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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: 20th September 2017.

+ RFA 105/2007

HINDUSTAN ENGINEERING & INDUSTRIES

..... Appellant

Through: Mr. Amit P. Deshpandey, Advocate

versus

ADARSH CEMENT PRODUCTS P. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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20.09.2017

P.S. TEJI, J. (ORAL)

1) Aggrieved by the judgment and decree dated 25TH August 2006, passed by the learned Additional District Judge, vide which the suit of the plaintiff/appellant was dismissed, the appellant has preferred the instant appeal.

2) At the outset, counsel for the appellant has submitted that vide order dated 4th February 2004 the following issues were framed by the learned trial court:

“1. Whether the plaintiff is the proprietor of M/s. General Engineering Works? OPP

2. Whether the plaint is signed and verified and the

suit is instituted by duly authorised person? OPP

3. Whether the defendant maintained a mutual open and current account with the plaintiff ? OPP

4. Whether the suit is within the period of limitation? OPP

5. Whether there was any valid acknowledgement as alleged by the plaintiff ? OPP

6. Whether this court has no territorial jurisdiction as alleged in the WS? OPD

7. Whether the plaintiff is entitled to any interest, if so at what rate and to what amount? OPP

8. To what amount, if any, is the plaintiff entitled? OPP.

9. Relief.”

3) The learned trial court at the time of final adjudication has dealt with only Issue No.1 and 2. Apart from these two issues, there were other issues such as; Limitation, acknowledgment, territorial jurisdiction, entitlement of the plaintiff with regard to amount sought to be recovered, interest thereon and relief.

4) The argument advanced by learned counsel for the appellant is that the trial court has not delivered any finding on the issues which is

mandatory in nature as even if the Issue No.1 and 2 are decided against the appellant, still there are vital issues on which the finding has not been determined.

5) In the facts and circumstances of the case, this court agrees with the arguments advanced by counsel for the appellant. Accordingly, the present appeal filed by the appellant is disposed of thereby remanding the matter back to the learned District Judge (East). The learned District Judge shall try the matter himself and decide the issue Nos. 3 to 9 or shall assign the same to some other competent court for decision.

6) Appellant is directed to appear before the learned District Judge on 28th November 2017 for further directions.

7) The trial court record be sent back alongwith order passed in this appeal.

8) It is made clear that the order passed in the present appeal would not debar the appellant to file a fresh appeal against the decision of the trial court.

9) With aforesaid directions, the appeal stands disposed of as such.

P.S.TEJI, J

SEPTEMBER 20, 2017
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