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

+ RFA 54/2022

NATIONAL POWER TRAINING INSTITUTE Appellant

Through Mr.Prashant Shukla, Mr.Neeraj
Kumar Verma, Mr.Mayank Gautam,
and Ms.Anushree Shukla, Advocates.

versus

SUNEHARI BAGH BUILDERS PVT. LTD Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **16.02.2022**

1. The hearing has been conducted through Video Conferencing.

CM APPL. 8482/2022

2. Exemption allowed, subject to the condition that appellant will file the duly sworn/attested affidavit within 72 hours from the date of resumption of the regular functioning of this Court.

3. The application stands disposed of.

CM APPL. 8480/2022

4. Exemption allowed, subject to all just exceptions.

5. The application stands disposed of.

RFA 54/2022 & CM APPL. 8481/2022

6. This appeal is filed against the impugned judgment and decree dated 03.09.2021 passed by the learned Trial Court in CS No.11841/2016 whereby the suit of respondent filed under Order 37 CPC was decreed for Rs.59,12,458/- with pendentelite and future interest @ 6% per annum.

7. The suit was filed under Order 37 CPC by respondent for recovery of Rs.64,76,146/- on the basis of the work done by respondent. The plea of the



appellant is the measurement book was filled up by respondent in collusion with the employee of an appellant, against whom they have already taken an action. Nevertheless, the learned counsel for appellant submits the learned Trial Court has ignored **a)** limitation; **b)** reduction of claim by plaintiff / respondent in the suit; and **c)** the original documents being never filed by respondent.

8. The learned counsel for appellant submits the impugned judgment of the learned Trial Court is based upon the finding of the learned Single Judge of this Court in CS (OS) No.3175/2014, as it was then pending before this Court while deciding the application of the appellant under Order 7 Rule 11 CPC wherein it was held *the defendant never indicated to the plaintiff that no amount is due to the plaintiff and in case the committee report is read in meaningful, it appears that at one stage on 24.10.2011, the committee had suggested to release 70% amount to the plaintiff and remaining subject to the measurement. It is also stated the suit has been filed within the period of three years from 24.10.20211.*

9. The learned counsel for appellant submits on the basis of the order dated 07.08.20215 of this Court, the learned Trial Court presumed the suit is within limitation whereas it ignored the fact the order dated 07.08.2015 was challenged in FAO (OS) No.595/2015 before the Division Bench of this Court wherein the order dated 07.08.2015 was set aside per order dated 29.02.2016 thus holding the issue of limitation being an issue of law as well as facts, which need evidence. Even the SLP filed by respondent against such order of the Division Bench was dismissed.

10. Secondly, it is argued initially the suit was filed for recovery of Rs.64,76,146/-, but later claim was reduced by the plaintiff to Rs.59,12,458/-



and per decision in *SRF Finance Ltd. vs Randeep Singh* 2000 (52) DRJ 595, where the plaintiff had first claimed a certain specific sum, which is later reduced in the amended plaint to some other sum, the leave to contest in the summary suit ought to be granted in the matter *on terms*.

11. In the circumstances, notice be issued to respondent through all modes including email and whatsapp returnable before the Registrar on 18.08.2022.

12. In the meanwhile, subject to appellant depositing 60% of the decretal amount with upto date interest within *eight weeks* from today with learned Registrar General of this Court, the operation of the impugned judgment and decree shall remain stayed till further orders.

13. Upon completion of service/pleadings, the matter be listed before this Court.

YOGESH KHANNA, J.

FEBRUARY 16, 2022

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