

IN THE COURT OF MS. DIVYA GUPTA,
CIVIL JUDGE-03,
CENTRAL DISTRICT, TIS HAZARI COURT, DELHI

New Case No. 3493/2017

ICICI BANK LIMITED,
HAVING ITS REGISTERED OFFICE AT:-
LANDMARK, RACE COUSE CIRCLE,
VADODARA, GUJARAT-390007

INTER ALIA HAVING ITS BRANCH OFFICE AT,
2ND FLOOR, VIDECON TOWER,
BLOCK-E, JHANDEWALAN EXTN.,
NEW DELHI-110055
THROUGH ITS AUTHORISED REPRESENTATIVE
AJEET SINGH CHAUHAN

..... PLAINTIFF

VERSUS

1. DINESH KUMAR
S/O SH. SONBIR SINGH
(BORROWER)
R/O 223/5, GALI NO. 5,
MANOJ DHABA, HAIDERPUR VILLAGE, AMBEDKAR
NAGAR, DELHI-110088.

2. SUMAN DEVI
S/O SH. JAGDISH,
(CO-BORROWER)
R.O 223/5, GALI NO. 5,
MANOJ DHABA, HAIDERPUR VILLAGE, AMBEDKAR
NAGAR, DELHI-110088.

Divya

..... DEFENDANTS

Date of Institution of the suit : 09.11.2017
Date of judgment passed : 06.08.2020

SUIT FOR RECOVERY OF RS. 2,85,689.94/- (RUPEES TWO LACS
EIGHTY FIVE THOUSAND SIX HUNDRED EIGHTY NINE AND
NINETY FOUR PAISE ONLY).

JUDGMENT

1. The present suit is a suit for recovery of Rs. 2,85,689.94/- filed by the plaintiff bank against the defendants. The suit has been filed by Sh. Ajeet Singh Chauhan, AR of the plaintiff bank who has been authorized by way of power of attorney executed in his favor by the plaintiff bank.

2. The factual matrix of the matter, as culled out from the bare perusal of the plaint is as follows:-

That the plaintiff bank is a body incorporated under the provisions of the Companies Act, 1956 and banking company under Banking Regulation Act, 1949 and is having having its registered office at E-Block, Videocon Tower, Jhandewalan Extension, New Delhi-110055. It is averred in the plaint that defendant no.1 is a borrower to the loan agreement and defendant no. 2 is a co-borrower and had approached the plaintiff and requested the plaintiff bank for grant of loan of Rs. 5,11,060/- against the security of commercial vehicle namely 'AL DOST' and entered

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into a loan agreement under the loan cum hypothecation scheme of plaintiff bank. In view of above agreement, plaintiff bank after sanctioning a loan of Rs. 5,11,060/-, disbursed an amount of Rs. 5,03,375/- on 27.12.2014 to the dealer "DEEP AUTOTEC PVT. LTD.", after deducting an amount of Rs. 2,625/- towards processing fees, stamp duty and other charges and an amount of Rs. 5,060/- towards motor secure charges, as per the request of defendants. Defendant's loan number maintained by the plaintiff bank was LVDEL00031220081. On 20.12.2014, defendant executed following documents:

- a) Credit facility application form with terms and conditions that loan would be repaid along with interest @16.02% in 48 equated monthly instalments of Rs. 14,764/-. If any instalment is delayed, defendant would pay a penal interest @ 24% p.a on outstanding instalment amount. That in case of default, plaintiff would be entitled to recall the loan.
- b) Hypothecation deed as per which vehicle financed to be hypothecated in name of plaintiff bank and bank would be entitled to take its possession. Vehicle bearing registration no. "DL-1LV-3764" was hypothecated in favor of plaintiff bank.
- c) Irrevocable power of attorney stating that plaintiff would be entitled to take possession and sell the vehicle in case of default.

3. Defendant in terms of loan agreement paid an amount of Rs. 4,20,208/-(29 equated monthly instalments), however, defaulted in payment of Rs. 57,929/-(04 equated monthly instalments) and Rs. 20,572/- towards

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late payments and cheque bouncing charges, thus totaling to Rs. 78,501/-, besides future instalments Rs. 2,17,335.00 /- as on 09.10.2017. Thereafter, various requests were made but in vain. In view of default in payment, the plaintiff bank recalled loan facility via loan recall notice dated 16.08.2017. Despite all this, defendant did not repay the dues. Thus, present suit has been filed by the plaintiff bank with a prayer seeking recovery of Rs. 2, 85,689.94/- from the defendants along with interest @16.02% per annum from 09.10.2017 till payment/realization.

