

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: September 23, 2014

Judgment Pronounced on: October 10, 2014

+ **RSA 216/2013 & C.M.APPLN.14634/13**

KARISHMA RAJ & ANR. Appellants

Through: Mr.Biswajit and Mr. Shubhankar
Sharma, Advocates

versus

STATE BANK OF INDIA Respondent

Through: Mr. Khushall Mohal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

% **J U D G M E N T**

1. In this second appeal, appellants assail a decree of ₹2,05,020.19/- suffered by them in respect of an educational loan of ₹4 lacs taken by appellant No.1 way back in August, 2005. Trial court vide its judgment of 25th January, 2012 had also decreed counter-claim of appellants for a sum of ₹33,938/-. Enhancement of counter-claim decree to ₹5,95,000/- with interest @ 11% per annum and litigation cost of ₹2 lacs is also sought by appellants in this appeal. Appellants have also sought a direction to respondent-Bank to erase CIBIL Report from the records. First appellate court vide impugned judgment of 19th February, 2013 has reaffirmed trial court's judgment of 25th January, 2012 decreeing the respondent's suit and the counter-claim of appellants as referred to hereinabove.

2. The factual basis of this case, as already noticed in the impugned judgment, is as under: -

“Brief facts of the case are that on 16.08.2005, the appellants approached the bank for grant of an educational loan for appellant No.1, which was duly sanctioned for Rs.4 lakhs on 27.08.2005. The appellant however availed Rs.2.08 lakhs only. All pre-conditions for availing the loan were accepted by the appellants by executing relevant documents. The EMIs towards the repayment were required to commence after the moratorium period upon completion of the course or upon getting a job, whichever was earlier. Till then the appellants were required to pay only the interest instalments on the amount availed. The appellants’ grievance is that the bank, on account of its own deficiency in services, stopped debiting the monthly interest from their account between October 2006 to September 2008 despite standing instructions and declared the appellants as defaulters with CIBIL. Aggrieved by being enlisted as defaulter, appellant no.2 approached the respondent bank and informed them that he had sufficient balance maintained in the savings account. Their action of notifying CIBIL was therefore unwarranted. The appellants were forced to deposit Rs.73,000/- with the plaintiff bank despite sufficient balance available. The respondent bank realised its mistake and attributed the stoppage of the pre-EMI interest to a computer generated fault while switching over from the

Bank Master to the Core Banking System. Admitting their mistake, the bank credited Rs.3,405/- towards loss of interest to the appellant's account, thought it took them more than a year to do so. The details of the calculation were not provided to the appellants. Dissatisfied, the appellants asked for the dispute to be referred for a Dispute Resolution, but their prayers went unheard. The appellant had also approached the Bank to recalculate the EMI as they had availed only 2.08 Lakhs of the Rs.4 lakhs sanctioned. The plaintiff bank, however unjustifiably issued a legal notice and recalled the educational loan. Without due consideration of the appellants' submission, the bank proceeded to institute the suit for recovery against them.

In their written statement as well as in the counter-claim, the appellants prayed for declaration that the recall of the loan amount was bad in law and sought damages on the following counts: -

<i>(i) Damages for wrongful termination of contract.</i>	<i>Rs.45,000/-</i>
<i>(ii) Damages for defamation/loss of reputation.</i>	<i>Rs.1,50,000/-</i>
<i>(iii) Damages for emotional and mental and physical pain and agony.</i>	<i>Rs.1,00,000/-</i>
<i>Total amount</i>	<i>Rs.2.95.000/-</i>

3. On behalf of respondent-plaintiff Bank, its then Manager (Loans)-*Mr. Subodh Verma (PW-1)* has deposed and appellants-defendants have deposed to resist the suit of recovery filed by respondent-Bank and to support their counter-claim. The crux of deposition of the witnesses as noticed by trial court in its judgment of 25th January, 2012 is as under:-

“During cross-examination, PW-1, Sh. Subodh Verma admitted that the defendants had submitted a FDR in August, 2005; that the defendants had opened a savings account in the PBB branch of the plaintiff bank for the purpose of servicing their loan account; that Mrs. Teresa was an employee of the plaintiff bank, when the savings account was opened; that for an education loan upto Rs.4 lacs, the principal debtor was not required to produce a guarantor; that the EMI of Rs.8598/- was fixed on the amount of Rs. 4 lacs; that the defendants had regularly serviced the interest component of the loan till September 2006; that on 01.10.2008, the savings account of the defendants had more than Rs.71,000/-; that during September, 2006 to October, 2008, there was sufficient balance in the saving account of the defendant for service of the interest component of the education loan; that the standing instructions of the defendants were not carried out between September, 2006 to October, 2008; that the plaintiff bank had never explained in writing the calculation on the basis of which, a credit of Rs.3,405/- was granted to the defendants; that the loan account of the defendants was

