IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO.:- 532/2018

UNIQUE CASE ID NO.:- 4242/2017

IN THE MATTER OF :-

ICICI Bank Ltd.
Having its registered Office At:
Near Chakli Circle, Old Padra Road,
Vadodara, Gujarat – 390007.

And having its Branch Office At:
2nd Floor, Videocon Towers,
Block E-1, Jhandewalan Extension,
New Delhi-110055. ....Plaintiff

VERSUS

Kuldeep Singh Rajput
S/o. Sh. Narsi Singh,
322A, Ground Floor,
Gali no. 9, East Vinod Nagar,
Patparganj, Delhi 110091. ....Defendant

SUIT FOR RECOVERY OF RS.4,52,840.40p (RUPEES FOUR LAKHS FIFTY TWO THOUSAND EIGHT HUNDRED FORTY AND FORTY PAISE ONLY)

Date of institution of the Suit	**: 28/09/2018**
Date on which Judgment was reserved	**: 21/07/2020**
Date of Judgment	**: 29/07/2020**

::- J U D G M E N T -::

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.4,52,840.40p filed by the plaintiff against the defendant.

CASE OF THE PLAINTIFF AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit, as stated in the plaint, are as under:-

(a) The plaintiff bank is a body incorporated under the provisions of the Companies Act, 1956 and a banking company under the provisions of Banking Regulation Act, 1949 and is having registered office and branch office at the aforementioned addresses. Sh. Mohit Grover is duly authorized representative of the plaintiff bank. He is duly authorized, empowered and competent to sign and verify the pleadings for and on behalf of the plaintiff bank, institute the suit in the Court, prosecute the suit and to do all acts, deeds in general for due prosecution of the suit.

(b) The defendant is a borrower to the loan agreement. In the month of June 2016, the defendant had approached and requested the plaintiff bank for grant of loan of Rs. 4,50,000/- for purchase of the vehicle namely VENTO/1.6 DIESEL COMPORTLINE METTALIC and entered into a Loan Agreement under the loan-cum-hypothecation scheme of the plaintiff. The defendant executed Credit Facility Application along-with standard terms & conditions for the said facility, Deed of Hypothecation and Irrevocable Power of Attorney in favour of plaintiff bank on 02.06.2016. The defendant agreed to repay the said loan in 48 Equated Monthly Installments with interest as per the repayment schedule.

(c) Keeping in view the request of defendant, the plaintiff bank sanctioned a loan of Rs. 4,50,000/- as per request by the defendant in terms of the loan

documents. The said loan was disbursed under the loan-cum-hypothecation scheme. The defendant agreed to pay the said loan along-with agreed interest rate in 48 Equated Monthly Installments of Rs. 12,581/-. The said loan was subject to the terms & conditions of the documents, which the defendant executed in favour of the plaintiff bank. The defendant's loan number maintained by the plaintiff bank is LUDEL00034480422. The vehicle of the defendant is registered with the registration authority with registration no. DL-14C-1520 and the same was hypothecated in favour of the plaintiff bank in terms of Deed of Hypothecation dated 02.06.2016 executed by the defendant in favour of the plaintiff bank and the charge is registered with the RTO. The said vehicle is the security against the loan amount.

(d) The defendant, in terms of the Loan documents executed, had paid an amount of 08 Equated Monthly Installments and had defaulted in repayment of 08 Equated Monthly Installments towards equated monthly installments and Rs.14,795/- towards late payment and cheque bouncing charges totaling to Rs. 6,240/- besides future installments of Rs. 3,90,723.80p as on 25.10.2017. Since there was default in repayment of the monthly installments, the plaintiff bank in terms of the Loan documents executed by the defendant, recalled the loan facility available to the defendant by way of sending a Loan Recall Notice dated 21.06.2017. Despite issuance of the notice, the defendant has neither cared to reply to the notice nor has made any effort to repay the outstanding amount and also to hand-over the peaceful possession of the vehicle. As per the loan account maintained by the plaintiff bank, the defendant is liable to pay a sum of Rs. 4,52,840 towards principal, interest, penal interest and other dues as on 25.10.2017.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the "Rashtriya Sahara" newspaper, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 23.10.2019.

EX-PARTE EVIDENCE OF THE PLAINTIFF AND DOCUMENTS RELIED UPON BY PW-1

The plaintiff, in order to prove its case led plaintiff's evidence and got examined Sh. Mohit Grover as PW-1. PW-1 has filed his evidence by way of affidavit, wherein, he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the following documents:-

1. Copy of Power of Attorney is Ex.PW-1/1 (OSR).
2. Preliminary Credit Facility Application Form is Ex.PW1/2.
3. Credit Facility Application Form alongwith Terms and Conditions of the loan is Ex.PW-1/3.
4. Unattested Deed of Hypothecation is Ex.PW-1/4.
5. The Irrevocable Power of Attorney is Ex.PW-1/5.
6. The Disbursement memo is Ex.PW1/6.
7. Certified copy of Statement of Accounts dated 25.10.2017 is Ex.PW-1/7.
8. Certificate under Section 2A of the Banker Book Evidence Act, 1891 is Ex.PW-1/8.
9. Certificate under Section 65-B of the Evidence Act, 1860 is Ex.PW-1/9.
10. Copy of loan recall notice dated 21.06.2017 is Ex.PW1/10 and photocopy of its postal receipt is Mark-X.

