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

% ***Date of Decision: 17th April, 2025***

\+ CM(M) 1321/2023 & CM APPL. 42464/2023 & CM APPL. 42466/2023

PUNJAB AND SIND BANK .....Petitioner

Through: Ms. Seema Gupta, Advocate.

versus

MR. DHEERAJ & ORS. .....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T ***(oral)***

1. Petitioner Bank filed a civil suit seeking recovery of Rs.15,59,195.03 with interest.

2. Such suit involved a commercial dispute and was filed before the concerned District Judge (Commercial Court), Delhi.

3. According to plaintiff Bank, the defendants (respondents herein) had applied for a *housing loan* as they wanted to purchase a residential property situated in Shahdara. Such loan was duly sanctioned to them with interest @ 10% per annum, having monthly rest. Various documents were executed towards the abovesaid loan facility and in order to secure the loan, defendant No.3 stood as guarantor. The property in question was, accordingly, purchased by defendant No.1 and the original sale deeds were deposited with plaintiff Bank for creating equitable mortgage and for further securing the loan amount.

4. Since the loan was not repaid, the abovesaid suit was filed.

5. Defendants were proceeded *ex-parte* in the abovesaid suit and when the case was at the stage of recording of plaintiff's evidence, the learned Trial Court learnt that the abovesaid immovable property had already been disposed of by taking recourse to the relevant provision of *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (*SARFAESI Act)* and the plaintiff Bank was able to recover a sum of Rs.14,35,000/- from such sale.

6. It appears that such fact was not brought to the knowledge of the learned Trial Court by the plaintiff Bank by moving any specific application or by making any positive averment. The learned Trial Court, feeling that such fact of sale of secured asset was, rather, concealed by the concerned witnesses, issued a notice under Section 340 Cr.P.C.

7. Fact remains that pursuant to such notice, the concerned witnesses appeared before the learned Trial Court and tendered their unconditional apology. The notice was, accordingly, dropped while directing the plaintiff Bank to be careful in future.

8. Thereafter, when the case reached at the stage of final arguments, the plaintiff Bank sought permission to lead additional evidence in order to bring on record, updated debit balance. The purpose was to show the adjustment of the proceeds realized from sale of the secured asset and, therefore, the request made in this regard was completely *bona fide* in nature as they did not want to conceal any further fact from the learned Trial Court and, therefore, the above permission was sought to lead additional evidence.

9. However, when they produced such additional evidence and one *system generated Statement of Account* was placed before the learned Trial Court, it took the view that the adjustment had not been reflected,

appropriately, and debit balance was inflated one. It is on the aforesaid premise and while observing that a false statement has been placed before it, the learned Trial Court has chosen to issue fresh notice under Section 340 Cr.P.C. against PW-1 Sh. Dinesh Chand Meena.

10. Such order has been challenged by filing the present petition filed under Article 227 of the Constitution of India.

11. When this matter was taken up by learned predecessor Bench on 18.08.2023, noticing various aspects of the case, it came to a *prima facie* view that there was nothing to indicate any falsification.

12. The relevant portion of such order reads as under:-

> *"1. This petition filed under Article 227 of the Constitution of India, impugns the order dated 31.07.2023 passed by District Judge (Comm.)-03, Shahdara, Karkardooma Courts, Delhi ('Trial Court') issuing notice under Section 340, Criminal Procedure Code, 1973, ('Cr.PC') upon the Petitioner's witness i.e., the PW-1, Dinesh Chand Meena for tendering the statement of account of the Housing Loan Account Exhibit PW-1/20 in the additional affidavit of evidence dated 03.07.2023.*
>
> *1.1 The Trial Court was of the opinion that the said Bank statement prepared by the official is false and therefore, the affidavit of evidence as well is false.*
>
> *2. The learned counsel for the Petitioner states that the statement of account marked as Exhibit PW-1/20 is maintained by the Petitioner, Bank in usual and ordinary course of banking business and is neither manually prepared nor typed by the Petitioner's witness i.e., PW-1.*
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> *2.1 She states that the statement of account clearly discloses that the debit balance of Rs. 3,75,177/- was the amount which stood due and recoverable by the Bank from the defendants, as on 31.03.2023. She states that in the statement of account, the bank continued to levy interest as per its contractual rate of interest*
>
> *2.2 She states that even in the additional affidavit of evidence, the fact that this balance was for the period upto 31.03.2023 was specifically mentioned at paragraphs 8 and 9 therein.*
>
> *2.3 She states that the commercial suit for recovery was filed on 31.05.2022, however the statement of account maintained by the Bank and filed with the additional affidavit included the interest at contractual rate until 31.03.2023.*

2.4 She states that the Petitioner does not dispute that the grant of pendente lite and future interest falls within the discretion of the Court; and the fact whether the interest would be awarded or not is also to be determined by the Trial Court at the time of the passing of the final adjudication.

