IN THE COURT OF THE MUNSIFF, HARIPAD
Present: Sri. Doney Thomas Varghese , B.A.LL.B(Hons:).Munsiff
Saturday 30th January 2016/ 10th Makha 1937

O.S. No. 256/2013
(**Filed on 09-09-2013)**

Plaintiff: Augustine, aged 62 years,
S/o Poulose,
Chungath House,
Thrukkakkara North Village,
Kalamasserry Desom,
Njalakom Kara,
Kanayannoor Taluk,
Eranakulam Dist.

By Adv. Smt.Vijayasree.S.

Defendant: Yasodha, aged 43 years,
D/o Santhamma,
Narayana Nilayam,
From: Muthalasseril House,

Muttom Muri,
Cheppad Village,
Karthikappally Taluk,
Alappuzha.

By Adv. Saji Thampan.

This Final Decree application having been finally heard on 28-01-2016 and the court on 30.01.2016 day delivered the following:

JUDGMENT

Suit is for realisation of money.

2. The averments in the plaint in brief are as follows: Defendant is known to the plaintiff even when he was working as the Chief Manager of Federal Bank Limited, Alappuzha branch. Defendant approached the plaintiff and demanded a sum of Rs.5,00,000/- as a loan for discharging the liabilities

incurred in connection with the construction of her house. Accordingly on 18.08.12 plaintiff has parted with a sum of Rs.5,00,000/- to the defendant who is turn agreed to repay the same together with interest at 24%. She was also handed over her title deed as security for the repayment of the loan. By acknowledging the loan defendant has also executed a promissory note in favour of the plaintiff. Though the defendant has paid interest up to 18.03.2013, thereafter she failed to pay the interest or principal amount. Despite material demands she failed to turn up. Demand notice issued by the plaintiff was returned unclaimed. Plaintiff has got reliable information that the defendant is making preparations for alienating the plaint schedule property with a view to delay or defeat the execution of the decree that may be passed against her. Hence this suit.

3. Defendant entered appearance and filed written statement with the following contentions: Suit is not maintainable either in law or on facts. Defendant is not acquainted with the plaintiff as alleged in the plaint. The construction of the house of the defendant was completed as early as in 2003 and she has not incurred any liability in connection with the same. Defendant has not yet visited S. N Auditorium for lending money from the plaintiff as alleged in the plaint. On 18.08.12 defendant has borrowed a sum of Rs.5,00,000/- for SML Finance (Federal Finance) Limited for which she has parted with her original title deeds and other documents. She has also executed a promissory note. At the time of availing the said loan plaintiff was the manager of the said institution. Defendant has no other nexus with the plaintiff. As directed by the employees of the said institution including the plaintiff defendant has repaid a

total sum of Rs.1, 60,000/-. A portion of which was credited to the account of the plaintiff and the remaining amount was collected by the plaintiff by visiting the defendant at her residence. Defendant has not yet defaulted in repaying the loan. She has not yet attempted to alienate the property in her name. Defendant has not borrowed any amount from the plaintiff. Plaintiff has not yet made any demand for the payment or money as alleged in the plaint. Plaintiff is not entitled to the relief sought for in the suit and the same is liable to be dismissed with costs.

4. On the basis of the above pleadings the following issues are framed for trial.

1. Whether the defendant has borrowed Rs. 5,00,000/- from the plaintiff as on 18.08.2012 ?
2. Whether the defendant executed a promissory note in favour of the plaintiff in respect of that transaction?
3. Whether the plaintiff is entitled to realise Rs. 5,00,000/- from the defendant?
4. What is the rate of interest?
5. What is the order as to costs?

5. An advocate commissioner was appointed to examine the witnesses in this case. From the plaintiff's side plaintiff' and three witnesses were examined as PW1 to PW4 and Ext. A1 to A12 were marked.

