

\$~1

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

+ CS(COMM) 135/2016 and I.A. Nos.2467/2016 (stay) & 2468/2016
(under Order 2 Rule 2 CPC)

ICICI BANK LIMITED

..... Plaintiff

Through: Mr. Abhinav Vashisht, Senior
Advocate with Ms. Rukhmini Bobde,
Advocate, Mr. Ritesh Issac,
Advocate, Ms. Aakanksha Nehra,
Advocate and Ms. Ayushi Kiran,
Advocate.

versus

ERA INFRASTRUCTURE (INDIA) LIMITED & ORS Defendants
Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **18.03.2016**

1. On 22.2.2016 and 29.2.2016, the following orders were
passed:-

“Order dated 22.2.2016

1. Counsel for the plaintiff wants to seek instructions inasmuch as it has been pointed out to the counsel that one of the reliefs claimed in the suit will be effectively for the plaintiff to be granted a declaration of a right, title and interest in the mortgaged immovable property, and which is not situated in Delhi but is situated in Gurgaon, and consequently lack of jurisdiction of this Court to entertain the suit on account of territorial jurisdiction as per Section 16(d) CPC. Also, learned counsel for the plaintiff has been put to notice of the judgment of the Supreme Court in the case of *Commercial Aviation and Travel Company & Ors. Vs. Vimla Pannalal (1988) 3 SCC 423* wherein the Supreme Court has laid

CS(COMM) 135/2016 page 1 of 3

down the ratio that once there are materials available on record to give a particular pecuniary jurisdiction value, a litigant at its own valuation cannot choose to fix any lesser arbitrary pecuniary jurisdiction.

2. List on 29th February, 2016.

Order dated 29.2.2016

1. Learned counsel for the plaintiff argues that Section 16(d) CPC would not apply in the facts of the present case inasmuch as plaintiff is not seeking any declaration of right to any mortgaged property as plaintiff has already asserted existence in its favour of the mortgage in the suit plaint and the relief prayed is only consequential upon the existence of the mortgage in favour of the plaintiff.

2. So far as the issue of court fee is concerned, by applying the ratio of the judgment of the Supreme Court in the case of ***Commercial Aviation and Travel Company and Ors. Vs. Vimla Pannalal (1988) 3 SCC 423*** and as per the causes of action and the reliefs claimed in the suit, learned senior counsel for the plaintiff states that plaintiff will take appropriate steps to amend the plaint and give a tentative valuation and pay court fees accordingly.

3. At request, list on 18th March, 2016.”

2. Today, learned senior counsel for the plaintiff sought to file an application across the board for amendment of the plaint, however, it is noted that even in this application which is proposed to be filed, plaint is sought to be amended so as to give a jurisdictional value for court fee as per the amount of security to be taken by the plaintiff to secure the loan taken by

the defendant no.1 but without giving any basis for such valuation.

3. In view of what is stated in the orders dated 22.2.2016 and 29.2.2016 as regards court fee aspect, at this stage, the learned Senior Counsel for the plaintiff states that he has instructions to withdraw the suit, however, liberty be granted to the plaintiff to file a fresh suit, and which liberty is granted to file a fresh suit, in any appropriate court, subject of course to plaintiff ensuring compliance of the ratio of the judgment of the Supreme Court in the case of ***Commercial Aviation and Travel Company and Ors. Vs. Vimla Pannalal (1988) 3 SCC 423*** so far as payment of court fee is concerned by fixing appropriate valuation for the purpose of court fee as per the value of the additional securities which are sought.

4. Suit is accordingly allowed to be withdrawn with the aforesaid liberty.

5. Since the suit is withdrawn at the initial stage, plaintiff will be entitled to refund of 50% of the court fee in terms of Section 16-A of the Court-Fees Act, 1870 (as applicable to Delhi) and the Registry will issue the necessary certificate in favour of the plaintiff.

VALMIKI J. MEHTA, J

MARCH 18, 2016/Ne

CS(COMM) 135/2016

page 3 of 3