KABG040019322022

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

Present: **Basavaraja Thulasappa. Nayaka,**
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.

This the day of 15th March, 2023

O.S. NO.1149/2022

Plaintiff/s : **Canara Bank**
A Wholly owned Government of India,
Undertaking constituted and functioning
Under the provisions of the Indian Banking Companies
(Acquisition * Transfer of Undertaking_ Act, 1970
having its Head Office at Bangalore & Branch Office at
High Street, Camp, Belagavi
Represented 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.

(Rept., by Shri. M.J. Jadhav, Advocate)

-V/s-

Defendant/s :1) **Shri. Mallikarjun S/o. Maharudra Guravannagol,**
Age: 47 Years, Occ: Business,

R/o: H.No.1444, Laxmi Nagar,
Hindalga, Belagavi – 591 108.

(By Shri. S.A. Paritkar, Advocate)

Date of institution of the suit;	15.10.2022
Nature of suit;	Recovery of Money
Date of commencement of Trial;	17.02.2023
Date on which the judgment was pronounced;	15.03.2023
Duration of suit;	Year/s: -- Months: 05 Days: --

J U D G M E N T

The plaintiff Bank filed this suit for recovery of an amount of Rs. 2,03,485/- with interest at the rate of 9.35% per annum compounded monthly from the date of filing of the suit till its realization.

2. **The brief facts of the case are as under: -**

It is averred that the defendant has approached the plaintiff bank seeking MSME (Services) Loan for working capital for improvement of business. Considering his application, the plaintiff bank has sanctioned the loan of Rs.1,90,000/- to the defendant on 25.06.2015 under A/c No.1634768000044. The defendant has agreed to repay the loan amount with interest at the rate of 9.35% per annum or any other rate that would be made applicable by the plaintiff/Bank from time to time. In case of default, the defendant is also liable to pay penal interest at the rate of 2% perr annum. The loan availed by the defendant is a term loan of 60 months. The defenant has executed the loan documents, hypothecation of stock and other documents. The defendant has not adhered to the terms and conditions of the agreement and become defaulter to the plaintiff bank. Therefore, the plaintiff bank has issued legal notice dated 19.09.2022, calling upon the defendant to repay the entire loan dues with interest. The notice issued at the residential address has returned with postal endorsement “Unclaimed Return to Sender” and the notice issued at the shop address has returned with postal endorsement “No such Addressee”. Further the notice duly served upon the residential address of the defendant on 28.09.2022. But, the defendant failed to comply with the same. Thus, there is an outstanding balance amount of Rs. 2,03,485. Hence, this suit.

3. In pursuance of suit summons, the defendant appeared before the Court through his counsel, but not filed written statement. Hence, the written statement of the defendant was taken as ‘Nil’.

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

1. **Whether the plaintiff bank proves that the defendant has availed loan of Rs.1,90,000/- from the plaintiff bank and executed necessary documents and agreed to pay interest at the rate of 9.35% p.a., with penal interest @ 2% per annum ?**

2. **Whether the plaintiff bank proves that the defendant due to the bank a sum of Rs.2,03,485/- as contended in the plaint?**

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

4. **What order or decree?**

5. In order to prove the case of the plaintiff Bank, the Manager of the plaintiff Bank has been examined himself as P.W.1 and 9 documents got marked at Ex.P.1 to 11.

6. Heard arguments.

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

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

REASONS

8. **POINT NOS.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 the defendant has availed the MSME (Services) loan of Rs.1,90,000/- from the plaintiff bank on 25.06.2015 for working capital for improvement of business. The defendant executed the necessary documents and agreed to repay the same with interest at the rate of 9.35% per annum with penal interest of

2% per annum and above the agreed rate of interest. But, he has not paid the installments as per the terms and conditions of loan agreement and became defaulter. Therefore, the plaintiff bank got issued legal notice dated 19.09.2022 through its counsel calling upon the defendant to repay the entire outstanding balance amount with future interest. Despite of service of notice, he has not came forward to repay the loan amount. Thus, there is an outstanding balance amount of Rs.2,03,485/-.

