

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

+ **RFA No. 717/2018**

% **28th August, 2018.**

ZAHIR ABBAS ANSARI

..... Appellant

Through: Mr. P.K.Srivastava, Advocate.

versus

SUSHILA JAIN

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 34854/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 34855/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is
condoned.

CM stands disposed of.

RFA No. 717/2018 & CM No. 34853/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Order of the Trial Court dated 18.1.2018 by which the trial court has decreed the Order XXXVII CPC suit filed by the respondent/plaintiff on account of non-compliance of the conditional order of the leave to defend dated 12.10.2017. By the Order dated 12.10.2017 appellant/defendant was given leave to defend on the appellant/defendant depositing a sum of Rs.20 lacs in the form of an FDR in the Court. Deposit was to be made within two weeks from 12.10.2017. Since till 18.1.2018, the necessary deposit was not made, therefore, by the impugned order the suit under Order XXXVII CPC has been decreed.

2. As per Order XXXVII Rule 3 Sub Rule 6(b) CPC in case of non-compliance by a defendant of the order granting conditional leave to defend, a plaintiff is entitled to a judgment forthwith. Admittedly, the order granting conditional leave to defend dated 12.10.2017 has become final and was not challenged by the appellant/defendant. Even in this appeal, the challenge is only to the

order dated 18.1.2018 decreeing the suit as per the provision of Order XXXVII Rule 3 Sub Rule 6(b) CPC.

3. Learned counsel for the appellant/defendant does not dispute that appellant/defendant has not complied with the order dated 12.10.2017 granting conditional leave to defend by depositing a sum of Rs.20 lacs in the trial court in the form of an FDR. The suit was a suit for recovery of money on account of goods supplied being threads and which supply was secured by cheques which were dishonoured and resultantly Order XXXVII CPC suit.

4. There is no merit in the appeal. Dismissed.

AUGUST 28, 2018/ib

VALMIKI J. MEHTA, J