

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

**SUIT NO.:- 335/2016**

**UNIQUE CASE ID NO.:- 617800/2016**

**IN THE MATTER OF :-**

**M/s. ICICI Bank Ltd.**  
**Registered Office at:**  
**Landmark, Race Course Circle,**  
**Alkapuri, Vadodara – 390 007.**

**And Corporate Office at:**  
**ICICI Bank Towers,**  
**Bandra Kurla Complex,**  
**Mumbai – 400 051.**

**Having its Branch Office at:**  
**2<sup>nd</sup> Floor, Videocon Tower,**  
**Block-E-1, Jhandewalan Extension,**  
**New Delhi-110055.**  
**Through: Sh. Mohit Grover**

**....Plaintiff**

**VERSUS**

**Sh. Manoj Baisla**  
**B-1356 Rajeev Colony,**  
**Sahibabad Ghaziabad,**  
**Ghaziabad-201007.**

**....Defendant**

**SUIT FOR RECOVERY OF RS.3,08,529/- (RUPEES THREE LAKHS EIGHT THOUSAND FIVE HUNDRED TWENTY NINE ONLY)**

**Date of institution of the Suit** : 29/02/2016  
**Date on which Judgment was reserved** : 16/06/2020  
**Date of Judgment** : 27/06/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.3,08,529/- (Rupees Three Lakhs Eight Thousand Five Hundred Twenty Nine 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 i.e. ICICI Bank Limited is a Banking Company incorporated under the Indian Companies Act 1956, having its registered office, branch office and Corporate Office at the aforementioned addresses. The operation of the plaintiff bank is subject to the guidelines promulgated by the Reserve Bank of India from time to time. The bank is inter-alia engaged in the business of financing Vehicles apart from other portfolios. Sh. Mohit Grover, who has been duly authorized by way of power of attorney and is competent to file, sign, verify, institute the present suit and follow-up the legal proceedings on behalf of the Bank. The present suit is being filed for recovery of Rs.3,08,529/- (Rupees Three Lakhs Eight Thousand Five Hundred Twenty Nine Only).

- (b) The defendant approached the plaintiff bank for grant of loan for purchasing a car make DATSUN GO under the ICICI Bank Car Loan Scheme. The defendant executed Credit Facility Application Form. In view of the request of defendant and the documents submitted by him, the plaintiff had granted the loan facility vide Loan No. LAGHZO0028744436. An amount of Rs.3,20,000/- (Rupees Three Lakhs Twenty Thousand Only) was financed and disbursed by the plaintiff on 19.07.2014 to the defendant. The said loan facility was granted to the defendant for a period of 60 (Sixty) months commencing from 10.08.2014 till 10.07.2019. The defendant had agreed to pay the monthly installments in 60 (Sixty) equated monthly installments of Rs.6,998/- (Rupees Six Thousand Nine Hundred Ninety Eight Only). Defendant also executed loan agreement, which contained the terms and conditions governing his loan. Defendant also executed Unattested Deed of Hypothecation hypothecating the vehicle financed from the loan amount of the plaintiff. Defendant further agreed to strictly comply with the repayment schedule. The said loan is a secured loan and the security of the loan was agreed to be the vehicle/car financed from the said loan amount.
- (c) From the said loan amount, a Vehicle/Car make DATSUN GO, bearing registration no, UP14CH4112 was financed and the same was hypothecated in favour of the plaintiff as a security towards the loan advanced by the plaintiff. The defendant had executed various documents i.e. (1) Credit Facility Application Form, (2) Unattested Deed of Hypothecation along-with Stamp Paper, (3) Irrevocable Power of Attorney along-with Stamp Paper, etc. in favour of the plaintiff.
- (d) The defendant failed to adhere to the financial discipline and committed defaults and failed to regularize his account. After availing the loan facility

for purchasing of the aforesaid vehicle, the defendant has paid only 12 (Twelve) installments to the plaintiff bank and thereafter, he did not pay any installment amount to the plaintiff bank towards the EMI or the interest. As per Statement of Account dated 17.02.2016. 7 (Seven) installments are overdue and payable by him to the plaintiff bank.

