

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

**SUIT NO. :- 303/2016**

**UNIQUE CASE ID NO. :- 619851/2016**

**IN THE MATTER OF :-**

**Delhi Khadi AND Village Industries Board  
5<sup>th</sup> Floor, Nigam Bhawan,  
Old Hindu College Building,  
Kashmere Gate,  
Delhi-110006.**

**....Plaintiff**

**VERSUS**

- 1. Sh. Sunil Kumar  
S/o Sh. Nakli Singh  
R/o E-160A, Gali No.8,  
Khajoori Khas,  
New Delhi-110094.**
  
- 2. Sh. Sudesh Kumar  
S/o Sh. Arvind Kumar  
R/o E-160/8, Khajoori Khas,  
New Delhi-110094.**

**....Defendants**

**SUIT FOR RECOVERY OF RS.4,14,759/- (RUPEES FOUR LAKHS FOURTEEN THOUSAND SEVEN HUNDRED FIFTY NINE ONLY)**

**Date of institution of the Suit : 07/09/2016**

**Date on which Judgment was reserved : 24/02/2020**

**Date of Judgment : 26/05/2020**

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

By way of present judgment, this court shall conscientiously adjudicate upon suit for recovery of Rs.4,14,759/- (Rupees Four Lakhs Fourteen Thousand Seven Hundred Fifty Nine 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:-

1. The plaintiff is an autonomous body created under a statute namely The Himachal Pradesh Khadi & Village Industries Board Act, 1966, as extended to the Union Territory of Delhi (Now Government of NCT of Delhi). The present suit has been filed through Sh. Surender Kumar, Development Officer, Authorized Representative of the plaintiff Board, who has been authorized by the Board to initiate all legal proceedings and actions by filing the suits for and on behalf of the Board vide Resolution dated 11.03.2016. The plaintiff is inter alia en-

gaged in the promotion of employment generation and for this purpose, it provides financial assistance for establishing industries/ units, as provided under the Scheme implemented by the Board.

2. The defendant no.1 had approached the plaintiff vide application dated 05.10.2012 and applied for a loan of Rs.3,00,000/- under Rajiv Gandhi Swavlamban Rojgar Yojna to establish a unit for manufacturing of Dona Pattal. As per rules of the Board, the plaintiff was required to provide one person working with a government department or body to secure the interests of the Board, thereby, the defendant no.1 proposed the name of defendant no.2.
3. The defendants have executed a loan agreement bearing a loan case no. F-7 / DKVIB/RGSRY/2456/Dona Pattal/2012-13 alongwith other requisite documents. The defendant no.2 stood guarantor for defendant no.1. Moreover, the defendant was granted the loan @ 10% interest in the event the loan amount is properly utilized by defendant no.1 and in case, there is any default on the part of defendant no.1, the loan amount/ funds shall be declared as mis-utilized and therefore, a penal rate of interest @ 8% shall be charged over and above the basic rate of interest.
4. Out of the sanctioned loan of Rs.2,70,000/-, the plaintiff was liable to contribute Rs.2,62,500/-, Rs.7,500/- was the total grant and Rs.30,000/- was to be contributed by defendant

no.1 out of his own sources for establishment of the unit of manufacturing of Dona Pattals as per terms of the Contract. The defendant no.1 executed a formal agreement as well as Deed of Hypothecation. The defendant no.1, at the time of grant of loan executed the Deed of Guarantee dated 07.11.2012 as well as affidavit towards the loan taken by defendant no.1. The said act of defendant no.2 makes his liability coterminous with defendant no.1 and therefore, equally liable to repay the entire loan amount to the plaintiff with interest in case of default on the part of defendant no.1.

