IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CR No.1281 of 2017**
**Date of Decision-08.08.2018**

M/s Ohm Forex Services Limited ... Petitioner

Versus

ICICI Bank Limited and another ... Respondents

**CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Nikhil Saras, Advocate for
Mr. H.S. Sethi, Advocate
for the petitioners.

Mr. Sandeep Suri, Advocate
for the respondents.

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***RAJ MOHAN SINGH, J.***

[1]. This revision petition has been preferred by the petitioner against the orders dated 20.01.2017, 25.01.2017and 06.02.2017 passed by Additional District Judge, Chandigarh.

[2]. Petitioner filed a civil suit for declaration, declaring the debit entries, whereby defendants had charged arbitrarily and illegally exchange margin rate in excess of norms to be illegal, null and void. Further declaration was sought that the defendants are authorized to charge commission as per norms irrespective of quantity of inflow of Great Britain Pound (GBP) per day and consequently, for refund of recovery of amount as claimed in the plaint being the principal amount of the charges deducted in excess and further amount on account of interest which was illegally and *malafidely* charged by the defendants. Recovery of

the amount was also sought on account of interest pertaining to the delayed transfer of funds in the account of the plaintiff along with interest.

[3]. Trial Court vide judgment and decree dated 10.07.2015 partly decreed the suit, thereby deciding point No.1 in favour of the plaintiff and point No.2 against the plaintiff. The suit was partly decreed with proportionate costs. The debit entries made by the defendant/Bank in the account of the plaintiff in excess of 0.07 paise per US Dollar were declared null and void and as a consequence thereof, defendants were directed to refund excess amount charged along with interest @ 9% per annum payable from the date when the excess amount was charged in the account to the date of suit. A revised account in this regard was ordered to be prepared by the defendants and thereafter, total amount excess charged and interest so calculated was ordered to be paid within a period of 30 days. In case, the amount was not paid within the stipulated time, plaintiff was held entitled to the interest @ of 6% per annum on the decretal amount from the date of institution of the suit to the date of realization of the same.

[4]. Appeal was filed by the defendants before the District Judge, Chandigarh. Cross objections were filed by the plaintiff. The execution was filed by the decree holder before the Executing Court. In the appeal filed by the defendants against the

judgment and decree of the trial Court, the cross objector filed an application for additional evidence for seeking an expert opinion from the State Bank of India on the issue of measurement of 11 transactions amounting to Rs.88.80 lacs.

[5]. On 20.01.2017, the Lower Appellate Court passed the order to the effect that reply to the application for leading evidence was filed by the appellant therein. One more application under Section 151 CPC on behalf of the respondent was filed to which appellant sought to file reply. The case was adjourned for argument in the main appeal and the applications were to be disposed of along with main appeal. One more application was filed for transfer of the appeal as well as cross objections to the Commercial Court. The case was adjourned to 25.01.2017 for remaining arguments. On 25.01.2017, the Court proceeded to determine as to whether the dispute falls within the ambit of commercial dispute or not.

[6]. Learned counsel for the petitioner submitted before the Lower Appellate Court that the amount involved in the dispute was in excess of Rs.1 crore and therefore, the application moved by the applicant/respondent for transfer of the matter to the Commercial Court having jurisdiction to deal with the commercial dispute be allowed. The Court considered the arguments of the parties and found that the value of the suit cannot be denied on the asking of the parties. The original suit was filed by the plaintiff

and the same was valued for less than Rs.1 crore as per para No.26 of the suit which was to the following effect:-

> *"That the value of the suit for the purpose of Court fee and jurisdiction is Rs.195/- as far as relief of declaration is concerned, on which Court fee of Rs.19.50 is affixed on the plaint, whereas, Rs.55,682.40 is the Court fee so far as the relief of recovery of Rs.19.50 is affixed on the plaint for claiming pendente lite and future interest. Thus, in all the Court fee of Rs.58,000/- is affixed on the present plaint."*

[7]. It was argued that before the executing Court, the execution for a sum of Rs.92,40,663.90 was pending. It was pointed out that the Lower Court has not granted the rate of interest which was applicable to the commercial transactions. Some other payments were also required to be considered. It was submitted that the value of the suit exceeded Rs.1 crore and the same is liable to be transferred to the Commercial Court having jurisdiction to deal with the commercial disputes. The Court found that the execution was preferred for approximately Rs.92 lacs inclusive of interest upto date. If arguments of learned counsel for the applicant are accepted, then every time the matter has to be proceeded further because interest part will keep on adding and the value of the subject matter shall keep on changing. The suit was preferred in the year 2009 for a value of Rs.55 lacs approximately. The value of the suit as originally preferred has to be considered for the purpose of ascertaining jurisdiction of the Court. If the interest portion keeps on adding to

the total tally, total tally increases with the passage of time. The value for the purpose of jurisdiction of the suit will not change. The application filed by the respondent was declined by the Additional District Judge on 25.01.2017. On 06.02.2017, the application filed by the respondent for striking of defence was considered by the Additional District Judge, Chandigarh. The case was adjourned to 27.02.2017 and executing Court was directed to adjourn the execution proceedings beyond the said date.

[8]. Threefold submissions at this stage, in my considered opinion would not invite any attention of the Court. The first submission made by learned counsel for the petitioner was in respect of striking of defence on account of non-payment of costs of Rs.1000/- as imposed on the respondent on earlier occasion. The stand taken by the respondent was to the effect that the cost was paid to the earlier counsel namely Mr. M.P.S. Mann. In order to attract the factum of non-payment of cost, the statement of earlier counsel ought to have been recorded in order to prove the aforesaid fact. In the absence of such statement/proof, the payment of cost cannot be appreciated. The application for additional evidence in terms of Order 41 Rule 27 CPC is required to be decided along with the main appeal. Therefore, on the aforesaid two grounds, no order is required to be passed at this stage. The only argument remain to be answered is in the context

of transfer of appeal to the competent Court having jurisdiction to deal with the commercial disputes.

[9]. Evidently, at the time of filing of the suit, the plaintiff fixed the valuation for the purpose of jurisdiction to be Rs.55 lacs approximately. The aforesaid figure was made in the year 2009. With the passage of time, if the interest part keeps on adding, the same would not enhance the valuation of the suit for the purpose of jurisdiction. The accumulated amount with the inclusion of interest would not give rise to any such increase in the valuation of the suit property for the purpose of jurisdiction.

[10]. In my considered opinion, the observations made by the Lower Appellate Court in the order dated 25.01.2017 passed by Additional District Judge, Chandigarh does not require any re-consideration. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)**
**JUDGE**

08.08.2018
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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No