

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

SUIT NO.:- 227/2020

UNIQUE CASE ID NO.:- 1407/2018

IN THE MATTER OF :-

ICICI Bank Ltd.
Having its Registered Office
Near Chakli Circle, Old Padra Road,
Vadodaram, Gujarat-390 007.

And having its Branch Office at
2nd Floor, Videocon Tower,
Block - E1, Jhandewalan Extn.,
New Delhi.

....Plaintiff

VERSUS

Savita Saroha D/o Sh. Maan Singh Malik
B-9/65-66, Rajpur, Kalan
Near Som Bazar Road,
Sector-5, Rohini, Delhi-110085.

....Defendant

SUIT FOR RECOVERY OF RS.5,78,159.10/- (RUPEES FIVE LAKHS
SEVENTY EIGHT THOUSAND ONE HUNDRED FIFTY NINE AND
TEN PAISE ONLY)

Date of institution of the Suit : 21/04/2018
Date on which Judgment was reserved : 01/07/2020
Date of Judgment : 10/07/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.5,78,159.10/- (Rupees Five Lakhs Seventy Eight Thousand One Hundred Fifty Nine and Ten Paise Only) 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 is Banking Company within the meaning of Banking Regulation Act and is inter-alia engaged in the business of banking, financing and providing loan facilities to its customers for purchase of vehicles, machinery etc. The plaintiff is having its Registered Office and Branch Office at the aforesaid addresses, within the Jurisdiction of this Court. Sh. Mohit Grover is the Authorised Representative of the Plaintiff and is well conversant with the facts of the case and he has been authorized by a Power of Attorney to sign, file, verify and affirm the pleadings and also to institute the present suit on behalf of the Plaintiff Bank.
- (b) The defendant is the borrower of plaintiff bank and has availed loan facility from the plaintiff under its CAR LOAN Scheme vide loan agreement bearing no. LADEL00034025190. The defendant approached the plaintiff bank and represented that she requires loan facility for purchase of a car namely CRETA/VTVT.
- (c) On such representations and assurances made by the defendant, the plaintiff bank agreed to grant the finance facility where after the defendant executed loan agreement/Credit Facility Application Form. The defendant agreed and

undertook to comply with the terms of agreement and assured that she would discharge her liability towards the plaintiff bank. In terms of the said agreement, a total sum of Rs.7,35,900/- was disbursed for purchase of a vehicle make CRETA/VTVT bearing Registration No.DL10CG 8324 on 12.01.2016. The said loan was to be repaid in 60 equated monthly installments of Rs.15,632/- each.

- (d) The defendant had been extremely irregular in making the payment of the equated monthly installments to the plaintiff bank. The defendant has to pay 25 equated monthly installments till 20.02.2018, however, she has paid only 19 equated monthly installments to the plaintiff bank and defaulted 6 equated monthly installments. The defendant commencing default from installment due on 01.02.2016. The plaintiff bank tried its level best to recover the amount due but the defendant evaded paying the same. The plaintiff bank looking to the indifferent attitude of the defendant in not repaying the installments, was compelled to issue a notice of demand dated 11.12.2017 to the defendant recalling/foreclosing the entire loan agreement. In spite of the receipt of notice, the defendant failed to make the payment of the termination amount, as demanded by the plaintiff in the notice. The defendant is liable to pay Rs.5,78,159.10 to the plaintiff bank as per statement of account dated 20.02.2018. For the closure of the aforesaid loan amount, Rs.6,09,888.03p is outstanding including an amount of Rs.31,728.93p towards pre-payment charges. However, the plaintiff bank is not claiming the aforesaid amount of Rs.31,728.93p on account of pre-payment charges and after its deduction, the plaintiff bank is only claiming an amount of Rs.5,78,159.10, which the defendant has willfully failed to pay in spite of repeated requests and demands made by the plaintiff bank.

EX-PARTE PROCEEDINGS

The defendant was served by way of ordinary process issued on 05.09.2018, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 17.12.2018.

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. Ex.PW-1/1 (OSR) is the copy of the power of attorney.
2. Ex.PW-1/2 is the preliminary credit facility application form.
3. Ex.PW-1/3 is credit facility application form.
4. Ex.PW-1/4 is unattested deed of hypothecation.
5. Ex.PW-1/5 is irrevocable power of attorney.
6. Ex.PW-1/6 is the disbursement memo.
7. Ex.PW-1/7 (Colly.) is the statement of accounts dated 20.02.2018.
8. Ex.PW-1/8 is the certificate under section 65B of the Indian Evidence Act.
9. Ex.PW-1/9 is the Section 2A of the Banker Books Evidence Act.
10. Ex.PW-1/10 is the loan recall notice dated 11.12.2017.
11. Mark X is the copy of the postal receipt of loan recall notice.

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 plaintiff has filed the present suit for recovery of the suit amount against the defendant. In the present case, 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.6,09,888.03/- was due as on 20/02/2018 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.5,37,778.50
Late payment penalties	– Rs.7,098.00
Cheque bouncing charges and other charges	– Rs.5,355.00
Interest for the month	– Rs.2,475.00
Prepayment charges @ 5.9% at O/S Principal	– Rs.31,728.93
Interest on pending installment	– Rs.25,452.60
Total	– Rs.6,09,888.03

The plaintiff in the present plaint has claimed a sum of Rs.5,355/- 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 the RBI (“ECS method”). Hence, the plaintiff is not entitled to claim Rs.5,355/- towards the cheque bouncing charges.

The plaintiff has not claimed a sum of Rs. 31,728.93p towards pre-payment charges. However, 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, the plaintiff otherwise, cannot be held to be entitled to pre-payment charges.

The plaintiff has also claimed amount of Rs. 25,452.60/- towards interest on the pending installment. The credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest at 9.99% 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.

In the present case, 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 present suit of the plaintiff is well within the period of limitation. In the present case, the plaintiff/PW-1 has proved on record the documents, as mentioned in his testimony, showing the liability of the defendant to pay the suit amount along-with interest to the plaintiff. The plaintiff has been able to prove its case. Hence, the plaintiff is entitled for the recovery of amount of Rs.5,47,351.50p 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 21.02.2018 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.5,47,351.50p is passed in favour of the plaintiff and against the defendant alongwith simple rate of interest @ 6% per annum from 21.02.2018 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 10th day of July, 2020.**

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

Digitally signed
by ARUN SUKHIJA
Date: 2020.07.10
12:07:25 +05'30'

CS No.1407/2018)

ICICI Bank Ltd.

Vs.

Savita Saroha

10.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: None for the Plaintiff.
Defendant is already ex-parte.

The Ahlmad has sent the meeting ID for pronouncement of Judgment, however, despite waiting for 5 minutes, none has appeared on behalf of the Plaintiff.

Vide Separate Judgment announced 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: 2020.07.10

12:09:21 +05'30'

(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/10.07.2020