4. Notice of the suit was served upon the defendant and appeared in person on 06.03.2018. Thereafter, neither defendants appeared before the court nor was WS filed on behalf of defendants. Therefore, the defendants were proceeded Ex-parte by Ld. Predecessor vide order dt. 18.07.2018.

5. Matter was then listed for ex-parte evidence. The plaintiff bank got examined by way of AR, Ms. Nitu Srivastava as PW-1 on 23.10.2019 by way of an affidavit of evidence which is marked as Ex. PW1/A wherein she reiterated the contents of the plaint. The same are not repeated here for the sake of brevity. She also exhibited the following documents: -

- i. Ex. PW1/1 i.e. copy of power of attorney (OSR).
- ii. Ex. PW1/2 i.e. credit facility form.
- iii. Ex. PW1/3 i.e. deed of hypothecation.
- iv. Ex. PW1/4 i.e. irrevocable power of attorney.
- v. Ex. PW1/5 i.e. loan recall notice dt. 16.08.2017.

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- vi. Ex. PW1/6 i.e. statement of account dt. 09.10.2017.
- vii. Ex. PW1/7 i.e. certificate under Section 2-A of the Banker's Book of Evidence Act 1891.
- viii. Ex. PW1/8 i.e. certificate under Section 65-B Indian Evidence Act.
- ix. Mark 'X' i.e. copy of postal receipt.

Thereafter, vide his separately recorded statement, Ex-parte PE was closed. The matter was then listed for Ex-parte final arguments.

6. Ex-parte final arguments advanced by the Ld. Counsel for the plaintiff were heard. Case filed perused.

7. In Ex-parte suits, where defendant has not filed WS or does not appear to contest the suit, the plaintiff as well as the court proceeds on the belief that there was no real opposition/defense to put forth. In such situation, where defendant has chosen to remain absent, there is no reason for this court to disbelieve plaintiff's version if the same sounds plausible.

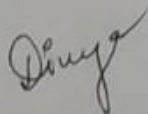
8. Perusal of Ex. PW1/1 shows that Ms. Nitu Sirvastava is an authorized representative of the plaintiff bank and has been empowered on behalf of plaintiff. Further perusal of evidence on record shows that the defendant had approached the plaintiff bank for grant of loan of 5, 11,060.00/- against commercial vehicle namely 'AL DOST' and entered

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into a loan agreement under loan cum hypothecation scheme of the plaintiff bank. Ex. PW1/2 consists of the credit facility application along with terms and conditions of the loan which clearly shows that the terms and conditions of the loan were such that the defendant had to repay the loan amount in 48 EMIs of Rs. 14,764/-. Further, plaintiff has placed on record hypothecation deed Ex. PW1/3 which provides that the bank would be entitled to take over the possession of vehicle in the event of default by the defendant being the rightful owner of the same. Further, Ex. PW1/4 which consists of irrevocable power of attorney. It authorizes the plaintiff to take over the possession of the vehicle and sell the same to appropriate dues in event of default by the defendant.

9. Further, plaintiff bank has placed on record the statement of account dt. 09.10.2017 which is Ex. PW1/6 along with certificate under Section 2A of the Banker's Book of evidence Act, 1891 exhibited as Ex. PW1/7 and certificate under Section 65 B of Indian Evidence Act, 1872, Ex. PW1/8, showing that the principal, interest, penal interest and other dues which defendant owes in favor of plaintiff bank as on 09.10.2017 amounts to Rs. 2, 85,689.64/-. Thereafter, in view of default in repayment, the plaintiff bank recalled the loan facility by way of loan recall notice dt. 16.08.2017(Ex. PW1/5). The service of notice is proved by a postal receipt which is marked "X".

On the other hand, despite the notice of the suit in hand, defendant has not appeared before the Court to either dispute the signatures



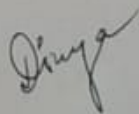
er due compliance.
Divya
(DIVYA GUPTA)
CIVIL JUDGE

upon the documents filed by the plaintiff or to dispute the plaintiff's case. As such, the entire evidence led by the plaintiff goes un rebutted and since defendant has chosen to remain absent, therefore, there is no reason for this court to disbelieve plaintiff's version. The plaintiff has claimed interest @ of 16.02% p.a. However, interest @ 16.02% seems to be exorbitant. Interest @ 12% p.a. from date of filing of the present suit seems to be sufficient to meet the ends of justice.