notified/reported to CIBIL in March, 2008 and that the defendants had written various letters to the plaintiff bank during 12 August, 2009 to 5 December, 2009. PW-1, Sh. Subodh Verma denied that the plaintiff bank had forced the defendants to procure FDRs of Rs.6 lacs and to open a saving account in its PBB Branch; that the plaintiff bank had not made oral communications to the defendants through telephone and personal visits of its employees prior to October, 2008; that as on 01.10.2008, the interest component of the loan was Rs.44,000/-; that the reporting of a loan account to CIBIL, bars the account holder from obtaining a loan from any other bank/financial institution; that there was any deficiency in the service rendered by the plaintiff bank on account of delay in rectifying the loan account; that the credit of Rs.3,405/- granted to the defendants was based on wrong calculations and that the plaintiff bank had charged interest in excess of the rate mentioned in the loan agreement dated 29.08.2005, Ex.P-3; that the plaintiff bank had defamed the defendants by wrongly declaring their loan account as an NPA and notifying it to CIBIL and that the plaintiff bank had promised the defendant that it would take action against its erring employees. During cross examination, PW-1, Sh.Subodh Verma explained that the standing instructions of the defendants were not carried out due to shifting of the operations of the plaintiff bank from "Bank Master" to

“Core Banking System” and that the plaintiff bank had rectified its error by granting a credit of Rs.3,405/- to the defendants in October, 2009. After cross-examination of PW-1, Sh.Subodh Verma, the plaintiff evidence was closed.

“During cross examination, DW-1 Ms. Karishma Raj admitted that she had applied for a loan of Rs.4 lacs; that the rough estimate of the total cost of her education in U.K. was Rs.15 lacs; that the FDRs were transferred in the plaintiff bank prior to the sanction of the loan in 2005; that the plaintiff bank had granted the deferment as requested in the letter dated 29.08.2006, Ex P7; that till the plaintiff bank had accepted the request made in the letter dated 29.08.2006, Ex P7, she had no grudge against the plaintiff bank; that she was not maintaining a regular check on her savings account because she had kept sufficient balance for servicing of the loan amount and that she had not written any communication to the plaintiff bank, informing that she had got a job at the Ministry of Science and Technology, Government of India after completion of the course at the University of Greenwich, UK. DW1 Ms. Karishma Raj denied the suggestions that the plaintiff bank had not forced her to transfer FDRs worth Rs.6 lacs from Bank of India, Janpath; that the plaintiff bank had not violated RBI Guidelines while processing and handling her loan application; that the officials of the plaintiff bank had not

humiliated her, during her visits to the bank and that the conduct of the plaintiff bank had not caused a loss of Rs. 2 lacs to her. Upon being questioned, regarding the harassment caused to her, DW1 Ms. Karishma Raj initially stated that she had suffered stress because of the regular calls she was receiving from her father regarding appearance in the present case and because she was drafting the replication, that was to be filed in the Court. Later, DW1 Ms. Karishma Raj stated that the stress was not on account of the calls made by her father, but on account of the fact that this Court was regularly insisting on filing of the replication. Upon being asked a Court question regarding any complaint made by the defendants regarding forceful transfer of FDRs, DW1 Ms. Karishma Raj stated, "Looking into our interest and on account of paucity of time, I did not write any complaint against the plaintiff bank."

4. The finding returned by the First Appellate Court in the impugned judgment is as under: -

"I have appraised the impugned judgment and decree passed in the case. I concur with the decision of the Ld. Trial Court. There is no evidence to substantiate the claim for damages for defamation or loss of reputation nor has any malafide been proved. In respect of the claim for Rs.1 lakh on account of emotional, mental and physical pain and being savings account and sign blank standard forms

documents, deposit money, receiving letters of default, not getting replies to their various representations and not withdrawing the report given to CIBIL, taking over a period of one year in rectifying their mistake and crediting only Rs.3,405/- in their loan account, Special Damages were not proved.

The plaintiff bank had expressed its regret over a bonafide mistake on account of the technical glitch for which the due interest of Rs.3405/- was credited in the appellant's account. The Ld. Trial court's decision to award ordinary damages cannot be faulted. The quantum for awarding ordinary damages is that discretion of the court and there is no reason for the appellate court to interfere with it. It does not lie in the mouth of the appellant to term it as inadequate or low in the absence of leading evidence to justify a higher amount. Further, as the recall of the loan amount was held to be justified, the rejection of the appellant's prayer for damages of Rs.45,000/- on account of wrongful termination of the contract was in order. The trial court also declared that the notification to CIBIL in March 2008 by the plaintiff bank was bad and illegal.

I do not find any infirmity in the impugned judgment and decree or in the order of 12.10.2011. The appellant herein has been granted ordinary damages for facing unwarranted harassment arising out of a bonafide mistake, but nonetheless a deficiency in the services of the plaintiff

bank. Ordinary damages have been granted by the Ld. Trial Court and it is not for the appellate court to interfere with the same. Special damages have to be proved and no evidence in this respect has been led by the appellants. With respect to the loss of the reputation and defamation, there is no evidence on record to justify their claim. Their grievance that their applications which were filed after leading evidence were dismissed vide order dated 12.10.2011 by the Ld. Trial Court does not merit any consideration as these were filed after the trial stood concluded.”

