

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

SUIT NO.:- 16/2020

UNIQUE CASE ID NO.:- 611418/2016

IN THE MATTER OF :-

ICICI Bank Ltd.

**Having it's Registered office at:
Landmark, Race Course Circle,
Alkapuri, Vadodara – 390007.**

And having one of it's Branch Office At Delhi:

**E-1, Videocon Tower,
Jhandewalan Extn.,
New Delhi-110055.**

**Through its Authorized Representative
Sh. Vivek Kumar**

....Plaintiff

VERSUS

**Mr. Ravi B. Shinde
Shakti Hormann Ltd.,
313, 3rd Floor,
Modi Tower, 98, Nehru Place,
New Delhi-110019.**

....Defendant

**SUIT FOR RECOVERY OF RS.9,37,029.53/- (RUPEES NINE LAKHS
THIRTY SEVEN THOUSAND TWENTY NINE AND FIFTY THREE
PAISE ONLY)**

Date of institution of the Suit : 31/05/2016
Date on which Judgment was reserved : 23/07/2020
Date of Judgment : 23/07/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.9,37,029.53/- (Rupees Nine Lakhs Thirty Seven Thousand Twenty Nine and Fifty Three 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 i.e. ICICI Bank Limited is a Bank registered and incorporated under the Indian Companies Act, 1956, having its registered office and regional office at the aforesaid addresses is engaged in banking sector besides providing different types of loan facilities, personal finance, Business-Loan etc. The plaintiff bank is also having various branches, regional branch through the country and the operations of the plaintiff bank are subject to guideline and regulations issued by the Reserve Bank of India.
- (b) Sh. Vivek Kumar is the Authorized Officer/ Attorney of the plaintiff duly authorized to file institute, prosecute to conduct, appear and represent the Plaintiff before this Court and to take any other legal action and to sign and verify, execute and declare any document and to swear affidavit etc. for and on behalf of the plaintiff bank.

- (c) The defendant approached and requested the plaintiff bank for grant of personal loan. The defendant had submitted loan application and other documents and undertook that he shall abide all terms and conditions of the plaintiff bank and to not default any EMI and he will pay the EMI to plaintiff regularly.
- (d) Keeping in view the request of defendant, the plaintiff bank sanctioned and financed a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only). The defendant agreed to repay the said loan along with interest in 60 installments of Rs.23,139/- each started from 15.10.2014 to 15.09.2019. The defendant executed Agreement, Schedule with the plaintiff bank. The said loan Agreement/ documents were executed on 25.09.2014 and financed loan amount was disbursed on 26.09.2014. The defendant's loan agreement number maintained by the plaintiff bank is LPDEL00029831059 vide loan agreement dated 25.09.2014.
- (e) The defendant has defaulted in repayment of several equated monthly installments which were due as on date as per the agreement and in accordance with the terms and conditions of the agreement, the plaintiff bank was forced to recall/ demand the loan facilities available to the defendant by way of sending a Loan Recall Notice/ Legal Notice dated 21.01.2016 to the defendant calling upon him to pay the outstanding amount. As per the accounts maintained by the plaintiff bank, the defendant is liable to pay a sum of Rs.9,37,029.53 as on 03.03.2016 towards principal, interest, penal interest and other dues.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the “The Asian Age” newspaper dated 17.07.2019, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 02.09.2019.

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 Sh. Pankaj Jain 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. Copy of Power of Attorney as Ex.PW-1/1.
2. Preliminary Credit Facility Application Forms as Ex.PW-1/2.
3. Original loan agreement dated 25.9.2014 along with other related documents as Ex.PW1/3.
4. Copy of Legal Demand Notice dated 21.1.2016 along with postal receipts as Ex.PW1/4 (Colly.).
5. Copy of foreclosure with certified copy of Statement of Account as Ex.PW-1/5 (Colly.).
6. Certificate in support of statement of account as Ex.PW1/6.

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 & CONCLUSIONS OF THE COURT

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.9,37,029.53p was due as on 03/03/2016 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.8,32,446.00
Late payment penalty	– Rs.11,390.00
Cheque bouncing charges and other charges	– Rs.3,654.00
Interest for the month	– Rs.5,343.00
Prepayment charges @ 5.725% at O/S Principal	– Rs.47,657.53
Interest on pending installment	– Rs.36,539.00
Total	– Rs.9,37,029.53

The plaintiff, in the present plaint, has claimed a sum of Rs.3,654/- as cheque bouncing charges, but as per Credit Facility Application Form Ex.PW-1/3, the loan was to be repaid by direct debit from the applicant/'s bank account with ICICI Bank (“Direct Debit method/Reduction against Salary”). Hence, the plaintiff is not entitled to claim Rs.3,654/- towards the cheque bouncing charges.

The plaintiff has also claimed a sum of Rs.47,657.53p 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.36,539/- towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest at 13.75% 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.

The present suit of the plaintiff is well within the period of limitation. The plaintiff/PW-1 has proved on record the documents, as mentioned in her testimony, showing the liability of the defendant to pay the suit amount along-with interest to the plaintiff. 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-1/5. The plaintiff has been able to prove its case. Hence, plaintiff is entitled for the recovery of amount of Rs.8,49,179/- 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 04.03.2016 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-1/5.

Applying priori and posteriori reasoning, 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.8,49,179/- is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 6% per annum from 04/03/2016 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 23th day of July, 2020.**

**ARUN
SUKHIJA**

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

CS No. (ID no.11418/16)

ICICI Bank Ltd.

Vs.

Ravi B Shinde

23.07.2020

The matter has been heard through cisco webex video conferencing.

Present: Shri Rajeev Kumar Ranjan
Defendant is already ex-parte.

Ex-parte final arguments heard. Vide Separate Judgment announced through Video Conferencing 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.

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(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/23.07.2020