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

+ RFA 57/2023, CM App 3236/2023 and CM App 38935/2023.

RAHUL GUPTA

..... Appellant

Through: Mr. Ujjwal Jha, Mr. Rohan Gupta  
& Mr. Amit Sharma, Advocates.  
[M:-9958178204]

versus

M/S PAHARPUR COOLING TOWERS LIMITED..... Respondent

Through: Mr. B.P. Singh, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

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**04.12.2023**

1. By order dated 21.08.2023, it was directed as follows:-

**“CM APPL. 3236/2023 (for interim direction) & CM APPL. 38935/2023 (for recovery)”**

1. *These applications have been filed by the parties with regard to appropriate interim arrangement pending disposal of the present appeal.*

2. *The appeal has been filed by the appellant-plaintiff against the judgment and decree of the Trial Court dated 10.11.2022 in CS DJ No. 9556/2016, by which the appellant's suit for recovery of money was dismissed. The appellant's suit was based on alleged failure of the respondent to pay the price of plastic granules supplied by the appellant.*

3. *The suit was originally decreed ex-parte on 24.10.2011. On 18.07.2013, this order was recalled on an application filed by the respondent under Order IX Rule 13 of Code of Civil Procedure, 1908, subject to the respondent depositing the decretal amount with the Registrar General of this Court, where the suit was then pending. The amount was later released to the respondent, subject to furnishing appropriate security.*



*Respondent furnished security by way of the title deeds of immovable property (Flat No. 381, Ground Floor, Sarita Vihar, New Delhi).*

*4. The matter thereafter proceeded to trial and the learned Trial Court has dismissed the suit by the impugned judgment 10.11.2022.*

*5. By way of CM APPL. 3236/2023, the appellant seeks a direction that the security furnished by it by way of title deeds of the immovable property may be extended until the disposal of the appeal. On the other hand, the respondent has filed CM APPL. 38935/2023 for a direction upon the plaintiff to return the amount of Rs.23,50,707/-, alongwith interest thereupon from 20.05.2013 i.e. when the amount was released to the appellant until deposit thereof. The rate of interest mentioned by the respondent is 20% per annum.*

*6. It is evident from the aforesaid narration that the amount was deposited by the respondent during the pendency of the suit as a condition for setting aside of the ex-parte decree dated 24.10.2011. The suit having been dismissed, I am of the view that it is not appropriate to permit the appellant-plaintiff to hold on the money at this stage. The appellant is directed to deposit with the Registrar General of this Court the sum of Rs.23,50,707/- alongwith interest thereupon @ 10% per annum from the date it was released to him until deposit. The amount will be held in the Registry of this Court in fixed deposit, subject to further orders to be passed in the present appeal. The aforesaid amount be deposited within a period of eight weeks from today.*

*7. It is made clear that this Court has not finally decided the question of interest, if any, payable upon the aforesaid amount, which will be adjudicated during the final hearing of the appeal.*

*8. Upon deposit of the amount in terms of this order, the title deeds of the immovable property (Flat No. 381, Ground Floor, Sarita Vihar, New Delhi) lying deposited in this Court will be released to the appellant.*

*9. List the matter before the learned Registrar on 21.11.2023 for compliance with this order.*

*10. Mr. B.P. Singh, learned counsel for the respondent, states that the goods which are the subject matter of the contract in question are lying with the respondent herein as they are unusable by it. Status quo will be maintained as to the goods in question during the pendency of the appeal.”*

2. Against the aforesaid order, the appellant approached the Supreme



Court by way of SLP(C) 24486/2023 [*Rahul Gupta vs. M/s Paharpur Cooling Towers Limited*], which was disposed of on 06.11.2023. A copy of the order is handed over in Court and the same is taken on record. The said order reads as follows:-

*“1. After addressing arguments for some time, learned Senior counsel for the petitioner seeks leave to withdraw the present petition with liberty to approach the High Court for seeking variation/modification of the conditions imposed in the impugned judgment regarding refund of the principal amount with interest.*

*3. Leave, as prayed for, is granted.*

*4. It is made clear that this Court has not made any observations on the merits of the present matter while granting leave to the petitioner. In the event the petitioner does not succeed, he shall be entitled to seek appropriate legal recourse.*

*5. The petition for Special Leave to Appeal is dismissed as withdrawn on the above terms. ”*

3. Mr. Ujjwal Jha, learned counsel for the appellant, submits that the appellant is in position to deposit the amount of ₹23,50,707/- which was earlier released to him, but instead of depositing the interest amount in terms of order dated 21.08.2023, the title deeds of his property, which are lying deposited in this Court, may remain deposited. He also seeks instalments for depositing the amount of ₹23,50,707/-.

4. With the consent of learned counsel for the parties, the order of deposit dated 21.08.2023 is modified to the extent that the appellant is granted four instalments to deposit the principal decretal amount of ₹23,50,707/- with the Registrar General of this Court.

5. The first three instalments of ₹6 lakhs each will be deposited by 05.01.2024, 05.04.2024, 05.07.2024 and the fourth instalment of the balance amount will be deposited by 05.10.2024. As far as the interest component is concerned, as directed in the order dated 21.08.2023, it



will be adjudicated at the final hearing of the appeal.

6. The title deeds of the appellant's immovable property [*Flat No. 381, Ground Floor, Sarita Vihar, New Delhi*] will remain deposited in this Court pending further orders of the Court.

7. Pending applications stand disposed of with the aforesaid directions.

8. The Registry is directed to list the appeal in the "Regular List" in its own turn.

**PRATEEK JALAN, J**

**DECEMBER 4, 2023**

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