date of actual payment.

11. Admittedly the JD have already paid full amount against the order dated 24.09.2001 and 20.01.2004 to the decree holders and nothing more is due against the JD/DDA in this respect.



12. Further it is stated that the review application to the order dated 24.09.2001 filed by the decree holders has also been dismissed by the court vide order dated 09.02.2007. The copy of the said review petition has also been filed by the JD/DDA. Hence the amount claimed by the decree holders is not liable to be paid by the JD/DDA.

13. The present petition along with the pending EA's is disposed of as no further orders are required to be passed.”

vii) An appeal, **EFA (OS) 16/2012**, was filed on behalf of the appellant assailing judgment dated 14.10.2011 passed in the aforesaid execution petition which was dismissed by learned Division Bench of this Court, *vide* order dated 23.01.2013 by observing as under: -

“Admit.

Learned counsel for the respondent accepts notice.

At the request of the partner of the appellant and the learned counsel for the respondent, the appeal is taken up for final disposal. The matter pertains to execution of an Award dated 23.02.1995 which was subsequently amended by the corrigendum (dated 04.03.1995. The Award mentioned the amounts under each claim which had been awarded but the effect of the corrigendum dated 04.03.1995 was that the date of completion of the contract was to be read as 18.01.1989 instead of 11.10.1989 which in turn had an effect on certain claims regarding computation of the period as under:-

(i) Claim Nos. 7 and 15 read together as interest had been awarded at 12% per annum on Rs. 2,05,600/- from 11.10.1989 (which would now be read as 18.01.1989) to 26.02.1995.

(ii) Claim No. 8 as the amount awarded was Rs. 6000/- per month from 11.10.1989 till 11.06.1991 which would now be commencing from 18.01.1989 instead of 11.10.1989.



Learned counsel for the respondent states that while the corrigendum was issued, the amounts were consequently not changed in the Award and the appellant subsequently withdrew his objection to the Award. He thus submits that the executing Court ought not to go behind the Award.

In so far as the principle propounded by the learned counsel for the respondent is concerned, there is no dispute. However the corrigendum cannot be made meaningless as if the effect of the corrigendum on the Award is not given effect to, then the corrigendum would really amount to being treated as having no effect on the Award. The sequitur to the corrigendum would be that the relevant amounts in the Award would change upon the date of completion being changed in the Award as per the corrigendum.

We are thus of the view that the petitioner is entitled to the aforesaid two amounts and we grant four weeks time to the respondent to make payment of these amounts failing which it will be open to the petitioner to take out execution proceedings qua these amounts.

The appeal is accordingly allowed in the aforesaid terms leaving the parties to bear their own costs.

Dasti to the learned counsel for the parties under the signatures of the Court Master.”

(emphasis supplied)

viii) Thereafter, respondent by way of an application, **C.M. No.4144/2013**, sought extension of time for paying award amount to the appellant, in which following order was passed on 19.03.2013 by learned Division Bench: -

“Learned counsel for the respondent states that the application has become infructuous as the amount has been paid to the appellant. However, the appellant states that the full amount has not been received i.e. the interest on Claim No. 8.

Learned counsel for respondent states that if the appellant is still aggrieved he can take out execution.



Application is dismissed as withdrawn.”

ix) Thereafter, execution petition, Ex.No.12/13 filed by the appellant before learned District Judge was disposed of *vide* order dated 13.03.2014 by observing as under: -

“By way of present execution the DH seeks to recover interest against delayed payment made by the JD in terms of. the award dated 23.02.1995, which was made rule of the Court on 24.09.2001 by the Hon'ble High Court of Delhi in Suit No. 1573/1995 and a decree was passed. **It is an admitted case of the JD that entire payment as per the award has been received, by him but no interest was paid by the JD from the date of award till the date of realization i.e. 12.03.2013 qua the claim No.8 of the award.**

I have perused the award as well as the decree passed by the Hon'ble High Court of Delhi. No future interest was awarded in favour of the DH against claim No. 8 and hence, he cannot recover any such interest from the JD. The execution petition is without merit. It is therefore dismissed and stands disposed off.

File be consigned to Record Room.”

(emphasis supplied)

x) An appeal, **RCA No.27/2015**, against the aforesaid order was preferred by the appellant wherein following order was passed by learned ADJ-01, South-East, Saket Courts, New Delhi, *vide* order dated 01.06.2016: -

“This is an appeal arises out of order dated 13.03.2014 passed by the court of Ms. Jyoti Kler, Ld. JSCC/ASCJ/GJ, South East, Saket Courts, New Delhi.

