

IN THE COURT OF MS. DIVYA GUPTA,
CIVIL JUDGE-03,
CENTRAL DISTRICT, TIS HAZARI COURT, DELHI

New Case No. 2313/17

ICICI BANK LIMITED,
HAVING ITS REGISTERED OFFICE AT:-
LANDMARK, RACE COUSE CIRCLE,
VADODARA, GUJARAT-390007

AND HAVING ITS BRANCH OFFICE AT,
2ND FLOOR, VIDECON TOWER,
BLOCK-E, JHANDEWALAN EXTN.,
NEW DELHI-110055
THROUGH ITS AUTHORISED REPRESENTATIVE
MOHIT GROVER

..... PLAINTIFF

VERSUS

AMARJEET GAUR
S/O SHHARI OM GUR
R/O: A-67,
INDIRA PARK, EXTENSION,
EAST UTTAM NAGAR DELHI-110059

..... DEFENDANT

Date of Institution of the suit : 07.07.2017

Divya

Date of judgment passed : 13.07.2020

SUIT FOR RECOVERY OF RS. 2, 38,461.93/- (RUPEES TWO LAKH THIRTY EIGHT THOUSAND FOUR HUNDRED SIXTY ONE AND NINETY THREE PAISE ONLY).

JUDGMENT

1. The present suit is a suit for recovery of Rs. 2,38,461.93/- filed by the plaintiff bank against the defendant namely, Amarjeet Gaur. The suit has been filed by Sh. Mohit Grover, AR of the plaintiff bank who has been authorized by way of power of attorney executed in his favor by the plaintiff bank.

2. The factual matrix of the matter, as culled out from the bare perusal of the plaint is as follows:-

That the plaintiff bank is a body incorporated under the provisions of the Companies Act, 1956 and banking company under Banking Regulation Act, 1949 and is having having its registered office at E-Block, Videocon Tower, Jhandewalan Extension, New Delhi-110055. Defendant is a borrower to the loan agreement. In the month of January 2016, the defendant had approached the plaintiff and requested the plaintiff bank for grant of loan of Rs. 2,66 ,000/- against the security of vehicle namely 'SWIFT DEZIRE' and entered into a loan agreement under the loan cum hypothecation scheme of plaintiff bank. In view of above agreement, plaintiff bank after sanctioning a loan of Rs. 2,66,000/-, disbursed an

Divya

amount of Rs. 2,63,550/- to the defendant's Saving Bank Account in Axis Bank through RTGS bearing account no. 910010009386821 on 29.03.2016, after deducting an amount of Rs. 2,450/- towards processing fees, stamp duty and other charges as per the request of defendants. Defendant's loan number maintained by the plaintiff bank was SPDEL00034351529. On 18.01.2016, defendant executed following documents:

- a) Credit facility application form with terms and conditions that loan would be repaid in 36 equated monthly instalments of Rs. 9,220/-. If any instalment is delayed, defendant would pay a penal interest @ 24% p.a on outstanding instalment amount. That in case of default, plaintiff would be entitled to recall the loan.
- b) Hypothecation deed as per which vehicle financed to be hypothecated in name of plaintiff bank and bank would be entitled to take its possession. Vehicle bearing registration no. "DL-9C-AD-6323" was hypothecated in favor of plaintiff bank.
- c) Irrevocable power of attorney stating that plaintiff would be entitled to take possession and sell the vehicle in case of default.

Defendant in terms of loan agreement paid an amount of Rs. 73,760/-(08 instalments), however, defaulted in repayment of Rs. 18,440/-(02 equated monthly instalments) Rs. 2,791/- towards late payments and cheque bouncing charges, thus totaling to Rs. 21,231/-, besides future instalments Rs. 2, 39,720/- as on 16.02.2017. Thereafter, in view of default in payment, the plaintiff bank recalled loan facility via loan recall notice



dated 10.02.2017. Despite all this, defendant did not repay the dues. Thus, present suit has been filed by the plaintiff bank with a prayer seeking recovery of Rs. 2, 38,461.93/- from the defendant along with interest @14.99% per annum from 16.02.2017 till payment/realization. . Also with a prayer that pending hearing and final disposal, fit person be appointed as receiver in accordance with rules and he be allowed to take possession, sell the same and pay off the sale proceeds to plaintiff in satisfaction of their claim.

3. Notice of the suit was served upon the defendant on 11.08.2019 by way of publication in the newspaper 'Rashtriya Sahara, Delhi edition', but despite service, neither the defendant had appeared before the court nor was WS filed on behalf of defendant. Therefore, the defendant was proceeded Ex-parte by Ld. Predecessor vide order dt. 09.12.2019.

4. Matter was then listed for ex-parte evidence. The plaintiff bank got examined by way of AR Shri. Mohit Grover as PW-1 on 05.03.2020 by way of an affidavit of evidence which is marked as Ex. PW1/A wherein he reiterated the contents of the plaint. The same are not repeated here for the sake of brevity. He also exhibited the following documents: -

- i. Ex. PW1/1 i.e. Power of Attorney (OSR).
- ii. Ex. PW1/2 i.e. credit facility application form along with terms and conditions.



