

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

Date of Reserve: 10.2.2009
Date of Order: March 04, 2009

CS(OS) No. 2091/2003
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04.03.2009

Enchante Jewellery

... Plaintiff

Through: Mr. Kirti Uppal, Advocate &
Mr. Vaibhav Sharma, Advocate

Versus

Citibank N.A.

... Defendant

Through: Mr. Sanjeev Singh, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

This suit has been filed by the plaintiff for permanent/mandatory injunction and damages. The plaintiff had taken auto loans from the defendant bank for finance of the four vehicles viz. HR-55-6574, HR-55-7598, HR-55-7599 & HR-55-7597 between 26.12.2000 and 7.2.2001. The Equated Monthly Installment (EMI) of Rs.16512/- was fixed for the first vehicle purchased i.e. vehicle no. HR-55-6574 and EMIs for rest of the three vehicles was Rs.18356/- each. It is plaintiff's own case that due to serious financial troubles plaintiff had moved Board for Industrial and Financial Reconstruction (BIFR). Though the plaintiff has not given the date of moving the Board but the

documents filed shows that the plaintiff had moved the Board in the beginning of year 2000. Plaintiff company was declared a sick industrial company by BIFR vide its order dated 25.10.2002. Plaintiff claimed that despite financial constraint, plaintiff tried its best to pay EMIs on time. However, the documents show that plaintiff did not pay EMIs of any of the vehicles after March' 03 and defaulted in payment of EMIs. Plaintiff claims that plaintiff was in negotiations with the Bank and had appraised the bank of its financial difficulties and wanted to clear EMIs and settle the accounts but the defendant bank failed to settle the accounts with the plaintiff. This pleading is a very strange pleading because if plaintiff wanted to pay the EMIs nobody could have stopped plaintiff from paying EMIs. The plaintiff had issued Post Dated Cheques (PDCs). The bank was putting these PDCs for encashment on the due date and these cheques were getting dishonoured, how the plaintiff wanted to settle the account has not been stated by the plaintiff in the plaint. In any case, according to the plaintiff defendant bank took forcible possession of one of the vehicles viz. Toyota Qualis Car No. HR-55-7598 from Mr. Pawan Mehra, younger brother of Chand Mehra (Director of the plaintiff company) on 9.10.2003 at 9.00 a.m. through some unlawful elements. Mr. Pawan Mehra was dragged out of the car and he was not allowed to remove his personal belongings from the car including jewellery products worth Rs.7 lac and he was forced to sign a blank vehicle surrender form. This form was later on filled up by the agents of the defendant and a noting was made that no cash and no valuable articles were lying in the car. The plaintiff company got shocked due to this act of the defendant bank. Mr. Pawan Mehra, not being a Director of Plaintiff Company had no authority to handover the vehicle or to sign vehicle surrender certificate. It is also stated that plaintiff being a sick company under SICA, the defendant could not have taken a coercive action against plaintiff

without obtaining permission from BIFR. On the same day (day of possession) plaintiff's Director Chand Mehra wrote a letter to defendant bank requesting it to handover the car back with personal belongings and the articles of the company to the plaintiff. The defendant assured that they would sort out the matter amicably. However, defendant bank vide letter dated 11.10.2003 informed the plaintiff that they had repossessed the said vehicle saying that it had been voluntarily surrendered by Mr. Pawan Mehra and they would sell the same in case of failure of the plaintiff to clear the dues within 07 days of receipt of letter. The plaintiff replied this letter on 14.10.2003 protesting that the vehicle was not voluntarily surrendered and Mr. Pawan Mehra was not a Director in the plaintiff company and had no authority to surrender the vehicle. It was also informed that plaintiff was a sick industrial company and the vehicle was carrying belongings of the plaintiff i.e. jewellery worth about Rs.7 lac. The defendant wrote letter dated 15.10.2003 to the plaintiff agreeing for an amicable settlement and referred to the two demand notices issued to the plaintiff, however, the plaintiff took the stand that notices were never received. It is also stated that inventory prepared by the defendant at the time of seizure of the car was not notarized by them. The plaintiff stated that since the plaintiff was a sick company it was difficult for it to arrange for huge amount in one go however, it informed defendant that it was ready to pay full and final payment for one vehicle, which would then be sold in order to raise funds and to clear balance payment in respect of other vehicles. The defendant agreed to this proposal vide its letter dated 22.10.2003. The plaintiff offered to the defendant a sum of Rs.1,02,294/- as first installment so that 'No Objection Certificate' could be released towards vehicle no. HR-55-6574 and after selling this vehicle, the plaintiff was to pay balance amount of Rs.3,43,046/- on or before 30.10.2003 to secure the release of car bearing no. HR-55-

