

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

+ **RFA No. 831/2017**

% **6th April, 2018**

CARE FINANCE LIMITED Appellant

Through: Mr. Shiv Chopra, Adv.

versus

CENTRAL BANK OF INDIA Respondent

Through: Mr. O.P. Gaggar, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 22.11.2016 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.6,95,342/- along with interest at 18% per annum.

2. The facts of the case are that the appellant/plaintiff had availed of credit facilities from the respondent/defendant bank and to secure the credit facility granted had created an equitable mortgage of

its property in favour of the respondent/defendant. On account of financial crisis, appellant/plaintiff could not meet the financial discipline resulting in the appellant/plaintiff becoming liable to the respondent/defendant for a sum of Rs.1,49,76,216/-. The respondent/defendant filed OA bearing No.19/2002 before the Debt Recovery Tribunal (DRT) for the sum which had then become Rs.1,70,76,216/-. The respondent/defendant also availed of its remedy under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and took possession of mortgaged property at E-05, Sitapura Industrial Area, Tonk Road, Jaipur and thereafter put the property on sale under Section 13(4) of the SARFAESI Act.

3. At this stage, the parties appeared before the Lok Adalat for settlement of the disputes. On 12.9.2010, a settlement was entered into between the parties before the Lok Adalat whereby the appellant/plaintiff undertook to pay a sum of Rs.2.2 crores to the respondent/defendant in full and final settlement within one month of the settlement, and which amount was paid. In terms of the settlement, DRT ordered the respondent/defendant to handover

possession of the mortgaged property to the appellant/plaintiff, but the appellant/plaintiff was denied possession inasmuch as the respondent/defendant first asked the appellant/plaintiff to pay a further sum of Rs.6,95,342/- incurred as per the respondent/defendant. Finding no option, and since appellant/plaintiff had to resume its business, hence the appellant/plaintiff paid an amount of Rs.6,95,342/- under a protest, and thereafter filed the subject suit for recovery of this amount paid to respondent/defendant.

4. Respondent/defendant contested the suit. It was pleaded that in addition to the settlement amount recorded before the Lok Adalat in terms of the order and statements of the parties on 12.9.2010, the appellant/defendant had also agreed to pay the differential amount of balance in future and also actual costs and expenses incurred by the bank for the recovery proceedings. It was not disputed by the respondent/defendant that parties had entered into a settlement before the Lok Adalat and the respondent/defendant has in fact received a sum of Rs.2.2. crores.

5. After pleadings were complete, the trial court framed issues and parties led evidence, and which aspects are recorded in

paras 6 and 7 of the impugned judgment and these paras read as under:-

- “6. From pleadings of parties following issues are framed:-
- Whether the defendant had illegally recovered Rs.6,95,342/- from the plaintiff?
 - Whether the plaintiff is entitled to recovery the same with interest? If so, at what rate?
 - Relief
7. To prove its case, plaintiff examined Sh.Kishan Behari Gupta as PW1. He exhibited following documents:-

Sl. No.	No. of Exhibits	Details of Documents
1.	Ex.PW1/1	Copy of Board Resolution dated 31.03.2014
2.	Mark-A(Colly)	Photocopy of letter of Delhi Legal Services Authority bearing reference NO.CBI/LA-DRT/Sept/2010/11 with annexures (five pages in total)
3.	Mark-B	Photocopy of certified copy of judgment dated 22.11.2010 in OA No.179/2002
4.	Mark-C (Colly)	Copies of letter dated 18.10.2010, letter dated 20.07.2011, hand written letter dated 09.10.2010, letter dated 12.10.2010
5.	Mark-D	Copy of letter dated 20.07.2011

6. Trial court by the impugned judgment has dismissed the suit on the ground that appellant/plaintiff led no evidence to prove its case.

