

## Canara Bank vs Anil Sharma on 27 January, 2025

BEFORE THE COURT OF SH. SURINDER S. RATHI, DISTRICT JUDGE  
(COMM.)-11 CENTRAL, THC, DELHI

CS Comm. No.1241/2023

Canara Bank  
A body Corporate/Constituted under  
The Banking Companies (Acquisition &  
Transfer of Undertaking Act No.40 of 1980)  
Having its Head Office at:  
112, J.C. Road, Bangaluru

Having Amongst Other Branches  
A Branch Office at  
Deshbandhu Gupta Road, Chuna  
Mandi, Paharganj, Delhi-110055

.....Plaintiff

Vs.

Anil Sharma  
(Proprietor M/s Perfect Fire Equipment)  
48/55, Gali No.6, Nai Basti  
Anand Parbat, Central Delhi-110055

.....Defendant

Date of Institution	:	16.09.2023
Date of Final Arguments	:	27.01.2025
Date of Judgment	:	27.01.2025
Decision	:	Decreed

### Judgment

1. This suit is filed by plaintiff bank for recovery of Rs.9,19,714/- alongwith interest @10.7 % per annum as unpaid dues of loan amount.

#### Case of the Plaintiff

2. Case of the plaintiff as per plaint and the documents filed is that it is a nationalised bank. Defendant who is proprietor of M/s Perfect Fire Equipment approached the Paharganj Branch of the bank for availing term loan as well as working capital loan on 16.11.2019 for Rs.4 lakhs and 3

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lakhs respectively. Upon due processing the loan was sanctioned on the same day. Due documentation was carried out. Defendant submitted a FDR of Rs.1,86,600/- as a collateral. Loan was to be repaid in 84 EMIs of Rs.6,785/- each although the plaint is silent in this regard.

3. On account of Covid related lockdown, 2 additional loans of Rs.80,000/- and Rs.12,000/- were extended to him in June 2019 and September 2020

respectively. Defendant did not adhere to financial discipline and defaulted in payment of loans. Consequently, they were declared NPA on 16.10.2022 having cumulative debit balance of Rs.9,03,795/-. When the dues were not cleared despite repeated demands bank issued legal notice dated 02.01.2023 which was not replied despite due service. Plaintiff bank approached Central DLSA for Pre-Institution Mediation under Section 12A of Commercial Courts Act, 2015 where defendant did not participate and Non-Starter Report dated 26.04.2023 was issued. In this backdrop suit in hand was filed for following reliefs:

Prayer:

- i. Pass a decree for a sum of Rs.9,19,714.6/- payable by the defendant in favour of plaintiff bank;
  - ii. Award pendente lite and future interest @10.7% p.a in favour of the Plaintiff and against the Defendant from the date of the filing of the suit till the entire amount;
  - iii. Award cost of the suit in favour of the plaintiff Bank and against the Defendant;
  - iv. In case of any of further short fall in recovery of the entire decretal amount may be issued to make recoveries from any other assets, movable or immovable;
  - v. Pass such other/further order (s) which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in favour of the plaintiff bank and against the defendant.
4. Summons of the suit was served upon the defendant who entered appearance on 04.12.2023.
- Defendant's Case
5. Case of the defendant as per WS and the documents filed is that the suit in hand deserves to be dismissed since plaintiff bank has suppressed material

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- facts and approached this Court with unclean hands. Dismissal is also prayed on the ground that there is misjoinder of 4 different causes of action as 4 loan accounts have been clubbed together. As per defendant he could not maintain fiscal discipline on account of Covid related lockdown. In his reply on merits defendant has categorically admitted that he availed loans of Rs. 4 lakhs and 3 lakhs respectively on 16.11.2019. He admits executing various documents qua the loan. He, however, claimed that he is educated up to 8th standard and does not understand English. The terms of the contract were not read out to him and he was asked to sign blank documents and pages. He admits submitting a fixed deposit of Rs.1,86,600/- as a collateral.
6. As regards the two additional loans of Rs.12,000/- and Rs.80,000/- extended on 18.06.2019 and 23.09.2020 respectively he denied availing them. He denied that he failed to adhere financial discipline. He claimed that plaintiff bank declared his loans as NPA arbitrarily or that there was a debit balance of Rs.9,03,759/-. According to him he paid Rs.5.50 lakhs in cash for the loan account maintained by him with the plaintiff bank to different representatives of the bank who came to collect the money but he was not issued any receipt despite assurances.
7. He states that he could not pay EMIs in time due to covid lockdown. He denied receipt of legal notice. He claimed that he is 45% physically challenged. He claims to have applied for Prime Minister Office's Karja Mukti Abhiyan. He denied that he did not appear before Central DLSA.