7598 confiscated by the defendant. The plaintiff paid the first installment on 22.10.2003, 'No Objection Certificate' was not issued by the defendant on the same day and it was released only on 27.10.2003. It is stated by the plaintiff that there was a delay in releasing 'No Objection Certificate' with the result that plaintiff could not initiate the sale process for car HR-55-6574 before 28.10.2003 and had to sell it off without bargaining at an amount of Rs.1 lac lesser than the market price.

2. The plaintiff however did not state at what price the car was sold and what the market price was. The last date of payment of installment as per plaintiff was 30.10.2003. The plaintiff requested defendant to give another period of 7-14 days for completing the sale of the car and in the meantime plaintiff offered a sum of Rs.1,21,041/- as full and final payment towards car no. HR-55-7598 (against the loan account of this car) and requested defendant to release 'No Objection Certificate' for second car also. This letter was not replied by the defendant. The efforts of the plaintiff to contact the defendant also failed. On 3.11.2003 Chand Mehra, Director of plaintiff visited the office of defendant bank along with three Pay Orders towards full and final payment of the three loan accounts. The defendant however, refused to accept the said payment and refused to issue 'No Objection Certificate' of the other cars and threatened to sell the car no. HR-55-7598, confiscated by the defendant and also threatened to confiscate the other two cars. Plaintiff submitted that effort of the plaintiff to settle the matter with the defendant subsequently also failed as defendant did not respond to the letters and requests of the plaintiff. The plaintiff feared that the defendant may dispose of car No. HR-55-6574, seized by it. The plaintiff parked other vehicles in the garage in the fear of their confiscation and was therefore not able to use other vehicles as well.

Plaintiff claimed that since plaintiff was a sick industrial company, BIFR's permission was necessary for the defendant to seize the car. It is also stated that plaintiff suffered loss of goodwill and reputation due to the act of the defendant and also suffered immense financial loss besides mental agony and harassment as the plaintiff was deprived of peaceful enjoyment of the four vehicles. Plaintiff also stated that plaintiff had suffered loss @ Rs.10,000/- per day per car from 9.10.2003 till 14.11.2003 i.e., till date of filing of suit which was the usual earning of the plaintiff from each car along with interest. The plaintiff therefore, claimed Rs.13,02,000/- as the damages towards loss of earning. Plaintiff also claimed that jewellery worth around Rs.7 lac was lying in the car and was seized along with car illegally by the defendant so the plaintiff was entitled to Rs.7 lac against loss of jewellery and personal belongings. Plaintiff claimed Rs.1 lac of damages towards loss suffered by plaintiff in selling car no. HR-55-6574 at a loss. Thus, plaintiff claimed total damages of Rs.21,02,000/- from the defendant. Plaintiff also sought a decree of permanent injunction that the bank should not confiscate car bearing no. HR-55-7599, HR-55-7597 and the defendant should be restrained from selling car no. HR-55-7598 seized by it. It also wanted a mandatory injunction directing defendant to give 'No Objection Certificate' towards three other vehicles/cars.

3. The defendant in the WS took several preliminary objections regarding suit being not maintainable. On merits, it was stated that the four vehicles were financed by the defendant bank, who remained the contractual owner of these vehicles till the time entire finance was not repaid by the plaintiff company. It was stated that the defendant, under the agreement entered between the parties, had a right to repossess the vehicle under following circumstances:

- 1) *The Borrower(s) failing to pay the loan or any fee charges, costs in a manner herein contained and any one EMI or any other amount due hereunder remains unpaid for a period of 45 (forty five) days from the dates on which it is due; or*
- 2) *The Borrower(s) failing to file the particulars of the vehicle in the prescribed form as provided in the annexure to this agreement; or*
- 3) *The Borrower(s) committing breach of any of the terms, covenants and conditions herein contained or has made any misrepresentations to the Bank; or*
- 4) *The vehicle being confiscated, attached or taken into custody by any authority or subject of any execution proceedings; or*
- 5) *The Borrower(s), being an individual(s) an insolvency notice is served on him/them, or being a corporation, a notice of winding up is served on it or a receiver is appointed or attachment is levied on any of his/its/their property or assets; or*
- 6) *The vehicle is distrained, endangered or damaged or bodily injured is caused to the third party by accident with the vehicle or others; or*
- 7) *The vehicle is stolen or is a total loss in the opinion of the Bank; or*
- 8) *There existing any other circumstances which in the sole opinion of the Bank, jeopardizes the Bank's interest;*

Then, in any of the aforesaid events, the Bank shall be entitled to deemed immediate repayment of the loan, and the Bank will be entitled to charge extra 2% or any other rate, which is applicable at that time as per bank policy on the Principal outstanding.

- 9) *The Bank is entitled to take the repossession of the hypothecated vehicle whether the entire loan amount has been recalled or not, whenever in the absolute discretion of the Bank there is likelihood or due money being paid and/or the vehicle is likely to be transferred to defeat the security and the due amounts of the Bank.*
- 10) *The Borrower(s) shall not prevent or obstruct the Bank from taking the procession of the vehicle. For this purpose the Bank's authorized representatives, servants, officers and agents will have unrestricted right of entry in any premises of the Borrower(s). The bank will be within its rights to use Tow-van to carry away the vehicle. The authorized representatives of the Bank would be entitled to sell the vehicle by public auction or private treaty, without being liable for any loss, without prejudice to the Bank's rights and remedies to suit against the Borrowers and to give proper receipts and effectual*

discharges to the purchaser thereof and to apply any amount with the Bank in or towards payment of such deficiency. Nothing contained in this clause shall oblige the Bank to sell the vehicle and the Bank shall be entitled to proceed against the Borrower(s)/Guarantor(s) independently of such security.

- 11) *The borrower shall be liable to pay various charges for procession of the vehicle like tow-away charges, godown charges, rentals and other such expenses incurred by the Bank for effecting the procession of the vehicle and for its safe keeping etc. The procession charges is described in clause 11 of the agreement.*

4. It is submitted by the defendant that plaintiff made payment of EMIs regularly till March'03 and thereafter there was a continuous default on the part of the plaintiff in payment of all the four loans taken by the plaintiff. Plaintiff never informed defendant bank about any proceeding before BIFR till the time vehicle no. HR-55-7598 was taken into possession in exercise of the contractual right, by the bank. Since Citibank was not a party in the proceedings before BIFR and the proceedings before the BIFR were deliberately concealed from the Citibank, no question of any information about BIFR could arise. It was denied that the plaintiff company was in regular touch with the defendant to settle the loans or had contacted defendant's officials but defendant did not respond properly. It is submitted that at the time of sourcing of the finance/loan, a detailed breakup of each and every installment was sent to the plaintiff by the defendant bank and this statement gives entire particular of the principal and interest to be taken on each installment and the outstanding loan amount. It was denied that vehicle no. HR-55-7598 was repossessed by the bank illegally or forcibly, but it was stated that it was repossessed peacefully. It was voluntarily surrendered by Pawan Mehra, and there was no question of dragging Pawan Mehra out of the car or not allowing him to remove his personal belongings from the car. The inventory of the articles lying in the car was prepared on the spot. Mr.Pawan Mehra at the time of

