



2026:DHC:7907



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 29<sup>th</sup> July, 2026*

*Pronounced on: 16<sup>th</sup> September, 2026*

*Uploaded on: 16<sup>th</sup> September, 2026*

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**CNR No : DLHC010858912025**

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**RFA 1006/2025**

**1. Kiran Kriplani**

....Appellant No.1

**2. Ashok Kriplani, Advocate,**

17/13, (G.F.), Old Rajinder Nagar,  
New Delhi—110060.

.....Appellant No.2

Through: Mr. Ashok Kriplani, Appellant  
No.-2 (in person) and on behalf  
of Appellant No.1.

versus

**ICICI BANK Ltd.**

(Formerly known as Sangli Bank Ltd.)  
NBCC Place, Bhishma Pitamah Marg,  
Jawaharlal Nehru Stadium), Pragati Vihar,  
New Delhi-110003

.....Respondent

Through: Mr. Amol Sharma and Mr.  
Ateev Mathur, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the Appellants/Plaintiffs against the Judgment and Decree dated 31.05.2025, passed by the learned District



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Judge, Delhi, whereby their Suit bearing **CS (DJ) No. 617664/2016** seeking damages/compensation of Rs. 5,00,000/- along with interest at the rate of 18% per annum compounded quarterly, against the Respondent/Defendant for filing a false, frivolous and vexatious Civil Suit against them, has been **dismissed**.

2. The **facts in brief** are, that the Plaintiffs availed **two loans of Rs. 2,50,000/- each** from the Defendant Bank, then known as Sangli Bank Ltd. (since merged with ICICI Bank Ltd.), on 30.12.1994, for a period of one year, at an interest rate of 19.25% per annum. The loans were secured by pledge of shares, the value of which exceeded the loan amount, in accordance with the policy of the Defendant Bank. The Plaintiff No. 1, Smt. Kiran Kriplani, was the borrower under one loan account (SOD A/c No. 257) with the Plaintiff No. 2, Sh. Ashok Kriplani, was the *guarantor*. The Plaintiff No. 2 was the borrower under the second loan account (SOD A/c No. 234), with Plaintiff No. 1 as the *guarantor*.

3. An Agreement of Pledge dated 30.12.1994 was executed, entitling the Defendant Bank to sell the pledged shares in the event that the value of shares fell below the outstanding amount, or upon the expiry of one year, whichever was earlier, with **due notice** to the Plaintiffs.

4. The Plaintiffs also executed a Demand Promissory Note, a Continuing Security Bond, a Letter of Lien and Set Off, and a Letter of Guarantee, all dated 30.12.1994, in favour of the Defendant Bank.

5. The Plaintiffs did not request extension of the loan period after the expiry of one year, i.e. after 30.12.1995. Despite this and despite the Plaintiffs' admitted inability to pay interest during the loan period, the Defendant Bank did not sell the pledged shares, as envisaged under the



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Agreement of Pledge. The Defendant Bank instead, continued to levy interest, escalating from 19.25% per annum to as high as 27% per annum, compounded quarterly.

6. By the end of 1995, the Plaintiff No. 2, who was engaged in the business of shares, suffered financial losses and was compelled to close his business. He relocated outside Delhi for employment with a private Company, rendering it difficult for the Plaintiffs to monitor their loan accounts with the Defendant Bank.

7. In October 1996, the Plaintiffs requested the Defendant Bank, *vide* Letter dated 10.10.1996, to swap certain pledged shares; specifically, to sell 8,400 shares of Indo Matsushita Appliances and 4,200 shares of Indo Gulf Fertilizers, *and instead to purchase 10,000 shares of Hitech Drilling Ltd. and 2,000 shares of Swaraj Mazda Ltd.* The Defendant Bank carried out the swapping transaction, but did not furnish the details thereof, to the Plaintiffs. The Account Statements of the Plaintiffs for the period October 1996 to December 1996, contained blank spaces corresponding to the period of the swap transaction.

