IN THE COURT OF THE MUNSIFF PALA

Present. Smt.Priyanka Paul, Munsiff, Pala

Thursday, 8th day of December 2022

17th day of Agrahayana 1944

O.S.No.248/2020

Plaintiff:-

The South Indian Bank Ltd., Branch at Cherpunkal,
Represented by its Branch Senior Manager,
The Principal Officer of the branch, Cherpunkal P.O,
Kidangoor Village, Meenachil Taluk, Kottayam District,
PIN 686584

By Adv. A.K Sebastian

Defendants:-

1. Merlin Mohan, D/o Mohanan T.V, aged about 27 years, residing at Pullamattathil House, Mariyidom Kara, Kadaplamattom P.O, Kidangoor Village, Meenachil Taluk, Kottayam District, PIN 686571

2. Mohanan T.V, S/o Varghese, aged about 56 years residing at Pullamattathil House, Mariyidom Kara, Kadaplamattom P.O, Kidangoor Village, Meenachil Taluk, Kottayam District, PIN 686571

3. Molly Mohanan, W/o Mohanan T.V, aged about 49 years, residing at Pullamattathil House, Mariyidom Kara, Kadaplamattom P.O, Kidangoor Village, Meenachil Taluk, Kottayam District

By Adv. V.G Venugopal (Exparte)

This suit has been finally heard on 07.12.2022 and the Court on 08.12.2022 delivered the following:-

JUDGMENT

This suit is one for realisation of money.

2. Plaintiff's case in brief is, as follows:- Plaintiff is the Cherpunkal branch of South Indian Bank having its head office at Thrissur and functioning under the Companies Act 1956. First defendant, Smt. Merlin Mohan was a student of four years B.Sc. Nursing Degree Course at Sri Dharmasthala Manjunatheshwara College of Nursing, Manjushrinagar, Sattur, Dharward, Karnataka affiliated to Rajiv Gandhi University of Health Sciences, Karnataka. Second and third defendants are the parents of first defendant and they are also coborrowers of the loan. Defendants being borrowers, had jointly applied for a Term Loan limit of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) under the "Education Loan Scheme" for the purpose to secure an admission of B.Sc. Nursing Degree Course at the said institute from the plaintiff bank by way of financial assistance for the education of the 1st defendant. Defendants after agreeing to all the terms and conditions made the loan sanction letter dated 02.01.2012 and affixed their signatures on the same in token of acceptance of the terms and conditions. They availed the loan facility after accepting the terms and conditions and by executing necessary loan documents. In pursuance of the documents and arrangements the defendants had availed the loan of ₹2,50,000/- and utilized the same for the purpose of meeting educational expenses of the first defendant. On 19.02.2018 the defendants had jointly executed an acknowledgment of debt. That after the historic flood of 2018 upon the application of the defendants for restructuring of the existing loan due to natural calamities, the plaintiff

bank sanctioned an additional loan amount of ₹42,000/- the proceeds of which is to be credited to the existing loan account. First defendant had agreed to all the terms and conditions made in the loan sanction letter dated 05.11.2018. In addition to the documents the first defendant on 05.11.2018 executed a short term restructuring (Educational) loan agreement which is supplemental to the original agreement dated 02.01.2012. The second and third defendants had agreed to all the terms and conditions made in the loan sanction letter. In pursuance of the documents and arrangements, defendants had availed the additional loan amount of Rs.42,000/- and utilized the same for crediting to the initial loan account which was disbursed for the purpose of meeting educational expenses of the first defendant. On 05.11.2018 defendants had executed an acknowledgment of debt and security. After availing the said loan, defendants violated the conditions in the documents executed by them and did not care to repay the loan amount with interest. Despite repeated requests, defendants failed to pay off the loan amount. As per the directives of Reserve Bank of India, the loan account is classified as Non Performing Asset from 22.02.2017 onwards. The balance outstanding as on 13.10.2020 in the first loan account is ₹2,25,540.93/- is due from the defendants to the plaintiff bank as per documents executed by the defendants. On 13.10.2020 an amount of ₹1,081.68 has been credited in the first loan account being reversal of the capitalized amount of penal interest of ₹6,715/- already charged in the account of various dates. The balance outstanding as on 15.10.2020 in the second loan account is ₹52,290.34/- is due from the defendants to the plaintiff bank as per documents executed by the defendants.

On 15.10.2020 an amount of ₹101.59/- has been credited in the first loan account being reversal of the capitalized amount of penal interest of ₹1,069/- already charged in the account of various dates. Therefore, plaintiff is entitled to recover an amount of ₹2,79,596/- (Rupees Two Lakhs Seventy Nine Thousand Five Hundred Ninety Six only) together with future interest @ 13.35% per annum with monthly rests and penal interest @ 2% per annum from the date of suit till realisation and cost of this suit from the defendants and their assets.

3. Defendants filed written statement with the following contentions :- It is admitted that defendants had taken an educational loan. Defendants had only signed on some unfilled documents at the instance of the plaintiff. But the calculation of interest and imposition of overdue interest is incorrect and unlawful. Defendants have not agreed for any such arrangement. The account statement produced does not show the actual arrears. Defendants have not executed an acknowledgment of debt as alleged in the plaint. Hence the suit is to be dismissed with costs.