6. Neither any oral nor any documentary evidence was adduced from the side of the defendant.

7. Heard both sides.

8. **Issues 1 to 5:**

For the sake of convenience issues 1 to 5 are discussed together. The case of the plaintiff is that he is acquainted with the defendant while he was working as the Chief Manager, Federal Bank Regional Office, Alappuzha. Defendant approached the plaintiff and demanded a loan of Rs.5,00,000/-. She agreed to repay the same together with interest thereon at 24%. Accordingly on 18.08.2012 plaintiff has parted with Rs.5,00,000/- to the defendant who is turn executed and issued Ext. A1 promissory note agreeing to repay Rs.5,00,000/- together with interest thereon at 24%. She has also handed over Ext.A2 original sale deed no. 1566/2008, Ext.A3 original sale deed no.1390/1998, Ext.A4 encumbrance certificate dated 16.07.2012, Ext. A5 possession certificate, Ext.A6 land tax receipt and Ext.A7 location sketch as security for the due payment of the borrowed sum with interest thereon. Though she paid interest up to 18.03.2013, thereafter she failed to pay any amount towards principal or interest. On 20.06.2013 demand notice was sent to the defendant but the same was returned unclaimed. Ext. A9 is the returned demand notice. The case of the plaintiff is that he is entitled to realise Rs.5,00,000/- together with interest thereon at 24% per annum. The case of the defendant is that she has not availed any loan from the defendant. According to her on 18.08.2012 she has borrowed a sum of Rs.5,00,000/- from the SML Finance (Federal Finance) Limited for which she has parted Ext. A2 to A6 documents. She has also executed and issued a promissory note. At the time of availing the said loan plaintiff was the manager of the said institution. Defendant has repaid a sum of Rs.1,60,000/- and a portion of which was credited to the bank account of the plaintiff with the Federal Bank and the remaining amount was collected by the plaintiff by visiting her house. Defendant has not yet defaulted in repaying the loan. The oral evidence of PW1 is sufficient to prove the alleged original transaction between the plaintiff and the defendant. It is corroborated by the oral evidence of PW2, a witness to the said transaction. Their evidence is further fertified by Ext.A1 to A7 documents. The case of the defendant is that she has availed a loan of Rs.5,00,000/- from a financial institution namely SML Finance. From the plaintiff's side, Ext.A12 document was produced to show that defendant has not availed any loan from the said financial institution. It is contended that PW4 who was examined to prove Ext.A12 document issued is a close friend of the plaintiff and the plaintiff was worked as a senior officer of the said institution. Said contention assumed little significance as the specific case of the defendant is that she has availed loan from SML Finance Limited. Neither any oral nor any documentary evidence was adduced by the defendant to prove the same. Withholding of best evidence on that point would cause dent in the case canvassed by the defendant. Further the version of the defendant is that she repaid the borrowed sum by crediting the same in the bank account of the plaintiff. It is quite difficult to digest that one will repay the amount borrowed from a financial institution by crediting the same in the bank account of one of the senior officers. It is quite difficult to believe that senior officer of a financial institution will possess such documents entrusted with the institution as security for due payment of a loan. Further Ext.A1 promissory note is a printed one. Defendant has no case that she has put her signature on any blank document rather her version in the written statement is that she has executed a promissory note. During the cross examination of PW1 a suggestion was put to him that the signature of the defendant was obtained on a blank paper affixed with revenue stamp at the time of availing loan from SML Finance. Said document was misused to the disadvantage of the defendant by making it as Ext.

A1 promissory note. Said suggestion is not in consonance with the pleadings of the defendant. Anyhow the plaintiff who was examined as PW1 categorically denied the same. The contention that Ext.A1 does not bear the signature of attestors assumes little significance as attestation is not needed for promissory note. Likewise the contention that there is no whisper in the Ext.A1 as to who prepared the document is not sufficient in itself to doubt the veracity of such a document which is a computer print containing the signature of the defendant at three places. Ext.A1 is executed in favour of the plaintiff and not in favour of SML Finance Limited. Nothing was brought on record to discredit or disbelieve the version of the plaintiff. Plaintiff has established his case warranting the grant of the relief sought for in the suit. Defendant failed to rebut the presumption u/s. 118 of the Negotiable instruments Act nor succeeded in proving the defence plea. The case of the plaintiff is that she paid interest at the agreed rate from 18.08.2012 to 18.08.2013. I am not inclined to go into the question whether the plaintiff is justified in levying that much amount as interest as there is no dispute on that point. However in the facts and circumstances of the case I am inclined to order interest at 6% per annum from the date of suit till realisation. Issues are answered accordingly.

In the result suit is decreed with costs. Plaintiff is entitled to realise Rs.5,00,000/- together with interest thereon at 6% per annum from the date of suit say 09.09.2013 till realisation and the costs of this suit from the defendant and the plaint schedule property.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 30th January, 2016.

DONEY THOMAS VARGHESE
MUNSIFF

APPENDIX

Exhibits for the Plaintiff:

A1	18.08.2012	Promissory Note
A2	18.08.2008	Sale deed No.1566/08
A3	25.08.1998	Sale deed No.1390/98
A4	16.07.2012	Certificate of Encumbrace
A5	10.07.2012	Posse ssion certificate issued from Village Officer, Cheppad.
A6	“	Tax Receipt
A7	“	Location sketch of -do-
A8	20.06.2013	Notice
A9	27.06.2013	Registered cover with A/D
A10	26.06.2015	Statement of Account
A11	12.01.2016	Certificate
A12	06.06.2014	Certificate issued from SML Finance Ltd.,Kochi

Exhibits for the defendant: Nil

Witness for the Plaintiff:

PW1	21.01.2016	C.P.Augustine
PW2	22.01.2016	Unnikrishnan Nair.
PW3	25.01.2016	A.T.Joseph
PW4	“	Liju Joseph.

Witness for the defendant: Nil

MUNSIFF

Typed by: vlb
Compd by