

Suit No. 266/06 Sbi vs Dr. J Anand Raj on 6 November, 2013

Suit No. 266/06

SBI Vs Dr. J Anand Raj

IN THE COURT OF MS. SHIVANI CHAUHAN: CIVIL JUDGE
-04: (CENTRAL) THC : DELHI

Suit No. 266/06
UID No. 02401C0687192005
Date of institution: 03.08.2005
Date of pronouncement of the judgment: 06.11.2013
Decision: Dismissed

State Bank of India
A Corporation constituted under
The State Bank of India Act, 1955,
Through its branch office at
A-5, Friends Colony, New Delhi.

.....Plaintiff

Versus

1. Dr. J. Anand Raj
C/o Ezhil Malai Ezhil Catherine,
No.1, 1st Street,
Haddows Road,
Wallace Garden, Chennai.
Also At:-
AB-17, Tilak Marg, New Delhi.

2. Dr. Raghvendra Gupta
H. No. 1393, Sector-19,
Faridabad, Haryana
Also at:-
Dr. Raghvendra Gupta
Sr. Registrar,

Pronounced in the open court on 06.11.13
Suit No. 266/06

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Escorts Heart Institute & Research Center
Okhla Road, New Delhi-110025.

....Defendants

SUIT FOR RECOVERY OF AN AMOUNT OF RS.1,96,119.60/-
ALONGWITH FUTURE AND PENDENTE LITE INTEREST

JUDGMENT

1. The plaintiff has filed the present suit for recovery of Rs.1,96,119.96 paise against the defendants.

Plaintiff's Case

2. The case of the plaintiff is that the plaintiff is a body corporate constituted by the State Bank of India Act, 1955, having its central office at Madam Cama, Nariman Point, Mumbai and one of its local head offices at New Delhi and amongst others places a branch office at A-5, Friends Colony, New Delhi.

3. It has been averred on behalf of the Plaintiff that defendant No. 1 vide personal loan application form dated 01.10.2003 approached the Plaintiff bank for a loan of Rs.2,00,000/- Pursuant to the said request, plaintiff bank vide personal loan agreement dated 07.10.2003 sanctioned a loan of Rs.2,00,000/- vide arrangement letter dated 07.10.2003 duly signed by defendant no.1.

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4. It has been further averred that the defendant no. 2, at the request of defendant no.1 i.e. borrower executed a deed of guarantee dated 07.10.2003 ensuring the full and effective repayment of the sanctioned loan amount of Rs.2,00,000/-

5. It is further averred that upon execution of agreement dated 07.10.2003 by defendant no.1 and deed of guarantee dated 07.10.2003 by defendant no.2, the loan of Rs.2,00,000/- was disbursed to defendant no.1 on 07.10.2003.

6. In accordance with agreed terms and conditions as per Clause 5 of the Loan agreement dated 07.10.2003, the sanctioned amount of Rs.2,00,000/- was to be repaid in 48 equated monthly installments of Rs.5400/-

7. It is further averred that in accordance of the clause 7 & 8 of the Personal Loan Agreement, if borrower committed any breach of the agreement then the plaintiff bank had the right to demand forthwith the outstanding loan amount along with interest, fees, cost, charges etc.

8. That defendant no. 1 was liable to repay to the plaintiff the amount of the aforesaid loan together with interest as per agreement and sanction letter in 48 equated monthly installments of Rs. 5,400/- Suit No. 266/06 SBI Vs Dr. J Anand Raj each.

9. It is further averted that defendant no.1 failed to liquidate the amount and he paid only 9 installments towards the liquidation of loan amount and thus defendant no. 1 is in breach of the agreed terms and conditions.

10. It is further averred that, as per the procedure adopted by the plaintiff bank prior to invoking judicial remedies a representative of the Plaintiff Bank personally met the defendant no. 1 on several occasion requesting him to make the payment, but in vain.

