KACD210010802022

Presented on : 10-11-2022
Registered on : 10-11-2022
Decided on : 03-08-2024
Duration : 1 years, 8 months, 23 days

IN THE COURT OF ITINERARY SENIOR CIVIL JUDGE & J.M.F.C AT MOLAKALMURU

Present : **SHAMEER P. NANDYAL,**
B.A.,LL.B.,(Hons.),LL.M.
Itinerary Senior Civil Judge & JMFC, Molakalmuru

DATED THIS 3RD DAY OF AUGUST 2024

O.S.No.233/2022

PLAINTIFF : ICICI Bank Ltd,
Mahalaxmi Complex-4,
Pavagada Main Road,
Challakere
Rep. by its Manager
Sri.D.C.Vinay
S/o Channegowda
(Rep. by Sri.G.Sannaveerappa, Adv)

Versus

DEFENDANTS :1. Rathnamma
W/o R.M.Eranna,
Aged about 57 years

2. E.Karibasava
S/o R.M.Eranna,
Aged about 25 years

RR/o Bukkambudi Village,
Challakere Taluk,
Chitradurga Dist.

(Rep. by Sri.G.Sanna Maraiah, Adv.)

Date of Institution of suit	**10-11-2022**
Nature of suit	**Recovery of Money**
Date of commencement of recording evidence	**06-10-2023**
Date of Judgment	**03-08-2024**
Total Duration	**Year Months Days** **01 08 24**

J U D G M E N T

The suit of the plaintiff is one for recovery of an amount of Rs.5,94,944/- along with interest at the rate of 18% per annum.

2. ***Brief facts of the case of the plaintiff:***

That the defendants had borrowed an amount of Rs.4,08,500/- from the plaintiff bank on 30-06-2015 under Kisan Credit Card/Over Draft account bearing No.101151000368. The defendants have executed necessary documents in favour of the plaintiff bank including registered mortgage deed dated 29-06-2015. After availing the loan the defendants have neither paid interest nor have they paid the outstanding loan amount. In spite of issuance of loan recall notice on 13-12-2021, the defendants have failed to repay the loan amount. The same has constrained the plaintiff bank to institute the present suit.

3. Pursuant to the summons issued to them, the defendants Nos.1 and 2 have appeared before this court through their counsel. However they have not contested the matter by filing their written statements.

4. In order to prove its case, the manager of plaintiff bank has got him examined as PW-1. He has also got marked eleven documents at Ex.P-1 to P-11. The defendants have not got PW-1 cross-examined. Thereafter the plaintiff bank has closed its side. The defendants have not led any evidence on their behalf.

5. Heard arguments on behalf of the plaintiff. No arguments were canvassed on behalf of the defendant. Perused records.

6. The points that arise for the consideration of this court are:

P O I N T S

1. Does the plaintiff bank proves that the defendants have borrowed an amount of Rs.4,08,500/- on 30-06-2015 under Kisan Credit Card/over Draft scheme by executing loan documents and registered mortgage deed dated 29-06-2015?

2. Whether plaintiff is entitled for the reliefs as sought for?

3. What decree or order?

7. On consideration of the materials on record, this court answers the aforesaid points as hereunder:

Issue No.1 : In the ***affirmative***

Issue No.2 : ***Partly in the affirmative***

Issue No.3 : As per final order for the following

R E A S O N S

8. ***Point No.1*****:** As aforesaid the manager of the plaintiff bank has got him examined as PW-1 and got marked 11 documents. In lieu of his examination-in-chief, he has filed his affidavit reiterating the plaint averments. Among the documents placed on record, Ex.P-1 is the notarized copy of power for attorney. Ex.P-2 is the loan application form. Ex.p-3 is the hypothecation deed. Ex.P-4 is the sanction letter. Ex.P-5 is the loan account statement. Ex.P-6 to P-9 are the loan recall notices. Ex.P-10 is the indenture of mortgage. Ex.P-11 is encumbrance certificate.