surrendering the vehicle signed this inventory voluntarily. No cash or valuables were lying in the vehicle at the time vehicle was repossessed. There was no illegality committed by the defendant. Even after seizure of car, the defendant had been ready to settle its accounts with the plaintiff and a letter dated 22.10.2003 was issued to the plaintiff in this regard, however, plaintiff failed to avail the settlement offer and the defendant had to wait to sell the vehicle taken in possession till 29.11.2003. The averments made by the plaintiff regarding repeated visits of plaintiff's director Chand Mehra to the office of defendant bank were denied. Issuance of letters by the defendant to the plaintiff was admitted. It is stated that defendant was acting within four corners of law and as per the contract between the parties. The pleas of the plaintiffs were false and fabricated. The other averments regarding plaintiff suffering loss due to delay in issuing 'No Objection Certificate' or the loss of earnings of Rs.10,000/- from each car per day or threat given by the defendant to repossess the other cars etc. were denied by the defendant. It was stated by the defendant that 'No Objection Certificate' in respect of one car was issued by the defendant to plaintiff on the same day i.e. 27.10.2003 after verifying the authority of the person sent by the defendant. It was also stated that Chand Mehra and Pawan Mehra, who were brothers were also Directors of M/s Vidhata Properties Ltd. and were also delinquent in the loans of the said company availed from the defendant. They had been forcing the defendant to settle the said accounts also at a huge concession and when the defendant refused to accept their proposal, they deliberately did not make the payments in terms of the settlement offer. The payments were to be made by 30.10.2003, the defendant gave further time to the plaintiff and waited to sell the vehicle till 29th November, 2003 but the plaintiff failed to discharge its loan. Regarding preparation of Pay Orders towards other loan accounts, it is stated by

the defendant that Mr. Chand Mehra used to come with the photocopies of the Pay Orders and had been forcing the defendant to settle the three loan accounts with concessions as well wanted defendant to settle the accounts of M/s Vidhata Properties Ltd. with huge concessions. The defendant had no option but to refuse to accept the proposal being unreasonable. It was plaintiff who had malafide intentions and not the defendant. With this malafide intention, the plaintiff made false averments that the car seized from Mr. Pawan Mehra was having jewellery worth around Rs.7 lac. The claim of the plaintiff that plaintiff was earning Rs.10,000/- per day per car was a bogus and false claim. Similarly, other claims of the plaintiff regarding suffering losses and damages were also false and bogus. It was prayed that suit of the plaintiff be dismissed.

5. In the replication plaintiff reiterated its stand as taken in the plaint.

6. Following issues were framed:

- 1) *Whether the plaintiff is entitled to a decree of damages as prayed for ? – OPP*
- 2) *Whether the plaintiff has committed any breach of contract as alleged by the defendant ? – OPD*
- 3) *Reliefs ?*

Issue No.2 *(whether the plaintiff has committed any breach of contract)*

7. In order to prove this issue, the defendant has relied upon the clause of the agreement entered into between the parties and the oral testimony of the plaintiff's witnesses, pleadings of the plaintiff and the testimony of the plaintiff's director. The agreement is Ex-DW1/13. The loan application made by the plaintiff to the defendant for

finance of the Toyota Qualis Car is undisputed document and is Ex. D1/1. A perusal of this application would show that at the time of taking loan from the defendant bank the plaintiff had not disclosed that it was a sick company, and had made an application before BIFR for being declared as a sick company. The plaintiff had agreed to pay EMI to the defendant on the first of each month and had also acknowledged that he had issued PDCs, which may be credited to the account of the bank each month. The plaintiff had undertaken to pay interest on the principal amount outstanding during the period beginning with the first of the month when the EMI was due till the date amount of the cheque was credited to the account of the bank, in case the cheque was not credited on first day of the month. It was also agreed that any dishonoring of the cheque would make the plaintiff liable to a flat charge and in case of non-payment a further charge would be levied.

8. The plaintiff while entering into loan agreement had hypothecated the vehicle to the defendant bank and it was agreed by the plaintiff that in the event of default as mentioned in para 02 above, the bank was entitled to take repossession of the hypothecated vehicle whether the entire loan amount has been recalled or not.

9. The plaintiff (PW-1) in his testimony during cross examination has admitted that plaintiff had not paid monthly installments after March'03 continuously till 9th October, 2003 when the vehicle was seized by the defendant. It is obvious that it was plaintiff who was in breach of the contract with the defendant. Whether the breach of this contract was deliberate or the plaintiff was under financial difficulty is also clear from the pleadings. The plaintiff has claimed that he was earning Rs.10,000/- per day each car, which shows that the earnings of the plaintiff from each car was around Rs.3

lac p.m. minimum, the EMI of each car which plaintiff had to pay was only Rs.18356/-. The person earning Rs.3 lac per month from a vehicle/car, if does not pay EMI of hardly 6% of its earnings would only show that the person had malafide intention and was deliberately committing breach of the contract. Thus, it is proved from pleadings of the plaintiff that plaintiff though earning Rs.3 lac p.m. from the each car, was deliberately not paying an installment of hardly Rs.18356/- per month. Thus, the breach of the contract was being committed by the plaintiff and this was a deliberate and malafide breach.

