

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

SUIT NO.:- 269/2016

UNIQUE CASE ID NO.:- 620393/2016

IN THE MATTER OF :-

ICICI Bank Ltd.
Having its Registered Office
At Landmark, Race Course Circle,
Vadodara – 390 007.

And having its Branch Office at
2nd Floor, Videocon Tower,
Block-E1, Jhandewalan Extn.,
New Delhi.

...Plaintiff

VERSUS

OLD ADDRESS

- 1. Gurdeep**
S/o Sh. Nek Ram
R/o 8/8, Indra Vikas Colony,
Near NDPL Office & Govt. School,
Delhi-110009.
- 2. H. No.-8/8, Ground Floor,**
Near Mukherjee Nagar,
Delhi-110009, NDH- (N-1)
Delhi-110009.

NEW ADDRESS

Gurdeep
S/o Sh. Nek Ram
C/o Krishna Communication and Travel
Designation- Proprietor
A-217, Dhaka Colony,
Nr House No.1, Mukherjee Nagar,
Delhi-110009.

....Defendant

SUIT FOR RECOVERY OF RS.4,15,447.22/- (RUPEES FOUR LAKHS FIFTEEN THOUSAND FOUR HUNDRED FORTY SEVEN AND TWENTY TWO PAISE ONLY)

Date of institution of the Suit : 15/10/2016
Date on which Judgment was reserved : 25/06/2020
Date of Judgment : 30/06/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.4,15,447.22/- (Rupees Four Lakhs Fifteen Thousand Four Hundred Forty Seven and Twenty Two 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 is Banking Company within the meaning of Banking Regulation Act and is inter-alia engaged in the business of banking, financing and providing loan facilities to its customers under various schemes such as personal loan, auto loan etc. The plaintiff is having its Registered Office and Branch Office at the aforesaid addresses, within the Jurisdiction of this Court. Sh. Gaurav Bhamri is the Authorised

Representative of the Plaintiff and is well conversant with the facts of the case and he has been authorized by a Power of Attorney to sign, file, verify and affirm the pleadings and also to institute the present suit on behalf of the Plaintiff Bank.

- (b) In the month of January 2014, the defendant had approached the plaintiff bank and expressed his willingness to avail Credit Card facility from the plaintiff Bank. The plaintiff Bank had informed the defendant about all the terms and conditions governing the usage of the credit cards issued by the plaintiff bank. Thereafter, the defendant, out of his own free will and consent, decided to avail Credit Card facility from the plaintiff Bank. The documents related to were executed by the defendant on 23.01.2014. At the time of applying the aforesaid credit card, the plaintiff bank had inter alia agreed to abide by the terms and conditions governing the usage of the credit card and assured to make payments regularly and punctually to the bank as per the statements raised upon him for the use and utilization of the credit card. The defendant provided all documents to the plaintiff to show his bona-fide.
- (c) On such representations and assurances made by the defendant, the plaintiff bank, on the written request of the defendant, issued a credit card bearing No. 4375511787131007 in the name of defendant, which was duly accepted and received by the defendant, but contrary to the assurances and undertaking, the defendant failed and neglected to pay the outstanding amount to the plaintiff bank as per the credit card statements sent to the defendant by the plaintiff bank within the respective payment due dates and consequently, interest and other applicable charges were levied on the credit card of the complainant, as per procedure.

- (d) Despite sufficient time and opportunity, the defendant failed and neglected to clear the outstanding dues against his aforesaid credit card, which were payable on demand. The Plaintiff Bank tried its level best to recover the amount due under the aforesaid credit card issued to the defendant, but the defendant evaded paying the same. The defendant lastly paid an amount of Rs.2100/- on 24.04.2014 towards part-payment of his outstanding dues. As per Statement of Account as on 08.08.2016, an amount of Rs.415447.22/- was due and payable by the defendant to the plaintiff bank.
- (e) The Plaintiff Bank, looking to the indifferent attitude of the Defendant in not repaying the outstanding amount, was compelled to issue a Legal Notice of demand dated 17.08.2016 through its counsel calling upon the defendant to make the payment of the outstanding amount within 7 days of the receipt of the aforesaid Legal Notice. In spite of the receipt of the Legal Notice, the Defendant failed to make the payment.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the “ Rashtriya Sahara”, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 10.07.2019.

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. Photocopy of Power of Attorney of Sh. Gaurav Bhambri is Mark-X (4 pages).
3. The Credit Facility Application Form is Ex.PW-1/2 (4 pages).
4. Statement of Account dated 08.08.2016 Ex.PW-1/3 (Colly. – 10 pages).
5. Certificate under Section 65-B of the Indian Evidence Act Ex.PW-1/4.
6. The Legal notice dated 17.08.2016 is Ex.PW-1/5 (2 pages) and copy of postal receipt is marked as Mark-Y.