2.5 She states that, however, by filing the said bank statement, the Petitioner's witness has not sought to mislead the Trial Court as has been recorded in the order.

2.6 She also relied upon the orders dated 03.06.2023 and 09.06.2023 passed by the Trial Court and submits that the Petitioner herein was consistently asserting that there is a balance outstanding of Rs. 3,75,177/- as on 31.03.2023, which was duly noted by the Trial Court. She states at that stage, the Trial Court did not opine that there was any wrong doing by the Petitioner or the witness.

3. She states that in these circumstances, the issuance of the impugned notice under Section 340 Cr.P.C. is not made out.

4. This Court has considered the submissions of the counsel for the Petitioner. As per the statement of account, the principal amount due and recoverable by the Petitioner as on 31.05.2022 stands at Rs. 16,64,814/-. The suit was filed as on 31.05.2022.

4.1 The amount of Rs. 15,17,608/- as per the statement of account was due and recoverable as on 31.05.2021.

4.2 The statement of account contains debit entries towards interest from 08.06.2022 until 31.03.2023 (i.e., the period during which the suit was pending). The credit of the sale proceeds is also duly recorded on 16.03.2023. After accounting for the credit and debit entries, the amount stands at Rs. 3,75,177/-.

4.3 This Court is prima facie persuaded that there is no wrong doing in the statement of account filed as Exhibit PW-1/20, which could be termed as falsification."

13. Accordingly, the directions recorded in the impugned order, with respect to initiation of proceedings under Section 340 Cr.P.C., were stayed.

14. Since the defendants have already been proceeded *ex-parte*, no notice in the present petition has either been issued.

15. Though the learned Trial Court was granted liberty to proceed with final hearing and to even pronounce the final judgment, for totally incomprehensible reasons, the matter has rather been adjourned *sine die*.

16. Be that as it may, there is nothing to suggest that the petitioner had

deliberately created any fraudulent Statement of Account or wanted to mislead the Court. As already noticed, the plaintiff Bank itself had sought permission from the Court to place on record updated Statement of Account and it is also the case of the plaintiff Bank that such statement was auto-generated by the system, with no manual intervention of any kind. It is submitted that the interest was also calculated by the system, as per the contractual terms.

17. Exercise of power under Section 340 Cr.P.C. is discretionary in nature and it is only when the Court is of the firm opinion that it is *expedient in the interest of justice,* the Court gives any such direction.

18. The all-important phrase is that it should be *expedient in the interests of justice*.

19. There is nothing to indicate that the intention of the plaintiff Bank was to falsify any document and, thereby affecting the administration of justice or, for that matter, to misinform the Court. Even if it is assumed that such statement contained incorrect calculation, it could not, *ipso facto*, triggered such extreme and harsh step.

20. There has to be a *prima facie* case of deliberate falsification, which is bedrock and substratum for initiation of any such enquiry.

21. Moreover, such power has to be, even otherwise, used with great circumspection and not in a casual manner as it has potential to curtail someone's liberty.

22. A system generated statement was placed and it was always open to the learned Trial Court to dispose of the suit, after evaluating the same. The Court could have discarded such statement in part or *in toto*, but there was, truly speaking, nothing compelling and convincing to have embarked on

such enquiry.

23. Copies of such statement of accounts have been annexed with the present petition and it is quite apparent that these seem to be system-generated. There is also a certificate in terms of Section 2A(a) and 2A(b) of Bankers' Books Evidence Act, 1891 attached with the abovesaid statements.

24. Keeping in mind the overall facts and circumstances of the case, this Court does not find any rationale behind directing initiation of action under Section 340 Cr.P.C. and, resultantly, the present petition is allowed with direction to learned Trial Court to hear final arguments and to dispose of the suit in accordance with law.

25. Needless to say, the proceedings under Section 340 Cr.P.C., which had been initiated against PW-1 Sh. Dinesh Chand Meena, stand terminated.

26. The petition stands disposed of in aforesaid terms.

27. Pending applications, if any, also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 17, 2025
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