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

+ RSA 217/2014

RAM CHANDER

..... Appellant

Through: Mr.G.L.N.Murti & Mr.H.S.Kumar,
Advocates

versus

SMT. ARTI DUBEY

..... Respondent

Through: Mr.Amit Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

08.03.2017

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RSA 217/2014

1. The appellant has filed the instant appeal impugning the judgment dated 31.05.2014 passed in RCA No.4/2014 whereby the First Appellate Court upheld the order dated 13th November, 2013 passed in Civil Suit No.235/13 vide which the learned Trial Court while dismissing the application seeking leave to defend moved by the appellant/defendant, decree the suit of the respondent/plaintiff under Order XXXVII CPC.
2. Civil Suit No.235/13 was filed by the respondent/plaintiff under Order XXXVII CPC for recovery of ₹2 lacs wherein the prayer of the appellant/defendant seeking leave to defend the suit was declined by the learned Trial Court and civil suit was decreed vide judgment dated 13th November, 2013.
3. Feeling aggrieved, the appellant/defendant preferred RCA No.4/2014

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which was also dismissed by the First Appellate Court.

4. Therefore this Regular Second Appeal has been filed by the appellant/defendant impugning the concurrent findings of the Courts below. On 23rd February, 2015, while admitting the appeal, following order was passed:-

“4. The question which arises for consideration is that in case the respondent/plaintiff is found guilty for offences under Section 380 read with Section 411 CPC then the entire suit of the plaintiff for recovery under Order 37 CPC as well as the complaint filed under Section 138 of the Negotiable Instruments Act fall flat.

5. In my considered opinion, the learned trial court ought to have given a conditional leave to defend to the appellant. As of now, the appellant is purported to have deposited not only the principal amount of Rs.2,00,000/-but the interest component to the tune of Rs.29,000/- also, in terms of the directions passed by the first appellate court. The payments have been released to the respondent/plaintiff. Therefore, in case a contradictory finding is returned by the criminal court where the respondent is being prosecuted, it will result in perversity qua the concurrent findings returned by the two courts below refusing the leave to defend to the appellant in the suit filed by the respondent under Order 37 CPC. Accordingly, the following substantial question of law is framed:

“Whether the finding returned by the two courts below refusing the leave to defend to the appellant in the light of the fact that the respondent/plaintiff herself was facing prosecution for an offence under Section 380 read with Section 411 IPC on the cheque in question, is preserve and the trial court ought to have waited for the outcome of that prosecution. If so, to what effect?”

6. Admit.

7. List in the category of Regular Matters as per its turn.

8. In the mean time, the respondent is directed to deposit an amount of Rs.2,00,000/- along with interest component of Rs.29,000/- with the Registrar General of this court or furnish a security of the equivalent amount with the Registrar General of this court within eight weeks.

9. List before the Registrar General on 01.05.2014.

10. The respondent is directed to appear in person before the Registrar General of this court.

11. Dasti.”

5. Today with the consent of the parties, the appeal is allowed and impugned orders 13th November, 2013 passed by the learned Trial Court and order dated 31st May, 2014 passed by the First Appellate Court are set aside granting the appellant leave to defend Civil Suit No.235/13 subject to the following conditions:-

(i) Since the amount of ₹2,29,000/- (₹2 lacs towards principal amount and ₹29,000/- towards interest) has already been realised from the appellant/defendant, the same shall remain deposited with the Registrar General of this Court.

(ii) If the amount of ₹2,29,000/- is not already kept in FDR, shall be kept by the Registrar General in FDR initially for a period of one year with auto renewal facility.

(iii) Release of amount of ₹2,29,000/- plus interest accrued thereon shall be in terms of final decision of learned Trial Court in Civil Suit No.235/13.

(iv) Written statement shall be filed by the appellant/defendant within two weeks from today with advance copy to opposite counsel.

6. Both the parties submit that keeping in view that the matter is very old

they will make every effort to get the Civil Suit No.235/13 disposed of expeditiously.

7. Parties are directed to appear before the learned trial Court on 31st March, 2017. It is hoped and expected that learned Trial Court shall dispose of Civil Suit No.235/13 within a period of one year from the date the parties start appearing before the learned Trial Court.

8. The appeal stands allowed in above terms.

9. A copy of this order be sent to the concerned Trial Court for compliance and be also given dasti to learned counsel for the parties.

CM No.13653/2014

Dismissed as infructuous.

PRATIBHA RANI, J.

MARCH 08, 2017

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