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

+ **RFA 779/2017 and C.M. Appl. No. 18761/2018 (under Section 151 CPC, for change of AR, filed by R-1)**

AMIT SHARMA

..... Appellant

Through: Mr. Jagjit Singh and Mr. Preet Singh,
Advocates.

versus

HOUSING DEVELOPMENT FINANCE
CORPORATION LTD & ANR

..... Respondent

Through: Mr. Ajay Saroya, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **07.05.2018**

1. Learned counsel for the appellant argues that the suit filed by the respondent/plaintiff under Order 37 CPC was not maintainable because respondent/plaintiff claimed the amount which did not directly arise from a dishonoured negotiable instrument or a liquidated demand arising from a written contract but what was claimed was a balance at the foot of an account.

2. For non-maintainability of the suit filed by the respondent

under Order 37 CPC counsel for the appellant places reliance upon the judgment passed by this Court in the case of ***IFCI Factors Limited Vs. Maven Industries Limited and Ors., 2015 (255) DLT 32.***

3. Learned counsel for the respondent argues that the respondent wants to persuade this Court to take a different view, however, this Court is bound by the judgment passed by this Court or any Coordinate Bench and till the judgment stands, there does not arise an issue of taking a different view.

4. Accordingly, by applying the ratio of the judgment in the case of ***IFCI Factors Limited (supra)***, since the suit was not maintainable under Order 37 CPC, there does not arise an issue of grant or otherwise of leave to defend, and which has been decided in terms of the impugned judgment by dismissing the leave to defend application filed by the appellant. Once the suit is not maintainable under Order 37 CPC, then either the suit had to be tried as an ordinary suit or the suit had to be dismissed as non-maintainable.

5. In view of the aforesaid position the impugned order dated 30.3.2017 is set aside with costs of Rs.20,000/- to be paid to the appellant within six weeks from today.

6. Parties to appear before the District and Sessions Judge, Patiala House Courts, New Delhi, on 28th May, 2018 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

VALMIKI J. MEHTA, J

MAY 07, 2018

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