* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA Nos. 914/2016 & 915/2016**

% **16th November 2017**

\+ **RFA No. 914/2016**

STATE BANK OF INDIA ..... Appellant

Through: None.

versus

RAJESH SINGH ..... Respondent

Through: None.

\+ **RFA No. 915/2016**

STATE BANK OF INDIA ..... Appellant

Through: None.

versus

PAWAN KUMAR ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM Appl. No. 43750/2016 (delay of 230 days) in RFA No. 914/2016

Respondent has not appeared in spite of service by publication. There is therefore no opposition to this application and which is allowed and delay of 230 days in filing the appeal is condoned.

Respondent is proceeded *ex-parte.* It is noted that respondent/defendant was also *ex-parte* before the trial court.

CM stands disposed of.

RFA No. 914/2016

1. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the appellant/plaintiff/bank impugning the judgment of the trial court dated 7.12.2015 by which the trial court has dismissed the suit filed by the appellant/plaintiff bank for recovery of Rs.9,93,685/-. The suit has been dismissed although respondent/defendant proceeded was *ex-parte*, and therefore, respondent/defendant had not filed written statement or led evidence. The suit has been dismissed on a single ground that statement of account filed by the appellant/plaintiff/bank as Ex.PW1/7 was not certified as per Section 65-B of the Indian Evidence Act, 1872.

2. The facts of the case are that the respondent/defendant was granted by the appellant/plaintiff/bank a loan for purchasing a vehicle namely "Mahindra Xylo" bearing registration no. DL1YC8198. A loan of Rs.7,25,000/- was sanctioned in terms of the loan agreement dated 24.1.2012 and which was to be repaid in 84

equated monthly installments of Rs.12,798/- each. Respondent/defendant has however failed to pay the loan amount and regularly monthly installments, and therefore the subject suit was filed after serving a legal notice dated 26.11.2014.

3. Para 7 of the impugned judgment which refers to various documents being proved by the appellant/plaintiff/bank reads as under:-

> "7. In order to prove its case, plaintiff has examined Sh. A.K. Chauhan, as PW-1, who tendered his evidence by way of affidavit and proved on record his affidavit Ex.PW-1/A. PW-1 reiterated the averment made in the plaint in his examination in chief. PW-1 further exhibited the documents, i.e. true copy of State Bank of India Notification dated 27-3-1987 exhibited as exhibit PW1/1 in his affidavit (the same is de-exhibited and marked as mark A being the photocopy). Loan application form dated 11-2-2012 as Ex.PW 1/2, the appraisal of car loan dated 11-2-12 as Ex.PW1/3, Arrangement letter dated 11-2-2012 as Ex.PW1/4, Loan cum hypothecation agreement dated 11-2-2012 as Ex.PW1/5, invoice of the car and the registration certificate & other documents as Ex.PW1/6 (Colly), true copy of the statement of account as Ex.PW1/7, Legal notice dated 26-11-2014 along with postal receipts as Ex.PW1/8 and postal envelope containing the legal notice dated 26-11-2014 as Ex.PW1/9."

4. As already stated above, the suit has been dismissed by holding that the statement of account Ex.PW1/7 is not certified as required under Section 65-B of the Indian Evidence Act.

5. In my opinion, trial court has erred in dismissing the suit on the ground of non-certification of the statement of account under

Section 65-B of the Indian Evidence Act inasmuch as an objection as to mode of proof of a document, unless the same is taken, the same is deemed to be waived in view of the judgment of the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8 SCC 752.*** The respondent/defendant being *ex-parte*, the deposition of the appellant/plaintiff's witness was not challenged as regards the mode of proof of the statement of account as Ex.PW1/7. Once that is so, trial court could not have held that the statement of account could not be looked into because of Section 65-B of the Indian Evidence Act as mode of proof of statement of account was not as per law viz. Section 65-B of the Indian Evidence Act .

6. In view of the above discussion, this appeal is allowed. The impugned judgment of the trial court dated 7.12.2015 is set aside. Suit of the appellant/plaintiff/bank is decreed for a sum of Rs.9,93,685/- along with the *pendente lite* and future interest at 9% per annum simple. Appellant/plaintiff will also be entitled to costs of the suit. Decree sheet be prepared.

RFA No. 915/2016 & CM No. 43761/2016 (delay of 230 days)

7. This appeal will stand allowed by adopting the reasoning given for allowing RFA No. 914/2016 and which judgment will apply *mutatis mutandis* with respect to facts of the present case where the loan was a loan of Rs. 7 lacs in terms of the loan agreement dated 24.1.2012 for purchase of a vehicle namely "Tata Indigo Manza" bearing registration no. DL4CAL3764 and 84 equated monthly installments were of Rs.12,357/- each. Suit is therefore decreed for a sum of Rs.9,94,007.97 along with *pendente lite* and future interest at 9% per annum simple. Appellant/plaintiff will also be entitled to costs of the suit. Decree sheet be prepared.

NOVEMBER 16, 2017/ib **VALMIKI J. MEHTA, J**