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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA(COMM) 488/2024 & CM APPL. 66969/2024 –Ex.

PUNJAB NATIONAL BANK

.....APPELLANT

Through: Mr. Mahesh K. Chaudhary, Adv.

versus

NISHA CHAUDHARY

.....RESPONDENT

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

18.11.2024

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1. The present appeal under Section 13(1A) of the Commercial Courts Act, 2015 seeks to assail the judgment and decree dated 02.08.2024 passed by the learned District Judge, Commercial Court-03, Karkardooma Courts, Delhi in CS Comm. No.13/2024. Vide the impugned judgment, the learned Trial Court has dismissed the recovery suit preferred by the appellant/plaintiff with costs of Rs 1 lakh payable to the Advocate Welfare Fund, Shahdara Bar Association.
2. At the outset, we may note that the respondent was not represented before the learned Trial Court and, therefore, costs imposed on the appellant were not awarded to respondent/defendant but to the Advocate Welfare Fund, Shahdara Bar Association.
3. Further, we find that the impugned judgment dismissing the suit was passed after the defence of the respondent/defendant had been already struck off by the learned Trial Court as it was found that except for a



shortfall of Rs.118/-, the respondent had already paid the entire amount in terms of the OTS offer made by the appellant on 21.03.2022. The learned Trial Court, therefore, came to a conclusion that the appellant could not have, after accepting the amount under the OTS offer from the respondent, seek recovery of the original due amount with interest.

4. After some arguments, learned counsel for the appellant, on instructions, submits that the appellant would be satisfied in case this Court were to set aside the directions under the impugned judgment for payment of Rs. 1 lakh as costs to the Advocate Welfare Fund, Shahdara Bar Association.
5. As noted hereinabove, we find that the defence of the respondent was struck off by the learned Trial Court well before the passing of the impugned order and the only relief which the appellant is now seeking is regarding waiver of costs which does not, in any manner, affect the respondent. In these circumstances, even though none appears for the respondent, we are taking up for consideration the appellant's plea for setting aside the direction for payment of costs in the impugned judgment.
6. Having perused the impugned judgment, we are of the view that the appellant bank is correct in urging that the amount paid by the respondent under the OTS offer was not strictly as per the timelines provided under the said offer. However, the appellant having accepted the OTS amount from the respondent without any demur, it was not open for the appellant to file a suit for recovery of the original due amount. Even though the suit instituted by the appellant was, in our



considered opinion, rightly dismissed, it cannot be said that in these circumstances, the action of the appellant bank in instituting the suit was such so as to warrant imposition of costs of Rs.1 lakh. We are, therefore, of the view that direction for payment of costs of Rs 1 lakh to the Advocate Welfare Fund, Shahdara Bar Association deserves to be set aside.

7. We, accordingly, modify the impugned judgment by setting aside the direction for payment of costs of Rs. 1 lakh to the Advocate Welfare Fund, Shahdara Bar Association.
8. The appeal alongwith pending application is accordingly disposed of in the aforesaid terms.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 18, 2024

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