

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

SUBJECT : CODE OF CIVIL PROCEDURE, 1908

RFA No.80/2004

DATE OF DECISION : 22nd February, 2012

IFCI VENTURE CAPITAL FUNDS LIMITED ..... Appellant  
Through: Mr. Shiv P. Pandey, Advocate with Ms. Rashmi  
Pandey, Advocate.

versus

SMT. SANTOSH KHOSLA & ORS. Respondents  
Through: None.

CORAM:  
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 18.10.2003 dismissing the suit filed by the appellant/plaintiff for recovery of ` 3,04,597.60/-.

2. The facts of the case are that the appellant/plaintiff granted a loan to the defendant Nos.1 and 2 on 12.5.1978. This loan was granted because the defendant Nos.1 and 2 needed moneys to subscribe to their portions of the share capital in the defendant No.3-company. It was pleaded by the appellant/plaintiff that no interest was payable but service charges @ 1% per annum was payable on the loan which was granted. The loan was secured by the pledge of the borrowers' entire equity share holding in defendant No.3. The defendants executed various security documents in favour of the appellant/plaintiff on 12.5.1978.

An amendatory agreement was also signed on 29.4.1982 by the defendant Nos.1 and 2. It was further pleaded in the plaint that on the loan being recalled the same would cease to be interest free and interest would be payable at the current bank rate. It was pleaded that the defendants committed default in repayment of the dues and also acknowledged their liabilities on 29.4.1982, 19.12.1983 and 6.2.1986. It was pleaded that as the defendant Nos.1 and 2 committed default in repayment of the dues, the subject suit came to be filed.

3. The suit was withdrawn against the defendant No.3-company on 27.8.2001. The defendant Nos.1 and 2 contested the suit on identical pleas. The defendants contented that the plaintiff had already appropriated the proceeds of the equity shares pledged which were more than the suit amount and therefore the suit was not maintainable. It was also pleaded that RIICO and IFCI which are the parent bodies of the original lender were necessary parties as the entire assets of the defendant No.3-company were sold by the said parent bodies.

4. After completion of pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff has any locus standi to file the present suit? OPP
2. Whether the suit is bad for mis-joinder of necessary parties? OPD
3. Whether the suit against the defendant no.3 is not maintainable as alleged? OPD
4. Whether the suit is barred by limitation? OPD
5. Whether suit has been signed, verified and instituted by competent person? OPP
6. Whether the plaintiff is entitled to suit amount? OPP
7. Whether plaintiff is entitled to interest? If so at what rate and for what period? OPP
8. Relief.”

5. The trial Court has dismissed the suit by holding that the suit was barred by limitation and was also not properly instituted. These findings have been given while answering issue No.4 pertaining to limitation and issue No.5 pertaining to institution of the suit. So far as the issue No.6 is concerned, the trial Court has held that the appellant/plaintiff had proved its case and therefore it was entitled to an amount of ` 2,12,746.60/-.

6. Learned counsel for the appellant/plaintiff has argued that the trial Court has misdirected itself in dismissing the suit as barred by limitation, inasmuch as para 16 of the plaint stated that the default only arose for the first time on 31.12.1983 and February, 1984 when there was default in payment of annual instalments and monthly charges respectively. It is argued that the limitation commences in a case such as the present, where the amount has to be repaid in instalments, only when the default occurs and not from the date when the loan was granted.

7. I agree with the arguments as urged on behalf of the appellant/plaintiff. The period of three years arises in the facts of the present case not from the date of the grant of the loan, but in fact from the date when default was committed inasmuch as the loan was repayable over a period of many years and in instalments. In such a case, limitation will commence from the date of the default and not from the date of grant of loan. Suits for recovery of amounts in these cases are governed by Article 113 of the Limitation Act, 1963 and not by Article 19 of the Limitation Act, 1963. Further, I may note that the Supreme Court in the case of Syndicate Bank Vs. R. Veeranna and Ors. 2003 (2) SCC 15 has held that an unqualified acknowledgment of liability gives a fresh cause of action and a fresh period of limitation to file the suit for recovery. In this case, the appellant/plaintiff has exhibited and proved on record the acknowledgment of debts being Ex.P13 dated 29.4.1982 and

Ex.P11 dated 6.2.1986. Therefore, looking at it from any angle of the suit having been filed within three years of 31.12.1983 i.e. on 17.12.1986 or within three years of the acknowledgment of debts, the suit is within limitation.

8. The trial Court has also misdirected itself in dismissing the suit although a reference was made by the trial Court itself to Order 29 Rule 1 CPC. The Supreme Court in the case of United Bank of India vs. Naresh Kumar & Ors., 1996 (6) SCC 660; AIR 1997 SC 3, has held that suits which are filed by the companies should not be dismissed on technical grounds with respect to filing of the same provided the same is contested to the hilt. In the present case, not only the suit is contested to the hilt by the appellant/plaintiff but also it is undisputed that the suit was instituted and filed through Mr. Mohan Singh who is the Secretary of the appellant/plaintiff-company and therefore a Principal Officer of the appellant/plaintiff-company in terms of Order 29 Rule 1 CPC. When Order 29 Rule 1 CPC refers to the competence to sign and verify the pleadings, it also includes the concomitant power to institute the suit. I have had an occasion to consider this aspect in the case of Mahanagar Telephone Nigam Limited Vs. Smt. Suman Sharma 2011 (1) AD (Delhi) 331 wherein I have held that once the person who signs and verifies the plaint is a Principal Officer, then, it ought to be held that the suit is validly instituted in terms of Order 29 CPC. I therefore hold that the suit was validly instituted and the trial Court was not justified in dismissing the suit by returning the finding with respect to issue No.5 of the suit not having been validly instituted.

9. In view of the above, I accept the appeal by setting aside the impugned judgment and decree. The suit of the appellant/plaintiff is decreed for a sum of ` 2,12,746.60/- alongwith pendente lite and future interest @ 9% per annum simple till realization. The appellant/plaintiff will also be entitled to costs of this appeal. Decree sheet be prepared. Trial Court record be sent back.

Sd./-  
VALMIKI J. MEHTA, J

FEBRUARY 22, 2012