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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st June, 2018

\+ **RFA 570/2015 & CM No.24342/2018**

M/S ICICI BANK LIMITED ..... Appellant

Through: Punit K. Bhalla, Advocate.

versus

GAURAV & ANR .....Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (ORAL)

1. The present appeal arises out of the impugned judgment/order dated 24th April, 2015 by which the suit for recovery filed by the Appellant/Plaintiff bank (*hereinafter, 'Plaintiff bank'*) was dismissed. The judgement of the Trial Court dismisses the suit on the ground that the statements of accounts have not been duly proved under Section 65B of the India Evidence Act, 1872 (*hereinafter, 'Evidence Act'*).

2. In the appeal, notice was issued on 25th August, 2015. On the same date, a representative of the Plaintiff bank was appointed as a receiver. The receiver was directed to take over physical possession of the vehicle, and in case the Respondents/Defendants (*hereinafter, 'Defendants'*) were to pay the outstanding sum, the vehicle was to be released to them. The Receiver was directed to file his report within one week. The Defendants remained unserved as they had *'left the given address'*, and steps were taken to serve them through publication. Service was finally recorded as having been completed by the order of the Registrar on 4th April, 2016. Despite service,

the Defendants failed to appear. Thus, the appeal was admitted and listed in the category of Regular matters on 7th April, 2016.

Brief Background

3. The Defendants approached the Plaintiff bank for financing of the purchase of a vehicle under loan-cum-hypothecation scheme for a sum of sum of Rs.3,96,000/-.The Defendants agreed to repay the loan amount in 60 equal monthly instalments (*hereinafter, 'EMI'*) of Rs.8,960/- each. The loan was duly sanctioned and was disbursed on 10th May, 2012 to the dealer from whom the vehicle was to be purchased by the Defendants, after deducting usual processing fee and stamp duty charges. All the loan documents were executed by the Defendants.

4. Upon payment by the bank to the dealer, the Defendants secured a loan for the HYUNDAI I-10 SPORTZ bearing registration No. DL-2CAM-8768. Initially the Defendants made several payments but thereafter various cheques which were issued by the Defendant for payment of the instalments, were dishonoured/returned unpaid with the remarks "***Refer to drawer/insufficient funds***". The Plaintiff bank then filed a suit for recovery for the sum of Rs. 3,71,865.94/-.

5. In the suit, summons were issued on 3rd January, 2014 and notice of the suit was served upon the Defendant on 15th February, 2014, however, the Defendant repeatedly failed to appear. On 7th May, 2014, the Defendants were proceeded ex-parte. The Plaintiff bank led evidence by way of affidavit of Mr. Mohit Grover, the authorized representative as PW-1. The said PW-1 exhibited, along with his affidavit, the following documents:

(i) Ex.PW-1/1 - Power of Attorney authorizing him to depose;

(ii) Ex.PW-1/2 - the Preliminary Original Credit Facility Application form along with the terms and conditions of the loan;

(iii) Ex.PW-1/3 - Unattested Deed of Hypothecation;

(iv) Ex.PW-1/4 - Irrevocable Power of Attorney;

(v) Ex.PW-1/5 and PW-1/6 - Loan Recall Notice dated 9th January, 2014 along with Postal Receipt;

(v) Ex. PW- 1/7 – Statement of Account dated 7th December, 2013 duly certified under The Bankers' Books Evidence Act, 1891 (*hereinafter, 'BBE Act');*

(v) Ex.PW-1/8 – Statement of Accounts dated 17th November, 2014 certified under the BBE Act.

6. This statement of account is duly accompanied with a certificate under Section 65B of the Indian Evidence Act, 1872 (*hereinafter, 'Evidence Act'*). On the basis of these documents, the Plaintiff bank prayed for a decree in the suit.

7. The Trial Court dismissed the suit of the Plaintiff Bank primarily on the ground that the Statements of Accounts produced were not duly accompanied by a certificate under Section 65B of the Evidence Act, nor have they been proved in the Plaintiff's evidence. The Trial Court notes that the Plaintiff Bank, on 18th November, 2014, placed on record an undated certificate under Section 65B of the Evidence Act along with the affidavit of evidence of the Plaintiff Bank's witness. Since the certificate does not find a mention in the affidavit of the witness, it cannot be said to have been proved.

8. A perusal of the documents placed on record clearly establishes that the Plaintiff bank has taken all steps necessary to establish its case. The loan documents, which are filed in original, bear the signatures of the

Defendants. The factum of release of the loan amount and the possession of the vehicle having been taken by the Defendants is not in dispute. The certificate under Section 65B is duly signed by the Principal Officer. The filing stamp on the same is the same as the affidavit in evidence. It appears that though the same was attached with the affidavit in evidence, it was not mentioned in the said affidavit. However, what is relevant is that the said Certificate is in support of the exhibited documents viz., the statements of account. The said statements are duly exhibited as Exhibit PW1/7 and PW1/8. Despite all the original documents being on record, the Trial Court proceeded on an erroneous assumption that the statements of accounts are not proved. The grounds on which the suit has been dismissed seek to ignore the original documents filed on record. The suit has been dismissed by adopting an over-technical approach even on Section 65B of the Evidence Act.

9. Banks and financial institutions, which disburse loans to citizens, operate on the trust and faith that the citizens who avail of loans would pay back the same honestly and with diligence. Banks hold the money of the public in trust with them, and the financial cycle of investments, deposits and loans are essential for the functioning of the economy. If people, who avail loans, default in payment of the same and also avoid the Court processes, there would be enormous distress in the system.

