IN THE COURT OF THE COMMERCIAL (SENIOR CIVIL JUDGE), SALEM.

Present : Tmt. K.Renugadevi, LL.M.,
Judge, Commercial Court (Senior Civil Judge),
Salem.

Tuesday, the 13th day of February, 2024

C.O.S. No.73/2023
(CNR No. TNSA 24 -000111 -2023)

Canara Bank, (Erstwhile Syndicate Bank),
Shevapet Branch,
Rep by its Branch Manager …….Plaintiff

/vs /

M. Shanmuganathan
Prop: M/s. Sharan Traders ……Defendant

This suit was taken on file of this Court on 07.10.2023 and came up before me on 03.02.2024 for final hearing in the presence of Tvl. S. Raja and N. Mohamed Usman, Advocates for the plaintiff, and the defendant remained exparte and upon hearing plaintiff side argument and perusing the available case records and having stood over for consideration till this day, this Court delivers the following :

J U D G M E N T

Suit for Recovery of money; directing the defendant to pay a sum of Rs.17,21,061.01 (1st loan) together with interest thereon at 11.60% per annum compounded monthly interest from 01.07.2023 till its realization and to pay a sum of Rs.1,47,243.24 (2nd loan) together with interest thereon at 11.25% per annum compounded monthly interest from 01.07.2023 till its realization and to pay a sum of

Rs.2,20,720.31 (3rd loan) together with interest thereon at 11.25% per annum compounded monthly interest from 01.07.2023 till its realization and for cost.

2. The plaintiff bank was originally named as Syndicate Bank and then got amalgamated with Canara Bank as per Gazette Notification dated 04.03.2020 and it is functioning under the banking companies (Acquisition and Transfer of Undertaking) Act of 1956, having its branch office at Shevapet, Salem District has filed this suit for recovery of sum of Rs.17,21,061/- in respect of 1st loan, Rs.1,47,243/- in respect of 2nd loan, Rs.2,20,720/- in respect of 3rd loan along with different interest on the allegation that the defendant is a proprietor concern dealing in whole sale and retail business of grocery items in the name and style of M/s. Sharan Traders has approached the plaintiff bank for the sanctioning of credit facilities of sum of Rs.10,00,000/- on 09.04.2019 and the same was sanctioned on 16.07.2019 under MSME scheme and thereafter the defendant once again approached the plaintiff bank to grant a loan of Rs.2,00,000/- on 12.06.2020 and again on 30.11.2021 for sanctioning a loan of Rs.2,00,000/- and for the said loans the defendant has executed loan documents like loan agreement, hypothecation, pronote, etc., and also agreed to repay the loan amount along with the agreed rate of interest agreed by him in the respective loan documents.

3. Further the defendant approached the plaintiff bank on 06.08.2020 for the enhancement of 1st loan obtained by him on 09.04.2019 on 06.08.2020 and the plaintiff bank has also enhanced the credit facilities of Rs.15,00,000/- from Rs.10,00,000/- as per the request made by the defendant on 01.10.2020 for which also he has executed loan documents agreeing to repay the loan amount along with interest. Thereafter the defendants was irregular in payment of loan amount and so his accounts were classified as NPA on 09.02.2022. And so the plaintiff bank approached the District Legal Services Authority for pre institution mediation as per Section 12A of Commercial Courts Act in which also the defendant has not appeared and so the present suit filed.

4. The defendant though received the summons and present before this court has not filed vakalat rather requested this court to engage a free legal aid counsel for defending his case as he has no means to engage an advocate and a letter was addressed to the DLSA, and it seems it has issued notice to the defendant, but he has not produced the documents sought for by the DLSA till 24.01.2024. Moreover he was also not present regularly before this court on the date of hearing. And so left with no other option this court set the defendant exparte on 24.01.2024.

5. And the exparte evidence was led by the plaintiff by examining the bank Manager as PW1 and marked Ex.A1 to Ex.A22 through her..

6. *Points for determination:-*

1. *Whether the defendant has borrowed an amount of* Rs.20,89,024/- *for the purpose of business?*
2. *If yes, whether the suit to be decreed?*

7. Heard Record perused:-

8. ***Point No.1 and 2:-***

The learned counsel for the plaintiff argued that the plaint documents would substantiate the case of the plaintiff and the defendant has not come forward to agitate the case of the plaintiff and the documents submitted would clinchingly prove and establish the facts put forth by the plaintiff and so sought to decree the suit.

9. On perusal of the pleadings and documents it is evident from Ex.A17 that the defendants is doing business and he has approached the plaintiff bank through Ex.A1 loan application for sanctioning of credit facility of sum of Rs.10,00,000/- and the same was sanctioned on 16.07.2019. And thereafter the defendants has executed Ex.A3 loan

agreement and hypohthecation agreement to repay the loan amount along with interest at 9.60% per annum.