Appellant has raised objections to the impugned order submitting that Ld. Trial Court has riot taken into consideration the corrections made by Ld. Sole Arbitrator in the Award. Further the Ld. Trial Court has not gone through the order dated 19.03.2013 of



Hon'ble Delhi High Court to which the appellant has. filed the execution.

Reply to the appeal has already been filed on behalf of respondent/DDA.

I have heard the arguments and gone through the record as well as impugned order passed by Ld. Trial Court.

The grounds of appeal taken by the appellant have already been dealt in the order of Ld. Trial Court. The only grievance with the regard to interest.

It is seen that the interest part has been clearly described in the order passed by Hon'ble High Court of Delhi and no future interest was awarded therein. Hence, Ld. Trial Court has rightly held that the appellant cannot recover any such amount which has not been granted to him by order.

Accordingly, I do not find any infirmity in the impugned order of Ld. Trial Court and thus, appeal deserves dismissal and the same is dismissed. Trial Court record be sent back with copy of this order Appeal file be consigned to record room.”

xi) Subsequently, an application under Order XLVII read with Section 114 of the CPC seeking review of order dated 01.06.2016 was filed by the appellant which was dismissed by learned ADJ-01, South-East, Saket Courts, *vide* the impugned order dated 27.11.2018 by observing as under: -

“By virtue of this order, application seeking review of application under Order 47 r/w Sec. 114 CPC is being disposed of.

It is argued by Ld. Counsel for applicant that pendente lite and future interest has not been recovered by the Decree Holder and execution application was disposed of by Ld. ASCJ *vide* Order dated 13.03.2014. Appeal was filed against the said Order which has also been dismissed. The present application has been moved praying that the Ld. Appellate Court has committed error apparent on the face of the record by neglecting to look into the Order dated 23.01.2013 passed by Hon'ble High Court whereby the Award



passed by the Ld. Sole Arbitrator had been corrected and interest had been granted. Hence, the Order / Judgment dated 01.06.2016 may be reviewed and pendente lite and future interest may be granted in favour of DH.

In rebuttal, Ld. Counsel for DDA has submitted that no future interest was granted either by the Ld. Sole Arbitrator or by the Hon'ble High Court and therefore Appeal has been rightly dismissed and there is no scope for review of the impugned order.

I have given careful consideration to the submissions advanced in the light of the judicial record.

At the outset, the scope of review of Order/Judgment is extremely limited as the jurisdiction of the review Court job is limited to the aspect of any error apparent on the face of the record. **In the present case, it has already been held by the Ld. ASCJ that no future interest had been granted to the Decree Holder qua claim no. 8, which observation has been upheld by my Ld. Predecessor, the Appellate Court.**

The applicant is aggrieved that the Appellate Court has failed to consider Order dated 23.01.2013 passed by the Hon'ble High Court vis-a-vis the issue of pendente lite and future interest.

I have looked into the same to understand if there is any material irregularity in order dated 01.06.2016 on account of non-conseration of Order dated 23.01.2013. By virtue of the said Order, Hon'ble High Court had changed the duration of monthly amount awarded to the DH as awarded by the Ld. Sole Arbitrator from 11.10.1989 to 18.01.1989 and also granted four weeks time to the Respondent / JD herein to make payment of the same. It is undisputed that payment was subsequently made on 04.03.2013 to the DH/petitioner. As such, I am satisfied that the JD complied with the directions of the Hon'ble High Court within 4 weeks and also no future interest was granted to the DH vide Order of the even date.

In view of aforesaid, the present application seeking review of Order dated 01.06.2016 stand dismissed, as meritless.



File be consigned to record room.”

(emphasis supplied)

xii) Hence, the present second appeal has been filed assailing the aforesaid order dated 27.11.2018, *inter alia*, the prayers, as noted hereinbefore.

4. Tilak Raj Gogia, who is a partner of the Appellant-Firm, has argued the present appeal in-person. He has submitted that learned Execution Court has not taken into consideration the fact that he was awarded future interest and the same has not been granted to him during the execution proceedings initiated by him. He has further submitted that the *pendente lite* and future interest has not been recovered by the appellant and execution application was erroneously disposed of by learned ASCJ. He has further submitted that the respondent had paid interest on decretal amount of Claim No.8 to the appellant during first execution proceedings. He has further submitted that the respondent had not taken into consideration the amendment letter dated 04.03.1995 while making the payment to the appellant in terms of the Rule of this Court. It is the case of the appellant-firm the same is an error apparent on the face of the record and learned Courts below had overlooked the same. Therefore, the present appeal be allowed and *pendente lite* as well as future interest awarded to the appellant in terms of the award dated 23.02.1995 as Ruled *vide* judgment dated 24.09.2001 be provided to him.

