

THE LIMITATION PERIOD FOR FILING A SUIT FOR RECOVERY BY A BANK SHOULD BE COMPUTED FROM THE DATE ON WHICH THE LOAN RECALL NOTICE WAS ISSUED

INTRODUCTION:

*The Delhi High Court in its decision in **Kulbhushan Sachdev Vs ICICI Bank and Anr.**¹, inter alia observed the limitation period for filing a suit for recovery by a bank would be computed from the date on which the Loan Recall Notice was issued.*

FACTS:

ICICI Bank ("**Respondent No. 1**") (Original Plaintiff in the Suit) had instituted a Suit, being CS (COMM) No. 2157 of 2021 ("**Suit**"), for seeking recovery of ₹3,44,854/- along with pendente lite and future interest at the rate of 24% per annum.

The Respondent No. 1 claimed that Respondent No. 2 (Defendant No.1 in the Suit) had approached the Respondent No. 1 for grant of a loan for a sum of ₹6,23,000/- for purchasing a vehicle ("**said Loan**").

The Respondent No. 1 claimed that the Respondent No. 2 had executed a Credit Facility Application as well as Car Loan Agreement for availing the said Loan. The said Loan was granted and was secured by the vehicle purchased by the Respondent No. 2. The said Loan along with interest was required to be repaid in 68 (sixty-eight) equated monthly installments (EMIs) of ₹13,008/- each with one EMI to be paid in advance.

The Respondent No. 1 did not take any steps for pre-institution mediation and filed a Suit against the Respondent No. 2 along with an urgent ex-

parte application for appointment of a receiver. Although, the said application was allowed, the Respondent No. 1 did not recover the vehicle.

The Appellant (co applicant of the loan) was not arrayed as a Defendant in the Suit as originally filed. However, the Respondent No. 1 filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, to implead the Appellant as Defendant No. 2 in the Suit on the ground that he was a co-applicant along with the Respondent No. 1 for availing the said Loan.

The Commercial Court issued notice of the Impleadment Application on 12th July, 2022. The Impleadment Application was not contested by either the Appellant or the Respondent No. 2 in the Suit and was accordingly allowed vide an order dated 2nd December, 2022 passed by the Commercial Court. By the said order, the Appellant was also granted time to file Written Statement. However, neither did the Appellant nor the Respondent No. 2 file their Written Statements and therefore the Suit was proceeded against them *ex parte*.

Vide order dated 4th August, 2023, ("**Impugned Order**") the Commercial Court decreed the Suit in favour of the Respondent No. 1 for an amount

¹ RFA(COMM) 288/2023, CM APPL.63407/2023 CM APPL. 63440/2023

of ₹3,44,854/- along with simple interest at the rate of 9% per annum from the date of filing of the Suit till the realization of the said amount. Additionally, the Commercial Court also awarded costs in favour of the Respondent No.1.

Being aggrieved by the Impugned Order the Appellant (Defendant No. 2 in the Suit) preferred an appeal before the Delhi High Court.

ISSUE FOR CONSIDERATION:

The issue for consideration before the Delhi High Court *inter alia* was as follows:

Whether the cause of action for filing a suit for recovery would commence from the date of default of repayment of EMIs?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Impugned Order was assailed on behalf of the Appellant on several fronts. It was submitted that the Respondent No. 1 could not proceed against the Appellant as it had taken no steps to recover the vehicle from the Respondent No. 2. It was submitted that the proceedings under the Insolvency and Bankruptcy Code, 2016, in respect of the Respondent No. 2 had been initiated before the National Company Law Tribunal ("NCLT") and an Interim Resolution Professional ("IRP") had been appointed. Therefore, the Respondent No. 1 was required to make its claim before the IRP or the NCLT.

It was further submitted that the Suit against the Appellant was barred by limitation. It was submitted that the Respondent No. 2 had defaulted in payment of EMI on 3rd April, 2019, and therefore, the cause of action for filing the Suit arose on the said date. However, the Impleadment Application for impleading the Appellant was moved before the Commercial Court on 12th July, 2022, which was beyond the

period of three years from the date of the cause of action.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1:

It was submitted on behalf of the Respondent No. 1 that the Appellant was not a guarantor but a co-borrower. It was submitted that the Loan Recall Notice was issued on 20th February, 2021 and therefore, the Suit was within the period of limitation.

The order of the Apex Court dated 8th March, 2021 in *Suo Motu Writ Petition (C) No.3 of 2020* was referred to by the Respondent No. 1 wherein the Apex Court had directed that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15th March, 2020 to 14th March, 2021, was to be excluded. It was submitted that even if it was accepted that the period of limitation for filing the Suit against the Appellant commenced on 3rd April, 2019, the Impleadment Application filed on 12th July, 2022 was within the period of limitation of three years after excluding the period from 15th March, 2020 to 14th March, 2021.

JUDGMENT:

The Delhi High Court *inter alia* observed that the documents filed by the Respondent No. 1 in the Suit established that the Appellant was not a guarantor but a co-applicant. It was observed that the Respondent No. 2 filed a separate loan application and a credit facility application was also signed by the Appellant on behalf of the Respondent No. 2 and separately as a co-applicant.

It was further observed that the said Loan was to be repaid in 68 EMIs. The repayment of the said Loan was to be made in five years and eight

months. The Respondent No. 1 claimed that the Respondent No. 2 had paid 35 EMIs.

It was also observed that the Loan Recall Notice dated 20th February, 2021, was issued during the stipulated repayment period and therefore the cause of action for filing the Suit was to be reckoned from the date of the Loan Recall Notice.

In view of the aforesaid, the Delhi High Court dismissed the appeal.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.