11. It is further averred that plaintiff bank has maintained an account of the defendant no. 1 in its books of account and as and when any amount was paid by defendant no. 1, the same was duly credited to his account. According to statement of account the total liability of defendant no. 1 is Rs. 1,96,119.60 paise on 15.07.05.

12. It is further averred that the liability of defendant no. 2 is co-extensive, joint and several with defendant no.1, since defendant no. 2 vide guarantee deed dated 07.10.03 had guaranteed that all amount due w.r.t said loan shall be payable by him.

13. It is further averred that plaintiff bank vide legal notice dated Suit No. 266/06 SBI Vs Dr. J Anand Raj 23.05.05, called upon the defendants to pay the entire dues. However, defendants neither replied that notice nor liquidated the loan amount.

14. The plaintiff bank has no other efficacious remedy for the recovery of the loan amount except the present suit.

15. It is further averred that defendants are jointly and severally liable to pay the loan amount along with future and pendentlite interest @ 18 % per annum.

Defendant's case

16. Defendant no. 1 was proceeded exparte vide order dated 16.01.08.

17. WS was filed by defendant no.2. In the written statement defendant no. 2 has taken objections that present suit is based on fraudulent transaction.

18. That defendant no. 1 is resident of Chennai and defendant no 2 is resident of Faridabad hence no loan could have been granted at Delhi.

19. That in the loan application residential address of defendant no. 1 is mentioned as EHIRC, Okhla Road, New Delhi, which is clearly Suit No. 266/06 SBI Vs Dr. J Anand Raj false.

20. It is averred that in the column no. 15 of the application it is mentioned that defendant no. 1 had bank/post office deposit of Rs. 5 lacs, if he had such a huge amount then taking of any loan from plaintiff did not arise.

21. It is further averred that application form contains two dates at page 3 i.e 01.10.03 at the end of column no.(iv) and 07.10.03 after the end of column (V) which shows that application was submitted on 07.10.03. That sanction of loan was recommended on 07.10.03 and 10.10.03 but was not approved by competent authority who again wrote for review. From the application form it appears that loan was not finally sanctioned. In case of salaried person no loan could be granted without getting Annexure V, VI and VII filed in undertaking of the employer for deducting the requisite amount of loan from his salary etc. In the present case these Annexures are totally blank and show that application was not proceeded further.

22. It is further averred that the stamp paper of agreement were purchased on 06.10.03 and in the stamp paper address of defendant no. 1 is mentioned as AB-7, Tilak Marg, New Delhi, which is not mentioned in the loan application while in personal loan agreement Annexure B there is no address of defendant no. 1 and the date of Suit No. 266/06 SBI Vs Dr. J Anand Raj loan application is 01.10.03 is false.

23. The purpose of personal loan is not mentioned anywhere. Signatures of defendant no. 1 also differ in many places.

24. In the statement of account a sum of Rs. 5,400/- is shown as against standing instruction but no such instruction has been filed on record which shows that computerized statement of account is manipulated one.

25. It is further averred that defendant no. 2 never executed the alleged Guarantee Agreement Annexure IV. The signature of defendant no. 2 were obtained on 06.10.03 on the blank paper on the pretext that it is only for reference and it will be typed on stamp paper if all terms are settled and if any loan upto Rs. 1.20 lacs is sanctioned and then only it will be properly executed.

26. It is further averred that at that time it was told by defendant no. 1 that he is applying for a loan of Rs. 1.20 lacs against hypothecation of his Maruti car bearing no. DL-6CC-9055 and the dues of the plaintiff bank will be deducted by his employer from his salary.

27. It is further averred that it was told to defendant no. 2 that Suit No. 266/06 SBI Vs Dr. J Anand Raj requirement of two personal guarantee is only a formality as the loan will be recovered either from the hypothecated car or from the employer i.e EHIRC. Guarantee of Dr. Altaf colleague of defendant no. 1 was also taken.

28. It is further averred that Annexure IV has been filled up subsequently by the plaintiff without the consent and knowledge of defendant no. 2. There is no witness on the alleged guarantee deed. No rate of interest is mentioned in the alleged deed of guarantee. The column 1 at page 2 relating to the extent of guarantee amount is still blank.

