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

\+ CS(OS) 1018/2011 & IA No.844/2013 (u/O XXXVII R-3(4) CPC)

HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED ..... Plaintiff

Through: Mr. Amit Sibal, Sr. Adv. with Mr. Ajay Brahme & Mr. A. Biswas, Advs.

Versus

ATLANTIS MULTIPLEX PRIVATE LTD & ANR..... Defendants

Through: Mr. Samrat Nigam & Mr. Abhimanyu Walia, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **12.03.2018**

1. The plaintiff has instituted the present suit for recovery of Rs.42,15,13,994/-, with *pendente lite* and future interest at 24% per annum from 15th February, 2011 till realization, jointly and severally from the two defendants i.e. Atlantis Multiplex Pvt. Ltd. and Mr. Ajeya Singh.

2. The suit was originally filed as a summary suit under Order XXXVII of the CPC but vide order dated 28th January, 2016 both the defendants were granted leave to defend and pleadings completed and on 11th November, 2016, the following issues were framed in the suit:

"(1) Whether the suit is properly instituted? OPD

(2) Whether the suit is maintainable in view of Section 18 read with Section 17 of the Reocvery of Debts to Banks and Financial Institutions Act, 1993? OPD

(3) Whether the plaintiff would be entitled to interest? OPD

(4) Relief."

3. The senior counsel for the plaintiff states that an appeal, being FAO(OS) No.119/2016, against the order of grant of leave to defend is pending consideration.

4. The order dated 11th November, 2016 framing issues also records the statement of the counsels for the parties that there was no need for recording of evidence and the matter could be disposed of on the basis of pleadings and documents filed.

5. Vide order dated 20th January, 2017, the following additional issue was framed in the suit:

> "Whether the plaintiff is entitled for a sum of ₹42,15,13,994/- as claimed in the suit? OPP "

6. The counsel for the plaintiff, on 16th February, 2017, for the reasons recorded in the order of that date, contended that the plaintiff does not fall within the definition of a bank or a financial institution and the suit was thus not barred by Section 18 read with Section 17 of the DRT Act. The counsel for the defendants on that date sought time to examine.

7. The order dated 1st may, 2017 records that there was no real dispute between the parties as to the disbursement of loan by the plaintiff to the defendants and that the suit was maintainable.

8. The parties were sent to the Mediation Cell of this Court for the limited purpose of defendants satisfying themselves with regard to the rate of interest charged by the plaintiff from time to time. It is informed that mediation remained unsuccessful.

9. Thereafter, vide orders dated 30th May, 2017, 10th October, 2017 and 30th October, 2017, certain other controversies between the parties were ironed out.

10. The senior counsel for the plaintiff draws attention to page 76 of Part-III file which contains a summary of the break-up of the amount claimed in the suit and which shows the principal amount outstanding of Rs.30,73,56,992/-, interest outstanding of Rs.9,71,96,002/- and additional interest outstanding of Rs.1,69,61,000/- making a total of Rs.42,15,13,994/-. The senior counsel for the plaintiff has further contended that the detailed accounts are filed from pages 77 to 83 of Part-III file.

11. Attention has also been invited to Clauses 3.2(b) titled 'Interest Rates' and Clause 3.7 titled 'Delay in payment of Principal and interest, etc.' of Article-III titled 'Loan, Interest and Repayment' of the Loan Agreement dated 10th March, 2006 executed by the parties to contend that the computation of interest is in accordance therewith.

12. The counsel for the defendants is unable to controvert any entry in the accounts, for the need for this Court to adjudicate on the same.

13. Thus as far as the claim of the plaintiff for recovery of Rs.42,15,13,994/- is concerned, no adjudication is required. The principal amount and the interest component thereof are not in dispute. The transaction being a commercial one, there is no need to interfere with the rate of interest to which the defendants had contracted.

14. As far as the interest *pendente lite* and future is concerned, for the same reasons, the defendants are liable for the contractual rate of interest.

15. On enquiry, it is stated that the defendant no.2 had personally stood guarantor for the advance availed of by the defendant no.1 from the plaintiff and had agreed to his liability being joint and several with the defendant no.1.

16. Accordingly, a decree is passed in favour of the plaintiff and jointly and severally against the defendants of recovery of Rs.42,15,13,994/- with interest from 15th February, 2011 till the date of payment / realization at the rates contracted by the defendants with the plaintiff and as contained in the Loan Agreement dated 10th March, 2006.

17. The plaintiff shall also be entitled to costs of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 12, 2018
'gsr'..