



2025:DHC:4654-DB



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

% Judgement delivered on: 30.05.2025

+ **RFA(COMM) 475/2024 & CM No.66321/2024**

M/S R.K. ENTERPRISES

.....Appellant

versus

CANARA BANK

.....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Nitesh Mehra, Mr. Aslam Parwez and
Ms Hitaakshi Mehra, Advocates.

For the Respondent : Mr. Akash Swami and Mr. Akhilesh Tejpal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The Appellant has filed the present Appeal impugning an order and judgment dated 29.07.2024 ('**impugned judgment**') passed by the learned District Judge, South-West District, Dwarka Courts, New Delhi ('**Trial**



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Court') in CS (COMM) No. 127/2023 ('Suit') titled as '*Canara Bank Erstwhile Syndicate Bank v. M/s R.K. Enterprises*' whereby, the Suit was decreed in favour of the Respondent. Hence, the present Appeal has been filed seeking setting aside of the impugned judgment.

FACTUAL BACKGROUND

2. The Respondent is a banking company and pursuant to the Gazette Notification dated 04.03.2020 of the Government of India, the Syndicate Bank had merged with Canara Bank. Pursuant to the said merger, with effect from 01.04.2020, the undertaking of the Syndicate Bank stood transferred to the Canara Bank.

3. Mr. Lalit Jha, the proprietor of the Appellant – M/s RK Enterprises, had approached the Syndicate Bank for the grant of Secured Overdraft ('SOD') Loan of ₹10,00,000/- and submitted a loan application dated 24.04.2017. Upon consideration of the said loan application, the bank sanctioned an SOD Loan of ₹10,00,000/- to the Appellant in Account No. 90911400000482 *vide* Sanction Letter dated 18.05.2017. In consideration of the grant and sanction of the SOD Loan, the Appellant executed various documents in favour of the Respondent.

4. The Appellant again submitted a loan application dated 09.10.2018 for the renewal of SOD Loan of ₹10,00,000/-. The Respondent renewed the SOD Loan *vide* Sanction Letter dated 31.10.2018. In order to secure the repayment of the loan amount sanctioned by the Respondent, the Appellant executed various documents in favour of the Respondent.

5. The Appellant further submitted a loan application dated 10.01.2020 for the renewal of SOD Loan of ₹10,00,000/-. The Respondent renewed the



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said SOD Loan *vide* Sanction Letter dated 22.01.2020. The Appellant again executed various documents in favour of the Respondent to secure the repayment of the loan amount to the Respondent.

6. The Appellant approached the Respondent for grant of Guarantee Emergency Credit Line ('GCEL') of ₹1,80,000/- *vide* loan application dated 20.01.2021. The Respondent sanctioned the said GCEL loan *vide* Sanction Letter dated 21.01.2021. The Appellant further executed various documents in favour of the Respondent.

7. The Appellant approached the Respondent for the renewal of SOD Loan of ₹10,00,000/- *vide* loan application dated 13.05.2021, which was sanctioned by the Respondent *vide* Sanction Letter dated 17.05.2021 and the Appellant executed various documents in favour of the Respondent.

8. With respect to the credit facilities provided by the Respondent to the Appellant, it was agreed between the parties that the applicable rate of interest would be subject to change based on the rules and regulations of the bank, in addition to the directions of the Reserve Bank of India. The same shall be liable to be paid by the Appellant to the Respondent.

9. After securing the aforementioned loan, the Appellant could not maintain financial discipline and failed to make regular payments to the Respondent. Consequently, both SOD and GCEL loan accounts of the Appellant were declared as Non-Performing Assets ('NPA').

10. Thereafter, the Respondent sent a legal notice dated 23.08.2022 to the Appellant. Despite several requests made by the Respondent, the Appellant did not repay the loan amount. Ultimately, the Respondent filed the Suit before the learned Trial Court seeking a decree in its favour for a total sum of ₹12,97,936.98 along with *pendente lite* and future interest till the



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realization of the loan amount, and costs of the Suit. The Suit was filed on behalf of the Respondent through its Authorized Representative, Ms. Gaganpreet Kaur, who was later substituted by Mr. Akhil Gupta/PW-1.

11. The learned Trial Court referred the matter for Mediation to explore possibility of an amicable settlement. However, the matter could not be settled. Thereafter, the learned Trial Court *vide* impugned judgment decreed the Suit in favour of the Respondent for a sum of ₹12,97,936.98 along with *pendente lite* and future interest @ 6% per annum, till the realization of the entire amount.