5. Learned counsel for the respondent/DDA submitted that the present second appeal has been filed by the appellant seeking the future interest on the award which was not granted by learned Arbitrator. It is further submitted



that the subject Award has been fully satisfied and the entire payment in respect of the said award including Claim No.8 has already been made to the appellant. Further, the directions of learned Division Bench of this Court *vide* order dated 23.01.2013, has been duly complied with by the respondent. It is the case of the respondent that the present appeal does not involve a substantial question of law in terms of Section 100 of the CPC. The appellant has failed to establish the maintainability of the present appeal in absence of any substantial question of law. It is further submitted that the second appeal lies solely on the ground of substantial question of law and does not lie against erroneous findings of fact. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Roop Singh v. Ram Singh**², in support of this contention by learned counsel for the respondent/DDA.

6. It is further submitted that the appellant has been duly paid the entire awarded amount along with interest of 12% per annum and the present appeal lacks merit, and is liable to be dismissed on the ground of non-maintainability as well as on merits. As per respondent, total payment of Rs.8,93,227/- including interest as awarded by this Court was paid to the Appellant by the respondent *vide* cheque No.830720 dated 09.08.2002.

7. It is further submitted that no *pendente lite* and/or future interest was ever awarded to the Appellant in Claim No.8, neither in the original award nor by this Hon'ble Court and the same is duly observed by the learned ADJ while disposing of the review application, appeal and execution petition.

² (2000) 3 SCC 708



Therefore, the impugned order dated 27.11.2018 does not suffer from any illegality and infirmity and the same does not require any interference.

8. Heard appellant in-person, learned counsel for the respondent/DDA and perused the records.

9. The appellant is aggrieved by the fact that he has not been paid *pendente lite* and future interest by the respondent in respect of award amount against Claim No.8, and seeks the same.

10. Perusal of the record shows that learned Arbitrator *vide* Award dated 23.02.1995 had awarded an amount of Rs.1,20,000/- against Claim No.8 of pertaining to loss of business for withheld money by the respondent/DDA with effect from June 1988 (18.01.1989-date changed by way of corrigendum dated 04.03.1995) till this day, *i.e.*, 11.06.1991, without interest as noted hereinbefore. The said award was made Rule of the Court *vide* judgment dated 24.09.2001 and a decree in terms thereof was passed in favour of the appellant. It is pertinent to note that said Award was not challenged and has attained finality.

11. In terms of the aforesaid decree, the respondent made a total payment of Rs.8,93,227/- including interest as awarded by this Court to the Appellant *vide* cheque No.830720 dated 09.08.2002, and the same is also admitted case of the appellant. Thereafter, the appellant again moved to Court *vide* execution petition, **Ex. No.226/2002**, demanding Rs.4,00,479/- plus 18% interest on the said amount. In response filed by the respondent/DDA



(judgment debtor), it was admitted that earlier the interest was calculated upto 30.06.2002 whereas payment was made on 09.08.2002, and therefore, after calculating the remaining interest again, which came out to be Rs.5,313/-, the same was paid to the decree holder(s)/appellant *vide* cheque No.359056 dated 28.06.2004.

12. In execution petition, **Ex.P.348/2008**, filed by the appellant, *vide* judgment dated 14.10.2011 learned Coordinate Bench had observed that the judgment debtor/respondent has already paid full amount against order dated 24.09.2001 and 20.01.2004 to the appellant and nothing more is due against respondent/DDA in this respect. It was further noted that the appellant had also preferred a review application to order dated 24.09.2001 (order by which the Award in the present case was made Rule of the Court and decree was drawn) which was also dismissed by the Court *vide* order dated 09.02.2007. Learned Coordinate Bench while disposing of the execution petition filed on behalf of the appellant for balance amount of Rs.80,000/- along with simple interest @ 12% p.a. from the date of award, *vide* judgment dated 14.10.2011 had observed as under: -

“11. Admittedly the JD have already paid full amount against the order dated 24.09.2001 and 20.01.2004 to the decree holders and nothing more is due against the JD/DDA in this respect.