With these pleas he prayed for dismissal of the suit.

8. The affidavit of statement of truth filed by the defendant with the WS is not as per Order 6 Rule 15A Appendix I. In his affidavit of admission denial to the plaintiff's documents he admitted execution, existence and custody of almost all the documents filed by the bank but denied the

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correctness of the contents of these documents. He denied receipt of legal notice.

Replication

9. No separate replication was filed.

10. Upon completion of pleadings following issues were identified by Ld.

Predecessor on 22.12.2023:

Issues:

- i. Whether the plaintiff is entitled to a decree for recovery of the suit? OPP
- ii. Whether the plaintiff is entitled to interest, if so, at what rate and period? OPP
- iii. Relief

11. Evidence in this case was ordered to be recorded before Ld. LC Sh.

Sarfraj Ahamad Ansari, Advocate as per protocol created by this Court under Order 18 Rule 4 CPC read with Order 15A Rule 6(l) and (o) CPC as applicable to Commercial suits.

12. To prove its case, plaintiff company examined PW1 Amit Kumar, Manager. Vide affidavit Ex.PW1/A he deposed on the lines of the plaint and exhibited following documents:

- i. Copy of General Power of Attorney is Ex.PW1/1(colly.);
- ii. Copy of loan application is Ex.PW1/2 (colly.);
- iii. The copy of registration certificate is Ex.PW1/3(colly.);
- iv. Copy of Sanction letter dated 16.11.2019 is Ex.PW1/4 (colly.);
- v. Copy of cash credit agreement dated 16.11.2019 is Ex.PW1/5 (colly);
- vi. Copy of Hypothecation of Machinery agreement dated 16.11.2019 is Ex.PW1/6 (colly.);
- vii. Copy of pronote dated 16.11.2019 is Ex.PW1/7;
- viii. Copy of loan/draft request facility is Ex.PW1/8 (colly.)
- ix. Copy of letter of undertaking loans/advances dated 16.11.2019 to repay is Ex.PW1/9(colly.);
- x. Copy of signature card 16.11.2019 is Ex.PW1/10(colly.);
- xi. Copy of acknowledgement of debt and security dated 13.09.2022 is Ex.PW1/11;
- xii. Copy of fix deposit dated 18.12.2019 which is Ex.PW1/12;
- xiii. Office copy of notice sent dated 02.01.2023 along with postal receipt is Ex.PW1/13 (colly.)
- xiv. Copy of account of statement along with certificates of Bankers Books of Evidence and certificate under Section 65B of Indian Evidence Act and Order 11 Rule 6 amended by the first schedule of the Commercial Court Act, 2015 ) which are Ex.PW1/14 (colly.).
- xv. Copy of non-starter report dated 26.04.2023 is Ex.PW1/15;

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- xvi. Copy of Letter of Proprietorship is Ex.PW1/16 (colly.)
- xvii. Copy of the Defendant's Pan Card is Mark A;
- xviii. Copy of the Defendant's Aadhar Card is Mark B.

13. In his cross-examination carried out by Ld. Counsel for defendant he stated that bank is in possession of a fixed deposit belonging to the defendant as Ex.PW1/12. He added that this is a subsidy amount by Khadi and Village Industries Commission. He accepted that in the legal notice Ex.PW1/13, as on 02.01.2023 the amount claimed was Rs. 6,37,780/-. He stated that as on 02.01.2023 he was not posted as Manager in Paharganj Branch. He added that the loan documents are bilingual in nature and are signed by the bank's borrower after reading them. He accepted that he did not witness the execution of loan documents in hand i.e. Ex.PW1/2 to Ex.PW1/10.
14. According to the record defendant paid a sum of Rs.2.78 lakhs only out of the four loans availed by him. He categorically denied the suggestion that defendant paid cash amounts to the representatives of the bank and qua which no receipt was issued. He denied that the defendant does not owe any money to the plaintiff or that the suit is without cause of action.
15. On the contrary defendant examined himself as DW1 Anil Arya. Vide affidavit Ex.DW1/A he deposed on the lines of WS and exhibited following documents:
- i. Copy of the 'Certificate for the persons with disabilities' is Ex.DW1/1;
  - ii. Copy of application form of 'Karza Mukti Abhiyan' is Ex.DW1/2.
16. In his cross-examination done by Ld. Counsel for plaintiff he stated that he is educated up to 8th and cannot read and write English but is acquainted with Hindi. He denied that he can read and write English but still accepted that he does append his signature in English. He admitted the suggestion that he applied for loan under Prime Minister Employment Generation Programme. He claimed that he did not read the loan document before signing and as such was not aware about the terms and

