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

+ CM(M) 324/2017

CENTRAL BANK OF INDIA

..... Petitioner

Through: Mr.Jaswinder Singh, Advocate.

versus

NIRMAL KUMAR & ORS

..... Respondents

Through: Mr.K.K.Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **11.05.2017**

CM(M) 324/2017

1. The petitioner Central Bank of India is aggrieved by the order dated 18th January, 2017 whereby the application under Order XIV Rule 5 CPC filed by the petitioner bank for settlement of an additional issue at the stage of defendant's evidence, has been dismissed by the learned Trial Court.
2. Mr.Jaswinder Singh, Advocate for the petitioner/defendant No.1 has submitted that though in the application number of additional issues have been proposed, the grievance of the petitioner/defendant No.1 would be redressed if learned Trial Court is directed to settle an additional issue regarding applicability of the principles of *res judicata* in this case in view of the judgment dated 20th June, 2003 passed by DRT in OA No.52/2002.
3. Mr.K.K.Aggarwal, Advocate for the respondents No.1 to 3/plaintiffs has drawn the attention of this Court to the order impugned herein wherein the learned Trial Court has specifically dealt with the above contention of the petitioner/defendant and observed as under:-

'Having considered the submissions for ld. Counsel for defendant No.1 bank, considering the factual background already noted above, once an issue regarding maintainability of the suit having already been decided in favour of plaintiff by predecessor of this

Court vide order dated 02.04.13 whereby it was also considered as to what would be the effect of final order dt. 20.06.03 of DRT whereby objection of plaintiffs were already dismissed. Therefore, there is no necessity of framing another issue on same aspect. Similarly, issue regarding sustainability of claim of plaintiff after the gap of six years when plaint was allowed to be amended and issue on the question of res-judicata, locus of plaintiff are inclusive in the issue no.1 already framed on 01.09.15 as to whether plaintiff is entitled for the relief of declaration as prayed for. Thus, I find no separate issue is required to be frame when defendant no.1 bank is at liberty to raise all the legal issue regarding maintainability and sustainability of the suit. With this observation application stands dismissed and last opportunity given for recording D.E.'

4. Learned counsel for the respondents No.1 to 3/plaintiffs, however, submits that he has no objection if a separate issue is settled in respect of the plea of *res judicata* taken by the petitioner/defendant No.1.
5. As the plea of *res judicata* has been taken specifically in the written statement, learned Trial Court is directed to settle an additional issue in respect of the above plea which is mainly based on the decision dated 20th June, 2003 passed by DRT in OA No.52/2002.
6. The impugned order dated 18th January, 2017 is set aside and the petition is allowed in above terms.
7. A copy of this order be sent to the concerned Court for information and compliance and be also given dasti to learned counsel for the parties, as prayed.

CM No.11125/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 11, 2017/'st'