KABG040019312022

IN THE COURT OF THE III ADDL. CIVIL JUDGE & JMFC, BELAGAVI

Dated this 29th day of February, 2024

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
III Addl. Civil Judge and JMFC, Belagavi.

ORIGINAL SUIT NO: 1148/2022

BETWEEN:

CANARA BANK.
A Wholly owned Government of India Undertaking
Constituted and functioning under the provisions
of the India Banking Companies (Acquisition
and Transfer of Undertaking) Act, 1970
Having it's Head Office At Bangalore and branch
at High Street, Camp, Belagavi
Presented by its Manager & Authorized Officer
Mr. Sunilkumar Bhattad,
Age: 35 years, Occ: Bank Manager,
R/o. C/o. Canara Bank,10,
High Street, Camp, Belagavi.

……**Plaintiff**

(By Smt. M.J. Jadhav, Advocate for Plaintiff)

AND:

1. M/s. Lucky Gadi Centre,
Represented by props,

(i). Mrs. Mehabubi W/o. Hussainsab Nadaf,
Age: 55 Years, Occ: Business,
R/o. Shop No.9, CTS No. 3033,
Sheri Chember, Khade Bazar,
Belagavi-02.

(ii) Mr. Imran S/o. Hussainsab Nadaf,
Age: 35 Years, Occ: Business,
R/o. Shop No.9, CTS No. 3033,
Sheri Chember,
Khade Bazar, Belagavi-02.

(iii). Mr. Irfan S/o. Hussainsab Nadaf,
Age: 32 Years, Occ: Business,
R/o. Shop No.9, CTS No. 3033,
Sheri Chember, Khade Bazar,
Belagavi-02.

..Defendants

(Shri. N.D. Nadaf, Advocate for Defendant No.1 to 3)

Date of Institution	:	17.10.2022
Nature of the suit	:	Recovery of Money
Date of Evidence	:	16.01.2024
Date of Judgment	:	29.02.2024
Total Duration	:	Year/s Month/s Day/s 1 04 12

<u>JUDGMENT</u>

The plaintiff Bank has filed this suit for recovery of money of Rs.68,997/- along with interest at the rate of 8.90% per annum from the defendant from the date of filing of the suit till its realization.

2. **<u>The brief facts of the case are as under: -</u>**

It is the case of the plaintiff bank that the husband of defendant no.1(i), father of defendant no.1(ii) and (iii) by name Late. Hussainsab Imamsab Nadaf, being the proprietor of Lucky Gadi Center. He during Covid-10 pandemic period i.e., on 02.07.2020 has availed GECL loan for his business from the plaintiff bank. After due execution of loan documents and hypothecation of stock and material, the plaintiff bank has sanctioned loan of Rs.60,000/- under Loan Account No.1634755000034. The original borrower i.e., defendant no.1 has agreed to repay the loan amount with interest as determined by the plaintiff bank from time to time.

3. It is stated that the Late. Hussainsab Imamsab Nadaf expired on 24.07.2020 leaving behind the defendant no.1(i) to (iii) as his legal heirs and they being his legal heirs have succeeded to the estate of deceased and have continued the business of Lucky Gadi Center. Hence, the defendant no.1(i) to (iii) are jointly and severally liable to repay the loan availed by Late. Hussainsab S/o. Imamsab Nadaf as the proprietor of Lucky Gadi Center from the plaintiff bank. That the plaintiff bank has maintained the books of accounts in its ordinary course of business in the name of defendant no.1 and holds charge on the hypothecated stock and material of the defendant no.1. It is stated that defendant no.1(i) to (iii) are doing profitable business and inspite of being capable of paying the dues of said account have willfully defaulted in repayment of the same with a malafide intention to cause loss to plaintiff bank. Hence, plaintiff bank issued legal notice on 19.09.2022, calling upon the defendants to make the payment of entire overdue balance of loan amount, but, the same have been returned with postal endorsement as refused on 20.09.2022 and the same notices are deemed to be served on 20.09.2022. In spite of it, the defendants have not complied with the notice. Hence, this suit.

4. After service of suit summons, the defendants appeared through their counsel, but failed to file their written statement. Hence, written statement taken as not filed.

5. In order to prove the case of the plaintiff Bank, the Manager of the plaintiff Bank has been examined as PW.1 and 13 documents got marked as Ex.P.1 to Ex.P.13.

