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

% **Date of Decision:15.09.2016**

\+ CM(M) 356/2016

ICICI BANK LTD ..... Petitioner

Through: Mr.Punil K. Bhalla, Advocate.

versus

BASANT KUMAR ARYA ..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition, the petitioner seeks to impugn the order dated 05.03.2016. The petitioner filed a suit for recovery of Rs. 3,75,689/-.It is urged that the respondent had approached the petitioner for grant of personal loan of Rs.6,00,000/-. The parties entered into a loan agreement under the Loan-cum-Hypothecation Scheme of the petitioner Bank. The respondent executed various documents and agreed to repay the loan amount in 48 equated monthly instalments of Rs. 17,313/- each. The petitioner sanctioned a loan of Rs.6,00,000/- and disbursed the amount requested by respondent after deducting disbursement charges.

2. Since there was default in repayment of the monthly instalment, the petitioner claims to have, in terms of the loan document, recalled the loan facility by sending a recall notice dated 19.05.2015. Thereafter, the present suit has been filed.

3. When the suit came up for hearing, the trial court instead of issuing

summons to the respondent passed the following orders:-

> "I have perused the record. From the credit facility application from, it is not clear as to which branch of plaintiff bank has disbursed the loan. However, from the perusal of the application it appears that amount was directly credited to the ICICI Bank account of DLF Cyber City, Gurgaon. It is also not clear as to on which bank defendant applied for sanction of loan. In the plaint however, it has been mentioned that the loan documents were executed at Central Delhi, Videocon Tower at Jhandewalan, Karol Bagh.
>
> Let the plaintiff file an affidavit of Senior most officer to the effect that whenever loan is applied through its branches the concerned applicant is directed to Office at Videocon Tower for execution of loan agreement. The concerned officer must also cite the relevant rules under which such practice is adopted by the bank."

4. The purpose of above directions is not clear. Instead of issuing summons on the respondent, the trial court has gone into an enquiry about the territorial jurisdiction of the court.

5. The Civil Procedure Code has been enacted to govern the procedure of the Civil Court. The code is exhaustive on all matters specifically dealt with by it. Normally, a judge cannot disregard the said enactment. The code binds all courts so far as it goes.

6. The Privy Council in the case of ***Gokul Mandar v. Pudmanund Singh, (1902) ILR 29 Calcutta 707*** held as follows:

> "They will further observe that the essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction."

7. Similarly, the Supreme Court in ***Rasiklal Manikchand Dhariwal & Anr. v. M.S.S.Food Products, (2012) 2 SCC 196***, held as follows:

> "93. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of 'civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction."

8. Order 4 Rule 1 CPC provides that a suit is to be instituted by presenting a plaint. Order 5 Rule 1 CPC provides that when a suit has been duly instituted, summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence. Issues are framed under Order 14 CPC, based on material propositions of facts and law where parties are at a variance and on which the right decision of the case appears to depend.

9. The impugned order has gone into a roaming inquiry on the merits and demerits of the facts and averments made by the petitioner in the plaint. It is for the petitioner to prove its case. The procedure adopted is illegal and

irregular. The order occasions failure of justice.

10. The impugned order is set aside. Summons be issued to the defendants returnable for a date to be fixed forthwith by the trial court. Thereafter, the trial court may proceed with the adjudication of the suit in accordance with the procedure stated in Civil Procedure Code.

11. The petition stands disposed of in the above terms.

JAYANT NATH, J.

SEPTEMBER 15, 2016