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

+ **CS(OS) 2550/2011 & IA.No.15821/2012 (u/O 37 R-2(3) CPC)**

**GE CAPITAL SERVICES INDIA** ..... Plaintiff

Through: Ms. Deepika Marwaha, Adv.

versus

**BASANTI DEVI NURSING HOME & ANR** ..... Defendants

Through: None.

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+ **CS(OS) 2551/2011, IA No.19385/2011 [u/O 37 R-3(4)],  
IA No.23108/2012 [u/O 37 (3) CPC] & IA No.23109/2012  
(for condonation of delay)**

**GE CAPITAL SERVICES INDIA** ..... Plaintiff

Through: Ms. Deepika Marwaha, Adv.

versus

**BASANTI DEVI NURSING HOME & ANR** ..... Defendants

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**30.04.2013**

1. The plaintiff has filed two suits against the same two defendants, both under Order 37 of the CPC, for recovery of Rs.1,17,51,250.15p and Rs.46,22,699.66p respectively, on the basis of Equipment Master Security &

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Loan Agreement between the plaintiff and the defendant No.1 dated 27<sup>th</sup> December, 2004 and 18<sup>th</sup> October, 2005 respectively.

2. It is the case of the plaintiff that the plaintiff had financed purchase by the defendant No.1 Dr. Surjit Kumar Roy, proprietor of Basanti Devi Nursing Home of medical equipment worth Rs.54,52,500/- and Rs.20,06,250/- respectively and the defendant No.2 in both the suits namely Mr. Rajanibhushan Ray had agreed to stand guarantor for repayment of the said amounts; that the defendants had agreed to repay the amount alongwith interest in 60 monthly instalments from January, 2005 to December, 2009 and from November, 2005 to October, 2010 respectively but have defaulted in the same and as on the date of the institution of the suit the sum of Rs.1,17,51,250/- and Rs.46,22,699.66p respectively were due under the Agreements from the defendants to the plaintiff.

3. Summons for appearance were issued.

4. The order dated 10<sup>th</sup> May, 2012 in CS(OS) No. 2550/2011 and the order dated 7<sup>th</sup> May, 2012 in CS(OS) 2551/2011 record the factum of the demise of the defendant No.2 Mr. Rajanibhushan Ray. No steps were taken by the plaintiff for substitution of his legal representative. The suits thus,

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insofar as defendant No.2 is concerned, have abated.

5. The order dated 13<sup>th</sup> December, 2011 in CS(OS) 2551/2011 records that the plaintiff had been served with application dated 3<sup>rd</sup> November, 2011 of the defendant No.1 for appearance though no appearance was on record. However vide order dated 3<sup>rd</sup> January, 2012, without prejudice to the appearance being not on record, summons for judgment in CS(OS) No.2551/2011 were issued to the defendant No.1. The counsel for the defendant No.1 appeared in CS(OS) No.2551/2011 on 20<sup>th</sup> March, 2012 and stated that leave to defend application has been filed within the prescribed time; the counsel for the plaintiff contended that no copy had been supplied to her. However the application for leave to defend was not on record on 7<sup>th</sup> May, 2012 also and the counsel for the defendants sought time to remove objection and have it placed on record. Though the plaintiff filed reply in CS(OS) No.2551/2011 to the application for leave to defend but the leave to defend did not come on record and thereafter the counsel for the defendant also stopped appearing.

6. The defendant No.1 remained unserved in CS(OS) No.2550/2011. Vide order dated 30<sup>th</sup> October, 2012 CS(OS) 2550/2011 was ordered to be

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listed alongwith CS(OS) 2551/2011 in which the defendant No.1 was appearing. The counsel for the defendant appeared in CS(OS) No. 2550/2011 on 12<sup>th</sup> December, 2012 and stated that appearance had been entered but the same was not found on record. An opportunity was given to the defendant to, subject to payment of costs of Rs.15,000/- have the appearance placed on record. Though the defendant filed application for appearance and for condonation of delay in filing the same but thereafter stopped appearing and also did not pay the costs.

7. In the aforesaid circumstances, the consequences from non appearance / non filing of application for leave to defend have to follow.

8. I have satisfied myself, of the suits being maintainable under Order 37 of the CPC; the suit claims being within time; the original documents on which the suits are based are before this Court.

9. Accordingly, a decree is passed in favour of the plaintiff and against the defendant No.1 for recovery of Rs.1,17,51,250.15p & Rs. 46,22,699.66p respectively. Though the plaintiff has claimed *pendente lite* and future interest at 36% per annum in each case, it is deemed expedient to award interest at the rate of 11% per annum being slightly above the rate

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given by the Nationalized Banks on fixed deposit, since the transaction between the parties is a commercial one. The plaintiff shall also be entitled to costs of the suits as per schedule.

10. Decree sheets be drawn up.

APRIL 30, 2013  
'M'..

RAJIV SAHAI ENDLAW, J

On office Note  
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