6. Heard arguments.

7. On the basis of the pleadings, the following points would arise for my consideration;

1. *Whether the plaintiff bank proves that the Late. Hussainsab Imamsab Nadaf, being the proprietor of Lucky Gadi Center has availed loan of Rs.60,000/- on 02.07.2020 from the plaintiff bank and agreed to repay the same with interest determined by the bank?*

2. Whether the plaintiff bank further proves that the defendant is due to the bank a sum of Rs.68,997/- with interest at 8.90% as contended in the plaint?

3. Whether the plaintiff bank is entitled for the relief as sought for?

4. What order or decree?

8. My answer on the above points is as follows:-

Point No.1	**:**	**In the Affirmative;**
Point No.2	**:**	**In the Affirmative;**
Point No.3	**:**	**Partly in the Affirmative;**
Point No.4	**:**	**As per the final order, for the following:-**

R E A S O N S

9. **POINT No.1 and 2:-** Both these points are considered together as they require same set of discussion and same set of pleadings and documents.

It is the case of the plaintiff bank that, husband of the defendant no.1(i) and father of defendant no.1(ii) and (iii) by name Mr. Hussainsab S/o.Imamsab Nadaf was the proprietor of “Lucky Gadi Center”. He availed loan of Rs.60,000/- for his business from the plaintiff bank on 02.07.2022. The plaintiff bank has sanctioned loan to the husband of defendant no.1(i) on loan account no.1634755000034 and he executed the necessary documents and agreed to repay the same with interest has determined by the plaintiff bank from time to time. The husband of defendant no.1(i) has expired on 24.07.2020 leaving behind defendant no.1(i) to (iii) as his legal heirs and proprietor of “Lucky Gadi Center”. The plaintiff maintained books of account as per the account the defendant no.1 is due to pay Rs.68,997/- But, the defendants are not adhered to the terms and conditions of the agreement and making profitable business and willfully defaulted in repayment of loan amount. Therefore, the plaintiff bank got issued legal notice dated 19.09.2022 calling upon the defendants to repay the loan amount with interest but the defendants have refused the notice and not complied with the notice. Thus, there is an outstanding balance amount is Rs. 68,997/-.

10. In order to prove the case of the plaintiff Bank, the Manager of the plaintiff Bank has been examined as PW.1, filed affidavit in lieu of his examination-in-chief in which he has reiterated the plaint averments. In support of his case, he has produced in all 13 documents which were marked as Ex.P.1 to Ex.P.13. Ex.P1 is the Loan Application dated 02.07.2020, Ex.P2 is the Sanction Memorandum, Ex.P.3 is the letter of undertaking, Ex.P.4 is the Appendix I HO Circular 416/2020 dated 01.06.2020, Ex.P.5 is the Annexure II Ho Circular 416/2020 dated 01.06.2020,Ex.P.6 is the Annexure III Ho circular 416/2020 dated 01.06.2020, Ex.P.7 is the Annexure I to Ho circular 416/2020 dated

01.06.2020, Ex.P.8 is the agreement Cum deed of Hypothecation, Ex.P.9 is the Statement of Accounts, Ex.P.10 is the Certificate, Ex.P.11 is the Legal Notice dated 19.09.2022, Ex.P.12 is the postal receipts and Ex.P.13 is the Postal return covers.The plaintiff also poduced the death certificate of Mr. Hussainsab S/o.Imamsab Nadaf.

11. On perusal of documentary evidence, it clearly discloses that the husband of defendant no.1(i) availed loan of Rs.60,000/- on 02.07.2020 and the same was sanctioned by the plaintiff Bank in which defendant has agreed for the terms and conditions stipulated therein. It is pertinent to note that, on perusal of the Ex.P.8 the hypothecation agreement, it is clear that, the husband of defendant no.1(i) hypothecated the materials to the plaintiff bank as security. Further on perusal of the Ex.P.9, the Statement of Accounts, it appears that the defendant no.1 is due a sum of Rs.68,997.6 on 02.09.2022 with respect to Account no. 1634755000034. In total the defendant is due to Rs.68,997.6. But defendant failed to repay the same. Moreover, if at all the defendants have repaid loan amount, they would have filed written statement and denied the allegation of the plaintiff as they are having knowledge about institution of the suit.

