

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

SUIT NO.:- 156/2018

UNIQUE CASE ID NO.:- 5913/2018

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:
2nd Floor, Videocon Tower,
Block-E-1, Jhandewalan Extension,
New Delhi-110055.**

Through: Sh. Kunal Nijhawan

...Plaintiff

VERSUS

**Sh. Nathu Ram
S/o Sh. Prabhu Ram
212 Sikrod Rasulpur Sikrod
Vardhan Hospital Pipal Wali
Colony Ghaziabad-201003.**

...Defendant

**SUIT FOR RECOVERY OF RS.3,06,184/- (RUPEES THREE LAKHS
SIX THOUSAND ONE HUNDRED EIGHTY FOUR ONLY)**

Date of institution of the Suit : 20/08/2018
Date on which Judgment was reserved : 14/07/2020
Date of Judgment : 14/07/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.3,06,184/- (Rupees Three Lakhs Six Thousand One Hundred Eighty Four 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. Sh. Kunal Nijhawan, 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.
- (b) The defendant approached the plaintiff bank for grant of loan for purchasing a commercial vehicle make AL DOST LS under the ICICI Bank Commercial Vehicle 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. LVGHZ00033637203. An amount of Rs.5,13,080/-(Rupees Five Lakhs Thirteen Thousand Eighty Only) was financed and disbursed by the plaintiff on 19.10.2015 to the defendant. The said loan facility was granted to the defendant for a period of 47 (Forty Seven) months commencing from

15.11.2015 till 15.09.2019. The defendant had agreed to pay the monthly installments in 47 (Forty Seven) equated monthly installments of Rs.14,768/- (Rupees Fourteen Thousand Seven Hundred Sixty Eight Only).

- (c) From the said loan amount, a Commercial Vehicle make AL DOST LS, bearing registration no, UP14ET8189 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, (3) Irrevocable Power of Attorney, 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 27 (Twenty Seven) 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 18.06.2018, 6 (Five) installments are overdue and payable by him to the plaintiff bank. 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 14.05.2018, which was sent and defendant was under obligation to make the payment of entire outstanding amount of Rs.3,06,184/- in consequences thereof, which defendant has failed to do, as demanded by the plaintiff bank vide Legal Notice dated 14.05.2018. The plaintiff is maintaining the proper accounts in the usual and ordinary course of its business. As per the Statement of Account dated 18.06.2018

maintained by the plaintiff bank, the defendant is liable to pay a sum of Rs.3,06,184/-, which the defendant has failed to pay.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the “Rashtriya Sahara” newspaper dated 10.05.2019, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 22.08.2019.

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. 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 are Ex.PW-1/3 (9 Pages).
4. Deed of Hypothecation is Ex.PW-1/4 (6 pages).
5. Irrevocable Power of Attorney is Ex.PW-1/5 (3 pages).
6. Copy of loan recall notice dated 14.05.2018 is Ex.PW-1/6 (3 pages) and photocopy of its postal receipt is marked as Mark-X.
7. Certified copy of foreclosure and Statement of Account dated 18.06.2018 are Ex.PW-1/7 (Colly.-9 pages).
8. Certificate under Section 65-B of the Indian Evidence Act is Ex.PW-1/8 (2 pages) and
9. Certificate under Section 2A of Bankers Book Evidence Act, 1899 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 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.3,06,184.26p was due as on 18/06/2018 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.2,56,427.10p
Late payment penalty	– Rs.14,438.00
Cheque bouncing charges and other charges	– Rs.7,610.00
Interest for the month	– Rs.264.60p
Prepayment charges @ 4.72% at O/S Principal	– Rs.12,103.36p
Interest on pending installment	– Rs.15,341.20p
Total	– Rs.3,06,184.26p

The plaintiff in the present plaint has claimed a sum of Rs.7,610/- as cheque bouncing charges, but as per Credit Facility Application Form Ex.PW-1/3, the loan was to be repaid by the Electronic Clearing System (Debit Clearing), as notified by the RBI (“ECS method”). Hence, the plaintiff is not entitled to claim Rs.7,610/- towards the cheque bouncing charges.

The plaintiff has also claimed a sum of Rs.12,103.36p 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.15,341.20p towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest at 16.02% 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 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. 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 unchallenged, 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 plaintiff has been able to prove its case. Hence, plaintiff is entitled for the recovery of amount of Rs.2,71,129.70/- say Rs.2,71,130/- 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 19/06/2018 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 held 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.2,71,130/- is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 6% per annum from 19/06/2018 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 14th day of July, 2020.**

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

Digitally signed
by ARUN
SUKHIJA
Date: 2020.07.14
14:26:03 +05'30'

CS No.156/18 (ID no.5913/18)

ICICI Bank Ltd.

Vs.

Nathu Ram

14.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

At 2.25 pm

Present: Sh. Vishal Rao Ld. Counsel for the Plaintiff.

Defendant is already ex-parte.

Vide Separate Judgment announced through video conference 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.

ARUN
SUKHIJA

Digitally signed by
ARUN SUKHIJA
Date: 2020.07.14
14:25:11 +05'30'

(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/14.07.2020