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conditions. He accepted that he has paid only Rs.2.78 lakhs. He, however, claimed that he made an additional payment of Rs.5.50 lakhs to bank representative. He claimed that no legal notice was received by him.

17. I have heard arguments of Ms. Mamata Pal and Ms. Nupur Katiyar,

Ld. Counsels for plaintiff and Sh. Harpreet Singh, Ld. Counsel for defendant assisted by defendant. I have perused the case file carefully.

18. Now I shall dispose of individual issues framed in this case.

Issue No.1:

- i. Whether the plaintiff is entitled to a decree for recovery of the suit OPP

19. At the onset it would be appropriate to cull out the admitted facts. It is admitted case of both the sides that defendant had approached Paharganj branch of the plaintiff to avail PMEGP loan from the bank on 16.11.2019 of Rs.4 lakhs apart from Rs.3 lakhs as cash credit loan. He accepts appending signatures on loan documents. He also accepts that he was unable to pay EMIs as per schedule. He accepts that FDR of Rs.1,86,600/-

was deposited by Khadi and Village Industries Commission on his behalf with the bank.

20. While opening her submissions Ld. Counsel for plaintiff submits that out of 4 loans clubbed by the plaintiff bank to file the suit in hand that constitutes the suit amount of Rs.9,19,714/- the dues have been detailed as in the claim as under:

Account No.	Present Liability	Rate of Interest	Interest from 01/07/2023
2021773001076	Rs.4,67,694.50	@10.7%	Rs.8,340.5
2021261058286	Rs.3,54,382.40	@10.7%	Rs.6,320.00
2021755000031	Rs. 76,736.20	@9.25%	Rs.1,183
2021757000002	Rs. 4,982.00	@9.25%	Rs. 76.00
	Rs.9,03,795.1	+	Rs.15,919.5
Total = Rs.9,19,714.6			

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21. Admittedly, loan application, loan agreement and sanction letter qua the first two loans are filed and proved on record as Ex.PW1/2 to Ex.PW1/6 are duly executed. As regards the similar documents i.e. loan application, loan agreement and sanction letter qua the 3 rd loan of Rs.80,000 and 4th loan of Rs.12,000/- it is accepted that no such documents have been filed, proved or exhibited on record. Evidently, defendant too has denied availing or sanctioning of any such loan by the bank in his favour.
22. During the course of final arguments Ld. Counsel for bank submits that although no loan applications were necessary for these latter loans as covid related lockdown was imposed in the country but she accepts that loan agreement and sanction letter were prepared by the bank. However for reasons best known to the bank and its officials none of these documents have been filed. It is submitted that the bank has filed separate statement of account maintained by the bank qua these latter two loans and that the Court may consider the same as sufficient proof of the application, sanction and disbursement of these loans.
23. This plea is opposed by Ld. Counsel for defendant with a submission that

had there been any element of truth in the plea that defendant had availed 4 loans, the plaintiff would have submitted the documents pertaining to the latter two loans. The fact that no such document has been filed on record calls for drawing of an adverse inference against the bank under Section 119 of Bhartiya Sakshya Adhiniyam, 2023 (Section 114 (g) of Indian Evidence Act). For ready reference the same is reproduced hereunder:

Section 119 of Bhartiya Sakshya Adhiniyam, 2023: Court may presume existence of certain facts

Illustration

The Court may presume-

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(g) That evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it;

24. In case titled Krishan Dayal Vs. Chandu Ram, 1969 SCC Latest

Caselaw 133 Del while discussing the effect of withholding of material documents like account book it was observed that:

"Question then arises as to what is the effect of the withholding of material account books. In this respect I find that according to illustration (g) under Section 114 of the Evidence Act, the evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. The principle underlying the above illustration has been applied by their Lordships of the Supreme Court in cases wherein a party in possession of material document does not produce the same. It has accordingly been held that the non-production of material document by a party to a case would make the Court draw an inference against that party.

