

M/S Housing Development Finance ... vs Sh. Satendra Singh Sikarwar on 2 February, 2013

IN THE COURT OF SHRI MAN MOHAN SHARMA
ADDITIONAL DISTRICT JUDGE (CENTRAL) 1
TIS HAZARI COURTS, DELHI

C.S. No. 468/2008
Unique ID no. 02401C1024702005

M/s Housing Development Finance Corporation Ltd.
(through its authorized representative Sh. Girish Bhatia)
The Capital Court,
Olof Palme Marg.
Munirka, Outer Ringh Road,
New Delhi-110067.

....Plaintiff

Versus

1. Sh. Satendra Singh Sikarwar
Mohalla Harkota,
Goal Pahadia, A. B. Road,
Lashkar, Gwalior-474002
Also at:-
Plot of land at Ward no. 48,
Mohalla Harkota,
Goal Pahadia, A. B. Road,
Lashkar, Gwalior.
2. Sh. Shailendra Singh Sikarwar
Mohalla Harkota, Goal Pahadia,
A. B. Road, Lashkar,
B. Gwalior-474002.

....Defendant

Date of institution of the suit :14.11.2005
Reserved for judgment on :02.02.2013

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Date of pronouncement of judgment :02.02.2013

Suit for recovery

J U D G M E N T:

☐The facts in brief as propounded by the plaintiff are:☐

(i). The plaintiff is a registered Financial Company under the provisions of the Indian Companies Act, 1956 and it engaged in the business of providing housing loan, loan against property etc. Defendant no. 2 is the owner of plot of land at Ward No. 48, Mohalla Harkota, Goal Pahadia, A. B. Road, Lashkar, Gwalior. The defendant no. 1 is the borrower and defendant no. 2 is the co-borrower.

(ii). The defendants had approached the plaintiff for grant of loan of Rs. 3,00,000/- towards home loan for construction of the house and the loan was sanctioned to the defendants after verification of the property papers. The defendants have signed the sanction letter dated 27.04.2012 in token of acceptance of the terms and conditions as well as the loan agreement dated 01.05.2002.

(iii). The defendants had to repay the loan amount along with the interest by way of 180 monthly installments. The interest was @ 11.5% per annum. The additional interest @ 18% per annum as per clause 2.7(b) of the loan agreement was also payable by the defendant to the plaintiff in case of default or delay in making the payment of the EMIs. The loan amount had been disbursed to the defendants through three cheques i.e. one cheque for a sum of Rs. 1,50,000/- and remaining two cheques for a sum of Rs. 75,000/- each.

(iv). The defendants had paid only initial few EMIs and defaulted in making of the EMIs since June, 2003. The plaintiff sent a legal notice dated 03.06.2005 through Regd. AD to the defendants for payment of the outstanding dues but the defendants did not pay the same. As per books accounts of the plaintiff, the defendants are liable to pay a sum of Rs. 3,87,983/-

2. The notice of suit was sent to defendants. Appearance on behalf of defendants has been recorded in the minutes of proceedings dated 29.11.2006. The defendant no.2 filed his written statement on that date itself which has also been adopted by the defendant no. 1. The defendants stopped appearing in the matter since 30.04.2010 and matter proceeded as ex parte against them.

3. In the written statement of defendant no.2, it has been stated that the suit is barred by limitation; suit has not been instituted by a duly authorized person; the Court is having no jurisdiction as the property for which loan has been granted is situated in Gwalior and the documents were executed at Gwalior; the claimed amount can not exceed the amount of loan; the loan is stated to be disbursed on 30.04.2002, whereas the documents were executed on 01.05.2002 which is fallacious; the suit is false, frivolous and without any cause of action.

4. On merits, the defendant no. 2 denied the material averments on which the plaintiff has propounded his cause of action.

5. With the available pleadings the following issues have been framed on 31.01.2007: □

i) Whether the suit is barred by limitation?

OPD

ii) Whether the suit is bad for not being signed
by authorised person? OPD

iii) Whether this Court got no territorial

jurisdiction to entertain the present suit? OPD

iv) Whether the suit is bad for suppression of material facts? OPD

v) Whether the suit is bad for lack of cause of action? OPD

vi) Whether the plaintiff is entitled for the decree of suit amount? If so to what sum? OPP

vii) Whether the plaintiff is entitled for interest? If so, at what rate and for which period? OPP

viii) Relief.

