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

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**RESERVED ON: 21.11.2013  
PRONOUNCED ON: 29.11.2013**

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RFA (OS) 14/2004, CM APPL.8804/2012

AJUDHIA NATH TREHAN

..... Appellant

Through: Mr. Ashok Sapra, Advocate.

versus

CHAMAN LAL TREHAN AND ANR.

..... Respondents

Through: Mr. Vineet Chadha, Advocate for  
LR-1 of Resp-1.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**MR. JUSTICE S.RAVINDRA BHAT**

**CM APPL.8804/2012**

1. This is the appellant's application to implead the legal representatives (hereafter '*LRs*') of deceased respondent Chaman Lal Trehan. It was stated on 21.08.2013 that the LR No. 1 of the said respondent was authorized to represent his estate by will. By an order made on the same date, the proposed LR No.1 (ii) was allowed to be represented through a guardian, i.e., LR No. 1 (i). The proposed LR Nos. 1 (iii) and (iv) have been served. Learned counsel appears on their behalf. However, there is no affidavit on behalf of LR No.1 (iii) and 1 (iv) conceding that LR No.1 (i) is entitled to represent the entire estate of deceased Chaman Lal Trehan. In these

circumstances, all the LRs are hereby substituted instead of Late Chaman Lal Trehan. It is, however, clarified that this order will not preclude LR No.1 (i) from claiming his right under any Will in accordance with law.

2. CM APPL. 8804/2013 is disposed off in the above terms by substituting all the LRs of deceased Chaman Lal Trehan.

**RFA 14/2004**

3. The present appeal has been preferred by the plaintiff Ayodhya Nath Trehan (hereafter '*the plaintiff*'). He had originally sued the respondent Chaman Lal Trehan, his brother, seeking a decree for dissolution of the partnership (M/s Bharat Oxygen Gas Company) and rendition of accounts. The suit had also sought a declaration that an agreement of a lease dated 31.03.1973 between the first two defendants was a sham, and thus void. Further relief by way of decree for rendition of accounts of Bharat Oxygen Gas Company, M/s Rajeev Trehan & Company and Rajiv Oxygen Pvt. Ltd. was sought. The plaintiff had contended that these three firms were carrying on the business of Bharat Oxygen Gas Company and the defendant Chaman Lal Trehan was obliged to account for the proceeds and profits of those firms. The partnership, i.e., M/s Bharat Oxygen Gas, was constituted through a deed on 09.05.1952 between the plaintiff and defendant. In the suit, the plaintiff alleged that parallel business had been carried on by the defendant with the aid of his sons through the three named firms. During the pendency of the suit – which was instituted on 31.07.1973 – the Court had directed impleadment of Rajiv Oxygen Pvt. Ltd. by an order dated 29.05.1975. The suit was thereafter amended appropriately.

4. Apparently, the parties to the suit had arrived at a compromise on

27.09.1973 but on certain aspects they could not agree to divide the assets of the firm. The compromise *inter alia* was to the effect that items in lot 'A' were earmarked to the share of the plaintiff/appellant and items mentioned in lot 'B' were earmarked to the share of defendant.

5. On 05.06.1974, the plaintiff was appointed as Receiver-cum-Manager of the running plant, which included the land and building, subject to his depositing Rs.4 lakhs. This order was appealed against. However, the Division Bench dismissed the appeal, FAO(OS) 28/1974, on 12.09.1974. The Division Bench rejected the defendant's contention that till the settlement was worked-out in entirety, the possession of the premises could not be handed-over. **On 15.04.1975, after recording statements of both parties, the Court** declared that the partnership stood dissolved and that its accounts be rendered. By subsequent order, M/s. Rajiv Oxygen Private Limited was directed to provide books of accounts for the period 1973-75 before a Local Commissioner appointed for the purpose of examining the accounts. Since the said concern failed to comply with the order, it was impleaded as a second defendant. Later, a counsel was appointed as Local Commissioner to prepare an inventory of machinery, articles and equipment lying at factory premises at Ludhiana and thereafter seal it. The keys were to be deposited with the Registrar of the Court. Eventually, while allowing I.A. No. 3113/1980, the plaintiff was appointed as Receiver of the factory with the direction that he was to maintain regular accounts and file them in Court. This order was made on 06.01.1981. Earlier, on 22.05.1980, by agreement of the parties, a Chartered Accountant was appointed as Commissioner to examine the accounts of second defendant and submit his report. The final report, after consideration of all the materials, was submitted in Court on