12. The present Appeal has been filed by the Appellant being aggrieved by the impugned judgement. *Vide* order dated 31.01.2025, this Court referred the matter to the Delhi High Court Mediation and Conciliation Centre ('**DHCMCC**'). However, the parties could not resolve the present dispute before the DHCMCC.

SUBMISSIONS BY THE APPELLANT

13. Learned Counsel for the Appellant submitted that the learned Trial Court failed to appreciate that the certificate given under Section 65B of the Indian Evidence Act, 1872 by the Authorized Representative of the Respondent was not in the service of the erstwhile Syndicate Bank. Therefore, the said Authorized Representative who filed the Suit had no legal sanctity. It is further submitted that the Statements of Account pertains to the erstwhile Syndicate Bank and not the Canara Bank.

14. Learned Counsel for the Appellant placed reliance on the decision of the Supreme Court in **Anvar P.V. v. P.K. Basheer**, (2014) 10 SCC 473 to argue that electronic records are more susceptible to tampering or alteration



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and without proper safeguards in place, the trial based on proof of electronic records may lead to travesty of justice.

15. It was submitted that the Respondent was under an obligation to properly prove the genuineness of the Appellant's Statement of Account and therefore, the person who had issued such certificate should also have been examined to ascertain the genuineness of the Statements of Account. As the authorized representative, who issued the said certificate was not examined, the Statements of Account of the erstwhile Syndicate Bank cannot be said to be proven.

16. It was submitted that the Respondent filed the Suit for recovery of the loan against the Appellant, however, the Appellant, being a sole proprietorship, is not a legal entity and thus, it cannot be sued. Hence, the Suit was not maintainable on this ground.

17. It was submitted that the loan amount of ₹10,00,000/- was an SOD Loan against stocks of the Appellant, which were kept as security. It was further submitted that the stocks of the Appellant were not checked by the officials of the Respondent bank. Hence, the Suit of the Respondent was not maintainable.

18. The Appellant submitted that PW-1 was not a properly authorized person to depose on behalf of the Respondent. The certificate under Section 65-B of the Indian Evidence Act, 1872 was also not properly proved by PW-1.

19. Learned Counsel for the Appellant submitted that the Respondent has committed irregularity and manipulated the Statement of Account, which is evident from the huge amount of balance shown against the Appellant, as there was no balance amount payable to the Respondent by the Appellant.



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20. In view of the foregoing submissions, it is prayed that the present Appeal be allowed.

SUBMISSIONS BY THE RESPONDENT

21. Learned Counsel for the Respondent submitted that the Appellant initially took an SOD loan of ₹10,00,000/- from the Respondent *vide* loan account no. 90911400000482, which was renewed from time to time. It was further submitted that the Appellant later took a GCEL loan of ₹1,80,000/- from the Respondent *vide* loan account no. 90919160000532. It was also submitted that the Appellant executed loan documents every time the loan was either taken or renewed.

22. It was submitted that the Appellant failed to observe financial discipline, and its account became highly irregular in payments. Despite several requests made by the officers of the Respondent, the Appellant did not pay the balance amount to the Respondent. Therefore, both the loan accounts were categorized as NPA on 05.05.2022.

23. It was also submitted that the Appellant is liable to pay the amount as detailed in the Statement of Account of the Appellant as maintained by the Respondent Bank, and the same has been proved as Ex. PW-1/52 and Ex. PW-1/53, with respect to both the aforesaid loan accounts. It was further submitted that the Respondent's case is proven by the testimony of PW-1, beyond the standard of preponderance of probabilities, for the recovery of the decree amount.

24. In view of the foregoing submissions, it was prayed that the present Appeal be dismissed.



ANALYSIS

25. The Appellant's case primarily hinges on the contention that the Authorized Representative of the Respondent who issued the Section 65B certificate should have been examined in order to ascertain the genuineness of the Statement of Account of the Appellant maintained by the Respondent Bank. The Appellant further argued that examination of the substituted Authorized Representative of the Respondent (PW-1) did not establish the genuineness of the said document.