29. It is further averred that since plaintiff has not filed any guarantee agreement of Dr. Altaf and Hypothecation agreement of the Maruti car it is clear that loan proposal was either not processed further or the same are being concealed.

30. It is further averred that all the documents contain use of different ink and writing at different places which clearly show that they have been filled up subsequently.

31. It is further averred that the alleged personal loan application was prepared and filed by defendant no. 1 on 07.10.03 and therefore no question of defendant no. 1 approaching the plaintiff bank on Suit No. 266/06 SBI Vs Dr. J Anand Raj 01.10.03 could arise.

32. It is further averred that as per the alleged statement of account the last installment was paid on 01.07.2004 whereas defendant no. 1 went to London in June, 2004 and since then his whereabouts are not known. This shows that entire suit of the plaintiff is based on falsehood.

33. It is further averred that no proof of service of notice has been filed on record which prove that no notice was served.

34. In the replication plaintiff reiterated and reaffirmed the contents of plaint and controverted the averments of written statement.

35. From the pleadings of parties, following issues have arisen on 04.09.2006 which are as follows: □
Issue No.1 Whether the suit has been signed, verified and instituted by a duly authorized person?OPP. Issue No.2 Whether the signatures of defendant no.2 on documents in question were obtained in blank?OPD Issue No.3. Whether the plaintiff is entitled to recover suit amount from the defendant?OPP Issue No.4 Whether plaintiff is entitled to interest, if so, at what Suit No. 266/06 SBI Vs Dr. J Anand Raj rate and period?OPP.

Issue No.5 Relief

36. In support of its case plaintiff bank examined Sh. S.C Sakarwal Manager of the Najafgarh Branch of the Plaintiff Bank, who proved following documents: □A) Copy of regulation = Ex. PW1/1 B) Personal loan application dated 01.10.03 = Ex. PW1/2 C) Arrangement letter dated 07.10.03= Ex. PW1/3 D) Personal loan agreement dated 07.10.13= Ex. PW1/4 E) Deed of guarantee dated 07.10.03= Ex. PW1/5 F) Statement of account = Ex. PW1/6 G) Legal notice alongwith postal receipts = Ex. PW1/7 and Ex PW1/8

37. Defendant no 2 did not lead any independent evidence in defence.

38. After recording the statement, the matter was fixed for final arguments.

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39. I have heard the Ld. Counsel for the plaintiff and perused the material available on record carefully.

Issue No.1 Whether the suit has been signed, verified and instituted by a duly authorized person?OPP.

40. The defendants have specifically disputed the authority of Sh. Joginder Singh to sign and verify the present suit.

41. The onus to prove this issue was upon the plaintiff. The suit has been signed and verified by one Sh. Joginder Singh in his alleged capacity as a Chief Manager of the plaintiff bank.

42. The plaintiff has examined only one witness Sh. S.C. Sakerwal, Deputy Manager of SBI, Najafgarh Road, Moti Nagar in support of its case.

43. No power of attorney or Board of Resolution had been filed by the plaintiff either along with plaint or in the evidence which would go on to show that Sh. Joginder Singh was employed with the bank as a Chief Manager and was duly authorized to sign and verify the plaint on behalf of plaintiff bank.

44. PW1 have also admitted in his cross examination that he does not know that Sh. Joginder Singh was ever posted in New Friends Suit No. 266/06 SBI Vs Dr. J Anand Raj Colony Branch from where the loan was sanctioned.

45. PW1 also admitted that he cannot say whether sh. Joginder Singh had the authority to institute the present suit.

46. Ld Counsel for plaintiff has cited judgment of Supreme Court of India in the case of United Bank Of India vs Sh. Naresh Kumar And Ors on 18 September, 1996 In this case it has been observed "...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."

"The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these Suit No. 266/06 SBI Vs Dr. J Anand Raj circumstances, even to presume that the suit had been filed and tried without the appellant having authorized the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorized to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit."

