* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 448/2018**

% **30th May, 2018**

M/S ALPHA OMEGA RESOULUTION CHEMICALS PVT. LTD.
..... Appellant

Through: Mr. Gurmit Singh Hans, Mr. Vishal Soni and Ms. Aarti Manchanda, Advocates.

versus

THE MANAGER ICICI BANK LTD & ORS. ..... Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 22395/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 22396/2018 (for delay)

2. For the reasons stated in this application, the delay of 45 days in re-filing the appeal is condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 448/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 28.11.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff for mandatory injunction directing the respondents no.1 to 3/defendant nos. 1 to 3/ICICI Bank to transfer an amount of Rs.5 lacs to appellant/plaintiff's current account with the respondents no.1 to 3/defendant nos. 1 to 3/Bank.

4. The case pleaded by the appellant/plaintiff was that its employee on 21.12.2009 by mistake deposited an amount of Rs.5 lacs in the current account of respondent no.4/defendant no.4 and when this mistake came to the knowledge of the appellant/plaintiff, the appellant/plaintiff requested the respondents no.1 to 3/defendant nos. 1 to 3/Bank to re-transfer the amount from the respondent no.4/defendant no 4's account to the appellant/plaintiff's account but the ICICI Bank refused. The ICICI Bank even refused the request of the respondent no.4/defendant no.4 to re-transfer the amount to the appellant/plaintiff's account. Hence the subject suit was filed.

5. Respondent nos. 1 to 3/defendant nos. 1 to 3 contested the suit and denied that the amount was deposited by inadvertence or that there was any coercion to deposit this amount by the appellant/plaintiff with the account of the respondent no.4/defendant no.4. In fact the respondent no.4/defendant no.4's account was having a debit balance of Rs.5,77,380.13 and because of deposit by the appellant/plaintiff of a sum of Rs.5 lacs in this account consequently to that extent the account of the respondent no.4/defendant no.4 was squared off. The suit was therefore prayed to be dismissed.

6. Respondent no.4/defendant no.4 supported the appellant/plaintiff and pleaded that the ICICI Bank was liable to transfer the amount credited to his account to the account of the appellant/plaintiff.

7. After pleadings were complete the trial court framed the following issues:-

"1. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant to transfer an amount of Rs. 5 Lacs in plaintiff's ICICI Current Bank Account No. 045505500004 from the defendant No.4's ICICI Current Bank Account No. 106505000258, as prayed ? OPP.

2. Whether the suit for mandatory injunction simplicitor is maintainable without seeking a relief of declaration?OPD

2.(a) Whether the suit is maintainable in the present form?

3. Whether the relief claimed in the suit in the present form is maintainable? OPP
4. Whether the suit is instituted by a duly authorized person? OPP
5. Whether the suit discloses cause of action against the defendant? OPP
6. Relief, if any."

8. With respect to the relevant issue of entitlement of the appellant/plaintiff for mandatory injunction trial court has held that there is no evidence led which can be believed by the Court that an amount of Rs.5 lacs was deposited by the appellant/plaintiff with the account of the respondent no.4/defendant no.4 by mistake. Also, there was no evidence that there was any coercion by the manager/employees of the ICICI Bank for the appellant/plaintiff to deposit the sum of Rs. 5 lacs in the account of respondent no.4/defendant no.4. The relevant paras of the trial court in this regard containing the discussion are paras 25 to 29 and which paras read as under:-

> "25. On the other hand, it is submitted by the counsel for the defendant No. 1 to 3 that the relief sought by the plaintiff does not invoke the provision of Section 72 of Indian Contract Act, 1872, for the reason that mistake of the plaintiff was not a bonafide mistake. The plaintiff was in full and absolute control of his senses while depositing the disputed amount in the Current Account No. 106505000258 of defendant No. 4. It was further submitted that the plaintiff has failed to prove that his mistake was a bonafide one as he did not place before the Court even a single document to establish his claim that his mistake was bonafide.