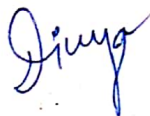
- iii. Ex. PW1/3 i.e. deed of hypothecation.
- iv. Ex. PW1/4 i.e. irrevocable power of attorney.
- v. Ex. PW1/5 i.e. copy of notice.
- vi. Ex. PW1/6 i.e. certified copy of statement of account.
- vii. Ex. PW1/7 i.e. certificate under Section 2-A of the Banker's Book.
- viii. Ex. PW1/8 i.e. certificate under Section 65-B Indian Evidence Act.
- ix. Mark 'X' i.e. postal receipt.

Thereafter, vide his separately recorded statement, Ex-parte PE was closed. The matter was then listed for Ex-parte final arguments.

5. Ex-parte final arguments advanced by the Ld. Counsel for the plaintiff were heard. Case filed perused.

6. Ex-parte final arguments advanced by the Ld. Counsel for the plaintiff were heard. Case filed perused.

7. In Ex-parte suits, where defendant has not filed WS or does not appear to contest the suit, the plaintiff as well as the court proceeds on the belief that there was no real opposition/defense to put forth. In such situation, where defendant has chosen to remain absent, there is no reason for this court to disbelieve plaintiff's version if the same sounds plausible.



8. Perusal of Ex. PW1/1 shows that Sh. Mohit Grover is an authorized representative of the plaintiff bank and has been empowered on behalf of plaintiff. Further perusal of evidence on record shows that the defendant had approached the plaintiff bank for grant of loan of Rs. 2,66,000/- against vehicle namely 'SWIFT DEZIRE' and entered into an loan agreement under loan cum hypothecation scheme of the plaintiff bank. Ex. PW1/2 consists of the credit facility application along with terms and conditions of the loan which clearly shows that the terms and conditions of the loan were such that the defendant had to repay the loan amount of Rs. 2,66,000/- in 36 EMIs of Rs. 9,220/-. Further, plaintiff has placed on record hypothecation deed Ex. PW1/3 which provides that the bank would be entitled to take over the possession of vehicle in the event of default by the defendant being the rightful owner of the same. Further, Ex. PW1/4 which consists of irrevocable power of attorney. It authorizes the plaintiff to take over the possession of the vehicle and sell the same to appropriate dues in event of default by the defendant.

9. Further, plaintiff bank has placed on record the certified copy of statement of account which is Ex. PW1/6 along with certificate under Section 2A of the Banker's Book of evidence Act, 1891 exhibited as Ex. PW1/7 and certificate under Section 65 B of Indian Evidence Act, 1872, Ex. PW1/8, showing that the principal, interest, penal interest and other dues which defendant owes in favor of plaintiff bank as on 16.02.2017



amounts to Rs. 2, 38,461.93/-. Thereafter, in view of default in repayment, the plaintiff bank recalled the loan facility by way of loan recall notice dt. 10.02.2017 (Ex. PW1/5). The service of notice is proved by a postal receipt which is marked "X".

On the other hand, despite the notice of the suit in hand, defendant has not appeared before the Court to either dispute the signatures upon the documents filed by the plaintiff or to dispute the plaintiff's case. As such, the entire evidence led by the plaintiff goes unrebutted and since defendant has chosen to remain absent, therefore, there is no reason for this court to disbelieve plaintiff's version. The plaintiff has claimed interest @ of 14.99% p.a. However, interest @ 14.99% seems to be exorbitant. Interest @ 12% p.a. from the date of filing of the present suit seems to be sufficient to meet the ends of justice.

RELIEF

10. Hence, in view of the aforesaid discussion, the suit in hand is hereby decreed ex-parte and plaintiff is hereby held entitled to recover an amount of Rs. 2,38,461.93/- (RUPEES TWO LAKH THIRTY EIGHT THOUSAND FOUR HUNDRED SIXTY ONE AND NINETY THREE PAISE) along with interest @ 12% p.a. (simple interest) from the date of institution of suit till its final realization, from the defendant.

Further, plaintiff is held entitled to sell the hypothecated vehicle namely 'SWIFT DEZIRE' bearing registration no. "DL-9C-AD-6323" in



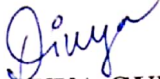
accordance with rules and adjust the proceeds of sale against the outstanding amount. In case sale proceeds exceed the decreed amount, the balance amount shall be paid to the defendant. However, if sale proceeds are less than the decreed amount, the plaintiff bank shall be entitled to recover the remaining amount from the defendant after adjusting the sale proceeds against the outstanding amount.

Cost of the suit shall also be awarded to the plaintiff.

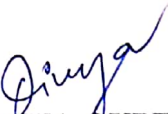
Decree sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

**Announced in the cisco webex
today on 13.07.2020**


(DIVYA GUPTA)
Civil Judge-03/Central
Tis Hazari Courts, Delhi

NOTE: There are total 8 pages in this judgment. Each page has been read and signed by me.


(DIVYA GUPTA)
Civil Judge-03/Central
Tis Hazari Courts, Delhi

CS NO. 2313/17

ICICI BANK LTD. VS. AMARJEET GUR

13.07.2020

At 04:00 PM

Presence: Sh. Puneet Bhalla, Ld. Counsel for plaintiff (via video conferencing in cisco webex).

Defendant is Exparte.

Arguments were heard on 26.06.2020. Ld. Counsel for plaintiff has filed written final submissions via email. Same is take on record.

Vide my separate judgement of even date, the suit of the plaintiff stands decreed with cost. Let decree sheet be prepared accordingly. *Perusal of record shows that*

File be consigned to Record Room after due compliance and necessary rules (announced on cisco webex).

Divya
(DIVYA GUPTA)

LD. CJ-03 (CENTRAL), THC

13.07.2020