IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH-86)
(Commercial Court)

THIS THE 23RD DAY OF JULY 2021

PRESENT:
SMT. LATHAKUMARI M.
M.A., LL.M.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE, BENGALURU.

<u>Com. OS. No. 8485/2019</u>

BETWEEN:

STATE BANK OF INDIA
SME Centre, Banasawadi,
No.13, 2A Munireddy Layout,
Horamavu Main Road, Banasawadi,
Bangalore-560 013.,
represented by its Chief Manager,
Sri. Gopesh Lal,
aged about 47 years,
S/o K. Gopal Lal. **: PLAINTIFF**

(Represented by Sri. Vachanna G.K. – Advocate)

AND

Sri. NANJESH,
Aged about 37 years,
S/o Boregowda,
R/at No.64, Chowdeshwari Layout,
Thammarasanahalli,
Bangalore North - 560 064.

: DEFENDANT

(Ex-parte)

Date of Institution of the suit	**25.11.2019**
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	**---**
Date on which judgment was pronounced	**23.07.2021**
Total Duration	**Year/s 01 Month/s 07 Day/s 28**

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.

J U D G M E N T

This is a plaintiff's suit for judgment and decree against the defendant for a sum of Rs.5,06,219/- together with current and future interest @ 12.05% per annum compounded with monthly rests from 26.11.2019 till realization with costs and such other reliefs as this court deems fit to grant in the facts and circumstances of the case.

2. The brief facts of the plaintiff's case is that, plaintiff is a banking institution constituted under the State Bank of

India Act, 1955 having one of its SME Centre at No.13, 2A Munireddy Layout, Horamavu Main Road, Banasawadi, Bangalore 560 113, represented by its Manager who is empowered to represent the plaintiff has filed this suit. It is plaintiff's further case that the defendant had made an application on 11.07.2016 before the plaintiff's erstwhile State Bank of Bikanar and Jaipur, Yelahanka New Town Branch for sanction of vehicle loan facility for purchase of Toyota Etios GD vehicle. Considering the loan application dated 11.07.2016 of defendant the plaintiff bank sanctioned the Credit Facility of Rs.6,80,000/- as per letter of arrangement dated 01.08.2016 in favour of the defendant. The defendant agreeing to repay the same in 60 months together with interest thereon @ 12.05% per annum compounded with monthly rests revised by the bank from time to time and his first installment commencing on September 2016. Having availed the said loan facility the defendant also executed Agreement of loan cum Hypothecation Agreement dated 01.08.2016 by hypothecating Toyota Etios GD in favour of plaintiff bank situated at Yelahanka New Town, Bengaluru. Inspite of executing all necessary documents in favour of the bank, the defendant became defaulter and not at all kept his undertakings. He has neither responded nor attempted to clear the outstanding amount due inspite of repeated requests made by said Yelahanka New Town Branch officer. The last payment of the defendant was on 29.11.2018 and he has paid Rs.30,100/- by acknowledging his liability towards bank. It is plaintiff's further case that the State Bank of Bikanar and Jaipur was acquired by State Bank of India by way of amalgamation with effect from 01.04.2017 and the account of defendant was transferred to plaintiff and thereby plaintiff is entitled to recover the amount due from the defendant. Thereafter plaintiff got issued legal notice dated 18.10.2019 calling upon the defendant to clear the amount due. The defendant due to the plaintiff a sum of Rs.5,06,219/- inclusive of interest, penalty and other charges till 25.11.2019 in his loan account No.61323562299. It is plaintiff's further case that the last payment was made by the defendant on 29.11.2018 by acknowledging his liability. Plaintiff's bank has paid court fee of Rs.33,749/- apart from miscellaneous expenses of Rs.1000/- for instituting the suit. Hence, pray for decree the suit along with costs and other miscellaneous expenses.

3. On issuance of suit summons to the defendant through court and RPAD to the last address known to the plaintiff bank and also through paper publication, the defendant remained absent and failed to appear before this court inspite of providing sufficient opportunity for his appearance. Having no other way this court placed the defendant ex-parte.

4. Since there was absolutely no defence on behalf of the defendant, plaintiff's evidence came to be dispensed with as per the provisions of Order VIII Rule 10 CPC.

5. I have carefully scrutinized the entire records placed before me. Heard the arguments.

6. Now the points that arise for my consideration are:-

1) Whether the Plaintiff's bank is entitled to recover from defendant a sum of Rs.5,06,219/- together with cost, current and future interest @ 12.05% p.a., compounded with monthly rests from 26.11.2019 till realization of the amount?

2) What Order?

7. My answers to the above Points are as under:

Point No.1 :- In the Affirmative

Point No.2 :- As per the final Order for the following reasons.