47. This judgment is squarely applicable to the facts of the instant case. the suit was instituted by plaintiff bank and full court fees was paid thereon. The suit was diligently pursued on behalf of the plaintiff bank. In these circumstances, it can be inferred that the plaintiff bank had ratified the action of Sh Joginder singh in signing the plaint by continuing with the suit. Accordingly, the issue stands decided in favour of plaintiff and against the defendants. Issue No.2 Whether the signatures of defendant no.2 on documents in question were obtained in blank?OPD

48. The onus to prove this issue was upon the defendant. The defendant has disputed the due execution of this document and had averred that the signatures were obtained on the blank

documents merely as a reference and that the documents were filled afterwards.

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49. It has been held in Sait Tarajee Khimchand v. Yelamarti Satyam AIR 1971 SC 1865, in para 15 as under:

"The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved..."

50. To similar effect are the observations made in Ramji Dayawala & Sons (P) Ltd. v. Invest Import AIR 1981 SC 2085. Its para 16 is as under: "...Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents as stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue...."

51. Thus, merely marking of the Deed of Guarantee as Ex. PW1/5 would not dispense with the proof of its due execution.

52. The genuineness of a document produced in evidence i.e. is a Suit No. 266/06 SBI Vs Dr. J Anand Raj document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act.

53. Section 67 of the Indian Evidence Act refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the handwriting of someone, it must be proved to be in the handwriting of that person.

54. The execution/ authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the handwriting in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (Sections 45, 47, 73 & 90 of the Evidence Act). Thus, there are various modes of proving signatures/handwriting of a person.

Document may be proved in any of the following manners :

(1) by calling as a witness a person who wrote the document (2) who saw it written or signed or Suit No. 266/06 SBI Vs Dr. J Anand Raj (3) who is qualified to express an opinion as to the handwriting or signatures by virtue of Section 47 or (4) by a comparison of the handwriting as provided by Section (5) by an admission of the

person against whom the document is tendered, or (6) by expert evidence under Section 45, and (7) by internal evidence as afforded by the contents of the documents.

55. The document has therefore to be proved and the provisions relating to the proofs of, documents are to be found in Sections 64, 65, 66 and 67 of the Evidence Act. Section 67 of the Evidence Act provides as under:□

56. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

57. What Section 67 of the Evidence Act requires is that the signature of the person who is alleged to have signed or made the document must be proved.

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58. It is the specific defence of the defendant no.2 that he had signed the Deed of Guarantee and other documents in blank as a witness/ reference to these documents and that he had not signed any document as a guarantor against the loan given to the defendant no.1.

59. In a case like present, provisions of Sections 101 to 104 of the Indian Evidence Act, 1872 would come into play. When a fact is asserted by one party and is denied by the other, then, the party asserting the fact is required and obliged to prove the fact by producing either documentary or leading oral evidence.

60. According to Section 102 of the Indian Evidence Act, 1872, burden to prove a particular fact would be on a party which shall fail in case none of the party leads evidence. In a dispute where plaintiff asserts a fact and the defendant denies, then, the plaintiff is required to prove the fact.

61. It has been held by Gujarat High Court in Gamon India Ltd. vs Sheth Estate Developers Pvt. Ltd. on 21 September, 2005 that:

"In a case where both the parties have led evidence and after considering pros and cons in their true perspective, the Court holds that a particular fact asserted by a party does not exist, then, it would Suit No. 266/06 SBI Vs Dr. J Anand Raj he held to be disproved. A fact is said not proved when it is neither proved nor disproved. Present would be a case falling under the clause not proved. When the plaintiff has asserted a fact, but did not lead any oral or documentary evidence in support of his case, though burden to prove existence of the fact or of the document under Section 102 of the Indian Evidence Act was upon the plaintiff, then, the fact is not proved."

62. The plaintiff did not examine any witness in whose presence the document was signed. The document is not proved to be in the handwriting of defendant no.2. The same is also not witnessed by independent witnesses. Plaintiff has failed to prove that Ex. PW1/5 was duly executed.

