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

\+ CM(M) 531/2017

RAJESH KUMAR ..... Petitioner
Through: Mr.Tarun Khanna, Advocate

versus

KOTAK MAHINDRA BANK ..... Respondent
Through: Mr.Pankaj Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% 30.05.2017

1. The petitioner has filed the instant petition under Article 227 of the Constitution of India with the following prayers:-

(i) to set aside the impugned order dated 21st April 2017 and 28th April, 2017 passed by the Court of Ms.Mona T.Kerkette, Civil Judge, West, Tis Hazari Court, Delhi in Execution Petition No.61517/16 (Old Ex.No.07/2013) titled "Kotak Mahindra Bank vs. Rajesh Kumar".

(ii) to pass an order allowing the petitioner to pay the remaining decretal amount in instalments within a period of 06-08 months from the passing of the order by this Court.

(iii) to pass an order to cal for the records of the learned Trial Court.

2. The respondent-bank has filed a suit under Order XXXVII of Code of Civil Procedure for recovery of ₹2,98,325/-. Vide order dated 21st December, 2012, while dismissing the application filed by the

petitioner/defendant seeking leave to defend, the suit was decreed under Order XXXVII Rule 3(6)(a) of Code of Civil Procedure.

3. Since the petitioner/judgment debtor failed to pay the decretal amount, the respondent-bank/judgment filed Execution petition No.61517/2016. Vide impugned order dated 21st April, 2017 the learned Executing Court, on failure of the petitioner/judgment debtor to appear before the Court, issued warrants of arrest against the petitioner/judgment debtor. Thereafter the petitioner/judgment debtor filed an application for staying the execution of warrants of arrest which has been dismissed by the learned Executing Court vide order dated 28th April, 2017.

4. Today petitioner is present in person alongwith counsel and submits that he is ready to settle the issue with the respondent-bank and pay a sum of ₹1,50,000/- towards full and final settlement. He further submits that his prayer is limited to the extent is that in view of his poor financial condition he may be permitted to pay ₹1,50,000/- in nine equal monthly instalments. The petitioner also assures that he will not make any default in future.

5. The petitioner has also filed his undertaking by way of affidavit today in the Court to the above effect.

6. Mr.Pankaj Kumar, learned counsel for the respondent submits that though the balance decretal amount is more than ₹1,50,000/- but in view of the assurance given by the petitioner that he will not make any default in future, the respondent has no objection if the petitioner is directed to pay ₹1,50,000/- towards full and final settlement by way of nine post-dated cheques in the sum of ₹16,670/- each to be given to the respondent within one week from today.

7. Learned counsel for the petitioner, on instructions, submits that the

petitioner undertakes to give nine post-dated cheques to the respondent-bank within a week from the date of this order.

8. Learned counsel for the parties submits that the petition may be disposed of in above terms.

9. In view of the submissions made by learned counsel for the parties, the petition is disposed of in terms of settlement arrived at between the parties.

10. The petitioner shall remain bound by the undertaking given by him today in the Court.

11. However, in case of any default by the petitioner in making the above payment, the respondent/bank shall be at liberty to execute the decree forthwith.

12. A copy of this order be sent to the learned Executing Court and be also given dasti to learned counsel for the parties under the signature of Court Master, as prayed.

PRATIBHA RANI, J.

MAY 30, 2017
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