

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

SUIT NO.:- 197/2019

UNIQUE CASE ID NO.:- 1157/2018

IN THE MATTER OF :-

ICICI Bank Ltd.

Having its registered Office At:

**Near Chakli Circle, Old Padra Road,
Vadodara, Gujarat – 390007.**

And having its Branch Office At:

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

**Through its Authorized Representative
Sh. Rattan Jha, Age 32**

....Plaintiff

VERSUS

Dinesh Kumar Jain

**S/o. Sh. Kishan Chand Jain,
D-162, Prashant Vihar,
Rohini, Sector-14,
Delhi 110085.**

....Defendant

**SUIT FOR RECOVERY OF RS.5,81,674/- (RUPEES FIVE LAKHS
EIGHTY ONE THOUSAND SIX HUNDRED SEVENTY FOUR ONLY)**

Date of institution of the Suit : 31.03.2018

Date on which Judgment was reserved : 21.07.2020

Date of Judgment : 29.07.2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.5,81,674/- (Rupees Five Lakhs Eighty One Thousand Six Hundred Seventy Four 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. Rattan Jha, 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.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand 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 06.06.2014. The Plaintiff Bank had granted and disbursed the Personal Loan of Rs. 12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand Only) to the

defendant under the Loan Account No. LPDEL00028277585 on execution of various necessary documents and completion of imperative formalities.

- (c) As per the terms and conditions of the Loan Account No. LPDEL00028277585, the Defendant had agreed and was under the legal liability/obligation to repay the said Loan Amount of Rs. 12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand Only) in 60 (Sixty) equated monthly installments of Rs.28,924/- (Rupees Twenty Eight Thousand Nine Hundred Twenty Four Only) each, as per repayment schedule. The defendant did not adhere to the terms and conditions of the loan agreement and stopped making payment to the plaintiff bank towards the EMI or the interest. As per statement of account dated 03.03.2018, an amount of Rs. 5,81,674/- is 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. The Plaintiff Bank sent the Loan Recall Notice dated 16.01.2018 calling upon the defendant to pay the entire outstanding dues till date, but despite the aforesaid Legal Recall Notice dated 16.01.2018, 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.

EX-PARTE PROCEEDINGS

The defendant was served by way of publication in the “Rashtriya Sahara” newspaper, but despite service, the defendant has not appeared and proceeded ex-parte vide Order dated 23.10.2019.

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. Photocopy of the Power of Attorney of previous AR Sh. Rattan Jha Mark X (5 pages)
3. Preliminary Credit Facility Application Form is Ex.PW-1/2 (4 pages).
4. Credit Facility Application Form alongwith terms and conditions of the loan is Ex.PW-1/3 (4 pages).
5. The Disbursement memo is Ex.PW1/4 (2 pages).
6. Certified copy of Statement of Account dated 03.03.2018 is Ex.PW1/5 (Colly) (8 pages).
7. Certificate under Section 65-B of the Indian Evidence Act, 1860 is Ex.PW-1/6 (2 pages).
8. Certificate under Section 2A of the Bankers Books of Evidence Act, 1891 is Ex.PW-1/7 (1 page).
9. Copy of Loan Recall Notice dated 16.01.2018 is Ex.PW-1/8 (1 page) and photocopy of its 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 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 6,13,279.48 was due as on 03.03.2018 against the defendant. The break-up of the said amount is as under:-

Principal Outstanding	– Rs.5,35,686/-
Late payment penalty	– Rs.12,996/-
Cheque bouncing charges and other charges	– Rs.4,720/-
Interest for the month	– Rs.4.483/-
Prepayment charges @ 5.9% at O/S Principal	–Rs.31,605.48/-
Interest on pending installment	– Rs.23,789/-
Total	– Rs. 6,13,279.48/-

The plaintiff, in the present plaint, has claimed a sum of Rs.4,720/- as cheque bouncing charges, but as per the Credit Facility Application Form Ex.PW-1/3, Mode of Payment/repayment of installments was provided, however, none of option was opted. The mode of payment/repayment by post-dated cheques was also provided but the same was also not opted. Hence, the plaintiff is not entitled to claim Rs.4,720/- towards the cheque bouncing charges.

The plaintiff has shown a sum of Rs.31,605.48/- towards pre-payment charges at the outstanding principal. The Plaintiff has not claimed the said amount in the suit. Otherwise also, 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 also, plaintiff cannot be held to be entitled to pre-payment charges.

The plaintiff has also claimed amount of Rs.23,789/- towards interest on the pending installment. Credit facility application form Ex.PW-1/3 reflects the agreed fixed rate of interest at 13.75% 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.5,53,165/- 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 04.03.2018 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. 5,53,165/-is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 6% per annum from 04.03.2018 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.

Decree-sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

**Announced through video conferencing on
this 29th day of July, 2020.**

**ARUN
SUKHIJA** Digitally signed
by ARUN
SUKHIJA
Date: 2020.07.29
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(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi

CS No. 197/19 (ID No. 1157/18)

ICICI Bank Ltd.

V.

Dinesh Kumar Jain

29.07.2020

The Judgment has been 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.

ARUN

SUKHIJA

Digitally signed

by ARUN

SUKHIJA

Date: 2020.07.29

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(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,

Delhi/29.07.2020