IN THE COURT OF VINOD YADAV:
DISTRICT JUDGE (COMMERCIAL COURT)-02:
NORTH-WEST DISTRICT: ROHINI COURTS: NEW DELHI

CNR No.DLNW010096652022
Civil Suit (Comm.) 792/2022

In the matter of:

UCO Bank,
Having its Head Office at
10 BTM Sarani, Kolkata,
West Bengal-700001

And having its Branch Off. at :
UCO Bank, Ayodhya Chowk Branch, Sector-7,
Rohini, Delhi-110085.

Through its AR Ms. Abha Jolly.

.....Plaintiff
(Through Shri Ujjawal Kumar, Advocate)

Versus

Sh. Satpal,
S/o Sh. Mohan Bat,
Village Ghurson, Tigaon FAridabad,
Haryana-121101.

Also at : H.No.263, Sihi Gate Road,
Ballabhgarh, Distt. Faridabad,
Haryana-121004.

.....defendant

(Defence already struck off vide order dt. 21.11.2023)

Date of Institution of Suit	:	11.10.2022
Date of hearing final arguments	:	22.04.2024
Date of judgment	:	22.04.2024

SUIT FOR RECOVERY OF Rs.3,16,795.54 (RUPEES THREE LACS SIXTEEN THOUSAND SEVEN HUNDRED NINETY FIVE AND FIFTY FOUR PAISE ONLY)

JUDGMENT IN TERMS OF ORDER 8 RULE 10 CPC

1. This is a suit for recovery filed on behalf of plaintiff against the defendant, thereby seeking a decree in the sum of ***Rs.3,16,795.54 (RUPEES THREE LACS SIXTEEN THOUSAND SEVEN HUNDRED NINETY FIVE AND FIFTY FOUR PAISE ONLY).***

CASE OF THE PLAINTIFF

2. The facts of the case in brief, as borne out from the record are that plaintiff is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its office at 10 BTM Sarani, Kolkata, West Bengal-700001 and amongst others branch office at Ayodhya Chowk Branch, Sector-7, Rohini, Delhi-110085.

3. That defendant approached the plaintiff in the month of November, 2017 for financial assistance of Rs.3 lacs to meet his working capital requirement. That the plaintiff accordingly sanctioned the said amount under Mudra Loan Scheme vide loan application of defendant dated 02.11.2017 as well as its credit sanction intimation/advice dated

06.11.2017. That the said facility was granted by the plaintiff to the defendant under CC (Hypothecation Scheme) with interest at base rate, i.e., MCLR + 0.15% and at the time of sanction 8.60% p.a. with monthly rests subject to change made from time to time by the applicant/RBI. That it was also agreed that the loan will be repaid in running account repayable on demand subject to review/renewal annually and in the event of default, an additional interest @ 2% over and above the contracted rate shall be charged. That thereafter, the aforesaid account of the defendant became irregular since the year 2019 (however, the last payment of Rs.5,000/- was made by the defendant on 31.03.2021). That as the defendant defaulted in repayment of the loan, the account of defendant was declared by the plaintiff as NPA on 31.03.2021. That thereafter, plaintiff sent a recall notice dated 14.09.2021 to the defendant for an amount of Rs.3,14,379.54 but in vain.

4. Accordingly, the plaintiff has filed the instant suit against the defendant *inter-alia* praying as under :-

> *(a)* a decree in the sum of ***Rs.3,16,795.54 (RUPEES THREE LACS SIXTEEN THOUSAND SEVEN HUNDRED NINETY FIVE AND FIFTY FOUR PAISE ONLY)***; and
>
> *(b) Cost of the suit.*

5. (i) After filing of the suit, summons for settlement of issues were issued against the defendant(s) vide order dated 11.10.2022. However, no

one appeared on behalf of defendant and **no written statement was filed.**

(ii) Since no appearance was put forth on behalf of defendant and no written statement was filed, accordingly, **vide order dated 21.11.2023, the right of defendant to file written statement in the matter was closed.**

6. Since, no written statement was filed on behalf of defendant in the matter, accordingly plaintiff preferred an application U/o VIII Rule 10 CPC *inter alia* praying for passing of decree in the matter in terms of the aforesaid provisions.

