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

% *Date of Decision : April 19, 2016*

\+ **W.P.(C) 11595/2015**

ICICI BANK LTD. ..... Petitioner
Represented by: Mr.Puneet K.Bhalla, Advocate

versus

COMPETENT DYESTUFF & ALLIED PRODUCTS PVT. LTD. & ANR ..... Respondents
Represented by: Mr.Sanjeev Aggarwal, Advocate with Mr.Ekansh Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Writ petition filed by the respondents against the impugned order dated July 28, 2015 disposing of Appeal No.411/2014 filed by DRAT Delhi has been dismissed. The grievance of the petitioner in the instant petition is to the quantification of the value of the written off Motor Vehicle in sum of ₹4 lacs, as also not correctly quantifying the amount due to the writ petitioner.

2. As we proceeded to dictate the judgment, learned counsel for the parties jointly request that after setting aside the impugned order the appeal be restored for adjudication afresh because both counsel concede that the

impugned order is perfunctory.

3. Therefore we note the relevant facts and thereafter highlight the issues which arise, so that DRAT properly applies its mind at the remanded stage.

4. The first respondent is the borrower. Its Director (the second respondent), is a co-borrower. Loan advanced by the petitioner was ₹60 lacs to purchase a BMW Motor Vehicle. Receiving the loan and having purchased the motor vehicle, 59 EMIs in sum of ₹1,28,415/- had to be paid. Rate of interest agreed was 9.75% per annum. (Whether with monthly, quarterly or yearly rest is not known because it does not find any mention in the impugned order).

5. ICICI Lombard Insurance Company, is stated to be a group company of the petitioner. The motor vehicle was insured with it.

6. At a road accident the motor vehicle became a total loss.

7. Only few EMIs (exact number not known) were paid. Petitioner filed OA No.312/2012 claiming decree in sum of ₹54,56,596/- with pendente lite and future interest.

8. The Debts Recovery Tribunal dismissed the original application holding that the petitioner had suppressed relevant facts.

9. Vide impugned order dated July 28, 2015, DRAT has held that the petitioner had not suppressed any fact, but was negligent in not taking possession of the damaged vehicle and thereafter selling the same. Though not expressly stated, the principle of mitigation of damages has been applied by the learned DRAT.

10. It is known to one and all that if a motor vehicle is insured, and at an accident becomes a total loss, while settling the claim the insurer purchases the damaged vehicle and thus DRAT was obliged to decide whether the

petitioner could have at all taken possession of the motor vehicle which was hypothecated to it.

11. Assuming petitioner was obliged to take possession of the damaged motor vehicle, its junk value had to be ascertained with reference to some relevant evidence. The figure of ₹4 lacs is obviously the ipse dixit of the learned DRAT.

12. As per the impugned order, claim has been allowed in sum of ₹47,10,229/- and subtracting ₹4,00,000/- therefrom, the petitioner has been held entitled to ₹43,00,000/-.

13. The impugned order throws no light as to on what reasoning amount payable to the petitioner has been quantified at ₹47,10,229/-. Impugned order makes no reference to the interest.

14. It was the duty of DRAT to have determined the number of EMIs which remained outstanding and interest due thereon. It was the duty of DRAT to determine the effect of the claim being laid before all 59 EMIs became due and payable, for the reason, when calculated each EMI had factored in the reducing principle and interest on the balance.

15. We are not rendering any opinion on the quantification of the amounts and what we have written hereinabove is to guide the DRAT as to in what manner the judgment has to be written. A judgment must have a brief overview of the facts to set the scene. A succinct statement of the issues to foreshadow the structure must emerge. If relevant, a succinct statement of the procedural history could be written. An impartial statement of each parties' position on each issue has to find a mention. A clear statement of the flaws in the losing parties' position on each issue has to be recorded. Evidence supporting findings on the issues and reference to the law or a

standard upon which the judgment is based has to be written.

16. The petition is accordingly disposed of, with consent, setting aside the impugned order dated July 28, 2015 passed by DRAT. Appeal No.411/2014 is restored for adjudication afresh before DRAT.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 19, 2016
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