

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

CS No. 11092/16

IN THE MATTER OF:-

M/s. ICICI Bank Ltd.

Having its registered office at :
Landmark, Race Course Circle,
Vadodra-390007.

Having its branch office at:
E-Block, Videocon Tower,
Jhandewalan Extn.,
New Delhi.-110055.

.....PLAINTIFF

VERSUS

Avadh Vihari Sharma
S/o Shri Rashik Bihari Sharma
B-218, New Ashok Nagar,
Delhi-110096.

.....DEFENDANT

Other Details :

Date of Institution	: 23.02.2015
Date of Reserving Judgment	: 02.07.2020
Date of Judgment	: 02.07.2020

SUIT FOR RECOVERY OF RS. 6,38,560/-

JUDGMENT

Facts as averred in the Plaint:

1(a) Succinctly stated, the case of plaintiff bank 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 the defendant had approached the plaintiff bank for grant of loan for purchase of a car namely “MARUTI SWIFT DZIRE” bearing registration no. DL8CAJ1028 and on his request, the plaintiff bank disbursed an amount of Rs.5,80,000/- on 09.07.2014 vide loan agreement bearing no. LADEL00028603980 upon execution of loan documents by the defendant. It is further averred that the defendant was to repay the said loan in 59 Equated Monthly Installments of Rs.12,772/- each.

1(c) Since the defendant failed to adhere to the financial discipline of the repayment of balance loan amount, the plaintiff sent a legal demand notice dated 09.12.2014, but the defendant failed to repay the outstanding amount.

The plaintiff has prayed for a decree of recovery of Rs.6,38,560/- alongwith interest @24% per annum from 30.01.2015 till its realization.

Proceedings before the beginning of trial:

2. Perusal of the record reveals that despite service of summons by way of publication in newspaper “Rashtriya Sahara” dated 09.07.2018, none on behalf of the defendant appeared and as such, the defendant was proceeded against ex-parte on 11.10.2018.

Evidence:

3. To prove its case, the plaintiff examined Shri Mohit Grover, 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 Mohit Grover, 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 is **Ex.PW1/2**;
- iii. Unattested Deed of Hypothecation is **Ex.PW1/3**;
- iv. Irrevocable Power of Attorney is **Ex.PW1/4**;
- v. Disbursement Memo is **Ex. PW1/5**.
- vi. Statement of accounts dated 30.01.2015 is **Ex. PW1/6 (Colly.)**.
- vii. Certificate U/s. 65-B, Indian Evidence Act is **Ex. PW1/7**.
- viii. Legal notice dated 09.12.2014 is **Ex.PW1/8**
- ix. Copy of its postal receipt is **Mark X**.

6. As referred to above, the defendant was proceeded against ex-parte on 11.10.2018. Perusal of the record reveals that the defendant 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 Irrevocable Power of Attorney (Ex.PW1/4) by the defendant, the plaintiff bank disbursed an amount of Rs.5,80,000/- on 09.07.2014 through disbursement memo Ex.PW1/5 vide loan agreement bearing no. LADEL00028603980 to the defendant for purchase of a car namely “MARUTI SWIFT DZIRE” bearing registration no. DL8CAJ1028. As per Credit Facility Application Form Ex.PW1/2, the defendant was to repay the said loan in 59 Equated Monthly Installments of Rs.12,772/- each.

7(b) Since the defendant failed to adhere to the financial discipline of the repayment of balance loan amount, the plaintiff sent a legal demand notice dated 09.12.2014 (Ex.PW1/8), but the defendant failed to repay the outstanding amount.

7(c) 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).

8. There is nothing on record to disbelieve the genuineness of documents Ex.PW1/1 to Ex.PW1/8 proved by PW1 Shri Mohit Grover. His testimony remained unrebutted and uncontroverted.

9. Record reveals that on 21.04.2014, a receiver was appointed and he subsequently filed his report dated 22.06.2015, as per which the vehicle in question was possessed on 20.06.2015 by the plaintiff bank. Record further reveals that valuation report dated 30.06.2020 was filed. As per which, the valuation of the vehicle in question was computed to Rs.90,000/-.

10. The plaintiff bank has imposed various interest, which are exorbitant and are in the form of penalty and does not seem to be justified. Therefore, the plaintiff is entitled to Rs.4,85,850/- (the principal outstanding amount alongwith interest

for the month which amounts to Rs.5,75,850/- deducting Rs.90,000/- which is valuation of the vehicle in question).

Interest:

11. 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 09.12.2014 to 22.02.2015. 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:

12. 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.4,85,850/- alongwith prelite interest at the rate of 9% from 09.12.2014 to 22.02.2015 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.
Plaintiff shall be also entitled to costs of the suit. Decree sheet
be prepared accordingly.**

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

Announced on 02.07.2020

JITENDRA Digitally signed by
SINGH JITENDRA SINGH
Date: 2020.07.02
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(JITENDRA SINGH)
Addl. District Judge-06 (Central),
Tis Hazari Courts, Delhi

CS No. 11092/16
ICICI Bank Ltd. Vs. Avadh Vihari Sharma

02.07.2020

Present: Shri Manish Dewan, Id. Counsel for plaintiff (**presence secured through video conferencing**).

None for defendant who is already ex-parte.

Final ex-parte arguments heard through video conferencing.

Put up for judgment at **4:00 PM**.

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by **JITENDRA**
SINGH
A SINGH Date: 2020.07.02
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(Jitendra Singh)
ADJ-06, Central District
THC, Delhi/02.07.2020

At 4:00 PM

Present: None.

Vide separate judgment, **the suit is decreed and plaintiff is held entitled to recover amount of Rs.4,85,850/- alongwith prelite interest at the rate of 9% from 09.12.2014 to 22.02.2015 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. Plaintiff shall be also entitled to costs of the suit. Decree sheet be prepared accordingly.**

The plaintiff bank is at liberty to dispose of the vehicle in question i.e. car namely "MARUTI SWIFT DZIRE" bearing registration no. DL8CAJ1028.

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

JITENDR Digitally signed by
by **JITENDRA SINGH**
A SINGH Date: 2020.07.02
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(Jitendra Singh)
ADJ-06, Central District
THC, Delhi/02.07.2020