8. On 15.07.1997, the Defendant Bank *sold 7,700 shares of Hitech Drilling Ltd. from the loan account of the Plaintiff No. 2, and realised Rs. 4,39,000/-*. Thereafter, it ***closed his loan account***, and transferred the credit balance of Rs. 95,008.50, to the loan account of the Plaintiff No. 1, and intimated the Plaintiff No. 2 *vide* its Letter of even date, to settle his overdraft account. This was done without prior Notice to the Plaintiffs, as required under Section 176 of the Indian Contract Act, 1872.

9. Thereafter, on 19.12.1997, the Defendant Bank filed a ***Civil Suit No. 494/11 titled Sanqli Bank Ltd. v. Kiran Kriplani & Anr.*** for recovery of



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Rs. 2,27,873.50/- against both Plaintiffs, before the Civil Judge, Tis Hazari Courts, Delhi. The Plaintiff No. 1 was arrayed as the borrower and the Plaintiff No. 2 as the guarantor.

**10.** During the pendency of *Suit No. 494/11*, the Defendant Bank sold further pledged 500 and 100 shares of Garware Wall Ropes Ltd. on 11.05.1998 and 12.05.1998 respectively, and 100 shares of Siltap Chemicals Ltd. on 11.05.1998, *again without notice to the Plaintiffs, without informing the Court, and without seeking its leave.* The Defendant Bank intimated the details of these sales, *vide* its Letter dated 08.09.1998 addressed to its own advocate, Sh. K.K. Jain. The Defendant Bank did not amend its plaint, to account for the amounts so realised.

**11. By judgment dated 22.12.2012, the learned Civil Judge, dismissed Suit No. 494/11.** It was observed that the Defendant Bank had some pledged shares lying with it at the time of filing the Suit, and the Suit was filed prematurely. It also failed to act with *reasonable diligence* by not selling the pledged shares after the expiry of one year upon reasonable Notice, and the Bank could not take benefit of its own wrong. It was further held that the Bank was guilty of concealment of material facts. Furthermore, the pledged shares were sold without reasonable notice to the Plaintiffs, and the sale was void under Section 176 of the Indian Contract Act, 1872. Moreover, the Bank had not given due credit of sale proceeds, in the account of the Plaintiff No. 1. **The Suit of the Defendant Bank was accordingly dismissed. The Defendant Bank did not prefer an Appeal against the said judgment.**

**12.** The Plaintiffs thereupon, instituted the present Suit on 22.12.2015, *seeking damages/compensation of Rs. 5,00,000/- (confined from the total*



claim of Rs. 10,00,000/-) along with interest at 18% per annum compounded quarterly from the date of institution till realisation, on the ground that the Defendant Bank had filed a false, frivolous and vexatious Suit against them, causing harassment, humiliation, defamation and mental agony. The Suit was valued at Rs. 5,00,000/-, for the purpose of jurisdiction and court fees. The Plaintiffs pleaded that the cause of action lastly arose on 22.12.2012 when the Defendant Bank's Suit was dismissed, and the present Suit was within the three-year period of limitation.

13. The Defendant Bank filed its **Written Statement** denying the Plaintiffs' claims and raised *preliminary objections* that the *Suit was devoid of cause of action; was not maintainable; was barred by limitation, and was filed with malafide intent, to harass bank officials.*

14. **On merits**, the Defendant Bank admitted that two loans of Rs.2,50,000/- each had been granted on 30.12.1994, at 19.25% per annum and that the same were secured by pledged shares. It was specifically stated that the loan account of Plaintiff No.2 had been adjusted and settled upon sale of the pledged shares, *whereas Plaintiff No.1 had failed to repay the outstanding dues despite repeated requests and reminders, which necessitated institution of Suit No.494/11.*

15. The Defendant Bank categorically denied that any swapping of shares was ever requested by the Plaintiffs or undertaken by the Bank. The Defendant Bank attributed its inability to challenge the judgment dated 22.12.2012, to the merger of Sangli Bank Ltd. with ICICI Bank Ltd. and the consequent administrative disruptions, staff transfers and procedural challenges. The Defendant Bank did not file any document, in support of its Written Statement.



