IN THE Court OF LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE, (EXCLUSIVE DEDICATED COMMERCIAL Court) AT BENGALURU (CCH.88)

THIS THE 29th DAY OF MARCH 2021

PRESENT:
SRI.CHANDRASHEKHAR U., B.Sc., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.O.S.No.6842/2018

PLAINTIFF	:	**Indian Bank ,** A body corporate constituted under The Banking Companies (Acquisition & Transfer of undertaking) Act, 1970, having its head office at No.254-260, Royapettah, Chennai 600 014. and one of its branches known as Halasuru Branch, No.55/3, Car Street, Halasuru, Bengaluru 560 008. Represented by its Branch Manager, Sri. R.Surya Kumar, S/o T.P. Rathnamm, aghed 57 years (Rep. by Sri. SK – Advocate)

AND

DEFENDANT	:	**Senthill Murugan,** S/o J.Sundara Moorthy, Aged about 49 years, No.181/3, Shankarnag Road, Domlur, Bengaluru 560 071 (Rep. by Sri. SK – Advocate)

Date of Institution of the suit	**18.09.2018**
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	**17.02.2020**
Date on which judgment was pronounced	**29.03.2021**
Total Duration	**Year/s 02 Month/s 06 Day/s 11**

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated Commercial Court)
Bengaluru.

J U D G M E N T

The plaintiff has filed the suit for recovery of a sum of Rs.4,88,610/-, with interest at 10.95% per annum, compounded monthly rests from the date of suit till realisation and for the costs of the suit.

2. The plaintiff has stated that the defendant approached it and requested for sanction of loan for the purpose of business needs of his proprietorship concern “Geo Basic Surveys” and submitted loan application on 9.4.2015. Upon consideration, the plaintiff Bank sanctioned the loan of

Rs.5,62,500/- on 13.4.2015 and the defendant has received the amount. In consideration to the above amount, the defendant has executed an On Demand Promissory Note, dated 18.4.2015 agreeing to repay the sum of Rs.5,62,500/- to Indian Bank with interest thereon at a minimum rate of 11.75% per annum, compounded monthly rests. After sanctioning of the loan, the defendant did not adhere to payment schedule. He has also executed agreement of hypothecation of movables available in his firm. The cause of action for the suit has arisen on 18.4.2015 and subsequent date of execution of documents within the jurisdiction of this Court. Accordingly, plaintiff has prayed for Judgment and decree.

3. After service of summons, the defendant appeared and filed his written statement, admitting the sanction of loan of Rs.5,62,500/- and according to him, since there was a delay in sanctioning of loan, he was put to huge loss. He has denied other allegations made in the plaint, regarding execution of documents and he is liable to pay penal interest at 11.75% per annum. He has stated that he has signed on blank On Demand Promissory Note and therefore, he is not liable to pay to the loan amount. Accordingly, he has prayed for the dismissal of the suit.

4. On the basis of the pleadings, the following issues are framed by my learned Predecessor-in-Office, they are:

1. Whether the plaintiff Bank proves that it advanced loan of Rs.5,62,500/- to the defendant on 13.4.2015?
2. Whether plaintiff Bank is entitled for the suit claim?
3. Whether the defendant proves that the suit of the plaintiff is barred by limitation?
4. Whether the defendant further proves that this Court has no jurisdiction to try this suit?
5. What Order or decree?

5. Heard the learned counsel for the plaintiff, learned counsel for the defendant was absent. Accordingly, the cross-examination of PW1 was taken as nil. Again the case was posted on 9.3.2021 for defendant’s evidence, if any, but on the said date, defendant did not turn up and his counsel was also absent. Accordingly, his evidence and arguments were taken as nil.

6. My findings on the above issues are as under:

1) Issue No.1 :- In the Affirmative
2) Issue No.2 :- In the Affirmative
3) Issue No.3 :- In the Affirmative
4) Issue No.4 :- In the Negative
5) Issue No.5 :- In the Negative
6) Issue No.6 :- As per the final Order
for the following reasons.

REASONS

7. **Issue Nos.1 & 2**: For the sake of convenience and to avoid the repetition of facts, I deal the above issues together for consideration.

8. In order to prove the issues, the plaintiff mainly relies upon the evidence of PW1 and documents Ex.P1 to P7. Learned counsel for the plaintiff would argue that the defendant stating to be a Diploma holder, approached the plaintiff Bank for sanction of MICRO loan of Rs.5,62,500/- for the purpose of his business concern, in the name and style of “Geo Basic Surveys”. After mutual discussion, loan was sanctioned and the application submitted by the defendant came to be marked as Ex.P1, which discloses the particulars furnished by the defendant regarding his concern. Ex.P2 is the sanction ticket, which discloses that a loan of Rs.5,62,500/- was sanctioned with interest at 10.25% per annum and penal interest at 1.50% per annum. In consideration to the above said loan amount, the defendant has executed Ex.P3 On Demand Promissory Note, which has been signed by the defendant on the stamp, as well as by the side of the same and the signature came to be marked as Ex.P3(a). The signature found at Ex.P3(a), when perused with signature found in loan

