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

+ **CS(OS) 819/2004**

GANESH BUILDERS (P) LTD. Plaintiff

Through: **Mr. Dhiraj Sachdeva, Advocate.**

versus

PUNJAB AND SIND BANK AC+ Defendant

Through: **Mr. Harish Katyal & Ms. Vinny Shangloo, Advocates.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

01.03.2016

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O.A. No.379/2015

1. This chamber appeal is directed against the order dated 05.08.2015 passed by the learned Joint Registrar, whereby the defendant's right to lead evidence has been closed. The defendant has examined one witness Mr.Amrit Lal Sethi as DW-1, who was discharged on 05.08.2015.

2. It is seen from the record that the defendant had earlier filed a list of witnesses on behalf of the defendant and sought summoning of two witnesses from the Indian Bank and the Syndicate Bank, which were listed at serial numbers 5 & 6 of the said list of witnesses. The application of the defendant for summoning of witnesses being I.A. No.16655/2014 was dismissed by the Joint Registrar on 01.09.2014 on the ground that the same

was premature. In spite of that being the position, in the impugned order the Joint Registrar observed that “*As per list of witnesses, there is no witness as cited by the defendant which required for examination*”.

3. In my view, the impugned order is patently laconic. Even if the defendants were not permitted to lead evidence of other witnesses, who were employees of the defendant bank, at least the summoned witnesses should have been permitted to be summoned.

4. The order passed on 01.09.2014 also appears to be laconic. If the application for summoning the witnesses was premature, the right course to be adopted by the learned Joint Registrar would have been to adjourn the application rather than to dismiss the same. Dismissal of that application would mean that the defendant would have to move a similar application subsequently resulting in burdening of the record and avoidable expense to the party.

5. Learned counsel for the defendant submits that the defendant is only interested in producing the summoned witnesses, i.e. from the Indian Bank and the Syndicate Bank.

6. I may also observe that the learned Joint Registrar seems to have acted rashly while imposing substantial costs of Rs.20,000/- upon the defendant due to non-appearance of the witness Mr. Sethi on 27.04.2015. The defendant had moved an application for waiver of costs by pointing out that the son of the witness Mr. Sethi was married on 27.04.2015, and thus, he could not appear on the said date to record his statement. That application too, had been rejected by the Joint Registrar on 21.05.2015. In

my view, the said order demonstrates complete lack of judicial discretion on the part of the Joint Registrar. However, since the costs have been paid for a good cause in the Prime Minister's Relief Fund, learned counsel for the defendant does not seek setting aside of the order imposing the costs and dismissing the defendant's application for waiver of costs.

7. Accordingly, the impugned order is set aside and the defendant is permitted to summon the two summoned witnesses from the Indian Bank and the Syndicate Bank.

8. A copy of this order be communicated to the Joint Registrar.

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9. 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 (West), Tis Hazari Courts for further proceedings before the competent court on 03.05.2016.

10. 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

MARCH 01, 2016

B.S. Rohella