

**IN THE COURT OF SH. JITENDRA SINGH, ADDITIONAL
DISTRICT JUDGE -06: CENTRAL DISTRICT,
TIS HAZARI COURTS, DELHI**

CS No. 3248/17

IN THE MATTER OF:-

M/s. ICICI Bank Ltd.
Through its authorized representative
Mr. Mohit Grover
Having its registered office at :
Landmark, Race Course Circle,
Vadodra-390007.

Inter alia having its branch office at:
E-Block, Videocon Tower,
Jhandewalan Extn.,
New Delhi.-110055.

.....PLAINTIFF

VERSUS

Sanjay Kumar
S/o Shri Balram Biva,
(Borrower)
R/o House No. WZ-50, 3rd Floor, Manohar Park,
East Punjabi Bagh,
New Delhi-110026.

.....DEFENDANT

Other Details :

Date of Institution
Date of Reserving Judgment
Date of Judgment

: 08.03.2016
: 19.05.2020
: 19.05.2020

SUIT FOR RECOVERY OF RS. 8,33,765/-

JUDGMENT

Facts as averred in the Plaint:

1(a) Succinctly stated, the case of plaintiff is that the plaintiff is the body incorporated under the provision of the Companies Act, 1956 and is having its registered office at Landmark, Race Course Circle, Vadodara and its branch office at E-Block, Videocon Tower, Jhandewalan Extension, New Delhi and defendant is borrower of plaintiff bank.

1(b) It is averred that in the month of December, 2014 the defendant had approached the plaintiff bank for grant of loan for purchase of vehicle namely "DUSTER/RXL 85 PS" and on his request, the plaintiff bank sanctioned loan of Rs.8,09,920/- and disbursed an amount of Rs.7,97,050/-, vide loan-cum-hypothecation agreement bearing no. LADEL00031081050 on 18.12.2014 upon execution of loan documents (Credit Facility Application, Deed of Hypothecation and Irrevocable Power of Attorney) by the defendant. It is further averred that the defendant was to repay the said loan alongwith interest @10.85% per annum

in 60 Equated Monthly Installments of Rs.17,549/- each.

1(c) The plaintiff further averred that the defendant had only paid an amount of Rs.1,22,843/- (i.e. 07 EMIs) and had defaulted in repayment of Rs.1,22,843/- (i.e. 07 EMIs) and late payment and cheque bouching charges totaling to Rs.1,35,893/- besides future installments of Rs.8,03,933/- as on 17.02.20216. Since the defendant failed to adhere to the financial discipline of the repayment of balance loan amount, the plaintiff sent a legal demand notice dated 14.12.2015, but the defendant failed to repay the outstanding amount.

The plaintiff has prayed for a decree of recovery of Rs.8,33,765/- as on 17.02.2016 alongwith interest @10.85% per annum.

Proceedings before the beginning of trial:

2(a) Perusal of the record reveals that since the plaintiff had neither taken steps for substituted service on the defendant nor had appeared before the court, the suit was dismissed in default for non appearance and non-prosecution on 07.12.2016.

2(b) Subsequently, upon application under Order IX

Rule 4 CPC moved on behalf of the plaintiff, the suit of the plaintiff was restored to its original number vide order dated 27.05.2017.

2(c) Record further reveals that despite service of summons by way of publication in newspaper "Rashtriya Sahara" dated 23.09.2018, none on behalf of the defendant appeared and as such, the defendant was proceeded against ex-parte on 12.03.2019.

Evidence:

3. To prove its case, the plaintiff examined Shri Mohit Grover, Authorized Representative of the plaintiff bank as PW1.

4. I have heard the final arguments through electronic mode and carefully gone through the material as placed on record.

5. PW-1 Shri Mohit Grover, Authorized Representative of the plaintiff bank filed his affidavit of evidence Ex.PW1/A wherein he reiterated the averments made in the plaint and relied on the following documents:-

- i. Copy of Power of Attorney is Ex.PW1/A (OSR);
- ii. Original Credit Facility Application Form is

Ex.PW1/2;

iii. Original Unattested Deed of Hypothecation is

Ex.PW1/3;

iv. Original Irrevocable Power of Attorney is **Ex.PW1/4;**

v. Legal notice dated 14.12.2015 is **Ex.PW1/5;**

vi. Copy of postal receipts is **Mark X;**

vii. Statement of account dated 17.02.2016 is **Ex.PW1/6;**

viii. Certificate under Section 2A of Bankers Book of Evidence is **Ex.PW1/7** and

ix. Certificate under Section 65B of Indian Evidence Act is **Ex.PW1/8.**

6. As referred to above, the defendant was proceeded against ex-parte on 12.03.2019. Perusal of the record reveals that the defendant never appeared before the court to contest the case on legal aspect.