9. The defendants have not contested the matter by filing their written statement. As such the evidence of PW-1 has remained unrebutted and unchallenged. The aforesaid documents bear the LTM and signature of the defendants Nos.1 and 2 respectively. The same goes to show that the defendants have jointly

borrowed the aforesaid loan from the plaintiff bank by executing the aforesaid documents including the mortgage deed. The account statement clearly establishes that the defendants are in due of the amount claimed by the plaintiff bank in the present suit. As such there is no reason for this court, to discredit the evidence of PW-1. By producing the relevant documents, the plaintiff bank is able to establish that the defendants had borrowed the loan amount of Rs.4,08,500/- and as on the date of filing of the suit, they are in due to pay a sum of **Rs.5,94,944/-** to it. The plaintiff bank has also proved that in spite of repeated demand, the defendants have failed to repay the same.

10. With regard to the limitation is concerned, the loan was borrowed by the defendants on 30-06-2015. The defendants have also executed mortgage deed in favour of the plaintiff bank, which is marked at Ex.P-10. Thus the suit filed by the plaintiff bank is within the period of limitation. Accordingly this court answers the point No.1 in the ***affirmative.***

11. ***<u>Point No.2</u>***: It is pertinent to note that the plaintiff bank has claimed total amount of **Rs.5,94,944/-** along with interest at the

rate of 18% p.a. As it transpires from the record, the loan obtained by the defendants from the plaintiff bank is for the purpose of crop cultivation. Considering the nature of loan, the interest sought by the plaintiff bank appears to be on a higher side. The loan transaction between the plaintiff bank and the defendants is not a commercial transaction. Thus this court deems it fit to grant interest of **6%** as per section 34 (1) of Code of Civil procedure. Accordingly point No.2 is answered ***partly in the affirmative.***

12. ***Point No.3***: In the light of foregoing discussions, this court proceeds to pass the following

O R D E R

The suit of the plaintiff bank is decreed in part with costs.

The defendants have jointly and severally liable to pay as sum of ***Rs.5,94,944/-*** *(Five Lakh Ninety four thousand Nine Hundred forty four rupees) to the plaintiff bank along with the interest at the rate of* ***6%*** *per annum, from the date of the suit till realization of entire amount.*

If the defendants fail to pay the said amount, then the plaintiff bank is entitled to proceed under Order XXXIV Rule 4 *of Code of Civil Procedure to apply for final decree for sale of the suit schedule property and the adjust the sale proceeds towards the decreetal amount.*

If the sale proceeds are insufficient, the plaintiff bank could proceed against the defendants personally and recover the amount.

Draw preliminary decree accordingly.

(Typed by me on laptop, printouts taken, corrected and then pronounced by me in the open court on this 3rd day of August 2024)

[SHAMEER P. NANDYAL]
Itinerary Senior Civil Judge
& JMFC, Molakalmuru

A N N E X U R E S

Witness examined for Plaintiff:

PW-1 : D.C.Vinay

***Documents marked for Plaintiff*:**

Ex.P-1	:	Power of Attorney
Ex.P-2	:	Loan Agreement
Ex.P-3	:	Hypothecation Deed
Ex.P-4	:	Sanction Letter
Ex.P-5	:	Account Statement
Ex.P-6	:	Loan Recall Notice
Ex.P-7	:	Loan Recall Notice
Ex.P-8	:	Loan Recall Notice
Ex.P-9	:	Loan Recall Notice
Ex.P-10	:	Mortgage Deed
Ex.P-11	:	Encumbrance Certificate

3. ***Witnesses examined for Defendants:***

-NIL-

4. ***Documents marked for Defendants:***

-NIL-

Itinerary Senior Civil Judge
& JMFC, Molakalmuru

ORDER PRONOUNCED IN OPEN COURT
VIDE SEPARATE JUDGMENT

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