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

\+   **RFA No. 356/2014**

%   **8th August, 2018**

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. K.K. Malviya, Advocate.

versus

MUNISH MONGA & ORS. ..... Respondents

Through: Mr. H.S. Parihar and Mr. Kuldeep S. Parihar, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code Civil Procedure,1908(CPC) is filed by the appellant/plaintiff-Bank impugning the Judgment of the Trial Court dated 24.5.2014 by which the trial court has dismissed the suit for recovery of Rs.5,70,751/- with interest filed by the appellant/plaintiff bank.

2. The cause of action as pleaded in the suit plaint was that the respondent nos. 1 and 2/defendant nos. 1 and 2(respondent no. 1 now being represented by his legal heirs) opened a joint saving fund

account No. 19897 on 21.2.1993 at the Rani Bagh, Delhi, branch of the appellant/plaintiff/Bank. This account was operated by respondent nos. 1 and 2/defendant nos. 1 and 2, however, on the inspection of the branch in March, 1998 it was found that this account was used for illegal activities whereby credit was given in the account without any instrument on the basis of which credits were to be given and credits were given by merely clearing vouchers and debiting the amount to the Imprest Clearing Account of the plaintiff bank. This fraud was played upon the appellant/bank from 2.11.1996 to 10.7.1997 as detailed in paragraphs 5 to 11 of the plaint resulting in illegal siphoning away of an amount of Rs.3,75,000/- by the defendant nos. 1 to 3. Defendant nos. 1 and 2 were assisted by the defendant no. 3/respondent no. 3, who was the employee of the appellant-Bank posted at the Rani Bagh branch.

3. Suit was contested by the defendants and they denied any wrong doing. Suit was prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues on 10.5.2005:-

> "1. Whether the suit of the plaintiff is barred U/o 2 rule 2 CPC? OPD

2. Whether the suit of the plaintiff is barred by limitation"
3. Whether the suit of the plaintiff is bad for non joinder of parties? OPD
4. Whether the suit has not been filed by a authorised person? OPD
5. Whether the plaintiff is entitled to the relief claimed, if so at what rate?
6. Whether the plaintiff is entitled to any interest, if so at what rate?
7. Relief."

5. Appellant/plaintiff/Bank examined Sh. B.M. Aggarwal as PW1 and his cross-examination was completed and he was discharged as noted in the Order dated 16.11.2012 passed by trial court. In the impugned judgment trial court wrongly records that Sh. B.M. Aggarwal's cross-examination remained incomplete and hence his testimony cannot be read in evidence. In fact, the appellant-Bank thereafter examined PW2 who was the Ahlmad of the court where the criminal case was filed against the defendants with respect to the FIR of fraud. PW2 Sh. Bhupender Kumar, Assistant Ahlmad, from the court of Sh. Sanatan Prasad, Metropolitan Magistrate, Delhi, filed and proved on record certified copies of the vouchers by which amounts were withdrawn as Ex.PW2/1 to PW2/6 and original vouchers were in the file of the criminal case brought by PW-2. Trial court does not even record this aspect in the impugned judgment and trial court has wrongly recorded in paragraph 6 of the impugned judgment that no evidence is led by the plaintiff.

6. I have examined the affidavit by way of evidence filed by PW1 Sh. B.M. Aggarwal and who was a Senior Manager posted at the Rani Bagh branch of the appellant-Bank from April, 1998 to July, 2000. He has proved on record the due filing of the suit in terms of Power of Attorney proved and exhibited as Ex.PW1/1. The signatures of the plaint were identified and proved as PW1/2. The statement of account of the bank duly certified under the Bankers Book Evidence Act was proved as Ex.PW1/12. The legal notices served with the postal receipts and returned envelopes were proved as Ex.PW1/3 to PW1/11. As already stated above PW2 proved the certified copies of the vouchers pertaining to withdrawal of the amounts as Ex.PW2/1 to PW2/6, and originals of which were in the judicial file brought by the witness PW2.

7. I may note that the trial court record does not show that any prayer was made by the respondent/defendants for leading evidence after the completion of evidence of PW2. Possibly for this reason trial court records that defendant's evidence was closed in paragraph 6 of the impugned judgment.

8. In view of the aforesaid discussion, this appeal is allowed and the impugned judgment of the Trial Court dated 24.5.2014 is set aside. Suit of the plaintiff is decreed against the respondents for a sum of Rs.5,70,751/- along with *pendente lite* and future interest at 12% per annum simple. Appellant/plaintiff/Bank will also be entitled to costs. Decree sheet be prepared.

AUGUST 08, 2018/ AK **VALMIKI J. MEHTA, J**