KABC170028662022

IN THE COURT OF LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH.83)

THIS THE 16th DAY OF DECEMBER 2022

PRESENT:
SMT. SUMANGALA S BASAVANNOUR.,B.COM,L.L.M.,
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.O.S.No.1516/2022

BETWEEN:

Indian overseas Bank, Padmanabhanagara Branch (3677) No. 5, R.K. Layout, Padmanabhanagara, Bengaluru – 560 070.

: PLAINTIFF

(Represented by Sri. S.N. Keshava Bhat - Advocate)

AND

Mr. G. Ramakrishnan, Business, Proprietor, M/s R.K. Enterprises, Works at : No. 26/A, Lakshmi

Nilaya, Near SRK School, Hanumaiah Layout, TATA Nagar, Main Road, Kodigehalli, Bengaluru – 560 094.

: DEFENDANT

(Defendant is placed exparte as 21.11.2022)

Date of Institution of the suit	**18.10.2022**
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	**Suit for recovery of money**
Date of commencement of recording of evidence	**14.12.2022**
Date on which judgment was pronounced	**16.12.2022**
Total Duration	**Year/s 00 Month/s 01 Day/s 28**

(SUMANGALA S BASAVANNOUR),
LXXXII Addl.City Civil & Sessions Judge,
Bengaluru.

J U D G M E N T

This suit is filed by the Plaintiff for recovery of Rs.10,73,315.69/- with current and future interest at the rate of

12.05% per annum on monthly within three months.

2. The Brief facts of the Plaint are as follows:-

The Defendant who represented to have established his sloe proprietary business of garment manufacturing in the name and style “R.K Enterprises” with GST registration No. 29AQBPR4167N1Z5 for his employment has sought term loan of Rs. 10,00,000/- towards purchase of machineries/equipments for use in business. The defendant sought to acquire the equipments through the suppliers M/s S.S. fashion, the items as per quotation valued at Rs. 14,11,200/-. The Defendant sought Term loan under Pradhan Mantri Mudra Yojana. The Plaintiff has sanctioned Term loan of Rs. 10,00,000/- on such terms as per credit sanction advice dated 23.08.2018. The facility has been sanctioned for promoting employment/business under Prime Minister’s Stand Up India Scheme with CGTMSE coverage and with such terms as per credit sanction advice dated 23.08.2018. The Defendant has duly accepted the sanction terms. In consideration of sanction of credit facility and also the Plaintiff granting term loan vide loan account No. 367703708000008, the Defendant executed the following loan documents in favour of the Plaintiff;

1) On Demand Promissory Note dated 23.08.2018.

2) Undertaking letter dated 23.08.2018 by way of

annexure to DPN to pay varied rate of interest based on Bank's MCLR.

3) Undertaking letter dated 23.08.2018 undertaking to pay the loan with interest by way of equated monthly installments over a period of 60 months on 30th of every month commencing from 30.08.2018.

4) Hypothecation agreement dated 23.08.2018 hypothecating all such equipments in the business and to be acquired and also stokes in trade and receivables as security for repayment of the loan.

5) Letter dated 23.08.2018 authorizing the Plaintiff to recover the installments and other changes by debiting to her current account.