63. This document was not signed by defendant no.2 in the presence of PW1. PW1 has no personal knowledge about the facts of the instant case. He was neither posted at the concerned branch of the plaintiff bank at any point of time.

64. The perusal of Deed of Guarantee i.e. Ex PW1/5 shows that the defendant no.2 has also signed in the place where witness to the document is required to affix his signatures. In addition to the same, he has signed all the pages of the Deed of Guarantee.

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65. The fact that defendant no.2 has signed as a personal Reference of defendant no.1 in the loan application form Ex PW1/2 and the fact that his signatures also appear at the place where the witnesses are required to affix their signatures, reinforces the argument of defendant no 2 that defendant no 2 had signed Ex PW1/5 merely as a reference for the loan.

66. This document is not witnessed by any independent witness and this also raises a strong presumption against the genuineness and due execution of Ex. PW1/5.

67. No person can lead direct evidence to prove a negative fact. Through cross examination of PW1, defendant has been able to substantiate that the document Ex. PW1/5 was not duly executed.

68. In these circumstances and in the absence of any contrary evidence, the issue stands decided in favour of defendant no.2 and against the plaintiff.

Issue No.3. Whether the plaintiff is entitled to recover suit amount from the defendant?OPP

69. The onus to prove this issue was upon the plaintiff. PW1 has admitted that he has no personal knowledge about the loan transaction and he was never posted at the New Friends Colony Suit No. 266/06 SBI Vs Dr. J Anand Raj Branch during the relevant period.

70. The loan was sanctioned by one Sh. S. K. Arora on behalf of the plaintiff bank.

71. The defendant no.2 had disputed the loan transactions on the ground that the same is a fraudulent transaction and no such loan was ever given to defendant no.1.

72. The defendant no.2 has submitted that he is a resident of Faridabad and defendant no.1 was a resident of Chennai and therefore, the question of applying and sanctioning of loan at the New Friends Colony Branch does not arise.

73. The defendant no.2 has argued that the loan transaction in question was fraudulent in nature and due diligence, as required by the Rules of plaintiff's bank, was not carried out at the time of granting of the loan.

74. The defendant no.2 has argued that even the correct address of defendant no.1 was not taken by the plaintiff bank at the time of execution of loan documents and that the loan application is also blank at several places.

75. In the loan application, defendant no.1 has mentioned his Suit No. 266/06 SBI Vs Dr. J Anand Raj st st., Haddau's Road, address as "No.1, 1 Mungansakkam, Chennai-60" however, the summons of the suit as well as the legal notice was not served upon the defendant at this address.

76. The address of defendant no 1 in the suit is shown as "No.1, 1 st st., Haddau's Road, Wallace Garden , Chennai-60". The summons were sent to the defendant on this address only.

77. PW1 during his cross examination, has admitted that the bank follows due procedure before changing the address of any of its client and had deposed that same cannot be changed without the request of the concerned party and in the absence of any documentary evidence in support of the address.

78. The defendant no 1 has not furnished any address in the loan agreement. The address provided by defendant no 1 in his loan application form is different from his address as mentioned in the suit. The plaintiff bank has not stated any basis on which it had changed the address of defendant no.1. In these circumstances, there is no justification for the change of address by the plaintiff bank on its own.

79. Before the sanctioning of loan, the plaintiff bank requires the details of the assets owned by the loan applicant to ensure his Suit No. 266/06 SBI Vs Dr. J Anand Raj credibility and the creditworthiness. In the loan application form, in column no.15 the assets of defendant no.1 are assessed at RS. 5 lakh. The plaintiff as well the evidence is silent as to the basis of computation of the assets of the defendant no.1 at Rs.5 lakh. Further, PW1 has admitted that the plaintiff bank had not obtained any documentary proof in respect of the assets of the defendant no.1 at the time of sanctioning of the loan. Moreover, if the defendant no 1 had an amount of Rs. 5 lakhs in post office deposits then why did he apply for loan from plaintiff goes unexplained.