16. The Plaintiffs in their **Replication** denied the contents of the Written Statement and reaffirming the averments of the plaint. The Plaintiffs specifically stated that the Defendant Bank had evaded replying on two aspects; the failure to amend its plaint in Suit No. 494/11 after selling shares during the pendency of that suit, and the arbitrary closure of the loan account of the Plaintiff No. 2, and contended that such evasion should be treated as admission.

17. On the basis of the pleadings of the parties, the **following issues were framed on 23.11.2022:**

- (i) *Whether the Plaintiffs are entitled to get a decree of recovery of damages/compensation of Rs. 5 lakhs from the Defendant Bank, as prayed for? OPP;*
- (ii) *Whether the Plaintiffs are entitled to the interest on the aforesaid amount, if so, at what rate? OPP;*
- (iii) *Whether the present suit is not maintainable in the present form? OPD;*
- (iv) *Whether the suit is barred by law of limitation? OPD;*
- (v) *Relief.*

18. In support of their case, the Plaintiffs examined two witnesses. **PW-1, Sh. Ashok Kriplani**, Plaintiff No.2, tendered his evidence by way of affidavit Ex. PW-1/A and relied upon Ex. PW-1/1 to Ex. PW-1/22. The documents relied upon included the Judgment dated 22.12.2012 Ex. PW-1/1, the letter dated 08.09.1998 regarding sale of shares during pendency of the earlier Suit Ex. PW-1/2, the Applications under Order VII Rule 11 CPC and the orders thereon as Ex. PW-1/3 to Ex. PW-1/6, the Agreement of Pledge



Ex. PW-1/9, Letter dated 10.10.1996 seeking swap of shares Ex. PW-1/10, Notice dated 03.10.2005 Ex. PW-1/11, statements of account Ex. PW-1/12 Colly, medical prescriptions of Plaintiff No.1 Ex. PW-1/14 (OSR), and the letter dated 15.07.1997 relating to closure of the account of Plaintiff No.2 Ex. PW-1/20.

**19. PW-2, Sh. Jitender Kumar, JJA, Record Room Civil, Tis Hazari Courts, Delhi,** produced the record of Suit No. 494/11 and confirmed the originals of the documents exhibited by PW-1.

**20. The Defendant Bank, despite being afforded numerous opportunities, did not lead any evidence. The Defendant's evidence was closed, vide Order dated 22.02.2022.**

**21.** The learned District Judge, *vide the impugned Judgment* dated 31.05.2025, **dismissed** the Suit of the Plaintiffs. It was held that although the Plaintiffs had strenuously asserted during arguments, that their case was not one of malicious prosecution, a plain reading of the pleadings and the reliefs sought, disclosed that the proceedings were in substance, directed towards *seeking compensation on the ground of malicious prosecution*; the injury claimed being the reputational and emotional harm occasioned by having to face litigation, which the Plaintiffs asserted was avoidable and malicious, and the title of the Suit itself signified that it was one for compensation for *harassment, humiliation and defamation on account of a false, frivolous and vexatious Suit*.

**22.** The learned District Judge examined the claim within the framework governing malicious prosecution and found that the **essential ingredients thereof were not made out**. A lender-borrower relationship admittedly existed, that the Plaintiffs had not disputed that the loan remained unpaid,



and that their grievance was confined to the manner in which the Bank chose to pursue recovery, rather than to the existence of any claim.

23. It was further held that under Section 176 of the Indian Contract Act, 1872 the *pawnee* has the option either to sell the pledged goods upon reasonable Notice or to institute a Suit for Recovery, and that no Notice is required where the latter course is adopted. Furthermore, there was no judicial determination, either in the judgment dated 22.12.2012 or otherwise, that the Bank had acted with malice or wrongful intent, as the Suit of the defendant was dismissed on procedural or technical grounds. The reliance placed by the Plaintiffs upon *H.S. Bedi vs. National Highway Authority of India* was distinguishable, as in the said judgement, the claims were demonstrably false and devoid of any legal foundation, unlike the present case where the liability stood admitted.