26. As per Section 72 of the Indian Contract Act, the liability of a person arises when money is paid or a thing is delivered to such person by mistake or under coercion. This is not the fact in this case. In this case the plaintiff has deposited a sum of Rs. 5,00,000/- in the account of defendant No. 4 which was then transferred in the account of defendant No. 1 as defendant No. 4 was in debit balance of Rs. 5,77,380.13/-. So upon the credit of Rs. 5,00,000/- the account itself got adjusted for the amount.

27. There is nothing on record to show that the money was delivered under coercion or by mistake because PW 1 though has stated that after depositing the money he has immediately visited the cash counter of defendant No. 1 and gave written complaint to the manager of defendant No. 1. He has further stated in his cross examination that he has filed the said complaint in the suit but when this witness was afforded an opportunity to show the complaint in judicial file, he has failed to show the same which shows that no such complaint was filed by the plaintiff in regard to the deposit of money in the account of defendant No. 1. Had it been so then definitely the plaintiff must have brought this fact in the notice of the defendant No. 1 in writing. Therefore, the only inference is that there was no mistake on the part of the plaintiff in depositing the account in the account of defendant No. 4 and as already discussed hereinabove there was no coercion from the side of defendant No. 1, 2 and 3 on the plaintiff for depositing the said amount in the account of defendant No. 4 So this arguments of the counsel for the plaintiff has to be rejected. As far as the question of seeking declaration by the plaintiff is concerned the case of the plaintiff is in regard to the debit and credit entry in the account of defendant No. 4 and in the account of defendant No. 1 to 3 which in my opinion, does not require the plaintiff to seek any declaration in this regard. Therefore, Issue No. 2, 2(a) and 3 are accordingly decided in favour of defendants and against the plaintiff.

28. **Findings on Issue No. 1**

Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant to transfer an amount of Rs. 5 Lacs in plaintiff's ICICI Current Bank account No. 045505500004 from the defendant No. 4's ICICI Current Bank Account No. 106505000258, as prayed for ? OPP

29. Since I have already decided Issue No. 2, 2(a) and 3 in favour of defendant No. 1, 2 and 3 and against the plaintiff, therefore, in view of my above findings on Issue No. 2, 2(a) and 3, the plaintiff is not entitled to a decree of mandatory injunction as prayed. This issue is accordingly decided in favour of the defendants and against the plaintiff." (underlining added)

9. I completely agree with the aforesaid reasoning and conclusion of the trial court, and would like to further add that there is no doubt that respondent no.4/defendant no.4 would be colluding with the appellant/plaintiff because appellant/plaintiff had deposited the amount to the benefit of the respondent no.4/defendant no.4, and whose account was the running in debit with the ICICI Bank. It is not the case that the appellant/plaintiff and respondent no.4/defendant no.4 were complete strangers because admittedly there are business relations between the appellant/plaintiff and the respondent no.4/defendant no.4.

10. Learned counsel for the appellant/plaintiff sought to argue that it was the respondent nos. 1 to 3/defendant nos. 1 to 3/Bank who had to prove that the account of respondent no.4/defendant no.4 was running in debit, however I cannot agree because the ICICI Bank had specifically pleaded in its written statement that the account of respondent no.4/defendant no.4 was running in debit for a sum of Rs.5,77,380.13, and the appellant/plaintiff for some strange reason has not filed any replication to dispute and challenge this aspect. No such issue has also got been framed by the appellant/plaintiff before the

trial court that the account of respondent no.4/defendant no.4 was not in debit towards the ICICI Bank. This argument therefore raised for the first time in this Court, besides the fact that the same cannot be raised for the first time in appeal, also on merits the same is misconceived and is therefore rejected.

11. There is no merit in the appeal and the same is hereby dismissed.

MAY 30, 2018 **VALMIKI J. MEHTA, J**
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