

\$~17

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 3rd April, 2018

+ CM(M) 570/2017 & CM No.19579/2017

BANK OF BARODA

..... Petitioner

Through: Mr. Umesh Joshi with Mr. Deepak
Sahni, Advocates.

versus

PRIYANKA SODHI & ORS

..... Respondents

Through: Mr. Yashvir Singh Kadian, Advocate
for R-1 and R-2.
Mr. Inderjit Singh, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The impugned orders with which the petitioner is aggrieved were passed on the file of civil suit presently registered as CS No.429305/12, it having been presented in August, 2012 seeking recovery of Rs.4,34,000/- with interest against the respondents who were impleaded as defendants. Concededly, an education loan was taken by the second respondent (second defendant) for purposes of the course of study (Bachelor of Dental Surgery) pursued by his daughter, i.e. the first respondent (first defendant), the third respondent (third defendant) being the guarantor. The bank's case is that there was a default in the repayment of the said education loan. It may be

mentioned here that earlier the suit was decreed *ex parte* but on the application of the defendants, the said *ex parte* decree was set aside and the proceedings revived.

2. In the proceedings post setting aside of the *ex parte* decree, the defendants nos.1 and 2 moved an application seeking rejection of the plaint invoking Order VII Rule 11 of CPC, 1908 the prime submission being that the plaint does not disclose the cause of action. The trial court considered the said application by issuing certain directions including about production of the statement of account by the plaintiff bank. It is on the scrutiny of the statement of account which was submitted that the trial court reached a conclusion by order dated 05.11.2016 that the defendants did not owe any amount of money and instead the bank had recovered in excess, the liability to repay commencing from 12 months from the date of completion of the course of study or six months from the date of the first defendant getting employed. In that context, by order dated 05.11.2016, the trial judge directed fresh statement of account to be furnished. Eventually, by order dated 25.04.2017, which is impugned here, a direction was given to the plaintiff bank to refund Rs.95,943/- which, in the opinion of the trial court, had been recovered in excess. The plaintiff bank had moved an application for review of the previous order which was dismissed.

3. In the opinion of this Court, the procedure adopted by the trial court is peculiar and unheard of. On tentative assumption with reference to the statement of account, the trial court could not have jumped to the conclusion that the plaintiff bank was not entitled to

recovery of any amount of money. The plaintiff was entitled to lead appropriate evidence to prove its case. The trial court has not even framed issues in the matter till date. If the conclusion of the trial court were to be upheld, one wonders why the civil suit was kept pending. Concededly, there is no counter-claim submitted by the defendants and, consequently, the direction for refund cannot be appreciated.

4. Be that as it may, since the amount of Rs.95,943/- which is found to be due from the bank unto the defendants has been deposited by the bank in terms of the interim order dated 22.05.2017 of this Court, such amount already directed to be put in fixed deposit receipt, to be renewed from time to time, the appropriate course would be to continue with the said arrangement subject to determination of the issues that arise between the parties in the suit after trial. Ordered accordingly.

5. For clarity, it may be added that the amount of money deposited by the plaintiff bank in terms of the above mentioned order dated 22.05.2017 shall be retained by the trial court in the form of fixed deposit receipt which shall be renewed from time to time, the proceeds thereunder to be available to the trial court for appropriate disbursal in light of the findings returned on the issues that arise.

6. The trial court is directed to proceed with the case in accordance with law, the first step wherein obviously would be to frame the issues that arise and thereafter calling upon the party in question to lead evidence as per the onus which will have to be reflected in the order framing the issues.

7. The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J

APRIL 03, 2018

srb