10. The conduct of the plaintiff in non-payment of installment is not the only malafide conduct. In fact the plaintiff had made an application to BIFR in early 2000 itself. Once the plaintiff had made an application to BIFR stating that the plaintiff was a sick industrial company meaning thereby that the cumulative net loss of the plaintiff company up to previous financial year was either equal or excess of its net worth, the plaintiff should not have incurred any further liability or loan upon itself and if it wanted to take loan it should have given specific information to the defendant bank that it was a sick industrial company and its matter was before BIFR. The bank thus, would have decided whether it should give loan to the plaintiff or not. Even when an enquiry or reference is pending before BIFR and a final order has not been passed by BIFR, Section 19(A) of the SICA provides that the sick industrial company should make an appropriate application to the Board (BIFR) for agreeing to any arrangement for continuing the operations of the sick industrial company and suggesting any scheme for any financial reconstruction. Since, the plaintiff was continuing operations and though that taking of vehicles on loan would have revived it because it was going to earn Rs.10,000/- per day each vehicle, still it was required from it to present this scheme

before BIFR and seek permission from BIFR. There is no provision in the Act (SICA) under which a bank, which had given loan on hypothecation of the vehicles, is required to go to BIFR and seek permission for repossession of vehicles hypothecated to it in case of default in payment of the EMIs. Section 22 of the Act also provides that where an enquiry under Section 16 is pending before BIFR, it may pass an order regarding operation of all or any of the contracts, assurance of properties, agreements, settlements etc. however, the sick company, whose enquiry is pending before BIFR, is supposed to make an application in this respect. It is not the case of the plaintiff that it went to BIFR regarding the loan contracts with the defendant. Thus, the plaintiff had in fact concealed its status of sick company from the defendant, obtained loan and after paying installments upto March, 03 stopped paying EMI. When order of BIFR came it seems that the plaintiff did not want to bring to the notice of the auditors and others about his earning Rs.10,000/- per day each car against a small installment of Rs.18356/- p.m. for each car. Since plaintiff had admitted these huge earnings, where it was being siphoned off by the plaintiff only plaintiff knows. It is clear that the plaintiff was in deliberate breach of the contract and the issue is decided in favour of the defendant and against the plaintiff.

Issue No.1 (*Whether the plaintiff is entitled to a decree of damages*)

11. The major damage claimed by the plaintiff in the suit is in respect of loss of jewellery of Rs.7 lac which plaintiff alleges was lying in Toyota Qualis Car HR-55-7598 when it was seized from Pawan Mehra younger brother of Director of the plaintiff company on 9.10.2003 at 9.00 a.m. In order to prove this plaintiff has examined Chand Mehra Director of the company and Pawan Mehra his brother as PW1 and PW2. Chand

Mehra in his affidavit by way of examination-in-chief has testified that there was jewellery of Rs.7 lac lying in the car at the time it was seized by the defendant/Citibank. Apart from claiming this amount, he has claimed damages of Rs.13,02,000/- for mental agony, harassment and due to non-utilization of three cars from 9.10.2003 till 14.11.2003 @ 10,000/- per day each car. In his cross examination he admitted that no information was given to the police that along with vehicle, jewellery worth Rs.7 lac lying in the vehicle was also taken by the bank. He stated that except Citibank he did not inform any law enforcing authority about jewellery being taken away by the bank. He placed on record a document Ex. PW1/4 in order to show the movement of jewellery worth Rs.7 lac in this car. However, this very document belies the claim of the plaintiff about the jewellery lying in this car. This certificate PW1/4 shows that a jewellery worth Rs.7 lac approximately was put in vehicle no. HR55-6574 and not in vehicle no. HR-55-7598 which was the vehicle seized by the Citibank. PW1/3 is the issue voucher of the jewellery dated 7.10.2003 and PW1/4 is the Outward Challan in respect of the same jewellery and this shows that the jewellery was put into the vehicle HR55-6574 on 7.10.2003 and not on 9.10.2003. Outward Challan was issued from plot No. 3 & 4 Udyog Vihar Phase-IV Gurgaon since the jewellery was moving out of the factory premises on approval basis. In case this jewellery had been stolen the accounts books of the factory had to show that this jewellery taken on approved basis on 7.10.2003 was stolen; a theft report was also to be required to be kept on record. It is obvious that the claim made by the plaintiff in respect of theft or seizure of jewellery by the defendant is a false claim and deliberately raised in the suit to pressurize the defendant. PW1 deliberately gave false testimony in the Court about jewellery lying in vehicle no. HR55-7598 whereas this jewellery was sent through vehicle no. HR-55 6574 and not on