REASONS

8. **Point No.1 :-** It is the case of the plaintiff's bank that defendant approached State Bank of Bikanar and Jaipur, Yelahanka New Town Branch for credit facility and made an application on 11.07.2016 and thereby availed credit facility of Rs.6,80,000/- towards purchase of commercial vehicle agreeing to repay the same in 60 months together with interest thereon and executed various documents including loan cum hypothecation deed dated 01.08.2016, however committed default and not kept his undertakings. It is plaintiff's further case the said State Bank of Bikanar and Jaipur later acquired by State Bank of India by way of amalgamation with effect from 01.04.2017 and thereby defendants loan account was transferred to the plaintiff bank. As I have already stated, on issuance of suit summons through court and RPAD to the last address known to the plaintiff bank same was returned with postal shara as 'defendant left the address'. Apart from sending suit summons multiple times to the address mentioned in the loan application of the defendant, the plaintiff's bank also got issued summons through paper publication. Inspite of these exercise defendant neither appeared before this court nor responded to the suit summons issued through court. In support of plaintiff's claim plaintiff bank has produced original loan application dated 11.07.2016 made by the defendant in favour of the Yelahanka New Town Branch, State Bank of Bikanar and Jaipur. The address mentioned in this loan application and cause title of this plaint are one and the same. Second document is the arrangement letter dated 01.08.2016. Third document is the original agreement of loan cum hypothecation dated 01.08.2016. All these documents are executed by defendant herein according to bank. As per loan application defendant availed the said loan towards working capital advances / purchase of Toyota Etios GD. In letter of arrangement it is mentioned that term loan has been given as working capital. Inspite of availing the loan for commercial purpose i.e., toward working capital primarily, defendant committed default and not at all cleared the loan amount as agreed. The account extract with certificate produced by plaintiff establishes that defendant committed default in payment of loan. Since the last payment was made on 29.11.2018 of Rs.30,100/-, the suit filed by the plaintiff bank is well within time. The original documents discussed supra produced and relied upon by the plaintiff's bank establishes its claim. The sanction letter establishes that defendant availed the loan agreeing to repay the same along with interest at the rate of 12.05% p.a., compounded with monthly rests. Even otherwise the loan availed by the defendant is for commercial purpose. It is probable that plaintiff bank would not have sanctioned the said loan for lesser rate of interest. In the absence of specific plea there is no reason for this court to consider with regard to quantum of rate of interest. As I have already stated, the defendant remained absent inspite of issuance of suit summons to his address mentioned in the loan application. If defendant actually changed the residence or if there is any mistake in the address, it is his responsibility that he shall inform the same to the bank. By availing the loan for the purpose of working capital and thereby purchasing diesel vehicle, the defendant cannot evade himself by repaying the same as agreed. The amount involved in plaintiff's bank is a public money. The defendant is not only under obligation but it is his responsibility to clear the same as agreed. The plaint averments which are inconsistent with the original documents produced and relied upon by the plaintiff establishes plaintiff's claim. Plaintiff bank has also issued demand notice on 18.10.2019 through RPAD. In the absence of specific defence and also oral and documentary evidence on behalf of the defendant, there is no reason to disbelieve the plaint averments and documents produced by plaintiff bank. Under these circumstances, the plaintiff's bank is entitled for the reliefs claimed. Accordingly, I answer Point No.1 in the **Affirmative**.

9. Point No.2 : - In view of my findings on Point No.1, I proceed to pass the following Order.

ORDER

The Suit filed by the plaintiff's bank for recovery of Rs.5,06,219/- from defendant along with cost, current and future interest @ 12.05% p.a., compounded at monthly rests from 26.11.2019 till realization is decreed with costs.

Draw decree accordingly.

(Dictated to the Typist directly on computer, corrected and then pronounced by me in open Court on this the **23rd day of July, 2021**).

(LATHAKUMARI M.),
LXXXV Addl. City Civil & Sessions Judge,
Bengaluru.

A N N E X U R E

LIST OF DOCUMENTS PRODUCED ON BEHALF OF THE PLAINTIFF ALONG WITH PLAINT (DEFENDANT EX-PARTE)

1) Original Loan Application dt. 11.07.2016

2) Original Letter of Arrangement dated 01.08.2016

3) Original Agreement of Loan cum Hypothecation dated 01.08.2016

4) Office copy of the Legal Notice dated 18.10.2019 along with postal receipt

5) Original one RPAD returned cover.

6) Computer Account Extract

7) Office copy of Certificates.

<u>LIST OF WITNESSES *EXAMINED ON BEHALF OF THE DEFENDANT*</u>

NIL

<u>LIST OF DOCUMENTS *EXHIBITED ON BEHALF OF THE DEFENDANT*</u>

NIL

(LATHAKUMARI M.),
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.