10. Further it is evident from Ex.A7 loan application that the defendant has requested for sanctioning of 2nd loan for a sum of Rs.2,00,000/- on 12.06.2020 and 3rd loan for a sum of Rs.2,00,000/- on 13.07.2021 as evident from Ex.A9 for which also the defendant has executed Ex.A8 and Ex.A10 loan agreement, hypothecation deed respectively. Further the defendant found to have approached the plaintiff bank for enhancement of the credit facilities that was sanctioned on 16.07.2019 to a sum of Rs.15,00,000/- and the same was also sanctioned on 06.08.2020 and the defendant agreed to the terms and conditions of the plaintiff and executed Ex.A5 loan agreement cum hypothecation deed. Hence, these documents would establish that the defendant has obtained three loans from the plaintiff bank on various dates and executed loan documents to repay the loan amount along with interest for his business purpose. It is also evident that he has also sought for enhancement of credit facilities of sum of Rs.15,00,000/- from Rs.10,00,000/- as a working capital for his business and executed loan documents for the said loan also.

11. That apart from Ex.A11 to Ex.A13 statement of accounts for the above said three loans would elucidate that there is an outstanding amount of Rs.17,21,061/, in respect of 1st loan, Rs.1,47,243/- in respect of 2nd loan and Rs.2,20,720/- in respect of 3rd loan as on 30.06.2023. Though the 1st loan is of the year 2019 and the suit filed in seventh month of 2020, the limitation is saved in view of the direction of Hon'ble Supreme Court, issued in writ petition No.3/2020. And therefore the 1st loan is within time. Therefore as per the statement of accounts the defendant is liable to pay the above said outstanding amount as agreed.

12. Further more the plaintiff has sought for the interest rate at 9.60% for the 1st loan and 9.25% for the 2nd and 3rd loan along with 2% penal interest. As regards the penal

interest as per judgment reported in ***(2002) 1 SCC 367 (Central Bank of India Vs. Ravindra and others)***, the plaintiff is not entitled for penal interest. With respect to the interest sought for, this court inclined to accept the same as the said is an agreed rate of interest.

In the result, Suit is decreed with cost directing the defendant to pay Rs.17,21,061/- along with simple interest at 9.60% per annum on the Principal amount of Rs.15,00,000/- and Rs.1,47,242/- along with simple interest at 9.25% per annum on the sum adjudged Rs.1,47,242/- and Rs.2,20,720/- along with simple interest at 9.25% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of decree. Time for repayment of above said amount by the defendant is six months. If the defendant failed to pay within the period of six months, the plaintiff is entitled for simple interest at 9.60% on the Principal amount of Rs.15,00,000/- and simple interest at 9.25% on the sum adjudged Rs.1,47,242/- and simple interest at 9.25% on the principal amount of Rs.2,20,720/- till the date of realization. Notice of decree shall be intimated to the defendant within 15 days of this day. If after the expiry of six months the defendant failed to comply the decree, the plaintiff shall file execution petition at the earliest for realizing the decree amount.

Dictated to the Steno-Typist, typed by her in computer and taken print out and after rectification of mistakes, pronounced by me in open court, the 13th day of February, 2024.

K RENUGADEVI

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Date: 2024.02.13 15:02:57 +0530

Judge,
Commercial Court (Senior Civil Judge),
Salem.

<u>List of Witnesses on the side of the Plaintiffs :-</u>

PW1. Mrs. P. Karunambigai (Manager)

List of Exhibits on the side of the Plaintiffs:-

Sl. No.	Exhibits Number	Date of the Document	Description of Document	Nature of the document
1	Ex.A1	09.04.2019	Loan application	Original
2	Ex.A2	16.07.2019	Sanction letter	Original
3	Ex.A3	09.04.2019	Composite hypothecation agreement	Original
4	Ex.A4	06.08.2020	Loan application	Original
5	Ex.A5	01.10.2020	Sanction letter	Original
6	Ex.A6	30.09.2020	Pronote and cash credit agreement	Original
7	Ex.A7	12.06.2020	Loan application	Original
8	Ex.A8	15.06.2020	Agreement cum deed of hypothecation	Original
9	Ex.A9	30.11.2021	Loan application	Original
10	Ex.A10	30.11.2021	Agreement cum deed of hypothecation	Original
11	Ex.A11	01.01.2023 to 31.12.2022	Statement of account	Computerized copy
12	Ex.A12	15.06.2020 to 30.04.2023	Statement of account	Computerized copy
13	Ex.A13	30.11.2021 to 30.04.2023	Statement of account	Computerized copy
14	Ex.A14	03.12.2023	General power of attorney granted in favour of Karunambigai	Photocopy

15	Ex.A15	24.02.2023	Non starter report	Original
16	Ex.A16	---	Aadhar card of the defendant	Photocopy
17	Ex.A17	--	Form GSTR -3B for the year 2019 – 2020 filed by the defendant	Photocopy
18	Ex.A18	----	Income tax return along with form 3CB filed by the defendant for the assessment year 2017 - 2018	Photocopy
19	Ex.A19	----	Income tax return along with form 3CB filed by the defendant for the assessment year 2019 - 2020	Photocopy
20	Ex.A20	04.03.2020	Gazette notification in respect of amalgamation of Syndicate Bank with Canara Bank	Photocopy
21	Ex.A21	11.08.2023	Statement of interest	Photocopy
22	Ex.A22	11.08.2023	Statement of interest	Photocopy

List of Witness and Exhibits on the side of the defendants :- NIL

K RENUGADEVI
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Date: 2024.02.13 15:03:05 +0530

Judge,
Commercial Court (Senior Civil Judge),
Salem.