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

+ **CS(OS) 2318/1999**

PUNJAB NATIONAL BANK Plaintiff

Through: **Mr. K.K. Mahajan, Advocate.**

versus

NAGESH KUMAR NAGPAL & ORS. EA+ Defendants

Through: **Mr. Sunil Keshari, Advocate for
defendant No.1.**

**Mr. Mukesh Anand, Advocate for
defendant No.2.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

25.02.2016

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O.A. No.490/2015

1. This chamber appeal is directed against the order dated 15.09.2015, whereby the right of the plaintiff to lead evidence of Sh.J.B. Gupta, who was already under cross-examination by the defendants has been closed.
2. The Court had passed the order on 20.01.2015 in O.A. No.2/2015 (which was directed against the order dated 17.10.2014, whereby the learned Joint Registrar had closed the evidence of the plaintiff's witness PW-2), whereby the plaintiff was granted a final opportunity to complete the evidence of PW-2, subject to payment of costs of Rs.25,000/-. The matter was listed before the Joint Registrar on 10.03.2015, when PW-2 was required to remain present for leading his evidence.
3. On 10.03.2015, PW-2 Mr. J.B. Gupta appeared and he was partly

cross-examined. The matter was adjourned to 07.04.2015 for further cross-examination.

4. On 07.04.2015, PW-2 was again present. The order sheet shows that learned counsel for the defendant was not present as he was held up in another Court and it was only at 04:00 p.m. that the PW-2 was cross-examined. The cross-examination was not completed and, therefore, the matter was adjourned to 15.09.2015.

5. On 15.09.2015, Mr. J.B. Gupta, PW-2 was not present. The officer of the bank informed that he had not been able to contact Mr. J.B. Gupta. It was also informed that he had since retired from the plaintiff bank. Learned counsel for the plaintiff appeared at 12:30 p.m. and sought an adjournment. Pertinently, this request was not opposed by learned counsel for the defendants. Despite that being the position, the plaintiff's evidence was closed.

6. The submission of learned counsel for the plaintiff is that had the learned counsel for the defendants cross-examined PW-2 on 07.04.2015, when the matter was earlier called out for that purpose, the cross-examination of PW-2 may have been completed on the said day. In any event, since PW-2 Mr. J.B. Gupta had retired, there was lack of communication with him and, therefore, he could not appear on 15.09.2015. Learned counsel submits that it was not intentional on the part of the plaintiff to avoid the leading of further evidence of PW-2. Even the defendants were agreeable to an adjournment when the Joint Registrar closed the right of the plaintiffs to lead remaining evidence of PW-2.

7. The submission of learned counsel for the defendants is that there is nothing placed on record to show that an effort was made to contact PW-2 Mr. J.B. Gupta to require him to appear on 15.09.2015.

8. Having perused the impugned order and heard learned counsel, this Court is of the view that the order dated 15.09.2015 passed by the learned Joint Registrar closing the right of the plaintiff to lead the remaining evidence of PW-2 is patently laconic and inappropriate and the same cannot be sustained.

9. From the order sheet, it is clear that PW-2 had earlier appeared on two occasions when he was examined. It was on account of the learned counsel for the defendants being busy in other proceedings that PW-2 had to wait and his cross-examination could proceed only at 04:00 p.m. on 07.04.2015. In the meantime, he retired as the date was given after nearly five months. On 15.09.2015, pertinently Mr. B.M. Aggarwal of the plaintiff bank was present. Thus, it could not be said that the plaintiff was not following up the proceedings. He, in fact, informed the Court of the learned Joint Registrar that Mr. J.B. Gupta could not be contacted as he had retired in the meantime. There is no reason to disbelieve this statement. The request of learned counsel for the plaintiff to seek an adjournment was not even opposed by the defendants. However, learned Joint Registrar's Court proceeded to close the right of the defendants to lead the remaining evidence. The Joint Registrar, who is a judicial officer, is expected to conduct the proceedings in a more judicious manner. The object of the Court and the Joint Registrar should always be to further the cause of justice and to grant adequate opportunity to parties to advance their case on merits. The idea should not be to sacrifice

the interest of justice by a hyper-technical reading of the orders passed by the Court. Merely because the Court had granted final opportunity to the plaintiff to lead remaining evidence while passing the order dated 20.01.2015, it did not mean that a genuine request for an adjournment by a party, who otherwise seems to be acting bona fide should not be considered.

10. Accordingly, the appeal is allowed and the order dated 15.09.2015 closing the right of the plaintiff to lead the remaining evidence of PW-2 is set aside.

11. This order shall be communicated to the concerned Joint Registrar for his guidance in future.

CS(OS) 2318/1999 and I.A. Nos. 6606/2000, 16171/2012 & 25581/2015

12. In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (East), Karkardooma Courts for further proceedings before the competent court on 03.05.2016.

13. It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

VIPIN SANGHI, J

FEBRUARY 25, 2016

B.S. Rohella