6. Pursuant to the execution of the above-noted documents, the sum of Rs. 2,70,000/- was released to defendant no.1 on 26.11.2012 through RTGS. The defendant no.1 became completely dishonest and breached the terms of the Contract and failed to repay the loan to the plaintiff.
7. As per the terms of Contract, the defendant no.1 was liable to submit the proof for utilization of the Loan tendered to defendant no.1 within a period of three months. However, the defendant no.1 completely failed to provide the proof of utilization of the loan amount and therefore, was not entitled to the subsidized rate of interest. The plaintiff, in the normal course, on several occasions, demanded the copy of bill to prove utilization of funds vide Show Cause Notice dated 10.12.2012 and 22.10.2014.

8. The defendant no.1, while availing the loan facility, as per the terms of Agreement, had also tendered 20 post-dated cheques in discharge of the liability of defendant no.1 to the plaintiff.
9. Pursuant to the grant of loan, the defendant no.1 failed to tender the bill for utilization of the loan amount. Moreover, the defendant also left the site, at which the defendant no.1 was liable to establish his industry. The plaintiff had conducted an inquiry and found that defendant no.1 had changed the address and is now residing at the abovesaid address. Due to breach of the terms of Contract by defendant no.1, the plaintiff was constrained to declare the account of defendant no.1 as mis-utilized on 12.11.2014 and hence, defendant no.1 became jointly & severally liable to clear the entire dues of plaintiff.
10. The defendants have played fraud upon the plaintiff. The defendants have only tendered a total amount of Rs.27,320/- in total. The post-dated cheques tendered by defendant no.1 have also not been honored and till filing of the suit 13 cheques have already dishonored.
11. The plaintiff has served several demand notices upon defendant no.1 vide notices dated 31.03.2014, 09.06.2014, 08.09.2014, 22.10.2014, 26.11.2014, 03.12.2014, 09.03.2015, 18.03.2015, 22.05.2015, 03.09.2015, 26.10.2015, 27.11.2015, 23.02.2016. Moreover, the plaintiff has also served demand notice dated 22.10.2014,

26.11.2014, 18.03.2015, 03.09.2015, 23.02.2016 upon defendant no.2 and Communications dated 16.02.2015 and 23.02.2016 upon the employer of defendant no.2 for deduction of loan amount from the salary. However, the defendants did not file reply to the said notices or even clear their outstanding dues. All the notices have been sent to defendant no.1 at his last known address and the notices were returned with the remarks that defendant no.1 has left the said premises, however, the notice dated 23.02.2016 had been served through his son at the new address.

12. At present, the defendants are jointly and severally liable to pay Rs.2,70,000/- towards the principal amount, Rs.1,43,787/- towards the interest accrued and Rs.972/- towards penalty. As per terms of the Contract, the defendants are liable to pay pendente-lite and future interest @ 18% p.a. till the realization of the loan amount.

### **EX-PARTE PROCEEDINGS**

Summons for settlement of issues were issued to defendant no.1. Despite service of summons by way of publication in 'Rashtriya Sahara' newspaper dated 18/03/2019, the defendant no.1 has failed to appear in the court and on 22/07/2019, defendant no.1 was proceeded ex-parte.

Summons for settlement of issues were issued to defendant no.2 but despite service of summons, the defendant no.2 has

failed to appear in the Court and on 12/01/2017, defendant no.2 was proceeded ex-parte vide order dated 12/01/2017.

**EVIDENCE OF THE PLAINTIFF**

The plaintiff, in order to prove its case, has led plaintiff evidence and got examined Sh. Manveer Singh 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. Authorisation Letter dated 02.03.2017 issued in my favour is **Ex.P1 (OSR)**.
2. Loan application dated 04.10.2012 and Consent Letter dated 05.10.2012 are **Ex.P2 (8 pages) (OSR) and Ex.P3 (2 pages) (OSR)** respectively.
3. Sanction Letter dated 17.10.2012 is **Ex.P4 (OSR)**.
4. Affidavit dated 17.09.2012, Agreement Deed dated 19.11.2012, Acknowledgement/ Receipt dated Nil, Deed of Hypothecation dated 19.11.2012, Affidavit dated 07.11.2012 and Deed of Guarantee dated 07.11.2012 are **Ex.P5 (2 pages) (OSR), Ex.P6 (10 pages) (OSR), Ex.P7 (OSR), Ex.P8 (8 pages) (OSR), Ex.P9 (2 pages) (OSR) and P10 (4 pages) (OSR)**.
5. The plaintiff has served several demand notices dated 31.03.2014, 09.06.2014, 08.09.2014, 22.10.2014, 26.11.2014, 03.12.2014, 03.09.2014, 18.03.2015,

