

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

CS No. 2755/17

IN THE MATTER OF:-

M/s. ICICI Bank Ltd.

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

1. Salman Malik
S/o Shshahbuddin
(Borrower)
R/o F-183, Gali No. 26,
F-Block, Mustafabad,
Landmark- Akbri Masjid
Delhi-110094.
2. Mubina
D/o Sh. Sagir
(Co-Borrower)
R/o F-183, Gali No. 26,
F-Block, Mustafabad,
Landmark- Akbri Masjid
Delhi-110094.

.....DEFENDANTS

Other Details :

Date of Institution : 19.08.2017
Date of Reserving Judgment : 17.06.2020
Date of Judgment : 20.06.2020

SUIT FOR RECOVERY OF RS. 3,70,865/-

JUDGMENT

Facts as averred in the Plaint:

1(a) Briefly 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 August, 2015, the defendants had approached the plaintiff bank for grant of loan of Rs. 4,25,210/- for purchase of commercial vehicle namely "TATA ACE" and on execution of Credit Facility Application Form, Deed of Hypothecation and Power of Attorney on 31.08.2015 by the

defendants, the plaintiff bank sanctioned a loan of Rs. 4,25,210/- and disbursed an amount of Rs. 4,17,741/- on 31.08.2015 to the dealer "TATA MOTORS LTD" under loan account no.LVDEL00033363680 after deducting Rs.3,259/- towards processing fees, stamp duty & other charges and Rs.4,210/- toward Motor Secure as per request of defendants.

1(c) It is further averred that the defendants were agreed to repay the said loan alongwith interest @16.07% in 47 Equated Monthly Installments of Rs.12,250/- each. The registration number of the said vehicle is DL1-LW-1926.

1(d) The plaintiff further averred that the defendantS had only paid an amount of Rs.1,96,000/- (i.e. 16 EMIs) and defaulted for an amount of Rs.73,500/- (i.e. 06 EMI) and an amount of Rs.23,981/- towards late payment and cheque bouncing charges besides future installments of Rs.3,06,250/- as on 25.07.2017.

1(e) It is further averred that since the defendants failed to adhere to the financial discipline of the repayment of balance

loan amount, the plaintiff sent a legal demand notice dated 17.05.2017, but the defendants failed to repay the outstanding amount.

Proceedings before the beginning of trial:

2. Record reveals that despite service of summons on 11.01.2018, none on behalf of the defendants appeared in court and as such, the defendants were proceeded against ex-parte on 27.02.2018.

Evidence:

3. To prove its case, the plaintiff examined Shri Ajeet Singh, 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 Ajeet Singh, 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.PW1/1 (OSR)**;
- ii. Credit Facility Application Form alongwith terms and conditions is **Ex.PW1/2**;
- iii. Unattested Deed of Hypothecation is **Ex.PW1/3**;
- iv. Power of Attorney is **Ex.PW1/4**;
- v. Loan recall notice dated 17.05.2017 is **Ex.PW1/5**;
- vi. Copy of postal receipt is **Mark A**;
- vii. Certified copy of statement of account dated 11.02.2017 is **Ex.PW1/6**;
- viii. Certificate under Section 65B of Indian Evidence Act is **Ex.PW1/7**.

6. As referred to above, the defendants was proceeded against ex-parte on 27.02.2018. Perusal of the record reveals that the defendants 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 Power of Attorney (Ex.PW1/4) by the defendants on 31.08.2015, the plaintiff bank sanctioned loan of Rs. 4,25,210/- for purchase of commercial vehicle namely "TATA ACE" (having registration number DL1-LW-1926) and disbursed an amount of Rs. 4,17,741/- on 31.08.2015 to the dealer "TATA MOTORS LTD" under loan account no.LVDEL00033363680 after deducting Rs.3,259/- towards processing fees, stamp duty & other charges and Rs.4,210/- toward Motor Secure as per request of defendants.

7(b) As per Credit Facility Application Form (Ex.PW1/2), the defendants were agreed to repay the said loan alongwith interest @16.07% in 47 Equated Monthly Installments of Rs.12,250/- each.

7(c) The plaintiff has admitted that the defendants had

only paid an amount of Rs.1,96,000/- (i.e. 16 EMIs), however, they defaulted for an amount of Rs.73,500/- (i.e. 06 EMI) and an amount of Rs.23,981/- towards late payment and cheque bouncing charges besides future installments of Rs.3,06,250/- as on 25.07.2017.

7(d) Since the defendants failed to adhere to the financial discipline of the repayment of balance loan amount, the plaintiff sent a legal demand notice dated 17.05.2017 (Ex.PW1/5), but the defendants failed to repay the outstanding amount.

7(e) The plaintiff has also furnished Certificate under Section 65B of Indian Evidence Act (Ex.PW1/7) in support of statement of account (Ex.PW1/6), as required by law.

8. There is nothing on record to disbelieve the genuineness of documents Ex.PW1/1 to Ex.PW1/7 proved by PW1 Shri Ajeet Singh. 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

seems to be justified. Therefore, the plaintiff is entitled to the principal outstanding amount alongwith interest for the month which amounts to Rs.3,11,884/- as reflected in Ex.PW1/6.