6. The plaintiff has examined Sh. Girish Bhatia as PW□ who has been cross examined by the defendant. Sh. D.K. Gupta has been examined by the plaintiff as PW□ in additional evidence. The defendants did not cross examine this witness being ex□parte.

7. No witness has been examined by the defendants. The statement of Ld. Counsel for defendant for closing the evidence of defendant as made on 24.08.2007 is on record.

8. I have heard Ld. Counsel for plaintiff.

9. It is submitted by Ld. Counsel for the plaintiff that there is no evidence on the part of the defendants. On the other hand, the evidence of plaintiff has remained without any challenge. The testimony of PW1 could not be impugned and the testimony of PW2 is not impugned by cross examination.

10. Ld. Counsel for the plaintiff has relied upon State of Rajasthan vs. M/S Swaika Properties AIR 1985 SC 1289 to cite that the cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. Case of M. M. Rubber Co. Ltd. vs. Vinod Patterns & Furnitures Civil Revision No. 516 of 1998 decided on 09.02.2000 by the Hon'ble High Court of Delhi has been relied upon to read that it is held that when the goods were sent from Delhi and cheques issued at Bhopal were sent to Delhi which in presentation dishonoured, a part of cause of action has accrued at Delhi.

11. Plaintiff relied upon M. Vittal Rao vs. M. H. Ranganath I (2000) CLT 438 wherein it is held that the demand for payment having been made by plaintiff in Bangalore through demand notice in exercise of right under pronote then cause of action for arisen partly in Bangalore in the light of section 20(2) CPC; Reliance if also placed upon Gauri Shankar Bajoria vs. Ram Banka AIR 1963 Patan 398 to cite that cause of action party accrues at place where cheque is issued and party at place where cheque is honoured or dishonoured. On the aspect of territorial jurisdiction case of Dena Bank vs. Iroside Ltd. AIR 1987 Bombay 227 and Vijaya Bank vs. Kiran & Co. AIR 1983 MADRAS 357 have also been relied upon.

12. I have considered the submissions and perused the record. My findings on various issues are as under: □ Issue no. 3: Whether this Court got no territorial jurisdiction to entertain the present suit?

13. I am taking up this issue first as the question of jurisdiction goes to the root of the matter.

14. Section 20 of the Code of Civil Procedure reads as under: □ "20. Other suits to be instituted where defendants reside or cause of action arises-- Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."

15. The clause (a) of the above is not attracted as admittedly as per the addresses furnished by the plaintiff the defendants are the residents of Gwalior. Clause (B) is also not attracted as on record no such leave has been applied for or granted.

16. Now clause (c) has to be examined to find out if the cause of action, whether in whole or in part, has accrued to the plaintiff within the jurisdiction of this Court.

17. PW □ has been cross examined primarily on the aspect of territorial jurisdiction by the defendants.

18. PW1 has stated in his cross examination that the loan was sanctioned by the Committee of which he was one of the members. He had not signed the loan agreement and the same has been signed by Sh. P. Haridashan. He also stated that he did not sign any of the document produced in the present case. He stated that his testimony was on the basis of record maintained by the plaintiff and that he did not have any personal knowledge about the issuance of 36 postdated cheques as mentioned in Ex. PW1/C.

19. Further in his cross examination PW1 stated that the stamp paper used is of Gwalior. He admitted the suggestion that the loan agreement was signed at Gwalior. He stated that the cheques given by the defendant were got encashed at Gwalior; the defendants are residents of Gwalior.

20. PW1 stated in his cross examination that the loan was sanctioned on 27.04.2002; the payment was advanced on 01.05.2002 at Gwalior; the suit was filed on 14.11.2005. He denied the suggestion that the defendant is not liable for any amount.

21. Ex. PW1/A is the copy of certificate of incorporation. It shows the incorporated status of the plaintiff. Ex. PW1/B is the copy of Letter of Authority and it shows the act of conferring authority upon Shri S. N. Shroff to institute suit and to do the incidental acts and deeds as narrated therein. Ex. PW1/C is the letter dated 27th April 2002 conveying the sanction of loan. Ex. PW1/D is the Loan Agreement. Ex. PW1/E is the Demand Promissory Note. Ex. PW1/F is the Demand Notice of Advocate which is dated 03.06.2005. Ex. PW1/G are the postal receipts of the dispatch of above. Ex. PW1/H□ to 3 are the AD Cards. Ex. PW1/I is the statement of account and Ex. PW2/1 is the certificate under the Banker's Books Evidence Act.