3. The Defendant has availed the credit facility to the full extent and acquired machinaries for use in his business. The Defendant has committed irregularities in making repayment resulting levy of charges in the loan account. During January, 2020 the Defendant has approached the Plaintiff seeking restructuring of his loan and considering his request, the Plaintiff restructured the repayment schedule and accordingly as permitted by the Plaintiff, the Defendant as per his undertaking dated 24.01.2020 has covenanted to pay the existing balance of Rs. 8,47,565.79 in 60 monthly installments on 4th of every month, the first of such installments due on 04.08.2020. Subsequently, the Defendant has utterly failed to adhere to the repayment schedule resulting in classification of the loan account as non performing asset on 31.05.2021 and thereby the Defendant rendered herself liable to pay the entire debt on demand. On 28.06.2021, the defendant has executed a revival letter admitting or otherwise acknowledging her liability to pay the debt as per documents executed earlier on 23.08.2018. Thereafter, the Defendant has totally ignored to make any repayment and on inspection, the Plaintiff also could find that the Defendant has stopped his business activities and the unit was closed. The Defendant was evasive regarding the whereabouts of hypothecated machinaries and avoided the Plaintiff. Despite the reminders and demands, the Defendant has failed to make any payment. The Defendant utterly failed to make repayment of the loan the Plaintiff submitted before DLSA seeking mediation vide proceedings No. PIM 1553/2021 but the Defendant has deliberately avoided the process issued by the said authority and in view of the same, the said authority has issued an endorsement dated 17.12.2021. The Defendant is due and liable to pay a total debt of Rs. 10,73,315.69. The Defendant who agreed to pay the varied rate of interest is liable to pay the prevailing rate of interest at 10.05% per annum on monthly rests and also overdue interest at 2% per annum and in all 12.05% per annum on monthly rests. In the regular course of banking the Plaintiff maintained ledger for Defendant loan account the entries therein never been disputed by the Defendant. By virtue of contractual obligation the Defendant is due liable to pay the debt due. Since the loan is secured by way of hypothecation of machineries and equipments as per schedule the Plaintiff is entitled to seek sale of the same towards recovery and the Defendant is personally liable to pay the entire debt. Hence, the Plaintiff has filed this suit for the above-mentioned reliefs.

4. Inspite of suit summons, the Defendant has not appeared before this court, he was placed ex-parte on 21.11.2022.

5. The Plaintiff has examined PW-1 and got marked Ex.P.1 to Ex.P.12. I have heard the arguments of the Advocate for the Plaintiff.

6. Based on the above pleadings of the Plaintiff, the following points arise for my consideration :-

1. Whether the Plaintiff is entitled for the Suit Claim from the Defendant ?

2. What Order ?

7. My findings on the above Points are as under:

1. Point No.1 :- In the **Partly Affirmative.**

2. Point No.2 :- As per the final Order

for the following reasons.

REASONS

8. **Point No.1 :-** The Plaintiff Bank to substantiate his case examined its Senior Manager, Rinku Joy as PW.1. PW.1 in his evidence reiterated averments of the Plaint, and got marked Ex.P.1 to Ex.P.12.

9. In the decision reported in ***A.I.R. - 2000 – Karnataka - 234 (Syed Ismail vs. Smt. Shamshia Begum)***, the Hon'ble High Court of Karnataka has held as follows :-

> "***3. The impugned order does not disclose the nature of pleading placed by the plaintiff and whether there is prima facie material to grant a decree in his favour. A judgement in favour of the plaintiff is not automatic. The Court has to consider the case of the plaintiff and grant a decree in his favour. The learned trial Judge has not referred to the pleadings of the plaintiff and the documents produced by him to substantiate even a prima facie case for grant of a decree in his favour. Therefore, the judgement and decree in favour of the plaintiff is not automatic on failure of the***

opposite party to put his defence. The Court can grant a judgement in favour of the party only upon consideration of the case of the plaintiff including appreciation of pleadings and evidence."

10. The averments of the Plaint, evidence of PW.1 and Ex.P.1 to Ex.P.11 discloses that the Defendant who represented to have established his sole proprietary business of garment manufacturing in the name and style “R.K enterprises” with GST registration No. 29AQBPR4167N1Z5 for his employment has sought term loan of Rs. 10,00,000/- towards purchase of machineries/equipments for use in business. The defendant sought to acquire the equipments through the suppliers M/s S.S. fashion, the items as per quotation valued at RS. 14,11,200/-. The Defendant sought term loan under Pradhan Mantri Mudra Yojana. The Plaintiff has sanctioned term loan of Rs. 10,00,000/- on such terms as per credit sanction advice dated 23.08.2018. The facility as been sanctioned for promoting employment/business under Prime Minister’s Stand Up India Scheme with CGTMSE coverage and with such terms as per credit sanction advice dated 23.08.2018 at Ex.P.3. The Defendant has duly accepted the sanction terms. In consideration of sanction of credit facility and also the Plaintiff granting term loan vide loan account No. 36770370800000 8, the Defendant executed the loan documents in favour of the Plaintiff On Demand Promissory Note dated 23.08.2018 at Ex.P.4, undertaking letter dated 23.08.2018 at Ex.P.5, letter of undertaking at Ex.P.6, Hypothecation agreement dated 23.08.2018 at Ex.P.7 and Letter of authorization dated 23.08.2018 at Ex.P.8.