4. Upon the pleadings, required issues were framed as follows ;

1) Is the plaintiff entitled to realise any amount from the defendants ? If so, what is the amount ?

2) What is the rate of interest ?

3) Order as to costs?

5. Thereafter, both sides were given opportunity to take pre-trial steps. Suit was included in the special list and was posted to 07.12.2022 for trial. When the case was called, both sides represented and learned counsel for the defendants stated no instructions from the defendants and filed a memo to that effect. Hence defendants were set exparte.

6. PW1 was examined and Exts.A1 to A16 were marked.

7. Heard the learned counsel for the plaintiff.

8. Issue Nos.1 and 2 :-Present Manager of plaintiff bank filed proof affidavit and got himself examined as PW1. Ext.A1 is the loan application of first defendant. Ext.A2 is the sanction of credit facility letter. Ext.A3 is the educational loan agreement. Ext.A4 is the interest subsidy agreement. Ext.A5 is the acknowledgment of debt. Ext.A6 is the request for reconstructing of loan. Ext.A7 and A9 are the sanction/renewal of credit facilities. Exts.A8 and A10 are the short term restructuring (Educational) loan agreement. Exts.A11 and A12 are the acknowledgment of debt and security. Ext.A13 is the copy of lawyer notice issued to the defendants demanding repayment of the loan amount. Ext.A14 series are the postal receipts and Ext.A15 series are the acknowledgment cards would show that defendants received Ext.A13 lawyer notice. Ext.A16 series statement of accounts shows that ₹2,79,596/- is due from the defendants to the plaintiff. From the unrebutted evidence of PW1 and Exts.A1 to A16, it is proved that defendants had jointly taken an educational loan for ₹2,50,000/- and that they defaulted repayment of the outstanding amount of ₹2,79,596/. I am satisfied that plaintiff has a cause of action against the defendants.

There is no contra evidence to disprove the case of the plaintiff. Under these circumstances, I find that plaintiff is entitled to realize an amount of ₹2,79,596/- from the defendants. Since the loan availed by the defendant was for educational purpose, I am only inclined to grant 6% future interest. Hence these issues are answered in favour of the plaintiff.

9. Issue No.3 :- General rule is that costs shall follow the event. I don't intend to deviate from the said rule. Therefore, I am of the view that the plaintiff is entitled to realise the costs of the suit from defendants. This issue is answered in favour of the plaintiff.

In the result, the suit is decreed as follows ;

1) Plaintiff is allowed to realise an amount of ₹2,79,596/- (Rupees Two Lakhs Seventy Nine Thousand Five Hundred and Ninety Six only) with 6% future interest from the date of the suit till date of realisation from the defendants and their assets.

2) Plaintiff is entitled to recover costs from the defendants.

(Dictated to the Confdl. Asst., transcribed and typed by him, corrected by me and pronounced in open court on this the 8th day of December, 2022.)

Sd/-
PRIYANKA PAUL
MUNSIFF

APPENDIX:

Exhibit marked for plaintiff:-

A1	26.08.2011	Loan application, The South Indian Bank Limited, Branch Cherpunkal
A2	02.01.2012	Sanction of Credit Facility Letter
A3	02.01.2012	Educational Loan Agreement
A4	02.01.2012	Interest subsidy agreement
A5	19.02.2018	Acknowledgment of Debt and Security
A6	10.10.2018	Draft Application to be collected from borrowers/ Guarantors
A7	05.11.2018	Sanction / Renewal of Credit facilities
A8	05.11.2018	Short Term Restructuring (Educational) Loan agreement executed by the first defendant
A9	05.11.2018	Sanction / Renewal of Credit facilities
A10	05.11.2018	Short Term Restructuring (Educational) Loan agreement executed by the second and third defendants
A11	05.11.2018	Acknowledgment of Debt and Security executed by the first defendant
A12	05.11.2018	Acknowledgment of Debt and Security executed by the second and third defendants
A13	30.12.2019	Lawyers Notice
A14		Postal Receipt
A14(a)		Postal Receipt
A14(b)		Postal Receipt
A15	01.01.2020	Acknowledgment card
A15(a)	01.01.2020	Acknowledgment card

A15(b)	01.01.2020	Acknowledgment card
A16	13.10.2020	Statement of Account for the period from 02.01.2012 to 13.10.2020 A/c No.0197655000000189
A16(a)	15.10.2020	Statement of Account for the period from 07.11.2018 to 15.10.2020 A/c No.0197655000000274

Exhibits marked for Defendants: Nil

Court Exhibits: Nil

Third Party Exhibits : Nil

Witness Examined for Plaintiff:

PW1 07.12.2022 Yadukrishnan M.S

Witness Examined for Defendants : Nil

Id/-
MUNSIFF

//True copy//

Sd/-
PRIYANKA PAUL
MUNSIFF

Typed By:Manju, Comp. By: Greeshma

Copy of
JUDGMENT
In
O.S. No.248/2020
Dtd. 08.12.2022