application and sanctioned letter, there is no any dissimilarity. The contention of the defendant as could be seen from the written statement, that at the time of signing the On Demand Promissory Note, it was blank. However, if any person knows that, he has signed a blank cheque or a Negotiable Instrument, then unless, contrary is proved, he is otherwise, authorising the person, to fill the cheque or blank Promissory Note, to the required amount or amount actually due and prosecute the case. Merely, because, a contention was taken that it was blank, the same has not been substantiated by the defendant either through PW1 by way of cross-examination or by his independent evidence. Therefore, the said contention cannot be accepted. Since, it is a small scale loan given to an individual, he has offered movables available in his concern for the purpose of disposal and recover the loan. Ex.P5 is the hypothecation agreement, which discloses the amount availed, rate of interest and hypothecation of materials. The said document is also signed by the defendant. So, with these documents, one thing is clear that defendant has availed the loan of Rs.5,62,500/- on 13.4.2015 and executed necessary loan documents, including an On Demand Promissory Note. The contention of the defendant that the Demand Promissory Note was blank, at the time of signature, substantiates the claim of the plaintiff regarding execution of documents. The Account extract produced at Ex.P7 discloses that, as on the date of suit, the defendant was due in a sum of Rs.4,88,610/-. Hence, I answer issue Nos. 1 and 2 in the **Affirmative**.

9. **ISSUE Nos.3 & 4**: For the sake of convenience and to avoid the repetition of facts, I would like to deal with the above issues together for consideration.

10. The plaintiff has claimed Rs.4,88,610/- with interest at 10.95% per annum, which according to him is as per the terms of the loan agreement, hypothecation agreement and also On Demand Promissory Note. When the defendant fails to repay the loan as agreed, certainly, the plaintiff Bank is entitled to recover the loan with compounded interest monthly rests. As far as limitation point raised by the defendant, though the loan was borrowed on 13.4.2015, the limitation ends on 12.4.2018 and prior to expiration of limitation, the defendant has executed acknowledgement of debt cum security at Ex.P6, which is dated 1.2.2018, thereby revived his liability to pay the loan amount. In view of the above fact, one thing is clear that, the claim of the

plaintiff is in time. Therefore, I answer **issue No.3** in the **Affirmative** and **issue No.4** in the **Negative**.

11. **ISSUE No.5**: The defendant has taken the contention that, this Court has no jurisdiction to try this case. I do not know how this suit is not maintainable before this Court. The claim amount is Rs.4,88,610/- and suit came to be filed on 18.9.2018, which is much later to 3.5.2018, the date of amendment to Commercial Courts Act and specified value is more than Rs.3 lakhs. Though, he contended that, Court has no jurisdiction in his written statement is silent, on what ground, he contends so. Further, the loan is barrowed for business purpose, that too, to carry out the business of “Geo Basic Surveys”, which is of commercial nature and therefore, the contention of the defendant cannot be accepted. Accordingly, I answer issue No.5 in the **Negative** by holding that this Court has jurisdiction to try the case.

12. **ISSUE No.6 :-** For the aforesaid reasons, I proceed to pass the following Order.

ORDER

The suit of the Plaintiff Bank is decreed with costs.

The Defendant is hereby directed to pay to the plaintiff a sum of Rs.4,88,610/- (Rupees four lakhs eighty eight thousand six hundred and ten only) with interest at 10.95% per annum, compounded monthly from the date of suit till realisation.

Further, the defendant is hereby directed to pay costs of the suit to the plaintiff. The Advocate for the plaintiff is directed to file Memorandum of Cost before the Office within 5 days from today.

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 read with Section 16 of the Commercial Courts Act.

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in open Court on this the **29th day of March, 2021**).

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated Commercial Court)
Bengaluru.

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF

PW-1 Smt. Madhavi.S

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF

Ex.P-1	Loan application
Ex.P-2	Sanction order
Ex.P-3	Demand Promissory Notice
Ex.P-3(a)	Signature of PW1
Ex.P-3(b)	Signature of PW1
Ex.P-4	The disposal of Proceeds letter issued by Defendant.
Ex.P-4(a)	Signature
Ex.P-5	Agreement of Hypothecation of movables
Ex.P-5(a)	Defendant signature every page of document and his signature on last page
Ex.P-6	AOD
Ex.P6(a)	Signature
Ex.P-7	Account Extract.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANT

NIL

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANT

NIL

(**CHANDRASHEKHAR U**),
LXXXVII Addl.City Civil & Sessions Judge,
Bengaluru.

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24.03.2021

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For Judgment

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The Judgment is pronounced in Open Court vide separate Judgment. The operative portion of the said Judgment is as follows :-

O R D E R

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LXXXVII ACC&SJ,
B'LURU.