24. The **learned District Judge thus, concluded that the Suit**, being in substance one for malicious prosecution, was governed by Article 74 of the Limitation Act, 1963, which prescribes one year from the termination of the impugned proceedings. The cause of action arose on 22.12.2012 and the limitation expired on 22.12.2013, whereas the Suit was instituted on 22.12.2015. Even assuming the case was founded on breach of contract, it **would be barred under Article 55, the latest alleged breach being the sale of shares in the year 1998.** *The suit of the Plaintiffs was accordingly, dismissed.*

25. *Aggrieved by the impugned Judgment and Decree dated 31.05.2025, the present First Appeal has been preferred.*

26. The **grounds of challenge** are that the learned Trial Court adjudicated the Suit on the *grossly incorrect premises of malicious prosecution and*



*breach of contract*, neither of which was ever pleaded by the Appellants; that what is alleged in a Plaint has first to be considered and dealt with before any conclusion contrary thereto is arrived at; and that the finding that the core grievance of the Plaintiffs is rooted in what essentially amounts to an allegation of malicious prosecution, and that the legal action initiated by the Bank was not only unwarranted but also malicious, amounts to putting words into the mouth of the unwilling Appellants.

27. It is the case of the Appellants that their Suit was founded neither upon malicious prosecution nor upon breach of contract, *but upon the institution by the Respondent Bank of a false, frivolous and vexatious Suit, which they assert to be a distinct cause of action*; that no relief was ever claimed by them on either of the two premises adopted by the learned Trial Court; and that their Suit, not being covered by any specific Article of the Schedule to the Limitation Act, 1963, but was governed by the residuary Article 113.

28. It is further contended that the expression "*prosecution*" is employed primarily in criminal matters and not in civil matters, as held by the Bombay High Court in Vasantrao Bapurao Chiddarwar vs. Raghunathrao Anantrao Deshmukh, which Judgment was referred before the learned Trial Court, but has not even been adverted to in the impugned Judgment. The limitation Article 74 of the Limitation Act, 1963 commences when the plaintiff is acquitted or the prosecution is otherwise terminated; neither of which occurs in a Civil Suit which is merely dismissed or rejected. The Suit of the Appellants was, accordingly, *governed by Article 113, the residuary provision prescribing three years, the Suit having been instituted within three years of 22.12.2012, when the cause of action arose*.



29. It is also urged that in the impugned Judgment, it was observed that the damages claimed are not premised on any breach of contractual terms, which is in direct contradiction to paragraph 32 thereof, wherein it was recorded that the Appellants attempted during arguments, to shift the cause of action away from malicious prosecution and to emphasise an alleged breach of contractual obligations. Moreover, *the Written Submissions filed by the Appellants before the learned Trial Court, did not refer even once, to malicious prosecution or breach of contract.*

30. The Appellants have further assailed the finding in the impugned Judgment, that the obligation to give Notice arises only when the *pawnee* elects to dispose of the pledged goods and that no such Notice is required where the *pawnee* approaches the Court by way of a recovery suit. It is contended that the Respondent Bank had in fact, sold the shares without Notice before institution of the Suit, as acknowledged by its own Letter dated 15.07.1997, and had again sold the shares during the pendency of the Suit, thereby violating Section 176 of the Indian Contract Act, 1872, both before and after the institution of the Suit.

31. It is contended that the observation that there is no judicial determination either in the Judgment dated 22.12.2012 or otherwise that the Respondent Bank acted with malice or wrongful intent, is contrary to the record. However, in the said Judgment itself, it was held that the Respondent Bank guilty of concealment of material fact. Therefore, the conclusion in the impugned Judgment, that the earlier Suit was not unfounded in law or actuated by malicious motives, stands demolished thereby.

32. Reliance has been placed by the Appellants upon H.S. Bedi vs. National Highway Authority of India, RFA 784/2010, decided by this Court,



upon S.P. Chengalvaraya Naidu vs. Jagannath, (1994) 1 SCC 1. Also, it is asserted that it is a well settled principle that a party approaching the Court with unclean hands, is entitled to no relief.

