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IN THE HIGH COURT OF DELHI

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RFA 336/2008 & CM No.11809/2008

Dr. C.S. KAKKAR

..... Appellant

through: Nemo

VERSUS

UNION BANK OF INDIA

..... Respondent

through:Nemo

DATE OF DECISION:

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16.9.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. None appears for the appellant at the first hearing.
None appears for the appellant even at the second hearing.
2. Trial Court Record was requisitioned for today.
3. We are prima facie of the view that the appellant is intending to delay the proceedings and keep alive a dead

cause. We note that on 20.8.2008 dasti notice was required to be taken out for service of the respondent returnable for today.

4. We note that the appeal has been filed belatedly by six days. Reason why we feel that the appellant is desirous of keeping alive a dead cause is that the appellant had pleaded in the suit that two cheques bearing No.476100 and 518661 were interpolated and that the bankers, Union Bank of India on whom the cheques were drawn, allowed encashment of the cheques resulting in a huge loss to the appellant.

5. It was claimed by the appellant that he was desirous of availing a loan from ICICI Bank and had handed over the two cheques to one Anand the Agent of ICICI Bank. He stated that the name of ICICI Bank in whose favour the cheques were issued was raised and name of ABN Amro Bank was interpolated on the cheques. He stated that the cheques were encashed by ABN Amro Bank and since the cheques were not credited to the account of ICICI Bank the said Bank did not process his loan application. It was pleaded that the two cheques were issued as processing fee for availing loan facility from ICICI Bank.

6. The learned Trial Judge has found no interpolation on any cheque.

7. The Trial Court Record reveals that the cheques in question in sum of Rs.12,400/- and Rs.5,000/- respectively have

been issued in the name of one Yogesh and refer to his account number. To clarify the payee of the two cheques is described as under:-

“A/c No.II 993259 c/o Yogesh Chandra Srivastav”

8. The cheques proved as Ex. PW-1/D-1 had been deposited with ABN Amro Bank. The said fact is evident from the stamp of the said bank at the rear of the cheques when the same were presented for clearing.

9. To the naked eye it is evident that no interpolation has been made on either cheque against the name of the payee.

10. It is wrongly stated in the plaint that the cheques were issued in favour of ICICI Bank and the name of the payee was interpolated to ABN Amro Bank.

11. The cheques show that they were issued in the name of Yogesh and specifically record the account number of Yogesh in which the cheques have to be credited.

12. It is apparent that somebody has cheated the appellant by posing to be the agent of ICICI Bank. The remedy of the appellant, is against the said imposter.

13. The suit against the Union Bank of India could have succeeded only if it was established that there was an interpolation on the two cheques.

14. Be that as it may since none appears for the appellant at the hearing today and we find that there is a default in affecting service upon the respondent we dismiss the appeal for non-prosecution.

15. Trial Court Record may be returned forthwith.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

September 16, 2008
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