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

\+ EX.F.A. 8/2018 & CM APPL. 7956/2018

VIRENDER KUMAR GUPTA (DECEASED) THROUGH: LRS

..... Appellant

Through: Mr. Jagdeep Anand and Mr. S. Singha Sen, Advocates.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Ms. Sangeeta Sondhi, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 28.02.2018

CM APPL. 7957/2018 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

EX.F.A. 8/2018 & CM APPL. 7956/2018

The appellant impugns an order dated 06.10.2017 declining his request for return of securities allegedly given by him to the respondent bank. A suit was filed by the respondent seeking recovery of certain monies from the appellant. It was settled between the parties that an amount of Rs. 7,39,244/- shall be paid to the respondent bank. In terms of the settlement, an order was passed on 09.10.2000 by this Court, which recorded as under:-

" 09.10.2000

Present: Mr. V.K. Jain for the Plaintiff

Mr. Fanish Jain for the defendant

IA 10527/2000 in s. No. 385/83

This is an application filed under order 23 Rule 1 for withdrawal of the suit. It is stated that total amount of Rs. 7,39,244/- has been paid by the defendant to the plaintiff. The claim of the plaintiff stands satisfied. Leave of this Court is sought to withdraw the suit.

Leave granted.

The suit is dismissed as withdrawn.

In light of the aforesaid settlement and withdrawal of suit, the securities, if any, with the plaintiff bank shall be returned to defendant Nos. 1 and 2 within four weeks".

The said monies have been repaid. The appellant states that their Collateral Security no. 4 "*Lien on statutory margin of 25% available against the deposit of Rs. 6.00 lacs i.e. (Rs.1.50 lacs) against which the party has been allowed an advance to the extent of Rs. 4.50 lacs"* needs to be returned. The appellant does not specify as to what is the nature of this collateral security. Furthermore, its claim, if any, would have to be adjudicated. This Court's order dated 09.10.2000 permitting withdrawal of the suit had directed return of securities, only if any such security was with the bank. The return of the alleged security sought from bank would first have to be specified, only then the bank could say whether such security was with them. In any case, even in the absence of such specified security, the learned counsel for the respondent bank submits that the bank has no security of the appellant lying with it. Indeed, if the respondent had any such security or asset of monetary value with itself, it would have monetised and adjusted the same towards the amounts outstanding against the appellant. The respondent has pursued the repayment for over 15 years in litigation.

The impugned order has dealt with this aspect which reads as under:-

"During the pendency of above-said application in High Court, proceedings were transferred to District Court and thereafter ld. ADJ passed the order in the absence from any counsel for the plaintiff bank on 9.2.2004 directing plaintiff bank to return above mentioned securities to defendant nos. 1 and 2/applicant.

There is no explanation on the part of defendant nos. 1 and 2 regarding a considerable delay of about two years in moving the above-said application since the passing of an order dated 9.10.2000 of Hon'ble High Court. Moreover, such application U/s 151 CPC though give details of alleged securities being in power and possession of bank, however, such application was not supported with necessary documents regarding those securities. Now if we consider this aspect along with the documents relied upon along with execution application, I find that most of those documents cannot considered to be as security or collateral security. First of those documents were 12 documentary bills purchased under BP limit along with GRs (being annexure A of the plaint). Apparently those were supporting documents and not securities. Similarly hundis/pronote given for taking BD limit to the tune of Rs, 40,053/-(being annexure B of the plaint) were those documents which were furnished at the time of sanction of limits by the bank. Such documents though were taken as security for sanction of limits to the defendant no.1 firm but, it was only a document executed for ensuring the repayment of amount under the limit, nothing more than it. It is also important to note that all those documents were given in year 1979 to erstwhile bank 'New Bank of India' which was later merged into present bank namely Punjab National Bank. It is also important to note it is only an amount of Rs. 2,30,000/- lying in the shape of FDR vide cash receipt dt.28.06.1979,regarding which there was an dispute between bank and the defendants which bank was required to return to the defendants after the settlement. In this regard, perusal of affidavit furnished by Smt. Heena Sarin being officer of the plaintiff bank which merged into PNB, is relevant. As mentioned above, in para 3 of her affidavit she has specifically *stated that amount of Rs.2,30,000/- was earlier kept in 21 fixed deposit receipts of different amounts, which were subsequently converted into one fixed deposit no. 14/79 under the intimation vide letter dt. 26.6.1979 to defendant no.2 and thereafter that amount of consolidated FDR was duly credited to the current account of firm Virender & Co. being account no.295 on 23.07.1980.*

No documentary evidence has been placed on record to rebut the fact so stated in the affidavit of Principal officer of plaintiff bank. In such circumstance, I do not find that there is any legal requirement for giving any directions for release of any securities to defendant nos. 1 and 2. Apparently, the order dated 9.2.2004 passed by Ld Predecessor the this court was passed without taking into consideration above stated facts. There appears to be compliance of order dated 9.10.2000 of the Hon'ble High Court from the plaintiff bank, as such no further directions are warranted in the present proceedings and accordingly proceedings are being closed as these proceedings are pending since year 2002".

In view of the above, the Court finds no reason to interfere with the impugned order. Accordingly, the appeal along with pending application, is dismissed.

NAJMI WAZIRI, J

FEBRUARY 28, 2018

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