**33. The Respondent/Defendant Bank, in its Written Submissions**, has supported the impugned Judgment, contending that a plain reading of the Complaint discloses that the cause of action for filing the present Suit arose upon the dismissal of the earlier Suit by the learned Civil Judge, and that the entire Complaint is founded upon allegedly malicious prosecution initiated by the Bank against the Appellants. It is submitted that the learned District Judge, upon examining the Complaint and the material placed on record, has rightly so held, placing reliance upon *West Bengal State Electricity Board vs. Dilip Kumar Ray*, (2007) 14 SCC 568.

**34.** It is further submitted that at the time of institution of the earlier Suit, there was admittedly an outstanding against the Appellants, and that no wrongful intent can therefore, be attributed to the Bank in prosecuting its claim for recovery. Reiterating the stand taken in its Written Statement, it is contended that under Section 176 of the Indian Contract Act, 1872 the *pawnee* has an election, either to bring a Suit upon the debt while retaining the pledged goods as collateral security, or to sell the pledged goods upon reasonable Notice; and the Bank having elected the former course, no notice was required in law.

**35. On the aspect of limitation**, it is submitted that a Suit founded on malicious prosecution is governed by Article 74 of the Limitation Act, 1963, which prescribes one year from the termination of the proceedings complained of. The earlier Suit having been dismissed on 22.12.2012, the present Suit ought to have been instituted on or before 22.12.2013, whereas



it was filed on 22.12.2015. Moreover, even upon the alternative case of breach of contract, the Suit is barred under Article 55, the latest alleged breach being the sale of the pledged shares being in the year 1998.

**36.** It is therefore, submitted that the impugned Judgment calls for no interference.

**Submissions heard and record perused.**

**37.** The Appellants and the Respondent Bank have been in litigation since the year 1997, on account of two loans of Rs. 2,50,000/- each availed by the Appellants on 30.12.1994 against pledge of shares. The following proceedings ensued between the parties:

- i. On 19.12.1997, Suit No. 494/11 titled Sangli Bank Ltd. vs. Kiran Kriplani & Anr. was instituted by the Respondent Bank for recovery of Rs. 2,27,873.50/- against the Appellant No. 1 as borrower and the Appellant No. 2 as guarantor, before the learned Civil Judge, Tis Hazari Courts, Delhi.*
- ii. On 06.08.2003, an Application under Order VII Rule 11 CPC was moved by the Appellants in the said Suit for rejection of the plaint on the ground of concealment of the sale of shares effected after its institution, which was dismissed on 21.01.2004. A Review Application dated 25.02.2004 was likewise, dismissed on 09.07.2004.*
- iii. On 20.08.2008, CS No. 99169/2016 was instituted by the Appellants against the Respondent Bank for redemption and*



*recovery of the pledged shares, which was dismissed vide Judgment dated 11.08.2021.*

- iv. The Suit No. 494/11, was dismissed by the learned Civil Judge Vide Judgment dated 22.12.2012 Ex. PW-1/1, holding that the Bank had not acted with reasonable diligence in failing to sell the pledged shares upon reasonable notice after the expiry of one year; that some of the pledged shares were lying with it at the institution of the Suit, rendering the Suit premature and the Bank guilty of concealment of material fact; that the sale effected without reasonable notice was void under Section 176 of the Indian Contract Act, 1872; and that due credit of the sale proceeds had not been given in the account of the Appellant No. 1. The said Judgment was not carried in Appeal by the Bank.*
- v. On 22.12.2015, the present Suit bearing CS (DJ) No. 617664/2016 was instituted by the Appellants, seeking damages and compensation of Rs. 5,00,000/- along with interest, on account of the Suit of the Bank being false, frivolous and vexatious.*

**38.** The principal questions that arise for consideration, are:

- (i) whether the Suit of the Appellants/Plaintiffs was, in substance, a Suit for compensation for malicious prosecution; and*
- (ii) whether the Appellants/Plaintiffs, upon the evidence led, established their entitlement to damages.*



**I. Whether the Suit was for Compensation for Malicious Prosecution:**

39. The entire edifice of the Appeal rests upon the assertion that the Appellants never founded their Suit upon malicious prosecution, and that the learned District Judge, in holding otherwise, put words into the mouths of unwilling litigants. It is asserted that the Written Submissions dated 29.07.2022 filed before the learned Trial Court, were "not even once based on Malicious Prosecution or Breach of the Contract".

