

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

% **Date of decision: 7th September, 2018.**

+ **RSA 126/2018, CM No.36437/2018 (for stay) & CM No.36439/2018 (for condonation of 68 days delay in refiling the appeal).**

V R FINSEC PVT LTD.

.... Appellant

Through: Mr. A.P. Dhamija and Mr. J.P. Singh, Advs.

versus

STATE BANK OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.36438/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RSA 126/2018, CM No.36437/2018 (for stay) & CM No.36439/2018 (for condonation of 68 days delay in refiling the appeal).

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 19th March, 2018 in RCA No.14/17 (Case No.1559/17) of the Court of the Additional District Judge-02 (Central)] allowing the first appeal under Section 96 of the CPC preferred by the respondent/plaintiff against the judgment and decree [dated 21st March, 2017 in CS No.1207/2014 of the Court of Civil Judge-04, Tis Hazari Court] of dismissal of the suit of the respondent/plaintiff.

4. I have perused the relevant copies of the record of the Suit Court and the First Appellate Court filed with the memorandum of appeal and heard the counsel for the appellant/defendant.

5. The respondent/plaintiff State Bank of India instituted the suit, from which this appeal arises, under Order XXXVII of the CPC for recovery of Rs.2,00,583/- from the appellant/defendant. The appellant/defendant applied for leave to defend but the said application was dismissed on merits by the Suit Court and a money decree passed in favour of the respondent/plaintiff. However in first appeal thereagainst being preferred by the appellant/defendant, the said money decree was set aside, the appellant/defendant granted leave to defend subject to deposit of the decretal amount, and the suit remanded for trial.

6. The respondent/plaintiff failed to lead any evidence in the suit and which resulted in the evidence of the respondent/plaintiff being closed and in the absence of any evidence of the respondent/plaintiff, the suit, vide judgment dated 10th March, 2016, was dismissed.

7. The respondent/plaintiff preferred an appeal under Section 96 of the CPC against the judgment and decree of dismissal of suit and which appeal was allowed vide judgment dated 3rd March, 2017 of the learned Additional District Judge and the judgment and decree of dismissal of suit was set aside and the parties directed to appear before the Suit Court with a direction to the Suit Court to, subject to payment of costs by the respondent/plaintiff, grant only one opportunity to the respondent/plaintiff to complete its evidence.

8. The Suit Court however, vide order dated 21st March, 2017 supra, recording, that the respondent/plaintiff had failed to pay the costs within the prescribed time and had also again failed to lead evidence, closed the evidence of the respondent/plaintiff and consequently dismissed the suit.

9. Against the aforesaid dismissal of the suit, the respondent/plaintiff filed First Appeal, from judgment wherein this Second Appeal arises. The learned Additional District Judge, in the impugned judgment has held, that though the respondent/plaintiff was at fault, but had paid the costs, though after a delay of few days and has remanded the suit to the Suit Court to grant another opportunity to the respondent/plaintiff to lead evidence subject to costs.

10. This appeal has been preferred, after more than six months from the date of the impugned judgment, and is accompanied with an application for condonation of delay of 68 days in re-filing thereof. The only ground pleaded for condonation of delay is, that the appellant/defendant was not possessed of legible copies of the documents and took time in arranging the same. The same does not constitute a sufficient cause and rather shows the lackadaisical attitude of the appellant/defendant also in the conduct of the suit.

11. The impugned judgment directed the suit to be listed before the Suit Court on 10th April, 2018. I have thus enquired from the counsel for the appellant/defendant, what happened on 10th April, 2018 and what proceedings have taken place in the suit thereafter. The counsel for the appellant/defendant states that he is not the counsel in the suit and is not

aware. The same again shows that the conduct by the appellant/defendant of the proceedings, is not different from that of the respondent/plaintiff.

12. Be that as it may, it has been enquired from the counsel for the appellant/defendant as to what is the substantial question of law entailed in the appeal and which is *sine qua non* for entertaining this Second Appeal. It has further been enquired, whether not orders, as of imposition of costs, assessment of costs and grant of opportunity, are essentially discretionary orders and whether any substantial question of law can arise therefrom.

13. The counsel for the appellant/defendant has drawn attention to the substantial questions of law pleaded from pages 11 to 17 of the paper book. Though I had intended to reproduce the same but the same being voluminous, running from alphabet 'A' to alphabet 'Q', it is not deemed appropriate to burden this judgment therewith. Suffice it is to state that in my opinion the same do not qualify as substantial questions of law as defined in (i) *Sir Chunilal V. Mehta Vs. Century Spinning and Manufacturing Co. Ltd.* AIR 1962 SC 1314; (ii) *Kashmir Singh Vs. Harnam Singh* (2008) 12 SCC 796; (iii) *Santosh Hazari Vs. Purushottam Tiwari* (2001) 3 SCC 179; (iv) *Hero Vinoth Vs. Sheshammal* (2006) 5 SCC 545; (v) *Veerayee Ammal Vs. Seenii Ammal* (2002) 1 SCC 134; and, (vi) *Damodar Lal Vs. Sohan Devi* (2016) 3 SCC 78.

14. The counsel for the appellant/defendant then refers to headnote 'C' of *Shiv Cotex Vs. Tirgun Auto Plast P. Ltd.* 2011 (9) SCALE 500 where the Supreme Court has disapproved of the High Court, on account of misplaced sympathy, granting another opportunity to the plaintiff in that

case who had also failed to lead evidence.

15. Attention of the counsel for the appellant/defendant is however invited to headnote 'A' of the said judgment, where the Supreme Court has observed what I was enquiring from the counsel for the appellant/defendant, that it was not the jurisdiction of the High Court under Section 100 of the CPC to interfere with the judgment of the Suit Court closing opportunity of the plaintiff in that case to lead evidence and the order of the First Appellate Court agreeing therewith. The same applies here, though the position here is converse, of the First Appellate Court disagreeing with the Suit Court and having granted further opportunity.

16. Moreover the observations in headnote 'C' of the judgment aforesaid, relating to private parties, would not apply to public monies, as of the respondent/plaintiff State Bank of India and with respect whereto Supreme Court itself has carved out a distinction in ***United Bank of India Vs. Naresh Kumar*** (1996) 6 SCC 660 and ***Sri Veera Hanuman Rice & Flour Mill Vs. State Bank of India*** (2005) 5 SCC 248.

17. I am therefore of the opinion that it cannot be said that the exercise of discretion, inherent in the First Appellate Court in, subject to costs and terms, grant opportunity to the respondent/plaintiff to prove its case, is so perverse or against the settled principles of law, as to constitute a substantial question of law.

18. There is no merit in the appeal.

19. Dismissed.

20. No costs.

21. The counsel for the appellant/defendant at this stage states that the Appellate Court has in two of the orders aforesaid directed inquiry to be conducted against the delinquent officers of the respondent/plaintiff Bank, which has not been done.

22. A copy of this judgment be forwarded to the Chairman, State Bank of India, with a request to ensure that the cases involving public money are diligently pursued and the delinquent officials, who either in connivance with adversaries of the bank or owing to negligence, help defaulters of public monies, do not go scot-free.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 07, 2018

‘pp’..

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