22.05.2015, 09.03.2015, 26.10.2015, 27.11.2015, 23.02.2016 on the defendants and the communications dated 16.02.2015 & 23.02.2016 upon the employer of defendant no.2 for deduction of the loan amount from his salary are **Ex.P-11 (Colly.) (23 pages) (OSR).**

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

**FINDINGS AND CONCLUSIONS OF THE COURT**

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. This Court is first of all required to see whether the suit of the Plaintiff is within the period of Limitation. As per Schedule of Repayment (Ex. P6) the first installment of Rs.6531/- was repayable on 15.2.2013 and last installment was repayable on 15-11-17. In case the borrower and in this case defendant No.1 fails to pay installments in terms of Schedule of Repayment then in that case the Plaintiff has two options firstly either wait till the last installment becomes due or the Plaintiff may recall the entire loan amount prior to the last date of repayment of installments. The Plaintiff has given the legal notice dated 18.3.2015 for recalling the entire loan amount which includes Prin-



cipal + Interest. The date of running the Limitation starts from 18.3.2015 when the Plaintiff has recalled the entire loan amount. The present suit was filed on 07.09.2016 and accordingly the suit was filed within the prescribed period of Limitation i.e. within three years from 18.3.2015.

Now, this Court will adjudicate the liability of defendants. As per case of the Plaintiff, the Plaintiff has disbursed the amount of Rs. 2,70,000/- to defendant no.1 on 26.11.2012 through RTGS and the defendants have only tendered a amount of Rs.27,320/- in total. The defendants have not filed the Written Statement to contest the suit of the plaintiff. The defendants have also not cross-examined PW-1 to contradict or disprove the case of the plaintiff. When the defendants have chosen not to appear and when the case of the plaintiff has gone un-challenged, un-controverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiff that the Plaintiff has disbursed the loan of Rs.2,70,000/- on 26.11.2012 and the defendants have paid only an amount of Rs.27,320/-. The perusal of the Schedule of Repayment reveals that the four first installments which were repayable by defendants to the Plaintiff were towards interest only. Even in fifth installments the Plaintiff was liable to pay interest of Rs.6563/-. As per the Plaintiff, the said Schedule of Repayment was on the basis of 10% interest charged from the defendants. The total amount of interest for the first four installments comes to Rs.26,252. As per the Plaintiff, the defen-

dants have paid an amount of Rs.27,320/- and the said entire amount can be adjusted towards the interest amount of first four installments and partly towards the interest as claimed for fifth installment. In view thereof, the Principal amount of Rs.2,70,000/- was still remains due and payable by the defendants but the interest amount, which is required to be awarded under this Judgment, shall be calculated after the date of first four installments. The date of payment of fourth installment was 15.11.2013 and fifth installment was due on 15.2.2014. As on 15.11.2013 i.e. till the fourth installment the total amount payable was Rs.26,252/-. The amount of Rs.27.320-Rs.26,252/- comes to Rs.1,068/-. The amount of interest of Rs.6563/- i.e. fifth installment was payable after three months i.e. about 90 days and if we divide Rs.6563/- with 90 days it comes to Rs.72.92 per day say Rs.73/- per day and the amount of Rs.1,068/- can be adjusted within a period 15 days from 15.11.2013 i.e. on 30.11.2013. Accordingly, after making entire adjustment of the amount of Rs.27,320/-, the Plaintiff is entitled to Rs.2,70,000/- as Principal amount, however, the Plaintiff is entitled to interest from 01.12.2013.