26. Section 65B(4) of the Indian Evidence Act, 1872 reads as under:

“(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”



27. In the case of **Sun Pharmaceuticals Industries Ltd. v. Mukesh Kumar P.**, 2013 SCC OnLine Del 2713, this Court held as under:

“16. Section 65B (4) provides for an alternative method of proving an electronic record by producing the certificate of a person in whose custody the computer device in which the document was stored in an electric form remained. In Rakesh Kumar v. State 183 (2009) DLT 658, it was held that “sub-Section (4) of Section 65B provides for an alternative method to prove electronic record. Sub-section (4) allows the proof of the conditions set out in sub-Section (2) by means of a certificate issued by the person described in Sub-section 4 and certifying contents in the manner set out in the sub-Section. The sub-Section makes admissible an electronic record when certified that the contents of a computer printout are generated by a computer satisfying the conditions of sub-Section 1, the certificate being signed by the person described therein.” In other words, no oral testimony of the person issuing the certificate may be necessary unless there is challenge to the accuracy of the computer evidence on account of misuse of the system or operational failure or interpolation. Consequently, the aforementioned objection of the Defendants is rejected.”

28. Therefore, it is clear from the above that the oral testimony of the person issuing the certificate under Section 65B of the Indian Evidence Act, 1872 is not required to prove the genuineness of the electronic record. Hence, the examination of the then Authorized Representative of the Respondent, who issued the Section 65B certificate, was not mandatory to prove the genuineness of the Appellant’s Statement of Account.



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29. The requirement of oral testimony of the person issuing the certificate under Section 65B of the Indian Evidence Act, 1872 arises only in case of challenge to the accuracy of the computer evidence on account of misuse of the system, operational failure or interpolation. While the Appellant contends that the Statement of Account was manipulated and fabricated, this claim appears to be a bald averment without any substantiation. Further, there is nothing on record to show that the accuracy of the said electronic evidence was under challenge on account of misuse of the system, operational failure or interpolation.

30. The Appellant has also laid emphasis on the fact that the then Authorized Representative of the Respondent, who issued the said certificate, had never worked for the Syndicate Bank. It is undisputed that the Syndicate Bank had merged with the Canara Bank in the year 2020, pursuant to which the undertaking of the Syndicate Bank stood transferred to the Canara Bank. Thereafter, when the said certificate was issued, the said Authorized Representative was working as the Manager of the Vikaspuri Branch, Delhi-110018, of the Canara Bank. Hence, the Appellant's contention that the said Authorized Representative never worked for the Syndicate Bank is misplaced, irrelevant and immaterial to the present controversy.

31. Therefore, in light of the above discussion, the objections raised by the Appellant regarding the genuineness of the Statement of Account in question are not tenable. Thus, the Appellant's Statement of Account maintained by the Respondent Bank stood proved as Ex. PW-1/52 and Ex. PW-1/53, with respect to both the loan accounts.



32. Another contention raised by the Appellant that requires examination is that the Appellant, being a sole proprietorship firm, which is not a legal entity, cannot be sued.

33. In ***Rasiklal Manikchand Dhariwal v. M.S.S. Food Products, (2012) 2 SCC 196***, the Supreme Court held as under:

“81. Order 30 Rule 10 of the Code reads as follows:

10. Suit against person carrying on business in name other than his own.—Any person carrying on business in a name or style other than his own name, or Hindu Undivided Family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, insofar as the nature of such case permits, all rules under this Order shall apply accordingly.

The above provision is an enabling provision which provides that a person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. As a necessary corollary, the said provision does not enable a person carrying on business in a name or style other than in his own name to sue in such name or style.”

34. From the above, it is clear that under Order XXX Rule 10 of the Code of Civil Procedure, 1908 (**‘CPC’**), a person carrying on business under an assumed or a trading name can be sued in that name. In the present case, the Appellant, that is, M/s RK Enterprises, is admittedly a sole proprietorship of Mr. Lalit Jha. Hence, Mr. Lalit Jha can be sued in the name of M/s RK Enterprises under Order XXX Rule 10 of the CPC. Therefore, the



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Appellant's contention, which appears to be an afterthought, cannot be sustained and the Suit is maintainable against the Appellant.

35. The Appellant also contended that the loan amount of ₹10,00,000/- was an SOD Loan against stocks of the Appellant, which were kept as security and that the same were not checked by the officials of the Respondent bank. From the examination of PW-1, it is clear that as per the Respondent Bank's assessment, the realizable value of the stocks of the Appellant was negligible and would not be sufficient to recover the loan amount and the applicable interest payable to the Respondent. Therefore, this contention of the Appellant also cannot be accepted.

36. In light of the discussion on law and the factual matrix of the present Appeal, the grounds taken in the Appeal by the Appellant are not convincing enough to warrant any interference with the impugned judgement.

37. Accordingly, the present Appeal is hereby dismissed, and the impugned judgment is upheld. Pending applications, if any, stand disposed of. No orders as to costs.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 30, 2025

'SMS'