

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

+ **RFA No. 901/2018**

% **1st November, 2018**

M/S ICICI BANK LIMITED Appellant
Through: Mr. Punit Kumar Bhalla, Advocate
with Ms. Chetna Bhalla, Advocate
(M.No.9810080772).

versus

VIKAS KUMAR THAKUR Respondent
Through

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 45929/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**C.M. Nos. 45930/2018(for condonation of delay in filing) &
45931/2018(for condonation of delay in re-filing)**

2. For the reasons stated in the applications, delay of 51 days in filing and 130 days in re-filing the appeal is condoned subject to just exceptions.

C.M.s stand disposed of.

RFA No.901/2018

3. By this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC), the plaintiff impugns the judgment of the Trial Court dated 25.11.2017 by which trial court has rejected the plaint under Order VII Rule 11 CPC. The plaint has been rejected on the grounds that firstly, though the respondent/defendant during the pendency of the suit has made various payments, yet the appellant/plaintiff is not bringing the respondent/defendant to the Court and secondly, since the suit amount as claimed in the suit has vanished as by subsequent payment, cause of action as pleaded in the plaint has hence vanished.

4. The respondent/defendant is *ex parte* in the suit.

5. In my opinion, trial court has completely erred in rejecting the plaint under Order VII Rule 11 CPC because a defendant in the suit always during pendency of the suit can keep on making payments towards the amounts claimed in the suit, however, that does not mean that cause of action in the suit will vanish, but in such circumstances the Court under Order VII Rule 7 CPC will take notice of the subsequent events of repayments and the court will amend the suit amount and only pass a judgment and decree decreeing the suit for a lesser amount after giving adjustment to the respondent/defendant for the amounts which are paid during the pendency of

the suit by the respondent/defendant, and as reflected from the account and other evidence filed by the appellant/plaintiff.

6. In view of the aforesaid discussion, impugned judgment of the Trial Court dated 25.11.2017 is set aside. The suit will now be heard and disposed of by the trial court in accordance with law.

7. Appellant/Plaintiff to appear before the District & Sessions Judge, Central, Tis Hazari Courts, Delhi on 4th December, 2018, and the District & Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

8. Appeal is disposed of in terms of aforesaid observations.

NOVEMBER 01, 2018
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VALMIKI J. MEHTA, J