10. In the present suit, the Ld. Predecessor of the court had appointed bank official as receiver in order to take over the possession of the hypothecated vehicle vide order dated 17.07.2017. Vehicle was then taken in possession by the receiver. Thereafter, the Ld. Predecessor had allowed an application filed on behalf of plaintiff bank under order 39 rule 6 C.P.C. thereby allowing the receiver to sell the vehicle "ALDOST LS bearing no. DL1-LV-3764 in a public auction and directed him to file final report vide order dated 12.12.2018. Thereafter, valuation report was filed on 18.12.2019 as per which the said vehicle was valued at Rs. 1, 70,000/-. In the final arguments, it has been submitted by the Ld. Counsel for plaintiff bank that the above said vehicle could not be sold in terms of order dated 12.12.2018 due to national lockdown COVID-19.

RELIEF

11. Hence, in view of the aforesaid discussion, the suit in hand is hereby decreed ex-parte and plaintiff is hereby held entitled to recover an



amount of Rs. 2,85,689.94/- (RUPEES TWO LACS EIGHTY FIVE THOUSAND SIX HUNDRED EIGHTY NINE RUPEES AND NINETY FOUR PAISE ONLY) along with interest @ 12% p.a. (simple interest) from the date of institution of suit till its final realization, from the defendant.

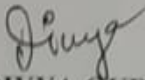
Further, plaintiff is held entitled to sell the hypothecated vehicle namely "ALDOST LS" bearing registration no. "DL1-LV-3764" in accordance with rules and adjust the proceeds of sale against the decreed amount. In case sale proceeds exceed the decreed amount, the balance amount shall be paid to the defendant. However, if sale proceeds are less than the decreed amount, then the plaintiff bank shall be entitled to recover the remaining amount from the defendant after adjusting the sale proceeds against the outstanding amount.

Cost of the suit shall also be awarded to the plaintiff.

Decree sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

Announced in the cisco webex
today on 06.08.2020


(DIVYA GUPTA)
Civil Judge-03/Central
Tis Hazari Courts, Delhi

NOTE: There are total 8 pages in this judgment. Each page has been checked and signed by me.

CS NO. 3493/2017

ICICI BANK LTD. VS. DINESH KUMAR

06.08.2020

At 12:30 pm

Presence: Sh. Saransh Garg, Ld. Proxy Counsel for plaintiff (via video conferencing via cisco webex).
Defendants are ex parte.

Perusal of record shows that an application under Order 39 Rule 6 is still pending which was filed on 30.10.2019. Ld. Proxy counsel for plaintiff submitted that the above said application was filed inadvertently as similar application had already been filed and decided by Ld. Court. In view of the above submissions, the pending application under Order 39 Rule 6 CPC becomes infructuous and is hereby dismissed.

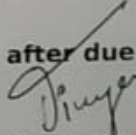
Vide my separate judgement of even date, announced on cisco webex, the suit of the plaintiff bank is hereby decreed ex-parte and plaintiff is hereby held entitled to recover an amount of Rs. 2,85,689.94/- (RUPEES TWO LACS EIGHTY FIVE THOUSAND SIX HUNDRED EIGHTY NINE RUPEES AND NINETY FOUR PAISE ONLY) along with interest @ 12% p.a. (simple interest) from the date of institution of suit till its final realization, from the defendant.

Further, plaintiff is held entitled to sell the hypothecated vehicle namely "ALDOST LS" bearing registration no. "DL1-LV-3764" in accordance with rules and adjust the proceeds of sale against the decreed amount. In case sale proceeds exceed the decreed amount, the balance amount shall be paid to the defendant. However, if sale proceeds are less than the decreed amount, then the plaintiff bank shall be entitled to recover the remaining amount from the defendant after adjusting the sale proceeds against the outstanding amount.

Cost of the suit shall also be awarded to the plaintiff.

Decree sheet be prepared accordingly.

File be consigned to Record Room after due compliance.


(DIVYA GUPTA)
CIVIL JUDGE-03(C), THC
06.08.2020