12. Further, the plaintiff bank has claimed that a sum of Rs.68,997/-. Since defendants did not filed written statement and not denied the allegation of the plaintiff. Therefore, there is no reason to disbelieve the testimony of PW.1. This court is of the opinion that, the Mr. Hussainsab S/o.Imamsab Nadaf, being the proprietor of “Lucky Gadi Center” has availed loan of Rs.60,000/- on 02.07.2020 from the plaintiff bank and agreed to pay interest. After his death the defendants have inherited his property, as such they due of Rs.68,997/- to the bank with interest. ***Hence, I answer the point no.1 and 2 in the Affirmative.***

13. **<u>POINT NO.3</u>:-** While answering to point no.1 and 2, it is held that late Mr. Hussainsab S/o.Imamsab Nadaf, being the proprietor of “Lucky Gadi Center” has availed loan of Rs.60,000/- on 02.07.2020 from the plaintiff bank and after his death defendants have inherited his property and remained due in repayment of loan, when it is clear that the defendants have not paid the loan amount to the plaintiff and the plaintiff has claimed interest in respect of amount due, then the Court may allow interest to the person entitled to recover the balance amount as per Sec.3 of the Interest Act, 1978. With respect to the rate of interest, it is to be noted that in view of Section-4 of the Interest Act and Section-34 of the Code of Civil Procedure-1908, the rate of interest including the current interest or pendent–lite interest is within the discretion of the Court, which operates notwithstanding an agreement between the parties stipulating a particular rate of interest till the date of decree. The proviso to Section-34 of the Code of Civil Procedure-1908 is in relation to ‘further’ interest from the date of the decree till the date of realization which, otherwise under the terms of Section-34(1) of C.P.C., should not exceed 6% per annum. The proviso states that where the liability in relation to the sum so adjudged arise out of a commercial transaction, the rate of such further interest may exceed 6% per annum, but it shall not exceed the contractual rate of interest, or where there is no contractual interest, the rate at which moneys are lent or advanced by the nationalized banks in relation to commercial transactions. This has been the point of law as regards the current interest or interest pendent lite and further interest as held in the case of Canara Bank Vs. B. Seshagiri Prabhu. Though, the plaintiff contend thatlate Mr. Hussainsab S/o.Imamsab Nadaf has availed loan for business purpose, in the facts and circumstances of present case, it is just and proper in the interest of justice and equity to award interest at the rate of 8% per annum. In this view, I am of the opinion that awarding future interest at the rate of 8.90% P.A. is exorbitant. Hence, for the above reasons, the plaintiff is entitled to recover the sum of Rs.68,997/- with pendent lite interest at the rate of 8% per annum from the date of suit till its realization. Thus, ***I answer Issue No.3 Partly in the Affirmative.***

14. POINT NO.4:- In view of the above discussions, I proceed to pass the following;

O R D E R

The suit of the plaintiff is hereby Partly Decreed with costs.

The defendant is liable to pay a sum of Rs.68,997/- to the plaintiff bank along with interest at the rate of 8% p.a. from the date of the suit till complete realization of the decreetal amount.

Draw decree accordingly.

*(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open Court on **29th day of February 2024.**)*

GEETA Digitally signed by GEETA Date: 2024.03.05 18:20:21 +0530

III Addl. Civil Judge & JMFC,
Belagavi.

ANNEXURES

List of witnesses examined on behalf of plaintiff/s :-

PW.1 : Shri. Sunilkumar Bhattad

List of documents marked on behalf of plaintiff/s :-

Ex.P1	:	Loan application
Ex.P2	:	Sanction Memorandum
EX.P3	:	Letter of Undertaking
EX.P4	:	Appendix – I
EX.P5-6	:	Annexure – II and III
EX.P7	:	Annexure – I to circular dated 01.06.2020
EX.P8	:	Deed of Hypothecation
EX.P9	:	Statement of Account
EX.P10	:	Certificate
EX.P11	:	Legal notice dated 19.09.2022
EX.P12	:	Postal receipts
EX.P13	:	Postal acknowledgments

List of witnesses examined on behalf of defendant/s :-

Nil

List of documents marked on behalf of defendant/s :-

Nil

GEETA Digitally signed by GEETA Date: 2024.03.05 18:20:29 +0530

III Addl. Civil Judge & JMFC,
Belagavi.