7. I have heard arguments advanced at Bar by Sh. Ujjawal Kumar, Advocate, learned Counsel for the plaintiff and perused the entire material on record.

8. The power and authority of the Courts to straightway decree a suit on the basis of averments made in plaint in terms of Order VIII Rule 10 CPC, in the absence of a written statement filed by the defendant is well settled by the Hon'ble Supreme Court in case reported as, "**(1999) 8 SCC 396**", titled as, "**Balraj Taneja V/s Sunil Madan**". Even recently, the Hon'ble High Court of Delhi in case reported as, "**CS (Comm.) No.72/2022**", titled as, "**Kleenoil Filtration India Pvt. Ltd. V/s Udit Khatri & Ors.**" **(DOO: 05.01.2023)** has been pleased to clear the air regarding power and authority of Court to straightway decree the suit under Order VIII Rule 10 CPC.

9. (i) Now coming back to the facts of instant case. From the perusal of Non-Starter Report dated 21.01.2022, issued under the signatures of learned Secretary, DLSA, North-West, Rohini Courts, it is clearly apparent that despite due service the defendant(s) neither appeared before the District Legal Services Authority during pre-institution mediation nor gave its consent/willingness to participate in the mediation process.

(ii) Furthermore, the plaintiff repeatedly requested the defendant for repayment of the remaining due amount. The Hon'ble High Court of Delhi in case reported as, "**98 (2002) DLT 573**", titled as, "**Metropolis Travels & Resorts (I) Pvt. Ltd. V/s Sumit Kalra & Ors.**", **(DOD: 07.05.2002)** has been pleased to hold as under:

> *xxxxx*
>
> *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. PW-1/3. No reply the same was given by the respondent. But inspite of the same no adverse inference was drawn against the respondent. This Court in the case of Kalu Ram v. Sita Ram 1980 RLR (Note) 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*

quite 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 learned Trial Court failed to draw inference against the respondent.

xxxxx

(iii) Furthermore, in another case **"RFA (OS) No.93/2010"**, titled as, **"Krishan Kumar Aggarwal V/s Life Insurance Corporation" (DOD: 29.08.2014),** the Hon'ble High Court of Delhi has been pleased to lay down as under:

xxxxx

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 23 rd 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. (1988) 2 SCC 165 &***

> ***Hiralal Kapur Vs. Prabhu Chaudhary (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 & Resorts Vs. Sumit Kalra 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 1980 RLR (note) 44 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.*
>
> *xxxxx*

10. In view of the above judgments of Hon’ble High Court of Delhi, plaintiff has been successful in showing on record that non-reply of notice of the plaintiff by the defendant calls for drawing of presumption as to correctness of the facts contained therein.

11. From perusal of the documents executed by defendant, it is clearly apparent that defendant had duly availed the credit facility of Rs.3,00,000/- from the plaintiff. The evidence in this case is primarily documentary in nature. The document relied upon by the plaintiff are presumed to be maintained by a bank in due ordinary course of its business. Though, the exceptions cannot be ruled out, but generally taking a judicial notice of the banking business, the aforesaid documents can be considered to be duly executed in due course of the business and capable of binding the parties into a contractual relationship.

12. Since no written statement has been filed by defendant(s) in the matter, there is nothing on record to disbelieve the documents placed on record by the plaintiff in support of its contentions. I am satisfied that the plaintiff has been able to make out a good case for passing of decree in its favour in terms of Order VIII Rule 10 CPC.

13. As regards the quantum of interest, in view of the nature of transaction between the parties being commercial in nature, interest @ 12% p.a. would meet the ends of justice.

<u>Relief</u>

14. (i) In view of the above, a decree in the sum of Rs.3,14,379.54 (Rupees three lacs fourteen thousand three hundred seventy nine and fifty four paise only) alongwith interest @ 12% per annum from 31.03.2021 till realization thereof is passed in favour of plaintiff and against the defendant.

(ii) Plaintiff is also entitled to costs as well as counsel's fee which is quantified as Rs.22,000/-.

15. Decree Sheet be drawn accordingly, subject to payment of requisite court fees.

16. File be consigned to Record Room after completion of necessary formalities.

Dictated & Announced in the open Court on 22.04.2024

(Vinod Yadav)
District Judge (Commercial Court)-02
North-West/Rohini Courts