

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

+ **RFA 459/2014**

% **Date of Decision: 16th October, 2015**

ING VYSYA BANK LTD Appellant

Through: Ms. Alka Chojar and Mr. Vipin
Yadav, Advocates.

versus

INDERJIT SINGH & ORS Respondents

Through: Mr. Anil Misra, Advocate for R-1.
Ms. Jaya Tomar, Advocate for R-2.
Respondent No.3 in person.
Mr. Rahul Mehra, senior standing
counsel for GNCTD with with
Mr. Mayank Mikhail Mukherjee,
Advocate.
SI Arun Dagar, PS Kapashera, Delhi.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the impugned judgment dated 15th February, 2014 whereby the learned Trial Court has passed a decree for Rs.2,95,000/- along with interest thereon against the appellant and respondent No.3.
2. Learned counsel for the appellant submits that the appellant's counsel stopped appearing without informing the appellant whereupon the appellant was proceeded *ex parte* by the learned Trial Court. Learned counsel for the appellant submits that the appellant came to know about the impugned judgment after the passing of the impugned judgment. Learned counsel for the appellant further submits that even the issues were framed after the recording of the *ex parte* evidence of respondent No.1 and respondent No.2.

3. On careful consideration of the rival contentions of the parties, this Court is satisfied that the matter needs to be remanded back and the parties be permitted to lead the evidence.

4. This Court is of the view that the following issues arise for consideration in this matter:-

- (i) Whether the plaintiff is entitled to recover the suit amount? If so, from which of the defendants? OPP
- (ii) Whether the plaintiff is entitled to *pendent lite* and future interest? If so, at what rate and for which period? OPP
- (iii) Whether there is any negligence on the part of the defendants No.1 and 2 in presenting and clearance of the cheque in question? If so, its effect? OPP
- (iv) Whether there was any collusion between defendants No. 2 and 3 as alleged by the plaintiff? If so, its affect? OPP
- (v) Relief.

5. Since the matter is being remanded back, respondent No.3 is also granted one opportunity to file the written statement. Respondent No.3 shall file his written statement before the learned Trial Court on 16th November, 2015. It is clarified that respondent No.3 has neither challenged the impugned judgment nor has made any prayer before this Court to file written statement but considering that the matter is being remanded back, in the interest of justice, this Court has granted one opportunity to respondent No.3 to file the written statement on 16th November, 2015. Needless to say that if the written statement is not filed by the respondent No.3 on 16th November, 2015, his right to file the same shall stand closed and the Court shall proceed to fix the dates of trial on the above issues.

6. Learned counsel for the respondent No.1 submits that respondent

No.1 has been cheated to the tune of Rs.2,95,000/- and the remand of the matter back would further delay the matter and put additional legal cost on respondent No.1 to contest the matter.

7. This Court is of the view that the respondent No.1 can be compensated by awarding cost of litigation and therefore, cost of Rs.25,000/- is awarded to respondent No.1 for contesting the matter upon being remanded back by this Court.

8. In the facts and circumstances of this case, the appeal is allowed. The impugned judgment and decree is hereby set aside and the suit is remanded back to the learned Trial Court. The learned Trial Court shall proceed with the matter from the stage of framing of issues. The issues mentioned in para 4 above are substituted in place of the issues already framed by learned Trial Court. If the written statement of respondent No.3 warrants any further issue, the Trial Court may frame the same. Learned Trial Court shall permit the parties to lead evidence on the aforesaid issues. Considering the delay which has been caused by the pendency of the appeal, the learned Trial Court shall endeavour to complete the trial positively within a period of one year.

9. The appellant has deposited the decretal amount with the Registrar General of this Court which has been kept in the fixed deposit. The Registrar General shall discharge the said FDR and pay a sum of Rs.25,000/- to respondent No.1 towards the cost awarded by this Court. The balance amount along with interest be refunded back to the appellant.

10. List before the learned Trial Court on 16th November, 2015 at 02.30 P.M. All the parties are bound down to appear before the learned Trial Court on the said date. Respondent No.3 present in person undertakes to appear

before the learned Trial Court on the said date. The undertaking is hereby accepted.

11. Vide order dated 19th March, 2015, this Court has issued show-cause notice to respondent No.3 to show-cause why a complaint not be made against him under Section 340 Cr.P.C for offences under Section 199 read with 191 and 193 IPC. The respondent No.3 has submitted the affidavit in response to the said notice. Let the copy of the order dated 19th March, 2015 and affidavit of respondent No.3 dated 20th May, 2015 be sent to the learned Trial Court. The learned Trial Court shall consider Section 340 Cr.P.C. at the time of passing the fresh judgment after recording the evidence of all the parties.

12. The record of the learned Trial Court be returned back forthwith.

13. The record of the Metropolitan Magistrate be also returned forthwith. Considering the facts of this case, the learned Metropolitan Magistrate shall expedite the hearing of the criminal case and endeavour to complete the trial within a period of six months from today. Copy of this judgment be sent to the Learned Metropolitan Magistrate along with the record of the criminal case. Mr. Rahul Mehra, Learned Senior Standing Counsel for Govt of NCT of Delhi present in Court shall ensure that there is no delay on the part of the prosecution in prosecuting this matter.

14. Copy of this order be given *dasti* to counsels for the parties as well as Mr. Rahul Mehra, senior standing counsel for GNCTD under signature of Court Master. Copy of this order be sent to the respondent No.3 through SI Arun Dagar, PS Kapashera, Delhi present in Court.

J.R. MIDHA, J.

OCTOBER 16, 2015/ak