9. In order to prove the case of the plaintiff Bank, the Manager of the plaintiff Bank has been examined himself as P.W.1. He has 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 documents which were marked at Ex.P.1 to 11.

10. Ex.P.1 is the loan application which reveals that the defendant has filed a loan application to the plaintiff bank for availing loan of Rs.1,90,000/- for working capital for improvement of business. Ex.P.2 is the Sanction memorandum which reveals that the plaintiff ban sanctioned loan of Rs.1,90,000/- to the defendant on 26.06.2015. Ex.P3 is the Composite Hypothecation Agreement dated 10.12.2019 which reveals that defendant has executed Composite hypothecation agreement in favor of the plaintiff bank with respect to the loan availed by the defendant. Ex.P4 and 5 are the letters of revival. Ex.P4 is the Statement of account and Ex.P6(a) is the certificate. Ex.P7 is the office copy of notice dated 19.09.2022, reveals that the plaintiff bank has issued legal notice to the defendant by calling upon him to repay said loan amount with interest. Ex.P8 and 9 are the Postal receipts, Ex.P10 unclaimed cover and Ex.P 11 are the unserved postal cover. On perusal of above said documents, it clearly disclose that the defendant has availed loan of Rs.1,90,000/- and the same was sanctioned by the plaintiff Bank in which defendant has agreed for the terms and conditions stipulated therein. Further on perusal of the Ex.P6, it appears that the defendant is due a sum of Rs.2,03,485. But he has failed to repay the balance amount. Further on perusal of the Ex.2 it appears that the defendant agreed to pay interest subject to revision from time to time. Further on perusal of the Ex.p3, it appears that defendant agreed to pay penal interest. Further on perusal of the Ex.P4 and 5 it appears that the defendnat acknowledged the laibility on 15-05-2017 and 24-02-2020. Moreover, though the defendant appeared through his counsel, but not chosen to file the written statement and also not caross-examined the PW.1. in The testimony of PW.1 remained unchallenged. Therefore, there is no reasons to disbelieve the testimony of PW.1. Hence, this court is of the opinion that, the defendant has availed loan of Rs.1,90,000/- from the plaintiff bank and agreed to pay interest at the rate of 9.35% p.a., with penal interest @

2% per annum and due to the bank a sum of Rs. 2,03,485. Hence, I answer the point no.1 and 2 in the Affirmative.

11. **POINT NO.3:-** While answering to point No.1 and 2, it is held that the defendant has availed the loan and he has remained due in repayment of loan , when it is clear that the defendant has not paid the remaining balance 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. In the instant case, the plaintiff availed loan for the purpose of purchase of electrical items. 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 6% per annum. In this view, I am of the opinion that awarding future interest at the rate of 9.35% P.A. is exorbitant. Hence, for the above reasons, the plaintiff is entitled to recover the sum of ₹2,03,485/- with pendent lite interest at the 6% per annum from the date of suit till the date of decree and future interest at the rate of 6% per annum. Thus, I answer Issue No.3 in the " Partly in the **AFFIRMATIVE**".

12. **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 'Decreed' with costs.

The defendant is liable to pay a sum of ₹,2,03,485/- to the plaintiff bank along with pendente-lite interest at the rate of 6% p.a. and future interest at the rate of 6% p.a. from the date of the suit till complete realization of the decreetal amount.

Draw decree accordingly.

(Dictated to the Judgment writer directly on computer, corrected and then pronounced by me in the open Court on 15th day of March-2023.)

(Basavaraja Thulasappa. Nayaka),
IV Addl. Civil Judge & JMFC,
Belagavi.

ANNEXURES

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

P.W.1: Mr. Sunilkumar Bhattad.

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

Ex.P1 : Loan application
Ex.P2 : Sanction memorandum
Ex.P3 : Composite Hypothecation Agreement
Ex.P4 and 5: Letters of revival
Ex.P6: : Statement of account
Ex.P6(a) : Certificate
Ex.P7 : Office copy of Legal notice
Ex.P8 & 9 : Postal receipts
Ex.P10 and 11: Unserved postal covers

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

Nil

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

Nil

(Basavaraja Thulasappa. Nayaka),
IV Addl. Civil Judge & JMFC,
Belagavi.