

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

SUIT NO. :- 251/2016

UNIQUE CASE ID NO. :- 616477/2016

IN THE MATTER OF :-

LOCAL HEAD OFFICE:

**State Bank of India
Parliament Street,
New Delhi-110001.**

BRANCH OFFICE:

**State Bank of India,
657-671, Sant Bhawan,
Chandni Chowk,
Delhi-110006.**

**Through: Shri Avinish Kumar Srivastava,
Chief Manager**

....Plaintiff

VERSUS

- 1. Sh. Lalit Tyagi,
S/o Shri Mahendra Tyagi,
House No.85, Nasib Vihar,
Main Chauhan Patti Road,**

**Near Sonia Vihar, Check Post,
Illaychipur-201002, Loni,
Ghaziabad (U.P.)**

**2. Shri Ram Kishore,
S/o Shri Khem Karran Singh,
B-150, Gali No.1, 2nd Pusta,
Sonia Vihar,
Delhi-110094.**

....Defendants

**SUIT FOR RECOVERY FOR RS.4,55,205/- (RUPEES FOUR
LAKHS FIFTY FIVE THOUSAND TWO HUNDRED FIVE
ONLY)**

Date of institution of the Suit : 25/02/2016
Date on which Judgment was reserved : 17/02/2020
Date of Judgment : 25/05/2020

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

Initially, the present suit was filed under Order 37 CPC but vide order dated 04.04.2018 at the request of Ld. counsel for the plaintiff, the present suit was directed to be treated as an ordinary civil suit for recovery. By way of present judgment, this Court shall adjudicate upon suit for recovery for Rs.4,55,205/- (Rupees Four Lakhs Fifty Five Thousand Two Hundred Five Only) filed by the plaintiff against the defendants.

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:-

- (1) The plaintiff is a body corporate, constituted under Hyderabad State Bank Act, XX of 1350 Fasli, the State Bank of Hyderabad Act, No. 79 and State Bank of India (Subsidiary Banks) Act No. 38 of 1959. The State Bank of Hyderabad was merged into State Bank of India and accordingly, this suit was continued by State Bank of India.
- (2) The present suit is being instituted, signed, verified and filed by Shri Avinish Kumar Srivastava the Chief Manager and Principal Officer of the Bank, who is duly authorized by the concerned officer and competent to sign, file and institute the present recovery suit and to conduct the proceedings thereof before this Court.
- (3) The defendants are the principal borrowers and they jointly approached the plaintiff bank through their applications dated 11.04.2012 for grant of Car Loan of Rs.6.00 Lakhs for purchase of Car – Hyundai I-20 Sportz Diesel. Both the defendants had signed the aforesaid loan application by promising to fulfill or to adhere certain terms & conditions to the present case loan and agreeing to pay back the amount borrowed by them from the plaintiff bank alongwith interest with 84 Equated Monthly Installments (EMIs) i.e. Rs.10,673/- per month.

- (4) The plaintiff bank sanctioned and disbursed/granted the car loan of Rs.6.00 Lakhs on certain terms & conditions, as stipulated in the plaintiff bank's arrangement letter of 11.04.2012 and the same terms & conditions were accepted and acknowledged by the borrowers/ defendants by putting their signatures on 11.04.2012.
- (5) After completion of entire formalities, the plaintiff bank disbursed an amount of Rs.7,04,746/-, out of which Rs.6.00 Lakhs towards car loan amount and Rs.1,04,746/- as margin money for and on behalf of defendants directly sent to Car Dealer namely M/s. M.R. Hyundai (Mange Ram Enterprises Pvt. Ltd., Loni Road, Opp. Shalimar Garden, Sahibabad, Ghaziabad (U.P.) through Banker's Cheque bearing no. 816579, dated 11.04.2012, drawn on State Bank of Hyderabad, Chandni Chowk Branch, Delhi-110006 in terms of dealer's receipts dated 11.04.2012.
- (6) To secure the due repayment of the amounts, which may become due and payable under the said loan account, the defendant executed and delivered to the plaintiff bank a Loan-cum-Hypothecation Agreement in the prescribed format in favour of plaintiff bank, on 11.04.2012, whereby the defendants hypothecated the car as security for the repayment of the loan amount. However, in order to facilitate to repay the loan, the said loan amount with interest @ 12.25% per annum with monthly rests and other charges, was repayable by the defen-

dants in 84 monthly installments of Rs.10,673/-, starting from May 2012. However, the rate of interest is subject to variations, as per RBI guidelines issued from time to time in this regard.

