IN THE COURT OF THE LXXXVIII ADDL. CITY CIVIL & SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT): BENGALURU CITY. (CCH-89)

Present: **Sri. P.J. SOMASHEKARA,** B.A.,LL.M,
LXXXVIII Addl.City Civil & Sessions Judge
Bengaluru City.

Dated this the 29th day of September 2021

Com.O.S.No.1792/2019

Plaintiff: Canara Bank, Marathalli Branch,
No.19, Krishna Senate,
Near Outer Ring Road Junction,
Marathahalli, Bangalore – 37.

Rep. by its Manager

(By Sri. V.R.A.R, Advocate)

-vs-

Defendant: M/s Shree Bakery & Food Court,
No.240, 6th Main, 6th Cross,
Hill Top, Ambedkar Nagar,
Whitefield, Bangalore – 66

Rep. by its Proprietrix,
Smt. S.R. Kavitha,
W/o Mr. Parthasarathy,
D/o Ramappa, Aged 35 years,

(Exparte)

Nature of the suit	Money suit
Date of institution of the suit	06.03.2019
Date of commencement of recording of the evidence	13.09.2021

Date on which the judgment was pronounced	29.09.2021		
Total duration	Year/s	Month/s	Day/s
	02	06	23

J U D G M E N T

This is a suit filed by the plaintiff bank against the defendant for recovery of Rs.7,98,995/- together with future interest @ 12.45% p.a. from the date of the suit, till its realization.

2. Brief facts of the plaint are as under :

The plaintiff bank in its plaint has alleged that the defendant has approached and requested for SME loan of Rs.13,60,000/- to purchase machinery to run bakery business, accordingly loan application has been filed on 23.12.2014 and the loan of Rs.13,60,000/- has been sanctioned in favour of the defendant as per sanction memorandum dated 29.12.2014 and at the time of availment of the loan has been agreed to repay the loan amount with interest @ 12.45% and executed agreement cum deed of hypothecation, pronote and letter of undertaking. After availment of the loan by the defendant has failed to comply with the terms of the loan for repayment, failed to clear the loan in spite of repeated written demands. Now the outstanding loan amount with interest of Rs.7,98,995/- up to 16.02.2019, though demanded the defendant for payment of the said loan amount with interest, but she did not repay the same, thereby on 07.02.2019 legal notice has been issued to calling upon her to pay the loan amount which due but in spite of the notice she did not came forward nor clear the loan amount which due. The cause of action for the suit which arose on 29.12.2012 when the loan was sanctioned and when the defendant has utilized the said loan for the purpose which granted and when the legal notice was sent through RPAD on 01.02.2019 to calling upon the defendant to pay the loan amount with interest which due within the jurisdiction of this court and prays for decree the suit.

3. In response of the suit summons the defendant did not appear nor filed her written statement as she was placed exparte.

4. The plaintiff bank in order to prove its plaint averments has examined its Manager as P.W.1 and got marked the documents as Ex.P.1 to P.9. The plaintiff bank has not examined any witnesses in its favour.

5. Heard the arguments on the plaintiff side.

6. Now the points that arise for court consideration are:

1. Whether the plaintiff bank is entitled for the relief as prayed for?
2. What order or decree?

7. My answer to the above points are as under:

Point No.1: In the Affirmative;
Point No.2: As per final order, for the following;

REASONS

8. **POINT NO.1:** The plaintiff bank has approached the court on the ground that the defendant has approached for SME loan of Rs.13,60,000/- for the purpose of purchase of machinery for running bakery, accordingly has filed the application and sanctioned loan of Rs.13,60,000/- under the sanction memorandum dated 29.12.2014 and the defendant has agreed to repay the said loan amount with interest @ 12.45%, but the defendant did not keep up her promise in terms of the loan agreement in spite of repeated request and demand as well as legal notice. Now the defendant is due a sum of Rs.7,98,995/- with interest @ 12.45% p.a. thereby the plaintiff bank has filed the instant suit against the defendant.