7. In my opinion, the judgment of the trial court is clearly illegal because it is an admitted fact that before the Lok Adalat parties had settled the disputes by the respondent/defendant receiving a sum of Rs.2.2 crores in full and final settlement, and which amount was

received by the respondent/defendant within one month's time granted under the settlement. The relevant order of the Lok Adalat and the statements of the appellant/plaintiff and the respondent/defendant before the Lok Adalat are reproduced as under:-

“Statement of Defendant

On S.A.

I admit that I have borrowed loan of Rs.1.43 Crores from the plaintiff Bank vide loan A/c. _____ on 12.07.2002 from Central Bank of India, Branch Parliament Street.

I agree to repay the outstanding/settled amount of Rs.2.20. Crore within a one month from today. If I failed to make payment of settled amount within one month then I will pay interest as BPL Rate @ 12.50% at present.

I agree that the case be disposed off finally in terms of the settlement reached today.

Sd/
Krishan Bihari
Director
RO & AC”

Sd/
Presiding Judge
JUDGE, LOK ADALAT

“Statement of the Plaintiff

We, Mr. R.K.Dubey and Mr. B.N.S. Ratnakar, have appeared on behalf of Central Bank of India and duly authorized to make this statement on behalf of the Bank. The Bank through us agrees to the terms of settlement whereby the defendant has undertaken to pay Rs.2.20 Crores against Loan No. _____ Central Bank of India Branch Parliament Street, in the manner stated by him.

The Bank is withdrawing the original application as settled/a decree may be passed accordingly in this suit.

Sd/-
(B.N.S.RATNAKAR)
Gen.Manager
RO & AC

Sd/-
(R.K.DUBEY)
Executive Director

Sd/-
Presiding Judge
JUDGE, LOK ADALAT
Sd/-
Associate Member”

“ORDER

The parties shall be bound by their own statements. The matter stands settled and disposed off and on award of Rs.2.20. Crores (Rs. Two Crores and Twenty Lacs only) is passed.

The suit is disposed off in terms of settlement. The plaintiff is entitled to adjustment of to Rs.75 lacs which according to him he has deposited in No lien account.

The order be sent to the concerned Tribunal to be consigned in accordance with law.

Sd/-
Associate Member

Sd/-
Presiding Judge
JUDGE, LOK ADALAT”

8. In my opinion, the aforesaid statements of the parties and the order passed by the Lok Adalat are in the nature of a written contract between the parties and therefore the provisions of Sections 91 and 92 of the Indian Evidence Act, 1872 will apply. As per Sections 91 and 92 of the Indian Evidence Act, once an agreement is contained in a written document, then no other terms can be added or subtracted from the written agreement between the parties. In the present case, the claim of the respondent/defendant for additional charges towards costs and expenses or for some further amount is hit by the principles contained in Sections 91 and 92 of the Indian Evidence Act and also by the principle of estoppel. In fact in my opinion the respondent/defendant bank is acting maliciously and dishonestly to harass common citizens of this country. This Court fails to understand that once there is an agreement for a full and final

settlement of the amounts of Rs.2.2 crores, and which is paid within the stipulated period of one month, then how can a nationalized bank raise frivolous defences for contesting the subject suit.

9. In view of the aforesaid discussion, the present appeal is allowed. The impugned judgment of the trial court dated 22.11.2016 is set aside. Suit of the appellant/plaintiff is decreed against the respondent/defendant for a sum of Rs.6,95,342/- along with *pendente lite* and future interest till realization at 14% per annum simple. Appellant/plaintiff is also awarded costs of the suit for conducting of the litigation in the trial court as also costs of the present appeal, and for which purpose appellant/plaintiff will file an affidavit supported by documents of the legal costs which have been incurred by the appellant/plaintiff in this litigation till date and on such affidavit being filed within two weeks from today, costs stated therein will be paid by the respondent/defendant to the appellant/plaintiff within a period of two weeks thereafter.

10. Appeal is allowed and disposed of with the aforesaid observations.

APRIL 06, 2018 ak

VALMIKI J. MEHTA, J