Now, this Court will adjudicate the entitlement of the Plaintiff towards rate of interest. As far as interest is concerned, the Ld. Counsel for Plaintiff has relied upon the following clauses of Agreement–Exhibit P-6 executed between Plaintiff and defendants, in order to justify the claim of interest of 18% per annum:-

*“..... (ii) That the Borrower shall utilize the said loan exclusively for the purpose for which it has been granted and positively within a period of three months from the date of release of the said loan amount. The Borrower shall also submit the documentary proof thereof to the Board of having new tools, equipments, furniture, machinery and raw material within the aforesaid prescribed period. The Borrower/s shall submit the annual progress report regularly to the Board till the refund of entire fund, given to him/ her. Failing to do so, the loan amount shall be treated as mis-utilized/unutilized and the Borrower shall be liable to refund the entire loan amount along with interest/ penal interest and expenditure, if any, incurred by this Board towards the sanction and release of the loan amount, immediately in single installment and can be recovered as arrears of land revenue.*

*...(vii) The said loan will carry simple interest @10% per annum as prescribed by the Board/ Govt. of NCT of Delhi, from to time which the Borrower has to pay along with the installments of repayment of Principal amount. If the installment of Principal and/or interest are not paid to their due dates, then the Borrower shall also be liable to pay penal interest @ 18% per annum as prescribed by Board/ Govt. of NCT of Delhi from time to time, for the belated period, till such payment of the installment due/unpaid installment on both the installment on both the principal and simple interest. This is without prejudice to the right/s of the Board, as may be available of them on account of the breach.*

*(viii) In case of mis-utilization or non-utilization of funds for the purpose other than sanctioned by the Board, the entire loan amount shall be recovered alongwith the penal interest @ 18% per annum i.e. from the date of release of cheque/funds.”*

There was Agreement between the parties to pay simple interest @ 10% per annum. However, the Plaintiff claimed 18% penal interest on three grounds and they are i) defendant No.1 had not produced and submitted any documents that he had utilized the said loan exclusively for the purpose for which it was granted to him within a period of three months from the date of release of the said loan amount, ii) defendant No.1 had failed to submit the documentary proof to the Board of having new tools, equipments, furniture, machinery and raw material within the period of three months and iii) defendant No.1 failed to submit the annual progress report regularly to the Board till the refund of entire fund in view of clause No.(ii) of the Agreement between the parties. The Ld. Counsel for Plaintiff has further argued that in view of the default, the loan amount was treated as mis-utilized/unutilized and on that account the defendants are liable to pay interest @ 18% per annum.

The 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 under 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.

The penal interest of 18% is not only unreasonable but the same is also excessive and oppressive and in terms of the aforesaid dictums of the Hon'ble High Court the same is against the public policy and void under Section 23 of the Indian Contract, 1872. In my considered view 2% penal simple interest over and above 10% simple interest is reasonable interest. Accordingly, this Court award 12% simple interest on the amount of Rs.2,70,000/- from 01.12.2013 (the date which was ascertained in view of the aforesaid findings) till filing of this Case.

Now, the question arises for awarding pendent-elite and future interest. 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 interest @ 6% per annum and future simple interest @ 9% per annum till realization on the said amount of Rs.2,70,000 /-.

Applying priori and posteriori reasoning, this court held that plaintiff has been able to prove its case against the defendant.

**RELIEF**

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

**FINAL ORDER**

- (a) a decree of Rs.2,70,000/- is passed in favour of the plaintiff and against the defendants jointly and severally alongwith 12% simple interest from 01.12.2013 till filing of the case. The plaintiff is also entitled to simple pendent-lite interest @ 6% per annum and future simple interest @ 9% per annum on the amount of Rs.2,70,000 /- till realization, thereof, from the defendants jointly and severally.
- (b) 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 26<sup>th</sup> day of May, 2020.**

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