- (7) After availing the aforesaid loan from the plaintiff bank, the defendants failed to adhere to the terms & conditions of the loan regarding repayment amount either towards principal or towards the interest or charges thereon. Several reminders were issued to the defendants to pay the amount and regularize the account, but to no avail and the account was declared as NPA on 31.08.2015 with an outstanding of Rs.4,19,332.25p excluding interest charged therein upto 31.08.2015. Subsequently, the plaintiff bank sent a demand letter dated 12.10.2015 duly acknowledged/received by the defendants. However, the defendants had made diverse payments towards part repayment in the said account, but some cheques were dishonoured on presentation and all the entries of payments and dishonoured cheques are reflected in the Statement of Account maintained by the plaintiff bank of defendant.
- (8) The plaintiff bank aggrieved with the attitude of defendants, approached the defendants by way of paying personal visits and telephonic calls and recalled the entire outstanding from the defendants in the said account, but the defendants have miserably failed and neglected to liquidate the outstanding

amount in the said account despite demand letter dated 12.10.2015 acknowledged/received by the defendants on the same day. Moreover, the plaintiff bank have sent a Legal Notice dated 20.01.2016 for recalling the entire outstanding amount to the defendants at their last known addresses through their counsel under speed post and courier, but despite the service of the same, the defendants failed and neglected to make the outstanding amount.

- (9) As per the accounts maintained by the plaintiff bank, the defendants are jointly and severally liable to pay a sum of Rs.4,19,332.25p towards principal amount excluding interest of Rs.13,609/- charged upto 31.08.2015 since the same has been reversed in the Statement of Account being unutilized/uncharged interest, as per the RBI guidelines, but the plaintiff bank is entitled to recover the interest of Rs.13,609/-, hence, the same has been added in the principal amount, which comes to Rs.4,32,941/- and Rs.22,264/- towards agreed interest @ 10.85% w.e.f. 01.09.2015 to 20.02.2016 being entitlement of plaintiff bank, totaling to Rs.4,55,205/-, which is to be payable by the defendants jointly and severally to the plaintiff.

CASE OF DEFENDANT NO.1 AS PER WRITTEN STATEMENT

Succinctly, the case of the defendant no. 1, as per Written Statement, is as under:-

- (1) The suit is liable to be dismissed as the same has not been

verified as per High Court Rules.

- (2) The defendant no.1 has taken the car loan from the plaintiff bank and was regularly paying the installments for repayment of the said car loan, but in the meantime, the defendant no.1 got suffered severe mental diseases and he undergone regular treatment for the same and due to this reason, the defendant no.1 suffered great financial crisis and his business also suffered from great loss and due to same, there may occurred some default in payment of installment and the applicant/ defendant no.1 is still undergoing the said medical treatment. After getting some recovery from the said mental diseases, the defendant no.1 started paying the installments of the said car loan at regular intervals and still ready to pay the balance loan amount, which can barely be seen from the Statement of Account of the said car loan, thereby reflecting the installments made by defendant no.1.
- (3) On merits, it has been submitted that plaintiff bank is charging the exorbitant rate of interest without following the norms and guidelines of RBI.
- (4) The defendant no.1 never received any demand letter or any kind of other letter alleged to be sent by plaintiff bank and further, the plaintiff bank declared the account of defendant no.1 as NPA without giving any intimation to defendant no.1.

EX-PARTE PROCEEDINGS

Summons for settlement of issues were issued to defen-

dant no.2. Despite service of summons by way of publication in 'The Statesman' newspaper dated 07/06/2018, the defendant no.2 has failed to appear in the court. On 13/08/2018, none has appeared on behalf of defendant no.2 and accordingly, defendant no.2 was proceeded ex-parte vide order dated 13/08/2018.

The defendant no.1 had appeared through counsel, filed the written statement and was appearing till the commencement of evidence of the Plaintiff. The proxy counsel for defendant no. 1 had also appeared when the examination-in-chief of PW-1 was done on 12.07.2019. On that date, the cross-examination was deferred on the ground that wife of the counsel of defendant was not well and the matter was adjourned to 30.09.2019. On 30.09.2019, the defendant no. 1 has again sought adjournment but the same was declined and the right of defendant no. 1 to cross-examination PW-1 was closed. Thereafter, the matter was listed for defendant's evidence on 12.12.2019. On that date, none has appeared on behalf of defendant no. 1 and accordingly, the defendant no. 1 was proceeded ex-parte. Thereafter, none has appeared on behalf of defendant no. 1.

REPLICATION AND ISSUES

The plaintiff has filed the replication controverting the allegations/ contentions in the written statement of defendant no.1 and contents of the plaint have been reiterated and reaffirmed.