A Division Bench of the Calcutta High Court (Mookerjee and Panton, JJ.) in the case of Debendra Narayan Singh v. Narendra Narayan Singh and others held:- "In a suit for accounts, the non-production of account books by the party who has custody of them justifies the presumption under Section 114(g) of the Evidence Act, that they have been withheld, because if produced, they would have been unfavorable to his case. If he is the plaintiff and is claiming account though withholding papers, his suit is liable to be dismissed.

(Emphasis Supplied)

25. In case titled Union of India Vs. Mahadeolal Prabhudayal, 1965 Latest

Caselaw 43 SC Hon'ble Supreme Court while discussing judgments passed by Privy Counsel ruled that:

"If it is found that a party to a suit breaches its application to give full disclosure of relevant facts and materials, the Court shall invoke the presumption attached to Section 114(g) of the Evidence Act."

26. In the light of the above the failure on the part of the bank to prove two applications, processing, documentation and sanctioning of the latter two loans this Court has no hesitation in concluding that bank has failed to prove the same.

27. As far as the loan amount pertaining to the first two loans i.e.

Rs.4,67,694/- and Rs.3,54,382/- as on 31.07.2023, defendant, on the one hand, concedes that he could not pay the EMIs due to covid related lockdown but on the other hand stated that he paid a sum of Rs.5.50 lakhs cash to the plaintiff's representatives. Upon being asked Ld. Counsel for

defendant accepts that apart from making a bald assertion in this regard in the WS no documentary or an independent oral witness has been cited, filed or relied by the defendant. As per Section 104 of Bharatiya Sakshya Adhiniyam, 2023 (Section 101 of the Indian Evidence Act, 1872)

primary onus of proving the case remains on the plaintiff but when the defendant come up with a specific fact like the plea that he paid a sum of Rs.5.50 lakhs cash to the bank's employees in terms of Section 105 of Bhartiya Sakshya Adhiniyam, 2023 (Section 102 of Indian Evidence Act) and Section 106 of Bhartiya Sakshya Adhiniyam, 2023 (Section 103 of Indian Evidence Act) the onus of proving the same remain on the defendant. For ready reference the law is reproduced hereunder:  
Section 105 of Bhartiya Sakshya Adhiniyam, 2023: On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustration:

(a) A sues B for land of which B is in possession, and which, as A asserts was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Section 106 of Bhartiya Sakshya Adhiniyam, 2023 : Burden of Proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that that fact shall lie on any particular person.

Illustration:

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted theft to C. A must prove the admission.

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B wishes the Court to believe that, at the time in question, he was elsewhere. B must prove it.

28. In case titled Anil Rishi Vs. Gurbaksh Singh, 2006 Latest Caselaw 269

SC dated 02.05.2006 Hon'ble Supreme Court held as under:

The suit will fail If both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.

29. In case titled Rajendra Singh Vs. State of UP and another, 2007 Latest Caselaw 602 SC Hon'ble Supreme Court held as under:

8. "Section 103 of the Evidence Act says that the burden of proof as to a

particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact lies on any particular person. The second illustration to Section 103 reads as under:

"B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it."

30. In case titled Government of NCT of Delhi and Ors. Vs. S.D. Sharma, 2015 Latest Caselaw 1910 Del Hon'ble Delhi High Court held as under:

9. "As per the case of the prosecution, the Respondent continued to remain

absent from duty wilfully and unauthorisedly w.e.f 23.12.93 to 01.02.2000 Under Section 101 read with Section 103, Indian Evidence Act, 1872, the burden of proof to prove the absence of the respondent lies on the petitioner. It is a settled legal position that preponderance of the evidence, also known as balance of probabilities is the standard of proof required in most civil cases, unlike criminal cases where the prosecution is required to prove the case beyond reasonable doubt. The standard is met if the proposition is more likely to be true than untrue. Effectively, when there is a chance greater than 50 percent for the proposition to be true. (Ref. Lord Denning, in Miller v. Minister of Pensions 1947 2 All ER 372.) Admittedly, there was not a single prosecution witness brought by the petitioners to prove the document relied upon by them. Thus the petitioners have clearly failed to discharge their burden of proof."

