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**(1991) 04 DEL CK 0036**  
**In the Delhi High Court**  
**Case No : Suit No. 646 of 1980**

Bank of Maharashtra

APPELLANT

Vs

Racmann Auto (P) Ltd.

RESPONDENT

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**Date of Decision :** 10-04-1991

**Acts Referred:**

**Citation :** AIR 1991 Delhi 278 : (1992) 74 CompCas 752

**Hon'ble Judges :** P.K. Bahri, J

**Bench :** Single Bench

**Advocate :** Pramod Aggarwal and Ms. Vasuda Indurkar, for the Appellant; N.L. Choudhary, for the Respondent

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## Judgement

1. This is a suit for recovery of Rs. 3,29,193.61 p. The case of the plaintiff, in brief, is that the defendant on April 28, 1976, had requested the plaintiff's Branch at Faridabad to sanction Cash Credit Facility (Pledge) to the limit of Rs. 2,00,000/- and on the same date, the defendant had executed by way of collateral security a demand promissory note for the said amount and continuing security and agreement of pledge of goods. The said Cash Credit Facility was sanctioned and it was agreed that the defendant shall pay interest @ 7 1/2 % per annum over the bank rate with a minimum of 16 1/2 % per annum. It is the case of the plaintiff that on August 12, 1977, the defendant executed acknowledgment of balance due on that date to the tune of Rs. 2,03,441.40 p. and as defendant still failed to clear the debit a letter dated August 4, 1980 was issued by the plaintiff to the defendant for paying the amount due which the defendant failed to pay and hence, the present suit has been filed. It is also pleaded in the plaint that the plaintiff has become entitled to sell the goods pledged with the plaintiff-batik.

2. The defendant has contested the suit and has taken certain preliminary objections pleading that the plaint is not signed, verified and instituted by a duly authorised person on behalf of the plaintiff and that the previous Managing Director of the defendant Shri Puran Singh Sethi who has allegedly executed the

documents for obtaining the Cash Credit Facility is a necessary party and the suit is bad for non-joinder of necessary party. Pleas were also taken that Delhi Courts have no territorial jurisdiction to try the suit and that the plaint has not been verified in accordance with law and that the claim in the suit is barred by time.

3. The written statement is stated to have been signed by the present Managing Director of the defendant and a plea has been taken that he was not aware as to the execution of the documents and the grant of the aforesaid credit facility but it was admitted in the written statement that defendant had been dealing with the plaintiff-bank but it was not disclosed as to what sort of dealings defendant had with the plaintiff-bank. It is further pleaded that Puran Singh Sethi had signed some documents which were blank and that plaintiff-bank ought to have taken steps for selling the pledged goods which were of the value of Rs. 4.50 lakhs and which are lying under the lock and key of the plaintiff-bank in the godowns of the defendant. In replication it was controverted that Puran Singh Sethi is necessary or proper party or the suit is barred by limitation or the plaintiff-bank was duty bound to sell the pledged goods before filing the suit and other pleas taken in the plaint were reiterated. Following issues were framed:

1. Was Mr. D. G. Tatke competent to file the suit on behalf of the plaintiff bank?
  2. Whether the suit is bad for non-joinder of necessary parties?
  3. Whether the claim, subject matter of the suit is barred by time?
  4. Whether the defendant was sanctioned cash credit facility to the limit of Rs. 2 lacs as alleged in para 3 of the plaint and the facility was availed by the defendant?
  5. What amount, if any, is due to the plaintiff from the defendant under the cash credit facility (pledge)?
  6. At what rate and to what amount the plaintiff is entitled to interest?
  7. Relief.
4. plaintiff has examined two witnesses in support of his case while counsel for the, defendant closed the evidence on behalf of the defendant without examining any witness.

#### ISSUE NO. I

5. Mr. Tatke PW I who was working as Manager at Faridabad Branch of the plaintiff-Bank from January 1977 to 1981 deposed that the plaint bears his signatures and he has been authorised to institute the suit vide Power of Attorney executed in his favor by the Chairman and Managing Director and the two directors, whose signatures he identified and Ex. PW I/ I is the copy of the said Power of Attorney. The Power of Attorney is said to be duly attested and authenticated by Notary Public. So, it is proved that Mr. Tatke is competent to sign, verify the plaint and institute the suit on behalf of the plaintiff bank. The

issue is decided in favor of the plaintiff.

## ISSUE NO. 2

6. Shri P. S. Sethi, Chief Managing Director of the defendant, executed the documents for obtaining the Cash Credit Facility on behalf of the defendant-company. He had not incurred any personal liability for the loan obtained by the defendant from the plaintiff and thus, he was neither necessary nor proper party in the present suit. Hence, the suit is not bad for non-joinder of any necessary or proper party. Issue is decided against the defendant.