- (e) Thereafter, in view of the non-payment of loan / credit amount and interest, the subject contract/loan facility was recalled by the plaintiff bank through Legal Notice dated 14.12.2015, which was sent and defendant was under obligation to make the payment of entire outstanding amount of Rs.3,08,529/- (Rupees Three Lakhs Eight Thousand Five Hundred Twenty Nine Only) in consequences thereof, which defendant has failed to do, as demanded by the plaintiff bank vide Legal Notice dated 14.12.2015. The plaintiff is maintaining the proper accounts in the usual and ordinary course of its business. As per the Statement of Account dated 17.02.2016 maintained by the plaintiff bank, the defendant is liable to pay a sum of Rs.3,08,529/- (Rupees Three Lakhs Eight Thousand Five Hundred Twenty Nine Only), which the defendant has failed to pay.

**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 25.11.2019.

**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 Ms. Nitu Srivastava as PW-1. PW-1 has filed her evidence by way of

affidavit, wherein, she reiterated and reaffirmed the contents of the plaint. PW-1 in her testimony has relied upon the following documents:-

1. Photocopy of Power of Attorney is Ex.PW-1/1 (OSR – 4 pages).
2. The preliminary Credit Facility Application Form is Ex.PW- 1/2 (7 pages).
3. Credit Facility Application Form along-with terms and conditions of the loan is Ex.PW-1/3 (11 Pages).
4. The unattested Deed of Hypothecation is Ex.PW-1/4 (6 pages).
5. Irrevocable Power of Attorney is Ex.PW-1/5 (5 pages).
6. Copy of loan recall notice dated 14.11.2015 is Ex.PW-1/6 (1 page) and photocopy of its postal receipt marked as Mark-X.
7. The foreclosure Statement and Statement of Account dated 17.02.2016 is Ex.PW-1/7 (6 pages).
8. Certificate under Section 2A of Bankers Book Evidence Act 1899 is Ex.PW-1/8 (1 page) and
9. Certificate under section 65-B of the Indian Evidence Act. 1860 is Ex.PW-1/9 (1 page)

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 3,08,529.71p was due as on 17/02/2016 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.2,68,484.00
Late payment penalty	– Rs.5,188.00
Cheque bouncing charges and other charges	– Rs.2,250.00
Interest for the month	– Rs.517.00
Prepayment charges @ 5.725% at O/S Principal	– Rs.15,370.71
Interest on pending installment	– Rs.16,720.00
<b>Total</b>	<b>– Rs.3,08,529.71</b>

The plaintiff, in the present plaint, has claimed a sum of Rs.2,250/- as cheque bouncing charges, but as per Clause No.9 of the Credit Facility Application Form Ex.PW-1/3, Mode of Payment/repayment of installments was provided, however, none of option was opted. The mode of payment/repayment by post-dated cheques was also provided in said clause no.9 of the said form but the same was also not opted. Hence, the plaintiff is not entitled to claim Rs.2,250/- towards the cheque bouncing charges.

The plaintiff has also claimed a sum of Rs.15,370.71 towards the pre-payment charges at the outstanding principal. 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, plaintiff cannot be held to be entitled to pre-payment charges.

The plaintiff has also claimed amount of Rs.16,720/- towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest at 11.25% 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, 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 her testimony, showing the liability of the defendant to pay the amount except which are disallowed hereinabove. Hence, plaintiff is entitled for the recovery of amount of Rs.2,74,189/- 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 18/02/2016 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 reasonings, this Court is satisfied that plaintiff has been able to prove his 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.2,74,189/- is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 6% per annum from 18/02/2016 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 27<sup>th</sup> day of June, 2020.**

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