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

\+ RFA(COMM) 45/2023

BANK OF BARODA ..... APPELLANT

Through: Mr. C. B. Singh and Mr. S. K. Choudhary, Advs.

versus

RAJESH ATTRI ..... RESPONDENT

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **08.01.2024**

1. None appears on behalf of the respondent despite the service of notice.

2. The appellant has filed the present appeal impugning the judgment dated 03.01.2023 (hereafter '**the impugned judgment**') passed by the learned Commercial Court rejecting the appellant's suit being CS (COMM) No. 18/2018 captioned ***Bank of Baroda v. Mr. Rajesh Attri.***

3. The appellant is a scheduled bank and had instituted the aforesaid suit for the recovery of a sum of ₹ 12,93,929/- along with interest and costs. Initially, the suit was instituted as a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC). However, subsequently the suit was converted into an ordinary suit.

4. It is the appellant's case that the respondent had availed of a vehicle loan for an amount of ₹ 15 lakhs for purchasing a vehicle described as 'Chevrolet Cruze 2.0 LTZ at BS4 (Fam-Z)' bearing the Registration No. DL10CB6077. The same was also offered as a collateral in respect of the

said loan.

5. The appellant contends that the respondent had failed to perform his re-payment obligation and on 05.01.2016, the said loan account of the respondent was classified as a 'Non-Performing Asset (NPA)'. The appellant sent a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter '**the SARFAESI Act**') for enforcement of its security against the loan (the vehicle in question). Thereafter, an order was passed under Section 14 of the SARFAESI Act for taking the possession of the vehicle in question. However, the same was not traceable. It was also alleged that the respondent has absconded and his whereabouts could not be traced.

6. Notice in the said suit was issued but the respondent did not enter appearance or file a written statement to contest the suit. In view of the above, the learned Commercial Court passed an order dated 27.05.2022, whereby, the learned Commercial Court directed that the respondent *ex-parte.*

7. The plaint was signed by one Sh. Uma Shankar Panwar on behalf of the appellant. It is stated that he was authorized to file, sign, and institute the suit. Subsequently, there was a change of the Authorized Representative, and the appellant filed an application for substituting Sh. Divakar Singh as its Authorized Representative in place of Sh. Uma Shankar Panwar. The learned Commercial Court heard and allowed the said application on 28.10.2022. The order dated 28.10.2022 indicates that the said application was allowed after the Court had perused the material on record.

8. Sh. Divakar Singh was examined as PW-1 and he proved the following documents:

> "1. Loan application dated 06.03.2013 Ex.PW1/1 (colly).

2. DP note dated 07.03.2013 Ex.PW1/2.

3. Letter of authority dated 07.03.2013 Ex. PW1/3 (colly).

4. Letter of instalment dated 07.03.2013 Ex.PW1/4.

5. Declaration cum undertaking dated 07.03.2013 Ex.PW1/5 (colly).

6. Letter of acknowledgment of debt dated 02.11.2015 Ex.PW 1/6 (colly).

7. Sanction letter dated 06.03.2013 Ex.PW1/7 (colly).

8. Letter of hypothecation dated 07.03.2013 Ex. PW1/8 (colly).

9. Performa invoice dated 06.03.2013 Ex. PW1/9.

10. Receiving given by the car dealers dated 07.03.2013 Ex. PW1/10.

11. Legal demand notice with postal receipt Ex. PW1/17 (colly).

12. Bills for expenses Ex. PWl/18 (colly).

13. Copy of ID Ex. PWl/19 (colly)”

9. The learned Commercial Court had dismissed the suit on the ground that the plaint did not contain any averment that Sh. Uma Shankar Panwar was the Authorized Representative of the Bank and was duly authorized to file, sign and institute the suit on its behalf.

10. The learned counsel appearing for the appellant submits that the issue whether the person was duly authorized was never raised. There is also no dispute that Sh. Divakar Singh was substituted in place of Sh. Uma Shankar Panwar and was duly authorized to pursue the said suit. The learned Commercial Court had satisfied itself in that regard before allowing the substitution of the Authorized Representative by an order dated 28.10.2022.

11. Learned Counsel for the appellant also submits that the appellant had executed a power of attorney in favour of the Sh. Uma Shankar Panwar to institute and pursue the suit on behalf of the appellant. The same was not place on record before the learned Commercial Court but a copy of said

document has been placed in the present proceedings.

12. This Court is of the view that the appellant's claim has been rejected on a hyper technical ground. As noticed above, the learned Commercial Court had permitted the substitution of the Authorized Representative of the Bank after considering the material on record. After permitting the same, there is no justification for dismissing the suit on the ground that it was not pursued or instituted by an Authorized Representative.

13. In view of the above, the impugned judgment is set aside and the suit is restored before the learned Commercial Court for disposal of the same on merits.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 8, 2024

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Click here to check corrigendum, if any