This Court heard ex-parte final arguments, as advanced by Ld. Counsel for the plaintiff through video conferencing. I have perused the material available on record.

FINDINGS AND CONCLUSIONS OF THE COURT

The defendant was proceeded ex-parte, despite this fact, the plaintiff has to prove its case on merits and satisfy the Court that the plaintiff is entitled for the recovery of the suit amount from the defendant.

As per plaintiff, a sum of Rs.4,75,893.10/- was due as on 25.10.2017 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.3,90,723.80/-
Late payment penalties	– Rs.14,795.00/-
Cheque bouncing charges and other charges	– Rs.6,240.00/-
Interest for the month	– Rs.4,156.00/-
Prepayment charges @ 5.9% at O/S Principal	–Rs.23,052.70/-
Interest on pending installment	– Rs.36,925.60/-
Total	**– Rs.4,75,893.10/-**

The plaintiff has claimed a sum of Rs.6,240/- as cheque bouncing charges, but as per Credit Facility Application Form Ex.PW-1/3, the loan was to be repaid by the Electronic Clearing System (Debit Clearing) as notified by RBI ("ECS). Hence, the plaintiff is not entitled to claim Rs.6,240/- towards the cheque bouncing charges.

The plaintiff has shown a sum of Rs.23,052.70/- towards pre-payment charges at the outstanding principal. The Plaintiff has not claimed the said amount in the suit. Otherwise also, in the Credit Facility Application Form Ex.PW-1/3, no pre-payment charges have been mentioned. Moreover, pre-payment charges are recoverable only when borrower himself is coming forward to make the entire outstanding amount prior to completion of period, for which the loan was advanced whereas, in the present case, it is the plaintiff, who has recalled the loan as defendant defaulted in making regular installment. In these circumstances also, plaintiff cannot be held to be entitled to pre-payment charges.

The plaintiff has also claimed amount of Rs.36,925.60 towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest @ 15.25 p.a., but this interest has already been calculated in the installments, hence, grant of separate interest on the defaulted amount would result in charging interest twice, therefore, the plaintiff cannot claim interest on the pending installments and consequently, same cannot be awarded.

The suit of the plaintiff is well within the period of limitation. The plaintiff/PW-1 has proved on record the documents, as mentioned in his testimony, showing the liability of the defendant. The defendant has not filed the Written Statement to contest the present suit of the plaintiff. The defendant has also not cross-examined the PW-1 to contradict or disprove the case of the plaintiff. The defendant has chosen not to appear and when the case of the plaintiff has gone un-challenged, uncontroverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiff qua the other claims, as mentioned in Ex.PW-1/7. The plaintiff has been able to prove its case. Hence, the plaintiff is entitled for the recovery of amount of Rs.4,09,674.80/- say Rs.4,09,675/- from the defendant.

Section-34 CPC postulates and envisages the pendent-elite interest at any rate not exceeding 6% and future interest at any rate not exceeding the rate, at which nationalized banks advance loan. Keeping in mind the mandate of the said proposition, interest of justice would be served if plaintiff is granted simple rate of interest @ 6% per annum from 26.10.2017 till decision of the suit and future rate of interest @ 9% per annum till its realization. The prior interest is already included in Ex.PW-1/7.

Applying priori and posteriori reasoning, this Court is satisfied that plaintiff has been able to prove its case against the defendant for the aforesaid amount.

RELIEF

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

a. A decree of Rs.4,09,675/- is passed in favour of the plaintiff and against the defendant alongwith simple rate of interest @ 6% per annum from 26.10.2017 till decision of the suit and future simple rate of interest @ 9% per annum till its realization.

b. The cost of the suit is also awarded in favour of the plaintiff and against the defendant.

Decree-sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

Announced through video conferencing on this 29th day of July, 2020.

ARUN SUKHIJA
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Date: 2020.07.29 12:24:05 +05'30'

(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi

CS No.532/18 (ID No.4242/17)
ICICI Bank Ltd.
V.
Kuldeep Singh Rajput

29.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: Shri Manish Dewan, Ld. Counsel for the Plaintiff.
Defendant is already ex-parte.

Vide Separate Judgment announced through video conference the suit of the Plaintiff is decreed in terms of the Judgment. Decree Sheet be prepared accordingly. File be consigned to record room after due-compliance.

ARUN SUKHIJA
Digitally signed by ARUN SUKHIJA
Date: 2020.07.29 12:24:56 +05'30'

(Arun Sukhija)
ADJ-07/Central/Tis Hazari Courts,
Delhi/29.07.2020