* IN THE HIGH COURT OF DELHI AT NEW DELHI

<u>Judgment delivered on : October 31st, 2017</u>

\+ RFA 149/2007

RAMESH CHAND JAIN ..... Appellant

Through Mr.J.K. Singh, Adv.

versus

STATE BANK OF INDIA ..... Respondent

Through Mr.S.L. Gupta and Mr.Mithilesh Pal, Advs.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

<u>JUDGMENT</u>

<u>P.S.TEJI, J.</u>

1. The appellant has filed the present appeal being aggrieved by the judgment and decree dated 16.11.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the appellant/plaintiff stands dismissed.

2. The facts enumerating from the plaint filed before the Court below are that the State Bank of India had filed a suit against M/s R.C.Jain and Associates and others and in that suit M/s R.C.Jain and Associates filed the counter claim for the recovery of Rs.4,30,000/-. Vide order dated 30.08.1997, the said counter claim was separated

from the main suit. Plaintiff/appellant deals in business of balancing/ reconciliation of account while defendant/respondent is a nationalized bank. Appellant/plaintiff had approached the bank for the job of balancing and reconciliation. In order to assess the competency of the appellant firm, job of balancing of one date was given to the plaintiff firm, which was completed to the satisfaction of the respondent bank. It was alleged that the appellant firm was informed by the respondent bank that balancing/reconciliation work was required for 260 dates. Accordingly, the appellant firm had submitted its quotation vide letter dated 05.02.1985 wherein appellant charged Rs.10,000/- for the job of reconciliation/balancing of inward clearing pertaining to the period 03.07.1983 to 30.06.1984. In pursuance of the said agreement, respondent bank had to supply the data of 87 dates for the purposes of balancing up to March, 1988 and appellant firm had actually balanced and reconciled 80 dates from the said data and supplied the reconciliation statements to the respondent bank during period October, 1985 to March, 1988. It is further alleged that respondent bank was satisfied with the reconciliation statements, however, discrepancy, if any pointed out, was to be duly rectified and fresh reconciliation statements were to be supplied to the respondent bank.

3. In the written statement filed on behalf of the defendant/ respondent bank, it contested the suit by stating that the agreement dated 05.09.1985 was executed with the appellant firm, however it was denied that the respondent bank agreed to assign the job of 260 dates. In fact, the exact number of dates to be reconciled were not

agreed in the said agreement and the data had to be supplied by the bank depending upon its requirement. It was further stated that as per agreement, bank had to pay Rs.6,000/- per date in respect of which correct statements were to be prepared and supplied by the appellant/plaintiff firm and respondent bank would further pay Rs.4,000/- per date to the appellant firm for collecting missing information/record from various banks and branches. Thus, the payment of Rs.4,000/- for each date was to be paid only for those dates wherein record or the information was missing and appellant had to collect the same from various banks and branches where no such information/record were missing, no additional payment was to be made.

4. Replication to the written statement was filed on behalf of the plaintiff firm. On the basis of pleadings of the parties, following issues were framed by the Court below :

> (1)Whether the claim of the plaintiff is within the prescribed period of limitation? (OPP)
>
> (2)Whether the plaintiff is entitled to recover Rs.1,70,000/- as damages claimed in the suit from the defendant? (OPP)
>
> (3)Whether the plaintiff is entitled to recover Rs.2,20,000/- as unpaid balancing charges from the defendants? (OPP)
>
> (4)Whether the plaintiff is entitled to recover Rs.70,000/- from the defendants as charges for seven dates on account of balancing charges for which complete data had not been supplied? (OPP)

(5) Whether the plaintiff is entitled to recover the interest, if so, at what rate and on what amount and for what period? (OPP)

(6) Relief

5. Vide impugned judgment, all the issues except issue no.1 were decided against the plaintiff and in favour of the defendant. The suit was ultimately dismissed by the Court below. Feeling aggrieved by dismissal of the suit, the present appeal has been preferred by the appellant/plaintiff.

6. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence available on record.

7. Argument advanced by the counsel for the appellant is that an agreement dated 05.09.1989 was entered into between the appellant and the respondent for reconciliation/balancing of inward clearing of the respondent bank for the period 03.07.1983 to 30.06.1984. Pursuant to the said agreement, the respondent bank supplied to the appellant the data and instructions only for reconciliation of inward clearance for 87 dates as against about 260 dates which was originally agreed between the parties before the agreement was entered into. The assignment of reconciliation and balancing of 87 dates was carried out by the appellant up to 31.03.1988. During the said period the appellant duly reconciled and carried out the balancing and reconciliation of 80 dates and supplied the reconciliation statements to the respondent bank during the period October, 1985 to 31.03.1988. The counsel for the appellant further submitted that the respondent

bank was fully satisfied with the work carried out by the appellant and did not at any point of time raise any objection and/or point out any discrepancy carried out in rectification.

8. The main issue to be decided in the present appeal is whether the bank was liable to pay @ Rs.10,000/- per date in respect of 35 dates or @ Rs.6,000/- per date. In this respect, clause 3 of the agreement, which is Ex.P-1, finds relevance, wherein it is mentioned that:

> *"The COMPUTER AGENCY also undertakes to collect the missing information in respect of missing record from the BANKS AND BRANCHES and to process the information thus collected and provide a statement of final outstanding amount giving the break-up of the difference. The BANK agrees to pay a sum of Rs.4000.00 (Rupees four thousand only) per date for this service. The said amount will be inclusive of conveyance and other expenses that may be incurred by the said COMPUTER AGENCY in visiting the branches of the said BANK and other Banks. The BANK undertakes to pay the said amount immediately on submission of the final reconciliation statements by the said COMPUTER AGENCY".*

9. From the above clause it becomes explicitly clear that Rs.4,000/- was payable only when the appellant firm had collected the missing information in respect of the missing record from the banks and branches. The onus is on the appellant to establish that its employees had collected any missing information in respect of the missing record

from the different bank and branches as the case may be. It is evident from the material placed on record and submissions made before the court below that the appellant has failed to produce any concrete evidence to prove the said fact.

10. Letter dated 09.01.1987 which is Ex.P-2 states that bank had mentioned that 60% of Rs.10,000/- for each date for 48 dates had been made and the balance 40% payment would be made after reconciliation of the statement. However, the bank had not made the balance payment in respect of 35 dates but balance payment had been made in respect of 13 dates. This shows that the bank had made the balance payment in respect of the dates, where the appellant firm had collected missing record from different branches and banks. From the letter Ex. P-2 it is clear that bank would pay the balance of 40% only after reconciliation of statements submitted by the appellant firm. It does not mean that the bank had admitted its liability in respect of the balance payment. Admittedly, in the said letter it has been nowhere mentioned that appellant had collected missing record from different branches. The onus to prove the same was to be on the appellant and the appellant has failed to prove the same.

11. In view of the above discussion, the appellant/plaintiff has failed to make out any ground in support of his case and failed to prove any of the issues, the onus of which lay upon the appellant alone.

12. As discussed above, this Court does not find any merit in the present appeal. The appellant/plaintiff has failed to make out any

error in the impugned judgment and decree passed by the Court below. Consequently, the present appeal is dismissed.

13. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 31, 2017
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