22. In L. N. Gupta and others. Vs. Smt. Tara Mani AIR 1984 Delhi 49 it has been held:

"Under S.20, Cl. (c) C.P.C., a suit can be filed in a Court in whose jurisdiction the cause of action, wholly or in part arises. Place of performance in full or in part of a contract and, therefore, the place of payment of part payment will give rise to a cause of action in that place. Such place can be specified at the time of making the contract, may be appointed later on, or may be implied. Indian Contract Act, 1872, Sections 47, 48, 49 deal with the place of performance. So far as the stipulated place is concerned, there should ordinarily be no problem. But where the contract is silent about the place and (i) the promisee is not required to indicate the place at which the promise ought to be performed, or the promissory must ask the promisee for a reasonable place, and (2) where the promisee is required to specify the place, at the place appointed by him, provided such place is a proper place. Now, there may arise situations in which the promisee is not required to specify the place or if required does not so specify the place, or if the place so specified is neither reasonable nor proper, then the Court may be called upon to look for loci solution is, that is the proper place of performance. This the Court can do by taking into consideration all the relevant factors.....I therefore, agree that the common law rule should be invoked in such cases not merely as rule to help locate the forum but as a part of the law relating to contractual obligations where the statute is silent in the matter. Avedh Behari J. has, therefore, with his usual caution concluded that we cannot totally exclude the application of this rule from our law:

(National Building Construction Corporation Ltd. vs. Vyasa Bank Ltd. ILR (1981) 2 Delhi 623)..."

23. In Soniram Jeetmull Vs. R. D. Tata and company AIR 1927 Privy Council 156 it has been held that if the contract is silent as to place to payment of liability□Payment should be made where the creditor is □Intention of parties to the contract must be seen.

24. In Arunachalam Chettiar and another Vs. Murugappa Chattiar 1956 MADRAS 629 (AIR V 43 C 201)it has been held that if a note is executed at one place and delivered at another or is made payable at another place, part of cause of action arises of at each one of those places and suit may be filed at any place at the option of the plaintiff. In Nath Bhai Ranchhod Vs. Chabildas Dharmchand AIR 1935 Bombay 283 it has been held that the promise to pay the creditor implies that the debtor

will find the creditor to pay him and will pay where the creditor is; under S. 49 it is reasonable to suppose that if the debtor applies for a place to be appointed, the creditor will appoint the place where he himself resides□at any rate he has the power so to appoint; if the debtor fails in his duty to apply, he cannot by his failure better his position or deprive the creditor of his statutory powers to appoint a reasonable place.

25. In Messrs. Johri Mull Vs. Hira Lal Seth AIR 1961 PATNA 198 (V 48 C 49) it has been held that it is the debtor who has to seek creditor and court at place of payment has jurisdiction.

26. Ex. PW1/C which is the letter conveying sanction of loan has been issued from Delhi. The Notice Ex. PW1/F demand payment has also been issued from Delhi. The statement of account Ex. PW1/I also shows that the account has been maintained at New Delhi. Considering the same in the context of the law relied upon by the plaintiff as well as the case law cited above this court does have territorial jurisdiction as a part of cause of action has arisen at Delhi.

27. The finding on this issue is returned in negative. Issue no.1 Whether the suit is barred by limitation?

28. Though the onus of this issue is upon the defendant it is the plaintiff who has to satisfy the court about limitation.

29. PW1 has submitted that the loan was sanctioned on 27.04.2002. Admittedly the loan documents had been executed on 01.05.2002 and the payment disbursed. As per Ex. PW1/D the term of loan was 180 EMI's. The suit has been instituted on 14.11.2005.

30. Surprisingly, the suit cannot be barred by limitation within the three years of disbursement of loan when the period of repayment itself is 15 years (180 months).

31. What is the period of limitation in such suits can be considered by citing the law pronounced in the judgment of the Hon'ble High Court of Delhi in National Small Industrial Corporation Limited vs. Takdir Singh 120(2005) DLT 297 wherein it has been held by the Division Bench that "...We feel cause of action accrued separately with regard to each and every installment only when particular installment became due and the period of limitation for that particular installment will be three years commencing from the date that particular installment became due..."

32. The PW1 has deposed that the instalments were not paid since June 2003. This statement is not controverted in cross examination and no evidence has been led by the defendant. In respect of the said instalment the limitation would have expired in May 2006. Thus the suit as instituted on 14.11.2005 is well within limitation.

33. Thus this issue is answered in negative.

Issue No. 2: Whether the suit is bad for not being signed by authorised person?

