

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

+ **RFA No. 368/2001**

% **21st February, 2011**

ORIENTAL BANK OF COMMERCE Appellant
Through: None.

VERSUS

SHRI SYED AKHLAQ HUSSAIN Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This matter is on the 'Regular Board' of this Court since 3.1.2011. Today, this matter is effective item No.9 on the 'Regular Board'. It is 12.15 P.M. and no one has chosen to appear for the parties. I have therefore perused the record and am proceeding to dispose of the appeal.

2. By means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), the appellant bank challenges the impugned judgment and decree dated 28.3.2001 whereby the suit of the appellant bank was dismissed on basically two grounds. First ground was that it has not been proved that the suit has been properly instituted and

second ground was that there seems to be certain difference in figures in the documentation of the bank at different points of time. The defendant was proceeded exparte and no evidence was led.

3. The facts of the case are that the respondent/defendant applied for and was granted the term loan facility for purchase of a computer machinery on 1.3.1996. The term loan of Rs.80,000/- was sanctioned and availed of. The respondent/defendant also executed an acknowledgement of debt dated 27.10.1998 acknowledging an amount of Rs.1,17,869.50/- to be due as on 30.9.1998.

4. While deciding the question of the competency to file the suit, the trial Court has referred to the Power of Attorney and the Board's resolution exhibited as Ex.PW1/1 and Ex.PW1/2, and yet has dismissed the suit holding that the suit has not been validly instituted. The findings of the trial Court do not carry any conviction, and which findings are as under:-

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Plaintiff has adduced the evidence by way of affidavit of Shri S.K. Pasy who was also present in the court at the time of filing of the affidavit. From the facts and circumstances, I observe that Shri S.K. Pasy who is officer/manager and duly constituted attorney of the plaintiff bank has signed, verified and filed the present suit. In his evidence, he has also corroborated this fact that he is officer/manager and attorney of the bank and is duly authorised and competent to sign, verify the plaint, sign pleadings and to file documents in terms of a letter of authorisation, resolution of Board of Directors and General Power of Attorney issued by the bank in his favour. Photocopies of the same have been exhibited as Ex.PW-1/1 and Ex.PW-1/2 and I have perused the same. The plaintiff has not produced the originals of the same in the court. The Document Ex.PW-1/1 is the

photocopy of a resolution No.F.2 dated 8.3.2000 passed by the Board of Directors and this resolution has not been produced by the plaintiff before the court. On perusing the photocopy of the resolution, I observe that it has been signed by General Manager whose name has not been mentioned. Vide this resolution, the G.M. decided to file the present suit against the defendant and in pursuance of said resolution he is authorised Sh. M.C. Gaur and Sh. S.K. Passy and Shri Ravinder Sharma jointly and severally to engage counsels and to institute suit/claim, sign and verify plaint, petition, written statement, application, affidavits and/or any other pleadings but the plaintiff has not produced this resolution before this court nor the copy of the resolution has been placed on record either. Further, Ex.PW-1/2 is photocopy of G.P.A. and its first two pages are typed and pages 3 to 5 are printed. Even this document is not attested by anyone nor original of the same has been shown to this court. On perusing the document Ex.PW-1/2, the bank has conferred powers upon one Shri Santosh Kumar son of Shri Ram Nath, resident of Meerut who is presently serving the bank to do certain acts as mentioned in the said power of attorney. However, Shri S.K. Passy who has deposed before the court has nowhere deposed that in fact he is Santosh Kumar and is also known as S.K. Passy and the said power of attorney has been executed in his favour by the bank. Thus, the plaintiff bank has failed to prove the authority of Shri S.K. Passy that he is competent to sign and verify the plaint, institute the suit against the defendant and to depose before the court in this case.

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5. The conclusions of the trial Court are inexplicable to say the least in view of the provision of Order 29 Rule 1 of the CPC. The decision of the Supreme Court reported as ***United Bank of India Vs. Naresh Kumar and others AIR 1997 SC 3***, and which decision existed when the impugned judgment was passed, clearly holds suits filed by corporations/banks should not be dismissed on technical grounds and once it is held that the suit is filed through a Principal Officer, it ought to be held that the suit has been validly instituted by virtue of Order 29 of the CPC. The Supreme Court in the aforesaid judgment of ***United Bank***

of India (supra) has also held that once the suit is pursued for a long period of time that itself is sufficient to hold that the suit is validly instituted. Applying the ratio in the case of **United Bank of India (supra)** I therefore hold that the suit has been validly instituted because there was no cross-examination of the witnesses of the appellant/plaintiff/bank and the resolution and the power of attorney were duly exhibited. The exhibited documents, even if they are photocopies can be looked at if there is no challenge to same for its exhibition at the stage at which they are exhibited- see **R. VE. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another 2003 (8) SCC 752**. The findings and the conclusions of the trial Court are therefore clearly illegal and perverse and it is held that the suit was validly instituted.

6. The second ground for dismissal of the suit was that there were different amounts shown in the statement of account, legal notice and the acknowledgement of debt. I may note that the statement of account exhibited as Ex.PW1/21, the balance confirmation has been exhibited as Ex.PW1/20 and the legal notice exhibited as Ex.PW1/10 all these documents show balance at different points of time because surely balances at different points of time will have to be different in view of the addition to the amount due towards interest and in certain cases for any credits which may have to be given or other debits made. The fact of the matter is that the acknowledgment of debt Ex.PW1/20 clearly shows that an amount of Rs.1,17,869.50/- was due from the respondent/defendant on

30.9.1998. The judgment of the trial Court is therefore clearly illegal and perverse by which it seeks to draw conclusions of difference in the amount due on different points of time which are actually not there.

7. In view of the above, the suit of the appellant is decreed for a sum of Rs.1,44,341/- alongwith pendent lite and future interest @ 9% per annum till realization with costs being the Court fee paid in the trial Court and in this appeal. Decree sheet be prepared. Trial Court record be sent back.

FEBRUARY 21, 2011
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VALMIKI J. MEHTA, J.