9. The plaintiff bank in order to prove the plaint averments has examined its Manager as P.W.1 who filed his affidavit as his chief-examination by reiterating the contents of the plaint stating

that on 29.12.2014 the defendant had approached for SME loan of Rs.13,60,000/- for the purpose of purchase of machinery to run bakery, and the loan has been sanctioned of Rs.13,60,000/- and the defendant has executed the documents by agreeing to repay the loan amount with interest on monthly installments, but the defendant did not keep up her promise as agreed, thereby the plaintiff bank got issued legal notice calling upon the defendant to pay the loan amount with interest, but in spite of notice did not appeared nor paid the loan amount. Now the defendant is due a sum of Rs.7,98,995/-.

10. It is an admitted fact the plaintiff bank has filed the instant suit against the defendant for recovery of Rs.7,98,995/- with interest @ 12.45% p.a. on the ground the defendant has availed loan of Rs.13,60,000/- for the purpose of bakery business and to purchase of machinery. Now the question is whether the suit which filed is maintainable before this court and whether this court having the pecuniary jurisdiction to consider the relief which sought by the plaintiff bank. Though no dispute either on the jurisdiction point nor maintainability of the suit before this court. However, it is necessary to consider these aspects before considering the materials on record as the plaintiff bank has filed

the instant suit against the defendant for recovery of loan amount of Rs.7,98,995/- with interest 12.45% p.a. Thus this court drawn its attention on Sec.2(i)(c) of Commercial Courts Act, 2015 which reads like this:

> **(*c*) "commercial dispute" means a dispute arising out of–**
>
> **(*i*) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;**
>
> **(*ii*) export or import of merchandise or services;**
>
> **(*iii*) issues relating to admiralty and maritime law;**
>
> **(*iv*) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;**
>
> **(*v*) carriage of goods;**
>
> **(*vi*) construction and infrastructure contracts, including tenders;**
>
> **(*vii*) agreements relating to immovable property used exclusively in trade or commerce;**
>
> **(*viii*) franchising agreements;**
>
> **(*ix*) distribution and licensing agreements;**
>
> **(*x*) management and consultancy**

agreements;

(*xi*) joint venture agreements;

(*xii*) shareholders agreements;

(*xiii*) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(*xiv*) mercantile agency and mercantile usage;

(*xv*) partnership agreements;

(*xvi*) technology development agreements;

(*xvii*) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(*xviii*) agreements for sale of goods or provision of services;

(*xix*) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(*xx*) insurance and re-insurance;

(*xxi*) contracts of agency relating to any of the above; and

(*xxii*) such other commercial disputes as may be notified by the Central Government.

The provision under Sec.2(c)(i) which referred above is very much clear the first category which referred above, includes disputes of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents. The definition naturally will cover the dispute of all kinds of ordinary transactions of merchants, bankers, financiers and traders. The banks are established under Banking Regulation Act for the purpose of business and commerce, naturally all transaction of bank about giving of loans, recovery thereof, deposits in banks etc., should fall within the category of commercial dispute. If the specified value there of is more than Rs.3,00,000/-. So the facts which pleaded in the plaint comes under the commercial dispute.

11. Now the question is whether the dispute which stated supra comes under the jurisdiction of commercial court. Thus, this court drawn its attention on Sec.6 of Commercial Courts Act, 2015 which reads like this:

Section 6: Jurisdiction of Commercial Court.

> **6. The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial**

jurisdiction.

***Explanation*.–For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).**

The above provision is very much clear that the commercial court shall have the jurisdiction to try all suits and applications relating to commercial dispute.

12. Now the question is whether this court having the pecuniary jurisdiction to adjudicate the matter which is in dispute. Thus, this court drawn its attention on Sec.3 of Commercial Courts Act, 2015 which reads like this:

Section 3: Constitution of Commercial Courts.