31. Failure on his part to prove the same inevitably leads to a conclusion that no such payment was made.

32. Likewise, another plea raised is that the defendant was made to sign blank documents in English and that he is educated up to 8th and that he is not aware of English Language. In case titled Nainmal Partap Mal Shah vs. CS Comm No.1241/2023 page 10 Canara Bank Vs. Anil Sharma Union Of India and Ors (1980) 4 SCC 427, in paragraph 2, it is observed and held as under:

"2. Controverting this allegation, the Under-Secretary to the Government of India stated that the grounds were explained to the detenu by the prison authorities. In the affidavit the name of the authority concerned or the designation is not mentioned. Nor is there any affidavit by the person who is stated to have explained the contents of the grounds to the detenu. The Under-Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English..."

33. This bald plea is nothing but a lame attempt to skirt the payment of loan defaulted by the defendant. There was no pressure or coercion on the defendant to sign the loan documents in case he was not satisfied about the contents of the same. Admittedly, all the loan documents are bilingual in nature i.e. both in English and Hindi and once the defendant has accepted that he can read and write Hindi a plea that he could not read the English part of the documents is meaningless.



34. Another submission made is that the plaintiff bank still holds a fixed deposit receipt of Rs.1,86,600/- dated 18.12.2019 with maturity value of Rs.2,54,437/- as on 18.12.2024 and that this amount had not been adjusted by the bank till date. Upon being asked defendant accepts that the money under the FDR of Rs.1,86,600/- was not deposited by defendant with the plaintiff bank but was rather deposited by Khadi Gram Village Commission. According to Ld. Counsel for plaintiff the adjustment of the above Rs.1,86,600/- in the debit balance of the defendant was possible but only had the defendant maintained the fiscal balance for three years from the date of disbursement of loan.

35. It is argued that once the defendant admittedly did not adhere to financial discipline and did not pay EMIs in time, as per the scheme and circulars issued therein the money contained in the FDRs will be returned back to CS Comm No.1241/2023 page 11 Canara Bank Vs. Anil Sharma Khadi and Village Industries Commission. Attention of this Court is drawn to document Ex.PW1/4 where it is mentioned that the margin money of Govt. subsidy shall have a lock in period of 3 years. Attention of this Court is also drawn to a circular dated 03.02.2024 issued by SME business unit of MSME wing of the plaintiff bank. This internal circular carries a reference of PMEGP scheme of Ministry of MSME which is being implemented by KVIC which provides that in a case a loan account issued under PMEGP becomes NPA within a lock in period of 3 years, the margin money will be returned back to the KVIC with interest.

36. It is accepted by Ld. counsel for the defendant that his client could not complete the three year term which is a prerequisite for availing the benefit of the above FDR, the bank cannot be directed to not to return the above amount back to KVIC and deposit it in the debit balance of the defendant herein.

37. The evidence in this case is primarily documentary. The documents relied upon by the plaintiff are the documents maintained by a Bank in the ordinary course of its business. Though the exceptions cannot be ruled out, but generally taking a judicial notice of the business, these documents can be considered to be duly executed in due course of the banking business and capable of binding the parties into a contractual relationship.

38. The pleadings in the plaint and annexed documents have remained unrebutted, unchallenged and uncontroverted. In the absence of any plausible denial on behalf of defendant, case of the plaintiff is deemed to be admitted. On the basis of pleadings, evidence led and the documents exhibited plaintiff has discharged the onus of proving its case.

39. This issue is partially answered in favour of plaintiff only qua loan no. 1 and 2 and that too at the principal outstanding of Rs.7,61,725/- as on 02.01.2023 i.e. when the legal notice was sent.

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40. The legal demand notice was not replied by the defendant despite due service. As per case titled Jayam Company Vs. T. Ravi Chandaran 2003 (3) RCR (Cr.) 154 Madras presumption is drawn against defendant that they have admitted the contents of the legal notice.