40. This assertion, however, is not borne out from the record. Paragraph 2 of the Affidavit of Evidence of PW-1, Ex. PW-1/A, reads as under:

*"So having violated the Statute by the defendant, an Institution, it is elementary law & common sense to not to plead or continue to plead before the Court and if pleaded and continued to be pleaded **then it is prima facie a false and malicious case to harass and continue to harass the opposite party therein the previous suit, hence is the present suit.**"*

41. The identical averment stands reproduced in the Written Submissions filed by the Appellants before the learned Trial Court on 29.07.2022, wherein it is stated that the conduct of the Bank rendered it "*prima facie a false and malicious case by the powerful to harass and continue to harass the weak opposite party therein the previous suit, hence is the present suit.*"

42. The Appellants thus, not only pleaded malice, but reiterated it in their Affidavit of Evidence and in the Written Submissions, upon which they now place reliance. The contention that the learned District Judge



supplanted a case which the Appellants had not set up, is contrary to the record and is liable to be rejected.

43. Apart from the said pleadings, it is not the label affixed by a party, but the substance of the pleadings and the nature of the injury complained of, which determine the character of a Suit. The title of the Plaint itself reads as under:

*"Suit For Damages/Compensation On Behalf Of The Plaintiffs Against The Defendant For Filing False, Frivolous Or Vexatious Suit Against The Plaintiffs And Thus For Damages Also On Account Of Harassment, Humiliation, Defamation, Etc."*

44. Paragraph 7 of the Plaint reads as under:

*"The suit filed by the defendant was **intentionally false, frivolous and vexatious**, to extort money from the then out-stationed, thus incapable plaintiffs, hence this suit against the defendant.*

*Defendant's false suit caused **harassment, humiliation, defamation, mental agony etc. to the plaintiffs and especially defamation to the plaintiff no.2 who became an advocate in year 2010 and had to face suit of the defendant as an advocate in full and searching glare of the Hon'ble Court, public and his colleagues, as a defendant.**"*

45. What is averred is thus, that the Bank by filing the earlier Suit, set a civil proceeding in motion; that it did so with an improper motive and to extort money; that the said proceeding terminated in favour of the Appellants; and that the Appellants suffered injury to reputation and mental



*distress in consequence.* These are the constituents of the tort of malicious prosecution.

46. The Supreme Court in West Bengal State Electricity Board vs. Dilip Kumar Ray, (2007) 14 SCC 568, has explained that malice is not to be understood in the sense of spite or hatred against an individual, but as denoting that the party is actuated by an *improper motive; the proper motive for a prosecution being the desire to secure the ends of justice.*

47. **The learned District Judge has, therefore, rightly held that the Suit was, in substance, one for compensation for malicious prosecution and was to be adjudged within that framework.**

## **II. Whether the Appellants established their entitlement to damages:**

48. In order to constitute malicious prosecution, the following aspects have to be established:

- (i) institution or continuation of legal proceedings by the defendant;*
- (ii) want of reasonable and probable cause;*
- (iii) malice; and*
- (iv) termination of the proceedings in favour of the plaintiff.*

49. Malice and want of reasonable and probable cause, are distinct ingredients and neither can be inferred from the other, nor either from the mere failure of the earlier proceeding.

50. The institution of Suit No. 494/11 by the Bank and its termination in favour of the Appellants, are not in dispute. The case of the Appellants, however, founders upon want of reasonable and probable cause.



51. PW-1, in his cross-examination dated 11.04.2017, admitted the execution of the Demand Promissory Note Ex. PW-1/D2, the continuing Security Bond Ex. PW-1/D3, the Letter of Lien and Set Off Ex. PW-1/D4 and the Letter of Guarantee Ex. PW-1/D5, and that the shares stood pledged as security in favour of the Bank under the Agreement of Pledge Ex. PW-1/9.