17.02.1995. In terms of the report, Rs.38,55,064.50/- was due to the plaintiff from the second defendant. In the impugned order, learned Single Judge considered the contentions of the parties and pending applications. The issues which the learned Single Judge dealt with pertained to the objections of the defendants to the Local Commissioner's final report of 17.02.1995: whether the first defendant was entitled to interest on Rs.4 lakhs with effect from 03.12.1980 till deposit and a further amount of Rs. 4 lakhs in addition to Rs. 2 lakhs with interest and lastly whether the first defendant was entitled to claim delivery of 1700 cylinders. After consideration of the previous orders as well as the objections and the report, the learned Single judge rejected all contentions of the defendant by the impugned order. This order was carried in appeal in another proceeding. However, the first defendant was not successful in the appeal.

6. The limited scope of the present plaintiff's appeal is that no relief or direction was granted with respect to 1200 cylinders valued at Rs.2000/- per cylinder, totalling Rs.36 lakhs and that the Court did not grant *pendent lite* and future interest on the same, determined at Rs.38,55,064.64/-.

7. It is argued by the appellant that the learned Single Judge, despite finding that the second defendant was a front of the first defendant, did not grant restitution in full in respect of the value of 1300 cylinders and interest on the same determined as due and payable. It is submitted that the Local Commissioner's inventory and report of 03.10.1977 and the spot report of Sh. K.P. Singh dated 09.01.1981 are silent as to the 1300 cylinders which fell to the plaintiff's share. In these circumstances, the Court should have made appropriate adjustments while drawing the final decree. It was also highlighted that the omission by the Court to direct payment of interest of

Rs.38.55 lakhs is an error of law. Learned counsel submitted that the said amount was determined and eventually accepted in 1995 but the plaintiff could not be approached on account of the delay and was entitled to the interest till date of payment.

8. This Court has considered the arguments. It is evident from the previous narrative and the record that a settlement was arrived at by the parties on 27.09.1973. The second defendant appears to have been put up as a front to throw-out the plaintiff's rights. It was in these circumstances that the Court directed an inventory of the articles and items found in the premises to be prepared by a local commissioner, which was done on 03.10.1977. The subsequent order of 1981 appointed the appellant as the Receiver-cum-Manager. It is also not disputed that both the parties had objected to the Commissioner's report and filed several applications. The appellant, however, does not highlight as to whether the question of grant of any relief in respect of the alleged 1300 missing gas cylinders was ever urged and pleaded and how the Court had dealt with it at that stage. In these circumstances, this Court is of the opinion that the learned Single Judge's impugned order cannot be faulted for not having dealt with one item, i.e. 1300 gas cylinders. There is no dispute that the parties worked-out their rights substantially. Indeed, the plaintiff has been in possession of the premises ever since 1981 and presumably carrying-on business. In these circumstances, the Court held that the appellant's grievance with regard to no provision having been made for the 1300 gas cylinders, he was entitled to under the compromise is without merit. It would also be appropriate to notice at this stage that the impugned order also rejects an identical contention of the first defendant with respect to 1700 gas cylinders.

9. As far as the question of a direction to pay interest is concerned, the Local Commissioner's report carried out the exercise based on the accounts submitted. The whole accounting exercise took a considerable period of time and the final determination was arrived at in 1995. The impugned order was made on 31.10.2000. In these circumstances, the discretion exercised by the learned Single Judge in not granting interest on the amounts held due and payable to the plaintiff *ipso facto*, cannot be held to be unreasonable. The question of interest had to be also from the standpoint of the amounts payable to the plaintiff out of the running business spread over several years. The learned Single Judge apparently was conscious of this aspect while directing drawing of a final decree and consequently, did not grant interest.

10. In view of the above discussion, the Court is of the opinion that the appeal lacks merit. It is accordingly dismissed without any orders as to costs.

**S. RAVINDRA BHAT  
(JUDGE)**

**NAJMI WAZIRI  
(JUDGE)**

**NOVEMBER 29, 2013**