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

+ CM(M) 832/2017 & CM No.27615/2017 (for stay)

ICICI BANK LTD

..... Petitioner

Through: Mr. Punit K. Bhalla and Ms. Chetna
Bhalla, Advs.

Versus

RAVINDER SINGH

..... Respondent

Through: Mr. G.S. Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.10.2017

1. This order is in continuation of the earlier order dated 4th August, 2017.
2. Mr. G.S. Yadav, Advocate for the respondent appears and has been heard.
3. The counsel for the respondent reiterates what is already recorded in the order dated 4th August, 2017 i.e. that the first appeal filed by the petitioner against the decree was dismissed; no second appeal was preferred; and thus the remedy of Section 152 of the Code of Civil Procedure, 1908 (CPC) and of this petition under Article 227 of the Constitution of India is not available.
4. I have considered the aforesaid.
5. The counsel for the petitioner has not done the homework for which opportunity was given to him in the order dated 4th August, 2017.

6. I am of the view that the obvious error in the judgment and decree for recovery of principal amount of Rs.1,03,945/- as damages with interest instead of @ 18% per annum, @ 18% per month cannot be permitted to remain on account of technicalities of law. The same is evidently a mistake of the Court and it is the settled position of law (See (i) **A.R. Antulay Vs. R.S. Nayak** (1988) 2 SCC 602; (ii) **Jang Singh Vs. Brij Lal** AIR 1966 SC 1631; (iii) **Neeraj Kumar Saini Vs. State of U.P.** 2017 SCC OnLine SC 258; (iv) **S. Krishna Sradha Vs. State of Andhra Pradesh** (2017) 4 SCC 516; and, (v) **Rambeer Shokeen Vs. State of NCT of Delhi** 2017 SCC OnLine Del 8504) that it is the incumbent duty of the Court to correct its mistake and to not allow any party to the litigation to be prejudiced or suffer owing to the mistake of the Court.

7. Else, this Court in **Motor & General Finance Ltd. Vs. Gautam Roy** ILR (2006) II Del 804 held that a clerical or arithmetic error can be rectified under Section 152 of the CPC even after the first appeal preferred against the order in which rectification is sought is dismissed and when the second appeal is pending before the High Court.

8. Thus, the petition is allowed; the impugned order dated 3rd June, 2017 in Case No.18/2017 of the Court of Civil Judge-04, Tis Hazari Courts, Delhi of dismissal of the application of the petitioner/defendant/judgment debtor under Section 152 of CPC is set aside. Axiomatically, the application under Section 152 of CPC is allowed; the judgment and decree dated 2nd August, 2013 in Suit No.149/13/05 UID No.02401C0234092005 of the Court of Civil Judge-09, (Central), Delhi is corrected; the relief paragraph thereof be read as under:

“In view of decision upon issues, the suit is decreed in favour of the plaintiff and against the defendant for an amount of Rs.1.00 lakh alongwith simple interest @ 18% per annum from the date of notice dated 07/03/2005 till the date of the realization of the decreed amount. Defendant shall pay the cost of the suit to the plaintiff. Decree sheet be prepared accordingly.

File be consigned to record room, after due completion.”

8. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 11, 2017

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