52. PW-1, in his cross-examination dated 11.01.2018, deposed as under:  
*"It is correct that we never said to the defendant bank to sale the pledged shares in the market and adjust the sale proceeds in our loan account."*

53. PW-1, in his cross-examination dated 13.05.2019, further admitted:  
*"It is correct that we were not able to pay the interest of the loan amounts which were sanctioned an granted to me and my wife."*

54. The Appellants thus availed the loans, failed to repay them, sought no renewal upon the expiry of one year and gave no instruction to the Bank to liquidate the security. A creditor who, in such circumstances, approaches a Civil Court to recover what is due to him, acts in assertion of a subsisting legal right. His Suit may fail for want of proof, for a defect in the conduct of the litigation, or for a bar in law, *but its failure does not render its institution an actionable wrong.*

55. It is not the success or failure of a litigation which determines its malicious character, but the *intent and the motive with which it was initiated*. The grievance of the Appellants is not that no debt was due, nor that the Bank believed no debt to be due, but that the Bank ought to have realised its dues by sale of the pledged shares, rather than by recourse to litigation. That



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is a complaint directed at the choice of remedy, and does not establish want of reasonable and probable cause.

56. Pertinently, PW-1 was unable to furnish the particulars of the very sales of which he complained. In his cross-examination dated 11.01.2018, he deposed that ***he could not state the details of the shares sold by the Bank before the filing of the earlier Suit***, and did not remember the details of the shares sold during the Court proceedings, volunteering only that he could tell from the records. The allegation of sale without notice thus, remains unparticularised, even in the testimony of the Appellants' own witness.

57. The Appellants have rested their case upon the findings recorded in the Judgment dated 22.12.2012 Ex. PW-1/1, contending that the same constitute a judicial condemnation of the intent of the Bank.

58. The learned Civil Judge dismissed the earlier Suit upon the reasoning that if some of the pledged goods were lying with the Bank at the time of institution of the Suit, the balance amount was not quantifiable at that stage, and unless the entire pledged goods were sold after reasonable notice, no cause of action arose to file the Suit. *The dismissal thus, proceeded upon the footing that the Suit was premature, and not upon any finding that no debt was owing by the Appellants.*

59. The position is placed beyond doubt by the said Judgment, wherein the learned Civil Judge, having held the sale of the pledged shares without notice, was void under Section 176 of the Indian Contract Act, 1872, concluded that the Bank *"is not entitled to adjust the amount arising out of void transaction in the account of defendant no.1."* The necessary consequence is that the amounts realised from the void sales, could not be



credited against the liability of the Appellant No. 1. *Far from extinguishing the debt, the finding leaves the liability standing and unadjusted.*

**60.** The findings relating to concealment are undoubtedly, adverse to the Bank. They pertain, however, to the sale of the pledged shares in May, 1998 effected during the pendency of the earlier Suit, and to the failure to disclose the same to the Court or to amend the plaint. They relate to the conduct of the Bank in the course of the litigation, and not to its state of mind on 19.12.1997 when the Suit was instituted. Misconduct in the course of a proceeding, does not retrospectively deprive its institution of reasonable and probable cause.

**61.** The observation in the impugned Judgment that there is no judicial determination that *the Bank acted with malice or wrongful intent*, is imprecisely worded, findings of concealment having in fact been returned in the Judgment dated 22.12.2012. The imprecision does not, however, disturb the conclusion, for those findings do not bear upon the honesty of the institution of the Suit.

**62.** The reliance placed by the Appellants upon H.S. Bedi vs. National Highway Authority of India, RFA 784/2010, is misplaced. The said decision operates where the claim advanced was demonstrably false and the party had no entitlement whatsoever, against the opposite side. Here, the availing of the loans and the subsistence of the outstanding stand admitted.

**63.** The reliance upon S.P. Chengalvaraya Naidu vs. Jagannath, (1994) 1 SCC 1, is equally misplaced. The principle that a litigant approaching the Court with unclean hands is entitled to no relief, operates as a defence in the proceeding before the Court, and was so applied, the Suit of the Bank having



been dismissed. It does not furnish a cause of action for a fresh Suit in damages.

**64.** There is a further aspect. Where a Suit is found to be false or vexatious, the successful defendant is not without recourse. **Section 35 Code of Civil Procedure, 1908** empowers the Court to *award costs to the successful party*; **Section 35A** empowers it, upon a finding that a claim or defence is false or vexatious to the knowledge of the party advancing it, to award *compensatory costs*; and **Section 35B** provides for *costs occasioned by delay*. That remedy is to be worked in the Suit, in which the mischief occurs.