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.

In the present case, the plaintiff/PW-1 has proved on record the documents, as mentioned in his 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. However, it appears to the Court that in the credit card facility, the plaintiff has charged exaggerated and excessive amount of interest and other charges.

As per the plaintiff, last payment of Rs.2,100 /- was made by the defendant on 24.04.2014 in the aforesaid Credit Card bearing no. 4375511787131007,

however, as per statement of account (Exhibit PW-1/3), the Plaintiff has received an amount of Rs.100/- by way cash at Branch on 08/08/2014. It's unbelievable that person would to go to branch to pay a only paltry sum of Rs.100/- in cash against the alleged liability of Rs. 3,17,229.93 as on 08.07.2014. Even if, the said amount is not taken into consideration still the suit is within the prescribed period of Limitation. However, the same is taken into consideration as the evidence of PW-1 is un-rebutted and uncontroverted. The Statement of Account (Exhibit PW-1/3) further reveals that the last transaction which was made from the credit card was done on 27/05/2014 when an amount of Rs.5,645.00 was paid to Suman Enterprises, Delhi. Thereafter on 08/06/2014 the statement of account reflects a Debit entry of Rs.199/- towards joining fee, however, the same is not clear whether the same was done through credit card operation or it was debited by the Plaintiff towards their own joining fee. As per the statement account of 08/06/2014, the total debit amount was Rs.2,31,762.20, which was due and payable by the defendant. Thereafter, there was no transaction which was done by the defendant, except a credit entry of Rs.100/-, which was alleged to be paid in cash on 08/08/2014 by defendant, and the same is discussed herein-above. As discussed herein-above, the suit of the plaintiff is well within the prescribed period of limitation.

The amount of Rs.2,31,762.20 which was due and payable by the defendant as on 08.06.2014 was raised to Rs.4,15,447.22/- as on 08.01.2015 and the said amount was carried on and continued to be shown as on 08.08.2016. The perusal of statement of account reveals that within period of seven months the amount was raised from Rs.2,31,762.20 to Rs.4,15,447.22/- i.e. just near to double. The plaintiff cannot be allowed to act as a money lender and to charge such a hefty amount in any name from the defendant, even if, there was contract between the

plaintiff and defendant. The plaintiff can be allowed to charge reasonable interest, whether in the form of penal interest or the normal interest and the charging of unnecessary interest and other charges are totally contrary to the public policy and the same is also against the well settled principles, as postulated in Section 23 of the Indian Contract Act.

I have profit to refer the judgment of Hon'ble Division Bench of Hon'ble High Court of Delhi in the case of *Pt. Munshi Ram & Associates (P) Ltd. V. DDA, 2010 SCC Online Del 2444* that higher rates of interest, which are against public policy, can be struck-down by the Court by finding such rates of interest to be against the public policy. Any Contract, which is against the public policy, is void, as per Section 23 of the Indian Contract Act, 1872. The said Judgment was also relied upon by the Hon'ble Single Bench of the Hon'ble High Court in the case bearing *R.F.A. No.823 of 2004 titled as Shri Sanjay Mittal Versus Sunil Jain decided on 07.12.2018*. The Hon'ble Single Bench has granted 9% p.a. interest instead of 24% per annum i.e. 2% per month.

Considering the aforesaid ratio laid-down by Hon'ble High Court and the spirit of the law, the plaintiff is entitled to the simple interest @ of 12% per annum on the amount of Rs.2,31,762.20 p from 08.06.2014 till filing of the present case. The defendant is entitled to deduction of Rs.100/-, which was shown as credit entry on 08.08.2014, towards payment in cash by defendant to branch of bank, from the aforesaid amount.

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 pendent-lite

simple rate of interest @ 6% per annum and future rate of interest @ 9% per annum till its realization.

RELIEF

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

FINAL ORDER

- a. A decree of Rs.2,31,762.20 p from 08.06.2014 is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 12% per annum from 08.06.2014 till filing of the present case in the credit card account Credit Card bearing no. 4375511787131007. The defendant is entitled to deduction of Rs.100/-, which was shown as credit entry on 08.08.2014, towards payment in cash by defendant to bank, from the aforesaid amount. The plaintiff is also entitled and the defendant is liable to pay the pendent-lite simple interest @ 6% per annum 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 30th day of June, 2020.**

ARUN
SUKHIJA

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ARUN SUKHIJA
Date: 2020.06.30
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**(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi**

CS No. 269/16 (ID no. 620393/16)

ICICI Bank Ltd.

Vs.

Gurdeep

30.06.2020

The judgment is pronounced through cisco webex video conferencing.

Present: Shri Manish Dewan, 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.

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(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/30.06.2020