Interest:

9. The plaintiff is claiming pre lite, pendente lite and post lite interest. It will be appropriate to award prelite interest at the rate of 9% from 17.05.2017 to 18.08.2017. 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.

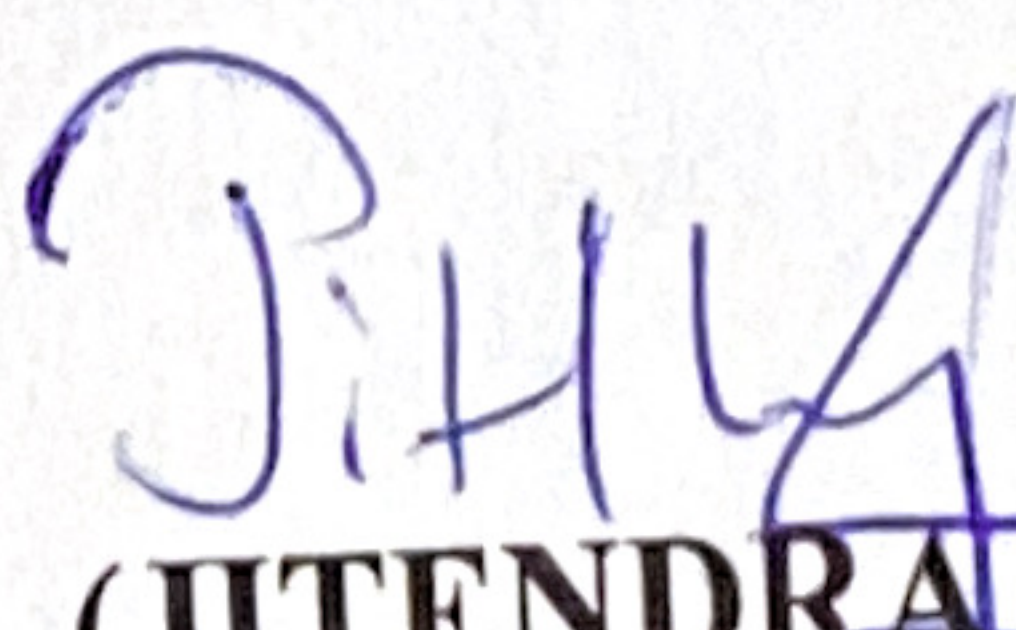
Relief:

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.3,11,884/- alongwith prelite interest at the rate of 9% from 17.05.2017 to 18.08.2017 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 from the defendants. 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 on 20.06.2020


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

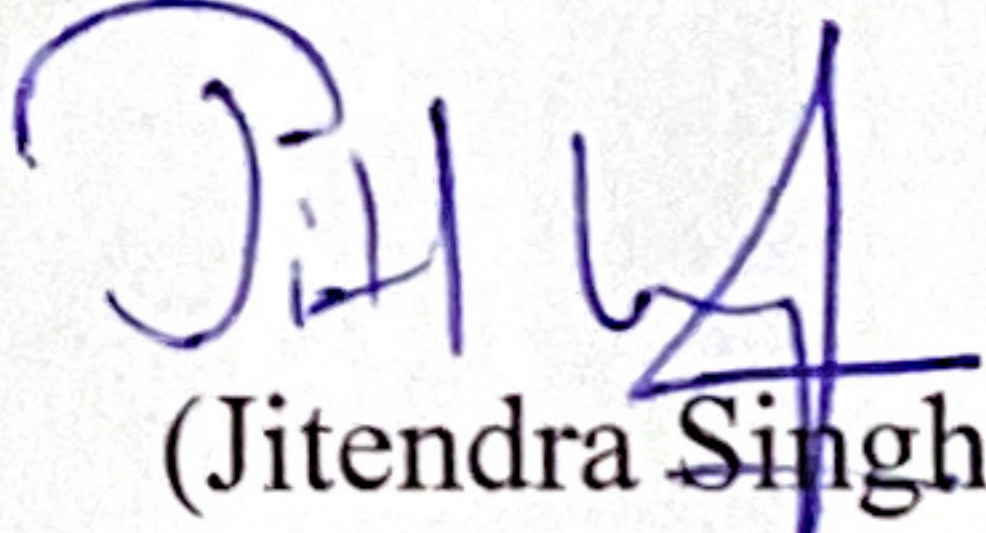
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20.06.2020

Present: Ms. Barkha Sharma, Id. Counsel for plaintiff (**presence secured through electronic mode**).
None for defendants, who are already ex-parte.

Vide separate judgment announced today, **the suit is decreed and plaintiff is held entitled to recover amount of Rs.3,11,884/- alongwith prelite interest at the rate of 9% from 17.05.2017 to 18.08.2017 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 from the defendants. Plaintiff shall be also entitled to costs of the suit. Decree sheet be prepared accordingly.**

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


(Jitendra Singh)
ADJ-06, Central District
THC, Delhi/20.06.2020