Appreciation of evidence:

7(a) The plaintiff bank proved that on execution of Credit Facility Application Form (Ex.PW1/2), Deed of

Hypothecation (Ex.PW1/3) and Irrevocable Power of Attorney (Ex.PW1/4) by the defendant, the plaintiff bank sanctioned loan of Rs.8,09,920/- for purchase of vehicle namely "DUSTER/RXL 85 PS" bearing registration no. DL-8CAK-0823 and disbursed an amount of Rs.7,97,050/- after deducting processing fees etc. on 18.12.2014 vide loan agreement bearing no. LADEL00031081050. Perusal of Credit Facility Application Form (Ex.PW1/2), it shows that the defendant was to repay the said loan alongwith interest @10.85% per annum in 60 Equated Monthly Installments of Rs.17,549/- each.

7(b) PW-1 Shri Mohit Grover deposed that the defendant had paid an amount of Rs.1,22,843/- (i.e. 07 EMIs), but defaulted in repayment of Rs.1,22,843/- (i.e. 07 EMIs) and late payment and cheque bouching charges totaling to Rs.1,35,893/- besides future installments of Rs.8,03,933/- as on 17.02.20216.

7(c) Since the defendant failed to adhere to the financial discipline of the repayment of balance loan amount, the plaintiff sent a legal demand notice dated 14.12.2015 (Ex.PW1/5), but the defendant failed to repay the outstanding amount.

7(d) The plaintiff has also furnished Certificate under

Section 65B of Indian Evidence Act (Ex.PW1/8) in support of statement of account (Ex.PW1/6) and also furnished Certificate under Section 2A of Bankers Books of Evidence Act (Ex.PW1/7), as required by law.

8. There is nothing on record to disbelieve the genuineness of documents Ex.PW1/1 to Ex.PW1/8 proved by PW1 Shri Mohit Grover. His testimony remained unrebutted and uncontroverted. The plaintiff bank has imposed various interest, which are exorbitant and are in the form of penalty and does not seem to be justified. Therefore, the plaintiff is entitled to the principal outstanding amount alongwith interest for the month which amounts to Rs.7,35,689/- as reflected in Ex.PW1/6.

Interest:

9. The plaintiff is claiming pre lite, pendente lite and and post lite interest. It will be appropriate to award prelite interest at the rate of 9% from 14.12.2015 to 07.03.2016. In these circumstances, it will be reasonable to award pendente-lite interest at the rate of 6% per annum from filing of the present suit till the

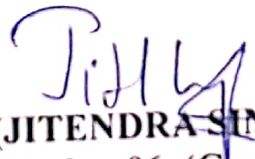
date of decree. As the recovery is based on commercial transaction, post lite (future interest) is awarded at the rate of 12% per annum.

Relief:

10. In view of the facts and circumstances of the case coupled with evidence adduced on record by the plaintiff, **the suit is decreed and plaintiff is held entitled to recover amount of Rs.7,35,689/- alongwith prelite interest at the rate of 9% from 14.12.2015 to 07.03.2016 and pendente lite interest at the rate of 6% per annum and future interest (post lite) at the rate of 12% from the date of decree till realization of the decretal amount. Plaintiff shall be also entitled to costs of the suit. Decree sheet be prepared accordingly.**

11. File be consigned to Record Room as per rules after compliance of necessary legal formalities.

**Announced in open Court
Dated: 19.05.2020**


(JITENDRA SINGH)
Addl. District Judge-06 (Central),
Tis Hazari Courts, Delhi

CS No. 3248/17

ICICI Bank Ltd. Vs. Sanjay Kumar

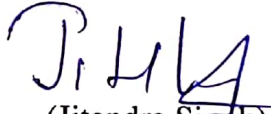
19.05.2020

File taken up today in pursuance of order bearing No. 9784-9885/DJ Central/ Lockdown COVID-19/AD&SJ Duty & Arrangements/2020 dated 16.05.2020 of Ld. District & Sessions Judge (HQs), Delhi.

Present: Ms. Barkha Sharma, Ld. counsel for plaintiff (presence secured through electronic mode).
None for defendant who is already ex-parte vide order dated 12.03.2019.

Final arguments heard through electronic mode.

Put up for judgment at 4:00 PM.


(Jitendra Singh)
ADJ-06, Central District
THC, Delhi/19.05.2020


At 4:00 PM

Present: None.

Vide separate judgment announced in the open court today, the suit is decreed and plaintiff is held entitled to recover amount of Rs.7,35,689/- alongwith prelite interest at the rate of 9% from 14.12.2015 to 07.03.2016 and pendente lite interest at the rate of 6% per annum and future interest (post lite) at the rate of 12% from the date of decree till realization of the decretal amount. Plaintiff shall be also entitled to costs of the suit. Decree sheet be prepared accordingly.

Date already fixed, i.e. 01.09.2020 stands cancelled.

File be consigned to Record Room as per rules after compliance of necessary legal formalities.


(Jitendra Singh)
ADJ-06, Central District
THC, Delhi/19.05.2020