

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

+ **RFA No. 907/2017**

% **2nd January, 2018**

MOHINDER AGENCIES Appellant

Through: Ms. Neha Kapoor, Advocate.

versus

MANAS AUTOMOTIVE SYSTEMS LIMITED Respondent

Through: Mr. Anshuman, Advocate.

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 of Civil Procedure, 1908 (CPC) is filed against the impugned judgment dated 6.5.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.11,29,098/-. The suit has been dismissed on account of evidence of the plaintiff being closed and therefore there was no evidence by which the appellant/plaintiff proved its case.

2. Learned counsel for the appellant/plaintiff rightly argues that the impugned judgment deserves to be set aside because evidence was closed on the very first date of hearing by the trial court and non-appearance of the appellant/plaintiff was on account of wrongly noting the date as 15.5.2017 instead of 5.5.2017.

3. In my opinion it is an extremely harsh stand taken by the trial court of closing the evidence of the appellant/plaintiff on the very first date of hearing. No doubt parties should not be negligent in conduct of their cases, but equally courts cannot be strict by closing evidence of the plaintiff on the very first date which is fixed for the evidence of the plaintiff.

4. I may note that in terms of Section 105 CPC in challenge made to a final decree an interim order which has the effect of causing the passing of the final decree can also be challenged and such interim order can be set aside in the first appeal.

5. In view of the above discussion, this appeal is allowed and the impugned judgment of the trial court dated 6.5.2017 is set aside. Appellant/plaintiff is given three opportunities to ensure that its

evidence is completed in chief. Respondent/defendant will also equally get three opportunities to complete its evidence in chief.

6. Parties to appear before the District and Sessions Judge, Central District, Tis Hazari Courts, Delhi, on 29th January, 2018 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

JANUARY 2, 2018

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VALMIKI J. MEHTA, J



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