80. On 3rd page of Ex PW1/2, there is a noting from Point Mark A to A that opinion report be prepared. There is no evidence on record to show that any such report was ever prepared by the plaintiff bank before sanctioning of the loan.

81. PW1 was confronted with Ex PW1/D1 to Ex PW1/D3 which are blank format of Annexure V, VI and VI A. These forms are required to be executed by the loan applicant and pertain to granting of irrevocable letter by the loan applicant and his employer in favour of the bank to deduct the installments in respect of the due amount in favour of the plaintiff bank before the grant of the loan. PW1 has admitted that when a loan is applied for by a borrower who is a salaried employee, the bank takes authority letter from the borrower Suit No. 266/06 SBI Vs Dr. J Anand Raj so as to deduct the loan installments from his salary. No such documents were executed at the time of grant of loan in question.

82. PW1 has stated that the sanction survey is done before the sanction of loan and documents in respect of the assets of the prospective borrower are also obtained and are annexed alongwith the loan application. In the instant case no such pre sanction survey was done and no such documents are annexed alongwith Ex PW1/2.

83. Ex PW1/4 is the personal loan agreement and is filled in two different inks. The dates and the rate of interest are filled in different ink and rest of the details are filled in different ink. The document is blank at two places and does not mention the parentage and address of the borrower.

84. Ex PW1/3 is the Arrangement Letter and is also filled in two different inks. The dates is filled in different ink and rest of the details are filled in different ink. Signatures of the defendants are in different ink as compared to the dates appended to the respective signatures. The processing charges are also filled in different inks.

85. There appears to be some manipulation/addition with the signatures of the defendants on the 2nd page of the Ex PW1/3. Neither of the defendants have appended dates to their signatures in Suit No. 266/06 SBI Vs Dr. J Anand Raj any of the documents and Signatures of the defendants are in different ink as compared to the dates appended to the respective signatures.

86. The primary burden of proving its entitlement to relief is upon the plaintiff. The plaintiff cannot take benefit of the weakness or the absence of defence. The case of the plaintiff has to stand on its own legs. Due diligence was not carried out by the plaintiff bank before the granting of the loan in question, no pre sanction survey was done, no documents in respect of the alleged assets of defendant no.1, as mentioned in column 15 of Ex PW1/2, were taken by the plaintiff before or at the time of granting of loan, no opinion report as per noting at Point Mark A to A on Ex PW1/2 was prepared, the relevant documents for deduction of salary of defendant no.1 were got executed at the time of granting of the loan. The complete and correct local address of the defendant was not taken in the loan application form or in the personal loan agreement Ex PW1/4. The defendant no.1 was not served on the address as provided by him in the loan application and the legal notices and summons were sent on a different address of defendant no.1 without their being any justification for the change of the same.

87. In the statement of account a sum of Rs. 5,400/- is shown as Suit No. 266/06 SBI Vs Dr. J Anand Raj against standing instruction but no such instruction has been filed on record.

88. The statement of account filed by the plaintiff is a computerized statement and the stamp and signatures are not affixed at the bottom of the typed matter but at the extreme right corner at the end of the paper.

89. In State Bank of India Vs Rizvi Exports Ltd, it has been held that "The law requires that if the statement of accounts has been filed by obtaining the printout then a different certificate is required. The Bankers Books of Evidence Act has been amended by Information Technology Act on 07.06.2000. Sub-section (8) of Section 2 defines the certified copy when it is filed by a Bank. Sub-section (8) of Section 2 of Bankers Books of Evidence Act, 1891 is reproduced below :

"(8) Certified copy" means when the books of a Bank□□

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the Bank and was made in the usual and ordinary course of business and that such book is still in the custody of the Bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of Suit No. 266/06 SBI Vs Dr. J Anand Raj the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the Bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the Bank with his name and official title;

and

(b) consist of printouts of data stored in a floppy, disc, tape or any other electromagnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of Section 2A.

