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

***Date of Decision: 2nd May, 2018***

\+ **RFA 49/2014**

ICICI BANK LTD ..... Appellant

Through: Mr. Punit K. Bhalla, Ms. Chetna Bhalla, Mr. Kashish Narang & Mr. Darpan Bain, Advocates

versus

PARWAZ OVERSEAS & ANR ..... Respondents

Through: Mr. Puneet Bajaj, Advocate.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. These are two appeals against the order dated 2nd March, 2013 by which a judgement on admissions has been passed under Order XII Rule 6, in the suit filed by the Respondents/Plaintiff *(hereinafter Plaintiff)*. The case of the Plaintiff is that it was appointed as a Manager and Collection Agent with the Appellant/Defendant-ICICI Bank vide agreement dated 19th September, 2006.

2. The Defendant bank introduced a scheme for farmers, agricultural commodity traders and processors. For marketing the said product applications were invited from persons/entities involved in the commodity trade. As per the Scheme, the Defendant bank was to provide the finance to the farmers and in addition there were three components viz., Management and Collection Agents, Collateral Manager and Borrower/Applicant. The

Plaintiff had applied for being considered under the Scheme, on the basis of its credit worthiness and had to provide adequate security. On the basis of the security provided, the line of credit was to the extent of ten times the assessed value of the security provided. The Plaintiff provided security of title documents for property bearing no. House No. 296, Sector 22, Urban Estate, Gurgaon and was thereafter appointed as Management and Collection Agent.

3. As per the agreement, The Plaintiff was to be paid a commission based on its performance. The total commission outstanding as per the Plaintiff as on 30th April, 2008 was a sum of Rs.8,33,434.88/-. A suit for recovery was filed for the principal amount and interest was claimed @ 21%. The Plaintiff claimed Rs.3 lakhs as damages and a direction that the title deeds of the mortgaged property be returned to them along with a relief of permanent injunction. The relief by the Plaintiff are set out herein below:

> *"(a) pass a decree for recovery of a sum of Rs. 1358508.85 (Rupees Thirteen Lacs Fifty Eight Thousand Five Hundred & Eight, Paisa Eighty Five only) in favour of the Plaintiffs and against the Defendant; and*
> *(b) pass a decree for a sum of Rs. 300000.00 (Rupees Three Lacs only) towards damages and compensation in favour of the Plaintiffs and against Defendant; and*
> *(c) pass a decree of mandatory injunction in favour of the Plaintiffs and against the Defendant thereby directing the Defendant to hand back the title deeds of the property bearing no. House no. 296, Sector 22, Urban Estate, Gurgaon; and*
> *(d) pass a decree of permanent injunction in favour of the Plaintiffs and against the Defendant thereby restraining the Defendant from using the title deeds of the property bearing no. House no. 296, Sector 22,*

*Urban Estate, Gurgaon in any manner whatsoever; and*
*(e) pass further directions for pendent lite and future interest @21% p.a. from the date of filing of suit till the date of payment on (a) and (b); and*
*(f) grant litigation expenses and cost of the suit in favour of the Plaintiffs and against the Defendant; and/ or*
*(g) grant any other or further relief(s) which this Hon'ble Court may deem fit in the facts and circumstances of the case."*

4. In the Written Statement, the bank raised various defences including the fact that various sums were due to be recovered from the Plaintiff's sister concern, M/s Hiban Lal Pvt. Ltd., against whom a FIR bearing no.372/2007 under Section 420 of IPC, was lodged. In the said FIR, various allegations were made against the promoters of the said M/s Hiban Lal India Ltd. whose promoters are the same as the Plaintiff company. The Trial Court is seized of the said criminal case after the filing of the charge sheet.

5. However, insofar as the amount due to the Plaintiff is concerned, paragraph J of the written statement is being admitted as under:

*"j) That the contents of Para No. 15 & 16 is a matter of record and hence needs no reply. The commission payable and the amount standing to the credit of the plaintiff herein is as per the terms agreed upon. At this stage it would be difficult for the bank to arrive at a conclusive figure because the losses have to be computed and then suitable adjustments needs to be made after reconciliation of the account after which anything can be paid. The bank has suffered a huge loss and it is still mounting and before the conclusion of the legal process in the form of criminal trial the banks losses can't be quantified in precise terms. The*

*statement of account in the light of the above submissions can't be treated as being the final figure qua the amount standing to the credit of the plaintiff's and shows fallacy of their stand. The bank was therefore been constrained to withhold the account albeit temporarily. As per their own agreed terms and conditions, the plaintiffs have to compensate the banks for any losses that it might suffer owing to the actions of the plaintiffs and that can't be done conclusively at this stage."*

In view of this admission, the Trial Court passed a decree on admission under Order XII Rule 6 to the extent of the admission i.e., Rs.8,33,434.88/-. Hence the present appeal

6. Counsels for both parties have been heard. The main argument of Mr. Punit Bhalla is that Bank has to recover a huge sum of money from the promoters of M/s Parwaz Overseas, and a criminal case has been lodged against them as M/s Hiban Lal India Ltd. has been actively involved in a criminal conspiracy with third parties to cause monetary loss to the bank. What is however clear is that till date there is no document which the bank is able to show that the parties/companies/promoters, had consented that the accounts of one entity can be adjusted against the accounts of another. Mr. Bhalla relies on a letter at page 175 (Annexure G) of the Appeal paper book issued by M/s Hiban Lal India to the effect that the Respondent and the said company are family concern, who are directly in the businesses of agricultural commodities. That by itself is not sufficient to not grant the Respondent, dues that it is entitled to recover, which are in fact admitted by the Bank. The decretal amount has already been deposited in this court and is earning interest. The title deeds are still lying with the bank. The counsel

for the Plaintiff submits that the suit has been adjourned *sine die* and hence the title deeds are also stuck with the bank thought the Plaintiff is entitled to release of the same.

7. Considering the overall facts and circumstances and the fact that this is a suit of 2011, trial of which is held up on various other reliefs prayed for therein, the appeal is disposed of with the following directions:

i) the principal amount of Rs.8,33,434.88/- shall be released to the Plaintiff and the same shall abide by the final decision in the suit. If the suit is decided against the Plaintiff, it shall be liable to restitute the Bank. An undertaking to this effect be filed by the plaintiff within 2 weeks, by one of the Directors, duly authorised by the Board;

ii) the interest amount shall continue to remain in a Fixed Deposit in this Court and shall also abide by the final decision in the suit;

iii) the title deeds of the properties shall be deposited with the Registrar General of this court within a period of 2 weeks and the same shall be kept in safe custody;

iv) the trial of the suit will proceed further, on all the issues that would be settled/framed, including the issue as to whether the bank is entitled to adjust the amounts due from M/s Hiban Lal India Ltd. against the Plaintiff.

8. The Trail Court shall conduct the trial and decide the matter expeditiously, if possible, within a period of six months from today.

9. List before the Registrar General for release of the principal amount and for carrying out the directions stated above. On the said date, a responsible officer from the bank shall deposit the title deeds with the Registrar General of this court.

10. Appeal is disposed of with the above observations. Trial Court

records be sent back.

11. List before the Registrar General on 30th May, 2018. List before the Trial Court on 2nd July, 2018 for further proceedings.

**PRATHIBA M. SINGH**
**JUDGE**

**MAY 02, 2018**
*Rahul*