5. To assail the afore-noted findings, learned counsel for appellants had contended that once the fault of the respondent-bank is proved, then appellants are automatically entitled to a declaration that premature termination of educational loan was illegal which negates the decree passed against appellants. It was vehemently contended by learned counsel for appellants that substantial question of law raised in this appeal is that the findings returned by the courts below of there being no obligation to respond to communications/letters from borrowers by Nationalized Bank runs counter to the RBI guidelines requiring nationalized banks to reply/redress to the grievances of borrowers within eight weeks. Reliance is placed upon decision in *Kulwant Kaur and Ors. v. Gurdial Singh Mann (dead) by LRs. And Ors.* (2001) 4 SCC 262 to contend that perversity of the findings returned is itself is substantial question of law and in the instant case, the findings returned by the courts below are perverse on the face of it and so, impugned judgment as

well as trial court's judgment deserves to be set aside and suit of respondent-Bank ought to be dismissed while decreeing the counter-claim of appellants as prayed for.

6. To support the findings returned by the courts below, learned counsel for respondent had referred to the evidence on record and had submitted that merely because all the correspondences of appellants were not replied to, would not render the findings returned perverse and the legality of finding of fact cannot be termed to be a question of law and so, there is no substance in this appeal and it ought to be dismissed with costs.

7. After having heard both the sides and on scrutiny of the impugned judgment, trial court judgment and the evidence on record, I find that the statement of account (*Ex. PW-1/A*) remains unchallenged thereby rendering the concurrent findings of appellants liable to pay the decretal amount, unassailable. Apart from this, the documents (*Ex.P-1 to P-8*) relied upon by respondent-plaintiff Bank to claim the suit amount contains unqualified admissions made by appellants which binds them to pay the decretal amount.

8. In the considered opinion of this Court, so far as the question of paying EMIs with stipulated rate of interest is concerned, there is no perversity as the findings in respect of the decretal amount are well supported by the evidence on record. Consequentially, challenge to the impugned decree of ₹2,05,020.19/- against appellants fails.

9. As regards the inadequacy of the counter-claim amount granted is concerned, this Court finds that the findings returned by the courts below

of there being no obligation on the part of respondent-Bank to reply to the letters of appellant dated 1st October, 2008 and 11th November, 2008 (Ex.D-2 & D-3) and letters of 31st August, 2009, 10th September, 2009 and 23rd October, 2009 (Ex.D-15, D-17 & D-22) runs counter to the RBI guidelines which mandate that Nationalized Banks like respondent-plaintiff Bank has to reply/redress the grievances of the borrowers like appellants within eight weeks. Clearly the findings returned by the court below of there being no requirement to reply to the letters of the borrowers is patently perverse and it is hereby set aside. The courts below have found that there was no lack of good faith or no malafides on the part of the respondent Bank but this by itself does not justify grant of meagre damages. The negligence on the part of respondent-Bank stands already admitted by their witness (PW-1). It is pertinent to note that respondent's witness *Sh. Subodh Verma (PW-1)* has candidly admitted in his evidence that at the relevant time there was sufficient balance in the savings account of appellants for service of interest components of the education loan and prior to October, 2008, respondent-Bank had not put appellants to any kind of notice.

10. It has also come in evidence that out of loan amount of ₹4 lacs, appellant No.1 had availed of loan of ₹2,08,000/- only which required re-scheduling of EMIs and respondent-Bank had not re-scheduled the EMIs and had caused avoidable distress and suffering to appellants. Infact, it has come in evidence of appellant No.1 that due to this unwarranted litigation initiated by respondent-Bank, she had to take many leaves and her work suffered and she had eventually lost a very good job. Aforesaid deposition of appellant No.1 does not stand refuted

in cross-examination. Infact, appellant No.1 had categorically asserted in her evidence that respondent-Bank had not followed RBI mandated Fair Practices Code with regard to lender's liability.

11. In the face of the afore-referred evidence, the finding returned by the courts below that the claim for damages remains unsubstantiated is not only erroneous but perverse. Such a view is being taken as the categoric evidence of appellant No.2 suffering acute hypertension on account of stress stands substantiated from the medical record (Ex.DW-2/1) and there is no worthwhile cross-examination of appellant No.2 on this aspect. The damages of ₹45,000/- claimed by appellants on account of prematurely recalling the educational loan and not re-scheduling the EMIs despite repeated letters written by appellants, appears to be quite reasonable and are hence granted, which are in addition to the general damages of ₹30,000/- already granted to appellants on account of distress and suffering of appellants due to negligence of the respondent-Bank in not deducting the interest on the loan amount while switching over to Core Banking system in September, 2006.

12. So far as special damages on account of loss of reputation and defamation claimed by appellants are concerned, this Court finds that the evidence to claim special damages is lacking. Thus, appellants are entitled to damages of ₹45,000/- with interest at the same rate on which general damages have been granted by the courts below. Consequently, the counter-claim of appellants is decreed for a sum of ₹75,000/- with interest at the rate of 9% per annum from 1st October, 2008 till realisation and with costs which are quantified at ₹50,000/-.

13. To the aforesaid extent, this appeal is allowed with costs.

14. The appeal and the pending application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 10, 2014

s