34. A company is a juristic person and thus as a rule of necessity has to exercise its essential functions through some human agency. Order 29 Rule 1 of the Code of Civil Procedure reads as under: □ "ORDER XXIX SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading-- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

35. In *United Bank of India vs. Naresh Kumar & Others* (1996) 6 SCC 660 it has been held: □ "8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name.

Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity, it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and *dehors* Order 29, Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour, of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

36. In the present case there is a letter of authority propounded by the witness PW1 as Ex. PW1/B. It is in his favour. The said witness namely Girish Bhatia is also a signatory to the plaint; he has sworn

an affidavit filed with the plaint; has appeared in the witness box; court fee has been paid on behalf of the plaintiff and so many other acts and deeds like engagement of Advocates etc. have been done. There is nothing to suggest that the said Shri Girish Bhatia is a busybody who is squandering his time and money on fruitless chores. If the company succeeds in the case no laurels are going to fall into his lap. Thus the facts and circumstances on record suggest that Shri Girish Bhatia, has been appearing in this case, signing and verifying the pleadings and giving evidence only for the reason that he has been so authorized to act for and on behalf of the plaintiff company. Thus the circumstances suggest his due appointment as well as his ostensible authority on preponderance of probabilities. No other inference reasonable seems to be flowing.

37. Thus taking a cue from the above judgment, the facts and circumstances on record go to suggest that the suit has been duly instituted by a duly authorized person; the plaint has been signed and verified by him accordingly under the said authority. The technical objection as raised by the defendants is only an art for art's sake objection and has no merits.

38. The finding on this issue is returned in negative. Issue no. 4: Whether the suit is bad for suppression of material facts? OPD

39. The onus of this issue has been on the defendants who have failed to step into the witness box, despite opportunity afforded.

40. The issue is an issue of fact. From the evidence on record there is nothing to infer that any material facts have been suppressed.

41. This issue is answered in negative.

Issue no. 5: Whether the suit is bad for lack of cause of action?

& Issue no. 6: Whether the plaintiff is entitled for the decree of suit amount? If so to what sum?

42. I am taking up these issues together as cause of action is a bundle of facts which the plaintiff has to establish to get his case go through after having tested on the touchstone of law.

43. I have already discussed the evidence led in the matter while discussing the issue no. 3. To avoid prolixity, the same is not being re-discussed here.

44. In a nutshell the transaction is not disputed by the defendants. The oral and documentary evidence of plaintiff has remained unchallenged on material aspects of the claim of the plaintiff. The plaintiff has been able to prove its entitlement to the relief claimed.

45. Hence the issue no. 5 is answered in negative and the issue no. 6 is answered in affirmative.

Issue no. 7: Whether the plaintiff is entitled for interest? If so, at what rate and for which period?

46. When the entitlement of plaintiff has been held in his favour while deciding issue no. 6, the grant of interest is a logical corollary as the defendants who have used the money for such a long time and deprived the plaintiff of the same can not be entitled to unjustly enrich themselves at the cost and expense of the plaintiff.

47. While awarding the interest, the Court has to balance the rights of both the parties when there is no contractual rate of interest agreed between the parties. The rate of interest should be such as to not give any undue advantage to one party over the other. It should be reasonable so that the defendant does not stand benefited by delaying the payment on account of low rate of interest and similarly it should not work as Shylock's legendary pound of flesh.

48. The plaintiff has claimed interest @ 18% per annum. The contractual interest has been the prime lending rate i.e. 11.50% P. A. By defaulting in the payment the defendants have failed to retain the title of 'prime borrowers' and in fact they are 'sub-prime'. Taking a stock all the aggravating and mitigating factors, in my view, the interest of justice should be served if the plaintiff is awarded pendentlite and future interest @ 13% per annum from the date of institution of suit till final realization.

49. This issue is answered in affirmative in the above terms. Issue no.5: Relief?

50. In view of my findings on the issues, the suit of plaintiff is decreed in the sum of Rs. 3,87,983/- (Rs. Three lacs eighty seven thousands nine hundred eighty three only) with pendentlite and future interest @ 13% per annum from the date of institution suit i.e. 14.11.2005 till final realization.

51. As the filing of the suit has been necessitated on account of default of the defendants, the plaintiff is also awarded the costs of the suit.

52. Decree sheet be drawn accordingly.

53. File be consigned to Record Room.

Announced in the Open Court On this 2nd day of February 2013 (MAN MOHAN SHARMA) ADJ (Central) Court No. 1, Delhi