**65.** The Appellants were the successful parties in Suit No. 494/11. It was open to them to press for costs, including compensatory costs, before the learned Civil Judge. The Judgment dated 22.12.2012 records that no order as to costs was made. Having not availed of the remedy afforded to them in that very Suit, the Appellants could not institute an independent Suit three years thereafter, to recover as damages that which lay available to them as costs.

**66.** Even otherwise, the claim to damages is unsustainable upon the evidence. The Complaint merely asserts that the Bank, "*having deep pockets is liable for damages/compensation to the plaintiffs of Rs.10 lakhs but confined to Rs.5 lakhs due to paucity of court fees at present*", without furnishing any particulars of the manner in which the said figure was arrived at.

**67.** *The head-wise break-up, apportioning Rs. 1,00,000/- to the false and vexatious Suit, Rs. 1,00,000/- to concealment of facts, Rs. 2,00,000/- to mental agony, Rs. 2,00,000/- to professional defamation, Rs. 1,00,000/- to abuse of power and position, Rs. 2,00,000/- to the dragging of the case and*



*Rs. 1,00,000/- towards deterrence, appears for the **first time in the Affidavit of Evidence Ex. PW-1/A. PW-1.** In his cross-examination dated 13.05.2019, it was admitted that "the details as mentioned in para no. 13 of my affidavit have not been given in my plaint." The evidence travelling beyond the pleadings cannot be looked into.*

**68.** At the outset, it is to be noticed that the Appellant No. 1, who is said to have suffered aggravated depression, did not enter the witness box at all. Her case was deposed to by the Appellant No. 2, who admitted in his cross-examination dated 11.01.2017, that he had not filed any copy of a General Power of Attorney or Special Power of Attorney executed by her, on record. The person who allegedly suffered the injury has thus, neither deposed nor has been subjected to cross-examination.

**69.** The claim of aggravated depression suffered by the Appellant No. 1, rests upon the Medical Prescriptions Ex. PW-1/14 (OSR), the exhibition whereof was objected to at the stage of tendering on 11.01.2017 on the ground of mode of proof, the said documents being required to be proved by the concerned medical practitioner. Though a doctor of Sir Ganga Ram Hospital stood cited in the List of Witnesses dated 16.11.2016, no such witness was examined. The said documents thus **remain unproved**, and no finding as to the health of the Appellant No. 1 or its causal connection with the Suit of the year 1997, can be founded thereupon.

**70.** The claim of professional defamation of the Appellant No. 2, rests upon bare assertion. He was enrolled as an Advocate in the year 2010, that is to say, some thirteen years after the institution of the earlier Suit, and not an iota of evidence has been adduced to establish *any loss of professional standing, clientele or income, attributable thereto*. Moreover, PW-1



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admitted in his cross-examination dated 11.01.2018, that the sale proceeds of the pledged shares stood credited to his own loan account and that no case was filed by the Bank against him as the principal borrower; he having been arrayed in the earlier Suit only in his capacity as guarantor for the Appellant No. 1.

71. It has been urged that the Bank led no evidence whatsoever, its right having been closed, *vide* Order dated 22.02.2022, and that its defence must consequently fail. The onus under Issue Nos. 1 and 2 was, however, cast upon the Appellants. The failure of a defendant to lead evidence enures to the benefit of a plaintiff only where he has first discharged the burden resting upon him, and does not convert an unproved claim into a proved one.

### **Conclusion:**

72. In the absence of any foundational pleading of malice, absence of evidence establishing want of reasonable and probable cause at the institution of the earlier Suit, and absence of proof of the damages allegedly suffered, the learned District Judge has *rightly dismissed the Suit of the Appellants/Plaintiffs vide the impugned Judgment and Decree dated 31.05.2025.*

73. There is no merit in the present Appeal, which is hereby, ***dismissed.***

74. Pending Applications, if any, are also disposed of, accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**SEPTEMBER 16, 2026/va/RS**