10. Courts also have a duty to safeguard public money and by applying completely incorrect principles of procedure and evidence, suits filed by these financial institutions cannot be dismissed in this manner. A perusal of the documents filed in this case shows that the Plaintiff bank has taken all the steps to serve the Defendants and has placed the entire set of original

documents on record. The statement of accounts clearly shows that the Defendants paid 13 instalments but defaulted in the remaining instalments.

11. The reasoning of the Trial Court is that the statements of accounts have not been fully proved under Section 65B of the Evidence Act. The findings of the Trial Court, do not take the other original documents filed by the Plaintiff bank into consideration. The fact that several of the instalments were paid by the Defendants is itself evidence of the loan having been disbursed by the Plaintiff bank and availed of and enjoyed by the Defendants.

12. This Court has in a similar case, ***ICICI Bank Ltd. v. Kamini Sharma & Anr. [RFA 297/2015 decision dated 31st January, 2018]*** *(hereinafter, 'Kamini Sharma')* held, in respect of filing of original documents and statements of accounts as under:

> *"11. The filing of original documents is a requirement under law for a particular reason i.e., the originals constitute primary evidence and copies constitute secondary evidence. In most commercial transactions, the documents are not even disputed. The requirement of filing original documents ought to be insisted upon only when the parties actually dispute the documents which are on record. It should not be easy for any party to dispute the documents which actually relate to it and bear proper signatures. Insistence of filing of original documents when documents are not disputed causes enormous delay in adjudication of commercial disputes. The Court ought to bear in mind that original documents are required when allegations as to their genuinity or existence are raised and not in a technical manner in all situations.*
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> *12. In most civil disputes, documents exchanged between the parties, documents bearing signatures, correspondence exchanged between the parties, etc.*

are not disputed. It is the effect and interpretation thereof which is usually a matter of dispute. In such cases, the insistence of production of original documents and going through the entire journey of admission/denial etc., leads to unnecessary waste of judicial time, as also a lag in the dispensation of justice. Apart from these documents, there are other documents, for example publicly available documents etc., which should be accepted, unless and until there is a reason to doubt their authenticity. The insistence of filing original documents can result in injustice as is evident from the present case.......

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14. Section 34 of the Evidence Act clearly provides that the books of accounts maintained in electronic form are relevant. Under Section 62 of the Evidence Act, original documents constitute primary evidence. In the context of electronic evidence, printouts of electronic documents are considered as secondary. However, judicial notice needs to be taken of the fact that most accounts today are not maintained in paper form, but electronic form. The primary evidence could be the server on which the statement of accounts is stored. These servers may store the statement of accounts of multiple clients in the hard drive. It would be an impossibility to require the Plaintiff bank to produce the hard drive of the server in every suit for recovery filed by it. Under such circumstances, the Plaintiff bank has no option but to produce the secondary evidence i.e., a printout of statement of accounts, duly certified by a responsible official of the bank along with a certificate under Section 65B of the Evidence Act. Needless to add, the certificate under Section 65B of the Evidence Act has now become a usual practice in almost all of the suits, inasmuch as, in every such suit, parties are bound to place reliance on electronic documents. The mere fact, that the printout is being filed as secondary evidence

> *along with the necessary certificate, does not make it any less valid. The said accounts statement would be rebuttable if any discrepancy is found or pointed out. But in the absence of the same, there is no reason as to why the statement of accounts filed by the Plaintiff bank should be disbelieved………"*

13. In ***Kamini Sharma (supra)***, this Court has analysed the manner in which Section 65B of the Evidence Act needs to be applied considering the judgements of the Supreme Court in ***Anvar P.V. v. P.K. Basheer AIR 2015 SC 180*** *(hereinafter, 'Anvar v. Basheer')* and ***Harpal Singh v. State of Punjab AIR 2016 SC 5389.*** Recently, the Supreme Court in ***Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801*** has held as under:

> *"26. Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V. v. Basheer, this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.*
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> *……………………*
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> *29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63*

and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. <u>Thus, requirement of certificate is not always mandatory</u>.

30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. <u>The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.</u>"

14. Thus, the requirements of Section 65B are relaxable. In the present case, the Plaintiff bank has filed the certificate under Section 65B of the Evidence Act through its witness and also certified all the copies of electronic records including bank statements etc., The requirements under Section 65B of the Evidence Act have been fulfilled.

15. The witness of the Plaintiff bank PW-1 has appeared before the Court and has tendered his evidence. There is no reason to disbelieve his deposition. The documents on record clearly reveal that the Defendants availed of the loan and have failed to repay part of the same. Thus, the judgment of the Trial Court is unsustainable, erroneous and contrary to law. The impugned judgment/order is set aside.

16. The suit is decreed for the sum of Rs.3,60,756.94/-, with adjustment of a sum of Rs.11,109/- paid by the Defendants after filing of the suit, with

interest @ 8% per annum from date of filing of suit till date. The payment shall be made by the Defendant within 12 weeks, failing which the Defendant would be liable to pay 12% interest per annum on the decretal amount, from the expiry of 12 weeks till the date of payment.

17. The appeal is allowed in the above mentioned terms. Pending application stands disposed of.

PRATHIBA M. SINGH, J.
Judge

JUNE 01, 2018/*dk*