

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

SUIT NO.:- 60/2019

UNIQUE CASE ID NO.:- 892/2017

IN THE MATTER OF :-

ICICI Bank Ltd.

Registered Office At:

**Landmark, Race Course Circle,
Vadodara – 390 007.**

And Corporate Office At:

**ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai 400 051**

Having its Branch Office At:

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

....Plaintiff

VERSUS

Sonia

D/o Late Kul Bahadur

95-C, IInd Floor, DDA Flats,

Sector-26, Near Dada Mote Mandir,

Dwarka, Delhi-110077.

Also at:

Sonia
D/o Late Sh.Kul Bahadur
H.No. Village Lochhman Garhi,
Near Mata Mandir, Dehradun,
Uttrakhand – 248003.

Employed at:
Ministry of Labour and Employment
CR Section (DGE&T),
Ministry of Labour and Employment,
Shakti Bhawan, Rafi Marg,
Near INS Building,
New Delhi-110001.

....Defendant

SUIT FOR RECOVERY OF RS.5,33,365/- (RUPEES FIVE LAKHS THIRTY THREE THOUSAND THREE HUNDRED SIXTY FIVE ONLY)

Date of institution of the Suit	: 02/03/2017
Date on which Judgment was reserved	: 02/07/2020
Date of Judgment	: 20/07/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.5,33,365/- (Rupees Five Lakhs Thirty Three Thousand Three Hundred Sixty Five 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 aforesaid 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 and personal loans apart from other portfolios. Sh. Kapil Dev, who has been duly authorized by way of power of attorney, is competent to file, sign, verify, institute the present suit and follow-up the legal proceedings on behalf of the Bank.

- (b) The defendant had applied to the Plaintiff Bank for availing the Personal Loan. On the representations of defendant and on the basis of various documents submitted by the Defendant, the Plaintiff Bank had sanctioned a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) by way of personal loan to the Defendant at the rate of Interest as agreed with the Defendant. The Defendant had signed and executed the Credit Facility Application Form and other necessary documents on 23.12.2015. The Plaintiff Bank had granted and disbursed the Personal Loan of Rs.5,00,000/- (Rupees Five Lakhs Only) to the defendant under the Loan Account No. LPDEL00033910144 on execution of various necessary documents and completion of imperative formalities.
- (c) As per the terms and conditions of the Loan Account No. LPDEL00033910144, the Defendant had agreed and was under the legal liability/obligation to repay the said Loan Amount of Rs.5,00,000/- (Rupees Five Lakhs Only) in 48 (Forty Eight) equated monthly installments of Rs.14,093/- (Rupees Fourteen Thousand Ninety Three Only) each, as per repayment schedule. Inasmuch as the Statement of Account dated 17.12.2016 is concerned, the defendant has paid only 5 (Five) installments to the plaintiff bank and thereafter, she did not pay any installment amount

to the plaintiff bank towards the EMI or the interest. As per statement of account dated 17.12.2016, 7 (Seven) installments are overdue and payable by the defendant to the plaintiff bank.

- (d) It was specifically agreed between the Plaintiff Bank and the Defendant that in the event of default by the Defendant in the payment of Loan Installments, interest, cost etc., the Plaintiff Bank would be entitled to recall the Loan without Notice and the defendant shall be liable to repay the entire outstanding amount together with interests, cost and other charges. It was also specifically agreed that any Event of Default shall attract penal interest at the rate of 24% per annum and the Defendant shall be liable to pay the same to the Plaintiff Bank. The Plaintiff Bank sent the Loan Recall Notice dated 07.10.2016 calling upon the defendant to pay the entire outstanding dues till date, but despite the aforesaid Legal Recall Notice dated 07.10.2016, the Defendant did not pay and clear the outstanding dues of the Plaintiff Bank, as demanded in the aforesaid Legal Demand Notice. The Defendant has intentionally/deliberately neglected and failed to pay and clear outstanding dues despite the several reminders and requests from the Plaintiff Bank. After adjusting the entire payments made by the Defendant, a sum of Rs. Rs.5,33,365/- is due and payable as on 17.12.2016, as Total Outstanding Amount, by the Defendant to the Plaintiff Bank. As such, the Plaintiff Bank is left with no option but to institute the present suit to recover its legally recoverable dues from the Defendant.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the “Rashtriya Sahara” newspaper dated 12.08.2019, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 17.10.2019.

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. Photocopy of Power of Attorney is Ex.PW-1/1 (OSR) (5 pages).
2. Preliminary Credit Facility Application Form is Ex.PW-1/2 (4 pages).
3. Credit Facility Application Form alongwith terms and conditions of the loan is Ex.PW-1/3 (7 pages).
4. Copy of Loan Recall Notice dated 07.10.2016 is Ex.PW-1/4 (1 page) and photocopy of its postal receipt is marked as Mark-X.
5. Statement of Account alongwith Foreclosure Statement are Ex.PW-1/5 (Colly.) (6 pages).
6. Certificate under Section 65-B of the Indian Evidence Act, 1860 is Ex.PW-1/6 (2 pages) and
7. Certificate under Section 2A of the Bankers Books of Evidence Act, 1891 is Ex.PW-1/7 (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 5,33,365.97 was due as on 17/11/2016 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.4,58,253.40
Late payment penalty	– Rs.6,478.00
Cheque bouncing charges and other charges	– Rs.1,376.00
Interest for the month	– Rs.1,218.80
Prepayment charges @ 5.9% at O/S Principal	– Rs.26,349.57
Interest on pending installment	– Rs.39,690.20
Total	– Rs.5,33,365.97

The plaintiff in the present plaint has claimed a sum of Rs.1,376/- 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.1,376/- towards the cheque bouncing charges.

The plaintiff has claimed a sum of Rs.26,349.57 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.39,690.20 towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the

agreed fixed rate of interest at 15.70% 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. 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. 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(colly.). The plaintiff has been able to prove its case. Hence, plaintiff is entitled for the recovery of amount of Rs.4,65,950.20/- say Rs.4,65,950/- 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 18.11.2016 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(colly.).

Applying priori and posteriori reasoning, this Court is satisfied that plaintiff has been able to prove its 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.4,65,950/- is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 6% per annum from 18/11/2016 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.
- c. 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 20th day of July, 2020.**

**ARUN
SUKHIJA**
Digitally signed
by ARUN
SUKHIJA
Date: 2020.07.20
11:41:57 +05'30'
(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi

CS No. 60/19 (ID no.892/2017)
ICICI Bank Ltd.
Vs.
Sonia

20.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

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
(Arun Sukhija)
ADJ-07/Central/Tis Hazari Courts,
Delhi/20.07.2020

Digitally signed
by ARUN
SUKHIJA
Date: 2020.07.20
11:43:17 +05'30'