From the pleadings of the parties, following issues were framed vide order dated 13/08/2018:-

ISSUES

- 1) *Whether the plaintiff is entitled to sum of Rs.4,55,205/- as claimed by the plaintiff? OPP*
- 2) *Whether the plaintiff is entitled to interest on the said amount, if so, at what rate and for what period? OPP*
- 3) *Relief?*

EVIDENCE OF THE PLAINTIFF

The plaintiff, in order to prove its case, has led plaintiff evidence and examined Sh. Avinish Kumar Srivastava as PW-1. The PW-1 has filed his evidence by way of affidavit, wherein, he reiterated and reaffirmed the contents of the plaint. The PW-1 in his testimony has relied upon the following documents:-

1. Attested copy of Gazette Notification Attorney is **Ex.PW-1/1 (3 pages)**.
2. Application dated 11/04/2012 is already exhibited as **Ex.P-1 (6 pages)**.
3. Arrangement Letter of 11/04/2012 is already exhibited as **Ex.P-2 (3 pages)**.
4. Loan-cum-Hypothecation Agreement dated 11.04.2012 is already exhibited as **Ex.P-3 (6 pages)**.
5. Photocopy of Registration Certificate of car bearing registration no. DL5CE 4478 is **Mark-A**.
6. Demand Letter dated 12.10.2015 is **Ex.PW-1/6 (2 pages)**.

7. Statement of account alongwith a Certificate under Section 2A(b) of Banker's Books of Evidence Act is **Ex.PW-1/7 (6 pages)**.
8. Copy of Legal Notice dated 20.01.2016 alongwith postal receipts and PODs of speed post and courier are **Ex.PW-1/8 (Colly. - 7 pages)**.

The defendant no. 1 has neither cross-examined PW-1 nor led his evidence and he was proceeded ex-parte on 12.12.2019.

This Court heard the ex-parte final arguments advanced by Ld. Counsel for the plaintiff. I have perused the material available on record.

ISSUES NO 1 & 2

The issues no. 1 and 2 are inter-related and inter connected with each other and accordingly, they are decided together.

FINDINGS & CONCLUSION 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 No.1 was given opportunity to cross-examine PW-1, however, defendant No.1 has failed to cross-examine him and accordingly his right to cross examine was closed.

As per version of the plaintiff bank, the defendants are jointly and severally liable to pay a sum of Rs.4,19,332.25p towards principal amount excluding interest of Rs.13,609/- charged upto

31.08.2015 since the same has been reversed in the Statement of Account being unutilized/ uncharged interest, as per the RBI guidelines, but the plaintiff bank is entitled to recover the interest of Rs.13,609/-, hence, the same has been added in the principal amount, which comes to Rs.4,32,941/- and further Rs.22,264/- towards agreed interest @ 10.85% w.e.f. 01.09.2015 to 20.02.2016 being entitlement of plaintiff bank, totalling to Rs.4,55,205/-, which is to be payable by the defendants jointly and severally to the plaintiff. In the present case, although, the defendant no. 1 has filed the written statement, however, the defendant no. 1 has not cross-examined PW-1 to contradict or disprove the case of the plaintiff. The testimony of PW-1 on behalf 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 aforesaid claims. Moreover, the defendant No.1 has admitted that the defendants have taken the loan. The only defence which was raised by defendant No.1 is that the Plaintiff was charging the exorbitant interest, however, the defendant No.1 has not cross examined the Plaintiff's witness on this aspect also. The defendant No.1 has also not adduced his evidence to substantiate the said defence also.

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 his testimony, showing the liability of the defendants. The plaintiff has been able to prove its

case. Hence, plaintiff is entitled for the recovery of amount from the defendants qua the amount, as mentioned hereinabove.

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 advanced loan. Keeping in mind the mandate of the said proposition, interest of justice would be served if plaintiff is granted simple pendent-elite rate of interest @ 6% per annum and future rate of interest @ 9% per annum till its realization.

Applying priori and posteriori reasoning, this Court has held that plaintiff has been able to prove its case against the defendants qua the aforesaid amount.

Accordingly, issues no. 1 and 2 are decided in favour of the plaintiff and against the defendants in aforesaid terms.

RELIEF

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

- (i) a decree of Rs. 4,55,205/- is passed in favour of the plaintiff and against the defendants jointly and severally along-with simple pendent-elite rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till its realization.

- (ii) The cost of the suit is also awarded in favour of the plaintiff and against the defendants jointly and severally.

Decree-sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

**Announced in the open court on
this 26th Day of May, 2020.**

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