3. (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

[2][Provided that with respect to

> **the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:**
>
> **Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]**
>
> **[3][(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]**

The above provision is very much clear that by virtue of the notification specified the pecuniary value of this court which shall not be less than Rs.3,00,000/- Admittedly, the plaintiff in the plaint itself has stated that the defendant is due a sum of

Rs.7,98,995/- with interest and the plaintiff bank has filed the instant suit against the defendant on 06.03.2019 i.e. after the amendment of Commercial Courts Act, 2018. Prior to the amendment, the pecuniary jurisdiction of the commercial court is of Rs.1 Crore and above, but by virtue of the amendment of Commercial Courts Act, the pecuniary jurisdiction of the commercial court shall not be less than Rs.3,00,000/-. So this court having the pecuniary jurisdiction to adjudicate the matter which is in dispute by virtue of the provision which stated supra.

13. The plaintiff bank in support of the oral evidence has produced the documents which marked as Ex.P.1 to Ex.P.9. Ex.P.1 is the loan application which filed by the defendant to the plaintiff bank and sought for loan of Rs.13,60,000/- for the purpose of purchase of machinery to run bakery business. Ex.P.2 is the sanction memorandum reflects the plaintiff bank has sanctioned loan of Rs.13,60,000/- for the purpose of purchase of machinery to run bakery and the defendant has been agreed to repay the said amount in 84 EMI of Rs.11,461/- Ex.P.3 is the deed of hypothecation reflects the defendant has hypothecated machinery in favour of the plaintiff bank. Ex.P.4 is the pronote which clearly reflects after availment of the loan the defendant

has executed pronote by agreeing to repay the loan amount with interest @ 10.20%. Ex.P.5 is the letter of undertaking reflects that the defendant has undertaken to repay the loan amount with interest on 84 EMI, Ex.P.6 is the copy of the notice reflects the plaintiff bank has got issued legal notice for calling upon the defendant for payment of loan amount with interest. Ex.P.7 and P.8 are reflects the plaintiff bank has got issued legal notice through RPAD. Ex.P.9 is the statement of accounts reflects the defendant was due a sum of Rs.7,98,995/- as on the date of the suit. So the documents which marked as Ex.P.1 to P.9 are coupled with the oral evidence of P.W.1.

14. If at all the defendant was not availed the loan of Rs.13,60,000/- for the purpose of purchase of machinery to run bakery business nor executed the documents in favour of the plaintiff bank, in response to the suit summons, the defendant would have appeared and resisted the claim of the plaintiff bank, but the reasons best known to the defendant, in spite of service of summons, did not appear nor resisted the claim of the plaintiff bank. On the other hand, the plaintiff bank has proved its case through oral and documentary evidence that the defendant has availed loan of Rs.13,60,000/- for the purpose of purchase of

machinery to run bakery and executed the documents by agreeing to repay the loan amount with interest on monthly basis, but the defendant failed to keep up her promise as agreed. Hence, I am of the opinion that the point No.1 is answered in the Affirmative.

15. **POINT NO.2**: In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The suit of the plaintiff bank is decreed with cost.

The defendant is hereby directed to pay the decretal amount of Rs.7,98,995/- together with future interest @ 12.45% p.a. from the date of the suit till its realization.

Draw decree accordingly.

(Dictated to the Stenographer, transcript thereof corrected by me and then pronounced in the open court on this the **29th day of September, 2021)**

(P.J. Somashekara)
LXXXVIII Addl. City Civil & Sessions Judge,
(Exclusive Commercial Court),
Bengaluru City

List of witnesses examined on behalf of plaintiff:

P.W.1	Sri. Amith

List of witnesses examined on behalf of defendant:

	Nil

List of documents exhibited on behalf of plaintiff:

Ex.P.1	Loan application
Ex.P.2	Sanction memorandum
Ex.P.3	Deed of hypothecation dt:29.12.2014
Ex.P.4	Pronote dt:29.12.2014
Ex.P.5	Letter of undertaking dt:29.12.2014
Ex.P.6	Office notice copy dt:07.02.2019
Ex.P.7	Postal receipt
Ex.P.8	Unserved Envelope Cover (opened in the open Court)
Ex.P.8(a)	Notice copy
Ex.P.9	Statement of accounts

List of documents exhibited on behalf of defendant:

	Nil

(P.J. Somashekara)
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