## ISSUE NOS. 3 & 4

7. PW 1, who was the Manager of the Faridabad Branch of the plaintiff bank at the relevant time, has deposed that he has been dealing with the documents of P. S. Sethi and has seen his signatures during the course of his duties and is in a position to identify his signatures. He identified the signatures of P. S. Sethi on Exs. PW 1/2 to PW 1/6. These documents show that P. S. Sethi as Managing Director of the defendant had executed these documents on behalf of the defendant for obtaining the Cash Credit Limit of Rs. 2 lakhs against pledge of goods. He has also proved signatures of P. S. Sethi on the copy of the resolution Ex. PW 1/7 which was given by P. S. Sethi to show that Board of Directors of the defendant has passed a resolution authorising P. S. Sethi to obtain the loan from the plaintiff-bank on behalf of the defendant. PW 2 was examined to prove that all these documents were signed by P. S. Sethi in his presence. Not a question was put to PW 2 suggesting that these documents had not been signed by P. S. Sethi or documents were blank when P. S. Sethi signed these documents as Managing Director on behalf of the defendant. P. S. Sethi has not been examined by the defendant to controvert the evidence led by the plaintiff in this respect. So, it is proved that the defendant had obtained the Cash credit facility to the extent of Rs. 2 lakhs and the relevant documents were executed by P. S. Sethi on behalf of the defendant. Ex. P I is admitted document which shows that defendant had confirmed the balance amount due on August 12, 1977, as Rs. 2,03,441.40 p. Copies of the statements of accounts Exts. PW 1/ 8 to PW 1/ 9 shows the disbursement of the said loan and the balance due on the date of filing of the suit. So, it is proved that the defendant had obtained the aforesaid credit facility and had availed of the same and the suit having been filed within three years of the date of the acknowledgment of balance is within time. These issues are, hence, decided in favor of the plaintiff.

## ISSUES NOS. 5 & 6

8. The statements of accounts referred to above clearly show the balance due from the defendant on the date of filing of the suit. The interest has been calculated @ 16 1/2 % per annum in accordance with the agreement stands clearly mentioned in the documents executed by the defendant.

9. Counsel for the defendant has, however, vehemently argued that the value of

the pledged goods was much more at the time the, goods were pledged and the plaintiff had neglected to get sold the pledged goods which had led to the deterioration of the value of the goods. It appears that it is during the pendency of the suit that a receiver was appointed who took possession of the pledged goods and with the consent of the parties the pledged goods were sold for a consideration of Rs. 16,666.66 p. The short question, which arises for decision, is whether there was any legal duty cast on the plaintiff bank to take any early steps for disposing of the pledged goods. It is not the case of the defendant that the defendant had at any time required the plaintiff bank to dispose of the pledged goods and the plaintiff bank had neglected to do so. Section 176 of the Contract Act which deals with Pawnee's right where the pawner makes default lays down that if the pawner makes default in payment of the debt or performance at the stipulated time of the promise in respect of which goods were pledge the pawnee may bring the suit against the pawner upon the debtor promise and retain the goods pledged as a collateral security or he may sell the things pledged on giving the pawner reasonable notice of the sale. The very wording of the section makes it clear that it is in the discretion of the pawnee to sell the goods in case the pawner makes default but if the pawnee does not exercise that discretion no blame can be put on the pawnee and pawnee has the right to bring a suit for recovery of the debt and retain the goods pledged as collateral security. In case the defendant was of the view that pledged goods are losing in value with the passage of time, the defendant as within his right to request to the plaintiff bank for selling the pledged goods. That is not the case here. Even I am in doubt whether the defendant as pawner could force the plaintiff to sell the pledged goods without defendant clearing the debt. In view of the provisions of Section 176 of the Contract Act, there remains no doubt about the legal proposition that it is in the discretion of the plaintiff bank to have filed the suit for recovery of the debt and retain the pledged goods as collateral security or in the alternative could resort to selling the pledged goods after giving reasonable notice of sale to the defendant plaintiff bank had in its wisdom exercised the first option of filing the suit and retained the pledged goods as collateral security. So, even if the value of the goods had deteriorated due to passage of time, no relief can be obtained by the defendant against the plaintiff as the defendant was legally bound to clear the debt and obtain the possession of the pledged goods from the plaintiff" bank before the pledged goods were sold during the pendency of the suit. That is clearly provided in S.177 of the Contract Act. Hence, I hold that the interest has been rightly calculated according to the rate agreed upon between the parties and amount in the suit was due at the time of, filing of the suit. Issues are decided in favor of the plaintiff.

#### RELIEF:

10. The court at the time of framing of issues had given a finding that Delhi Courts have territorial jurisdiction inasmuch as the registered office of the defendant company is located at Delhi. Suit is liable to be decreed.

11. I decree the suit for recovery of Rs. 3,29,193.61 p. with costs and grant interest @ 16 1/2 % per annum from the date of the suit tilt realisation in favor of the plaintiff and against the defendant. The amount which has been realised by sale of the pledged goods to the tune of Rs. 16,666.66 p. shall be adjusted in the decree.

12. Order accordingly.