2A. Conditions in the printout.□□A printout of entry or a copy of printout referred to in Sub□section (8) of Section 2 shall be accompanied by the following namely□□

(a) A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountants or branch manager; and

(b) A certificate by a person incharge of computer system containing a brief description of the computer system and the particulars of:

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorized persons;

(B) the safeguards adopted to prevent and detect Suit No. 266/06 SBI Vs Dr. J Anand Raj unauthorized change of data;

(C) the safeguards available to retrieve data that is lost due to systematic failure or any other reasons; (D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electromagnetic data storage devices; (E) the mode of verification in order to ensure that data has been accurately transferred to such removable media.

(F) the mode of identification of such data storage devices;

(G) the arrangements of the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and (I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person incharge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, be relevant data."

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90. According to the amended provisions of the Banker's Book of Evidence Act, the banker either had to produce the original ledger or a duly certified copy of the same as per the provisions of Banker's Book of Evidence Act. The statement of account Ex PW1/6 is a computerized statement, however, no such certificate as required by law is appended to it. In these circumstances, the statement of account is not admissible in evidence.

91. The burden of prove in Civil cases is that the respective party has to prove his case on the balance of probabilities. Issue no 2 has been decided against the plaintiff.

92. In the loan application residential address of defendant no. 1 is mentioned as EHIRC, Okhla Road, New Delhi. The stamp paper of agreement were purchased on 06.10.03 and in the stamp paper address of defendant no. 1 is mentioned as AB□7, Tilak Marg, New Delhi, which is not mentioned in the loan application while in personal loan agreement Annexure □3 there is no address of defendant no. 1 and the date of loan application is 01.10.03 is false. In the column no. 15 of the application it is mentioned that defendant no. 1 had bank/post office deposit of Rs. 5 lacs, if he had such a huge amount then he had no need of taking the alleged loan from the plaintiff bank.

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93. The loan application form contains two dates at page 3 i.e 01.10.03 at the end of column no.(iv) and 07.10.03 after the end of column (V) which shows that application was submitted on 07.10.03.

That sanction of loan was recommended on 07.10.03 and 10.10.03 but was not approved by competent authority who again wrote for review. From the application form it appears that loan was not finally sanctioned.

94. Otherwise also, in case of salaried person no loan could be granted without getting Annexure V, VI and VI□A filed in undertaking of the employer for deducting the requisite amount of loan from his salary. In the present case these Annexures are totally blank. The purpose of personal loan is not mentioned any where. Signatures of defendant no. 1 also differ in many places.

95. In civil cases, the plaintiff is required to prove his case on per ☐ preponderance of probabilities. The loan application is not duly filled in, there is discrepancy in the address of defendant no 1 which goes unexplained, requisite documents were not got executed. No verification was carried out by the plaintiff bank with respect to the alleged assets or the address of the defendant no 1. The statement of account is not duly proved in accordance with law. It is held that the plaintiff had been unable discharge the onus put upon it.

Suit No. 266/06 SBI Vs Dr. J Anand Raj Accordingly, the issue stand decided in favour of the defendants and against the plaintiff.

Issue No.4 Whether plaintiff is entitled to interest, if so, at what rate and period?OPP.

96. In view of decision of issue no.3, this issue is also decided against the plaintiff and in favour of the defendants. RELIEF In the light of above discussion, the suit of the plaintiff is hereby dismissed. No orders as to costs.

Decree sheet be drawn accordingly. File be consigned to the record room.

Announced in the open court
today i.e. on 06.11.2013
(Total pages 1 to 30)

(Shivani Chauhan)
Civil Judge/Central-04/06.11.2013

Suit No. 266/06

SBI

06.11.2013

Present : None.

Vide my separate judgment of even date, announced and dictated in the open court, the suit of the plaintiff is hereby dismissed. No orders as to costs.

Decree sheet be drawn accordingly. File be consigned to the record room.

(Shivani Chauhan) Civil Judge/Central 04/06.11.2013