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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 6655 OF 2016

Central Bank of India.

... Petitioner.

V/s.

M/s. Vora Automotives Pvt. Ltd.

... Respondent.

Mr. N.V. Walawalkar, Senior Advocate i/b. V.K. Nair for the
Petitioner.

Mr. Prem Gidwani i/b. Raj Baid for Respondent.

CORAM : N.M. Jamdar, J.

26 September, 2016.

Oral Order :-

Rule. Rule made returnable forthwith. The learned
Counsel for the Respondent waives service. Taken up for disposal by
consent.

2. The Petitioner challenges the order passed by the Civil
Court, Mumbai dated 5 November 2014 rejecting the Notice
of Motion No. 2214 of 2014 taken out by the Petitioner for
condonation of delay and to taken the written statement on record.

3. Suit No. 23 of 2005 was filed by the Respondent – Plaintiff initially in this Court which was subsequently transferred to the City Civil Court, Mumbai in view of change in pecuniary jurisdiction. The Respondent – Plaintiff in the suit has sought an order and decree to direct the Petitioner to pay an amount of Rs.27,55,646.16/- towards building loan account alongwith interest at the rate of 18%. The reason given by the Petitioner that due to the change in the pecuniary jurisdiction and the mistake of the manager and advocate, the written statement could not be filed in time. The reason was not found in favour by the learned City Civil Court.

4. I have heard the learned Counsel for the parties. It was put to the learned Counsel for the parties, considering that the Petition is at the admission stage, to curtail further delay in the proceedings, whether the Petitioner can be permitted to file the written statement subject to the amount claimed in the Suit being secured by the Petitioner – Bank and subject to cost. The learned Counsel for the Respondent submitted that to avoid any further delay, if the amount is secured and costs are imposed, the Respondents are not averse to disposal of the Petition as indicated.

5. The Petitioner is a Bank and the reason given in the application is a mistake on the part of the officers of the Bank as well as the Advocate. The learned Senior Advocate on behalf of the Petitioner has tendered unconditional apology for not filing the

written statement on time. He has also stated that action has been taken against those who were responsible in not filing the written statement on time.

5. Considering this position and what is sought in the Suit is a monetary claim and that the Petitioner – Bank has found itself in the above situation for lapse of his officers and advocate, the equities can be balanced by directing the Petitioner to open a fixed deposit account in the name of Registrar of the City Civil Court, Mumbai and deposit the amount of Rs.27,55,646/- in a fixed deposit initially for period of one year and thereafter, renewable as directed by the City Civil Court. The amount of interest accrued in this fixed deposit can be added to the account. The deposit can be subject to the further orders to be passed by the learned City Civil Court Judge. The copy of the receipt of the fixed deposit shall be placed on the file of the pending suit with a copy to the Respondent. As far as the amount of costs are concerned, considering the claim and the position of the parties, I am of the opinion that cost of Rs.75,000/- will be appropriate in the facts and circumstances of the case. As far as written statement is to be filed, the written statement which was annexed to the Notice of Motion No. 2214 of 2014, confirmed on 24 June 2014 will be filed, within three weeks of payment of cost.

6. Accordingly, the Writ Petition is disposed of by the following directions :-

(a) The impugned order dated 5 November 2014 passed by the City Civil Court is quashed and set aside.

(b) Notice of Motion No. 2214 of 2016 in Special Civil Suit No. 5691 of 2005 is allowed subject to following :-

(i) The Petitioner to open a fixed deposit account in the name of Registrar of the City Civil Court, Mumbai and deposit the amount of Rs.27,55,646/- in a fixed deposit initially for period of one year and thereafter, renewable as directed by the City Civil Court. The amount of interest accrued in this fixed deposit shall be added to the account. The deposit shall be subject to the further orders to be passed by the learned City Civil Court Judge. The copy of the receipt of the fixed deposit shall be placed in the pending suit, with a copy to the Respondent.

(ii) Cost of Rs.75,000/- will be paid to the Plaintiff within three weeks.

(iii) All contentions of the parties on merits of the Suit are kept open.

(N.M. Jamdar, J.)