11. As per the request of the defendant, the plaintiff restructured the repayment schedule and accordingly as permitted by the Plaintiff, the Defendant as per his undertaking dated 24.01.2020 at Ex.P.9 and Ex.P.10 has covenanted to pay the then existing balance of Rs. 8,47,565.79 in 60 monthly installments.

12. Subsequently, the Defendant has utterly failed to adhere to the repayment schedule resulting in classification of the loan account as non performing asset on 31.05.2021 and thereby the Defendant rendered herself liable to pay the entire debt on demand. On 28.06.2021, the defendant has executed a revival letter at Ex.P.11.

13. From Ex.P.12 the Statement of account speaks to the effect that total amount payable includes the interest accrued and therefore, Plaintiff has successfully proved that the

Defendants have availed loan and have not repaid the same and are liable to pay the suit claim amount as on the date of suit. The Plaintiff has prayed interest on the suit claim amount at 12.05% per annum on monthly rests within three months. However by considering the interest prevailing, it is proper to award interest @ 10% per annum from the date of suit.

14. The Defendant executed a revival letter on 28.06.2021 and the same being an acknowledgment of debt and the suit filed on 18.10.2022 is within the limitation period.

15. In this case in spite of suit summons, the Defendant is not appeared and denied the claim of the Plaintiff Hence, it shows the Defendants admitted the case of the Plaintiff. The evidence of PW.1 and Ex.P.1 to Ex.P.12 are remained unchallenged. Therefore, the Plaintiff is entitle for recovery of the suit claim amount of Rs. 10,73,315.69/- with interest @ 10% per annum from the date of suit till realization of the entire amount. Hence, I answer this Point in **“ Partly Affirmative”**.

16. **Point No.2 : -**Therefore, I proceed to pass the following Order.

ORDER

The Suit of the Plaintiff is decreed in part

with cost.

The Defendants are hereby directed to pay Rs. 10,73,315.69/- to the Plaintiff, with interest at the rate of 10% per annum from the date of suit till realization.

Draw Decree accordingly.

The Office is directed to send copy of this Judgment to Plaintiff and Defendant to their email ID as required under Order XX Rule 1 of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.

(Dictated to the Stenographer, typed by her directly on computer, verified and then pronounced by me in open Court on this the **16th day of December, 2022**).

(SUMANGALA S BASAVANNOUR),
LXXXII Addl.City Civil & Sessions Judge,
Bengaluru.

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF

PW-1 Smt. Rinku Joy

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF

Ex.P.1	Loan application.
Ex.P.2	Quotation dated 14.08.2018.
Ex.P.3	Credit sanction advice dated 23.08.2018.
Ex.P.4	Revised demand promissory note dated 23.08.2018.
Ex.P.5	Undertaking letter dated 23.08.2018.
Ex.P.6	Letter of undertaking.
Ex.P.7	Hypothecation agreement.
Ex.P.8	Letter of authorization dated 23.08.2018.
Ex.P.9	Application for restructure of loan dated 24.01.2020.
Ex.P.10	Letter of undertaking dated 24.01.2020.
Ex.P.11	Revival letter.
Ex.P.12	Statement of account along with certificate.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANT

NIL

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANT

NIL

(SUMANGALA S BASAVANNOUR),

LXXXII Addl.City Civil & Sessions Judge,
Bengaluru.