41. In another case titled as Metropolis Travels & Resorts (I) Pvt. Ltd. Vs. Sumit Kalra and Ors., 2002 Latest Caselaw 714 Del wherein it was observed that :

"13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respondent vide Ex. PW1/3. No reply to the same was given by the respondent. But in spite of the same, no adverse inference was drawn against the defendant. This court in the case of Kalu Ram Vs. Sita Ram 1980 RLR 44 observed that service of notice having been admitted without reservation and that having not been replied in that eventuality, adverse inference should be drawn because he kept quiet over the notice and did not send any reply. Observations of Kalu Ram's case (supra) apply on all force to the facts of this case. In the case in hand also despite receipt of notice, respondent did not care to reply nor refuted the averments of demand of the amount on the basis of the invoices/bills in question. But the Ld. Trial court failed to draw inference against the respondent".

(Emphasis Supplied)

42. Ld. Counsel for plaintiff has also relied upon case titled as Krishan Kumar Aggarwal Vs. Life Insurance Corporation 2010 Latest Caselaw 3344 Del wherein Hon'ble Delhi High Court observed that:

"65. No explanation has been rendered by the respondent as to why letter dated 23rd August, 2008 and the legal notice sent by the appellant were not repudiated or even replied. Despite due receipt, the respondent did not bother to even send any response to the letter dated 23rd August, 2008 or the legal notice, the contents whereof would be deemed to have been admitted. In the judicial precedents reported in Rakesh Kumar Vs. Hindustan Everest Tool Ltd. MANU/SC0396/1988: (1988) 2 SCC 165 & Hirallal Kapur Vs. Prabhu Chaudhary MANU/SC/0189/1988 : (1988) 2 SCC 172 it was held by the Supreme Court that a categorical assertion by the landlord in a legal notice if not replied to and controverted, can be treated as an admission by a tenant.

"66. In a Division Bench proceedings of this court reported in Metropolis Travels and Resorts Vs. Sumit Kalra MANU/DE/0562/2002 : 98 (2002) DLT 573 (DB), no adverse inference was drawn against the respondent for failure to reply the legal notice on consideration of the facts and circumstances of the case. Reference was made to proceedings reported in Kalu Ram Vs. Sita Ram wherein it had been observed that service of notice being admitted without reservation and that having not been replied, in that eventuality, adverse inference should be drawn".

(Emphasis Supplied) CS Comm No.1241/2023 page 13 Canara Bank Vs. Anil Sharma

43. As per judgments of Division Bench of Hon'ble High Court of Delhi, plaintiff has been successful in showing on record that non-reply of legal notice by the defendant calls for drawing of

presumption as to correctness of the facts contained therein.

Issue no. 2:

ii. Whether the plaintiff is entitled to interest, if so, at what rate and for which period? OPP

44.The interest is payable as per Section 34 CPC. For ready reference, Section 34 CPC is reproduced hereunder:

Section 34 CPC: Interest

(i)"Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6% per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(ii).Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum but shall not exceed the contractual rate or interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation (i) In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970.

Explanation (ii) For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of the payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

(Emphasis Supplied)

45.Section 34 CPC provides that plaintiff will be entitled the interest at the rate at which Court finds reasonable. For a general suit, the rate of interest prescribed is 6% and for commercial suit, the Parliament promulgates that rate of interest may increase from 6% to a rate which is found reasonable. Plaintiff is accordingly entitled to only the rate at which RBI has issued Circular for Commercial suits.

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46.As far as the interest is concerned, rate applicable to Commercial transaction shall be payable. As per RBI notification dated 30.08.2022 issued vide Press Release no.2022-2023/794 whereby advisory issued by RBI to Schedule Commercial banks of accepting deposit rates @ 9.05% per annum. Relief

47.In view of the above, the suit of the plaintiff is decreed with cost qua principal outstanding of two loans i.e. Rs.4,38,959 + Rs.3,22,766 i.e. Rs.7,61,725/- + Rs.48,270/-[interest @9% w.e.f. 02.01.2023 (the date of legal notice) to 16.09.2023 (date of filing of the suit) = Rs. 8,09,995/- and further 9% interest on Rs. 8,09,995/- pendente lite and till realization. Lawyer's fees is assessed as Rs.20,000/-.

48.Decree sheet be prepared accordingly. File be consigned to Record Room after due compliance. Digitally signed by SURINDER S SURINDER RATHI S RATHI Date:

2025.02.11 14:14:56 +0530 (SURINDER S. RATHI) District Judge, Commercial Court -11 Central District, THC Delhi/27.01.2025 CS Comm No.1241/2023 page 15  
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