12. Further it is stated that the review application to the order dated 24.09.2001 filed by the decree holders has also been dismissed by the court *vide* order dated 09.02.2007. The copy of the said review petition has also been filed by the JD/DDA. Hence the amount claimed by the decree holders is not liable to be paid by the JD/DDA.



13. The present petition along with the pending EA's is disposed of as no further orders are required to be passed.”

13. Thereafter, a challenge to the aforesaid judgment was disposed of by learned Division Bench *vide* order dated 23.01.2013 in **EFA(OS) 16/2012** by observing that relevant amount in the award would change upon the date of completion being changed in the award by of corrigendum dated 04.03.1995, and further direction with respect to payment of said claims within four weeks' time was given to the respondent. However, there was no mention of interest on Claim No.8.

14. Perusal of the record shows that no *pendente lite* and/or future interest on Claim No.8 was granted to the appellant by learned Arbitrator by Award dated 23.02.1995 as also by the corrigendum dated 04.03.1995. If such was the case, then the appellant could have agitated the same while review of the Arbitral Award dated 23.02.1995 was sought which was dismissed *vide* order dated 09.02.2007. The appellant admittedly has been paid entire decretal amount in terms of the Rule of this Court way back in 2002 and 2004 by way of separate cheques as noted hereinbefore, and no dispute with respect to payment of future and/or *pendente lite* interest, as claimed now, was raised on behalf of the appellant at that time. It is noted that the appellant has not denied having received the payment from the respondent/DDA in terms of orders dated 24.09.2001 and 20.01.2004. Further, the calculations placed on record from Office of Executive Engineer, DDA, shows that no interest was ever calculated or paid by DDA on the decretal amount of Claim No.8. Even after necessary change in date of completion in accordance with corrigendum dated 04.03.1995, there was change in period for which loss of business for



withheld money by the respondent/DDA was to be given by the latter; however, no *pendente lite* and/or future interest was calculated or paid on behalf of respondent/DDA to the appellant. Therefore, the contention of the appellant that he had received interest on decretal amount of Claim No.8 or he was paid interest by respondent/DDA while making payment in initial execution proceedings is misconceived. The calculations provided and placed on record by the Office of Executive Engineer, DDA, with respect to detail of interest calculation and amount in respect of other calculations including Claim No.8 was also not disputed by the appellant in the earlier execution proceedings. It is only after receiving the payment from respondent/DDA issue of *pendente lite* and future interest has been raised by the appellant in respect of Claim No.8. The calculations with respect to award amount were all this while available with the appellant, and same was also not agitated while objections on behalf of the respondent in Suit No.1573/95 were dealt with nor at the time when rectification application to the award was filed on behalf of the appellant. Even after the corrigendum, it is pertinent to note that only the period for completion was changed. With respect to Claim No.8, there was no direction/change in the *pendente lite* and future interest. The argument of the Appellant that the order dated 23.01.2013 passed by learned Division Bench in appeal, **EFA (OS) 16/2012**, has not been considered is not tenable as there was no such observation with respect to payment of *pendente lite* and future interest in respect of Claim No.8.

15. Even otherwise, the present appeal being a second appeal also does not raise any substantial question of law. This Court being a second appellate Court cannot go behind the decree/award and decide disputed question of fact.



It is further noted that the decree drawn in terms of judgment of learned Coordinate Bench dated 24.09.2001 has been satisfied on the payment made by respondent/DDA. The Hon'ble Supreme Court in **Roop Singh (supra)** had observed as under: -

“7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. That apart, at the time of disposing of the matter the High Court did not even notice the question of law formulated by it at the time of admission of the second appeal as there is no reference of it in the impugned judgment. Further, the fact-finding courts after appreciating the evidence held that the defendant entered into the possession of the premises as a *batai*, that is to say, as a tenant and his possession was permissive and there was no pleading or proof as to when it became adverse and hostile. These findings recorded by the two courts below were based on proper appreciation of evidence and the material on record and there was no perversity, illegality or irregularity in those findings. If the defendant got the possession of suit land as a lessee or under a *batai* agreement then from the permissive possession it is for him to establish by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. (*Thakur Kishan Singh v. Arvind Kumar* [(1994) 6 SCC 591]) Hence, the High Court ought not to have interfered with the findings of fact recorded by both the courts below.”

16. In these facts and circumstances of the present case, the impugned order dated 27.11.2018 does not call for any interference.

17. The present appeal is dismissed and disposed of accordingly.

18. Pending applications, if any, also stand disposed of accordingly.



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19. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

APRIL 15, 2026/bsr/ns