9.10.2003 but on 7.10.2003. Non-production of the accounts of the factory, non lodging of FIR with the police proves it beyond reasonable doubt that the plaintiff's claim was not only baseless but a totally false claim. This is further proved from the fact that after the car was seized, on the same day the plaintiff had written letter dated 9.10.2003 to the defendant/Citibank wherein there is no mention of jewellery worth Rs.7 lac lying in the car. This jewellery did not belong to Mr. Pawan Mehra from whom the vehicle/car was seized and PW1 has claimed that this jewellery belonged to his company. In the letter Ex. 1/5 it is written that some personal belongings of Mr. Pawan Mehra in the car were also seized. Mr. Pawan Mehra in his testimony did not state that his personal belongings lying in the car were seized. He had gone to the extent of saying that he had not seen the jewellery lying in the car. He only stated that his brother informed him of jewellery. But this fact is belied from documentary evidence placed on record by the plaintiff himself because documentary evidence showed that this car was not used for transporting jewellery of the plaintiff's company.

12. Plaintiff has also failed to prove that plaintiff was earning Rs.10,000/- per car per day or he was deprived from using other cars by the defendant. Defendant has exercised its right, under the contract, of seizing the car. The car was lying hypothecated with the defendant and it is settled law that in case of hypothecation the possession of hypothecated goods remains with the hypothecator but the hypothecate has a right of repossession of the hypothecated property and sell it for realization of amount. The plaintiff has failed to place on record his books of accounts or any other document to show that each car was earning Rs.10,000/- per day for the plaintiff. It is settled law that any document or pleading made by the plaintiff can be used against the

plaintiff without any formal proof but the same cannot be used against the defendant without proving the same. The alleged earning of Rs.10,000/- per day each car can be used against the plaintiff as an information given by the plaintiff but cannot be used against the defendant as a proof of earnings of the plaintiff from each car. The plaintiff miserably failed to show that plaintiff was earning Rs.10,000/- per day per car or that the defendant had deprived the plaintiff from using the other three cars which plaintiff got financed from the defendant bank.

13. There is no question of plaintiff (Director) suffering any mental agony or pain. The plaintiff has failed to prove that any force was used against the plaintiff or his brother at the time of seizure of the car. Had any force been used in removing Mr. Pawan Mehra from the car Mr. Pawan Mehra would have lodged an FIR with the police regarding the same immediately or would have received some injury as a result of use of this force or resistance. The question of any mental agony etc. therefore does not arise. It only shows that the plaintiff, his brother and the company wanted to thrive on the money of others. On the one hand plaintiff applied to BIFR being declared as a sick company on the other hand it, without informing the bank about its real status of a sick company, took loan from the bank and got four vehicles financed for their personal and official use. I find that the plaintiff has miserably failed to prove that plaintiff suffered any damages at the hands of defendant bank.

Relief

14. The suit of the plaintiff is a false, frivolous and baseless suit. Plaintiff had made false averments about placing jewellery within the car and jewellery having been

taken away. These averments have been made deliberately and were false to the knowledge of the plaintiff since the documents placed on record itself show that this vehicle was not used for carrying the jewellery and show the jewellery was transported two days back in some other vehicle for approval. Nobody keeps jewellery worth Rs.7 lac in a car for days together. The very fact that no accounts of the company showing the jewellery written off has been produced shows the claim made by the plaintiff was false to its knowledge. The suit deserves to be dismissed with heavy costs. The suit of the plaintiff is hereby dismissed with costs of Rs.1,00,000/- (Rs.One lac) to be paid by the plaintiff to the defendant.

March 04, 2009
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SHIV NARAYAN DHINGRA, J.