[C.R.P. 67] Govt. of Karnataka

Form No.9 (Civil) Title Sheet for Judgment in Suits (R.P.91)

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Sri.SUNIL ANDANEPPA SHETTAR, B.Sc., LLB., (SPL)
LXXXVI ADDL. CITY CIVIL JUDGE

Dated this the 26th day of July, 2021

Com.O.S.No.7367/2019

Plaintiff/s : State Bank of India
Small and Medium Enterprises Centre
(SMEC) Rep. By its chief Manager,
Sri.K.Shyamsundar Rao
S/o K.Govinda Bhat.
Age.58 Years,
13, 2A, Munireddy Layout
Horamavu Main Road, Banaswadi,
Bangalore-43, Mob.9448705533.

(By Sri.N.P.S. Advocate)

- Vs -

Defendant/s : Mr.Naveen Kumar G.
S/o Rajesh G.L.
Age: Major,
114/4, 19th Cross, Nandakumar building,
Kaggadasapura Circle,
C.V.Raman Nagar Post,
Bangalore-560 093.
Mob: 9008278322, 9845426331.

(Defendant placed exparte)

Date of institution of the suit	:	14.10.2019
Nature of the suit [suit on pronote, suit for declaration and possession, suit for injunction]	:	Recovery of Money
Date of the commencement of recording of the evidence	:	16.07.2021
Date on which the Judgment was pronounced	:	26.07.2021.

	Year/s	Month/s	Day/s
Total Duration	**01**	**09**	**12**

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.

J U D G M E N T

This is the suit filed by the plaintiff-bank against the borrower of the loan for Judgment and Decree directing him to pay an amount of Rs.12,54,472/- together with current and future interest at the rate of 12.2% P.a. compounded on quarterly basis from the date of suit till realization along with costs.

2. The brief facts of the plaintiffs' case are as under:

The plaintiff is a Banking institution constituted under the "State Bank of India Act 1955" having its corporate Centre at Madam Cama Road Mumbai and local office at Bangalore. The defendant had approached the plaintiff-bank for sanction of a Term Loan facility for the purpose of purchasing a Nissan Sunny SL DAT Car on 04.11.2015. Accordingly the plaintiff-bank sanctioned the term loan to the tune of Rs.8,50,000/- with certain terms and conditions. The defendant has executed the loan agreement and other documents and agreed to repay the loan in 57 monthly installments of Rs.15,000/- commencing from February 2015 and the last installment of Rs.10,000/-. The defendant had agreed to pay the installments on or before the same day of each month and the interest accrued shall be paid on the respective due dates. The defendant has also agreed to repay the loan with interest at the rate of 2.25% above the base rate with a minimum of 12.2% on the outstanding amount.

3. It is the allegation of the plaintiff-bank that the defendant has committed default in repayment of the loan as agreed and has failed to adhere to the terms and conditions of the agreement. Inspite of several requests, the defendant has failed to regularize his account and hence the plaintiff-bank has got issued the legal notice dated 23.09.2019 calling upon the defendant to pay the outstanding balance amount, but the defendant did not turn up to settle the account. The outstanding loan amount of the defendant as on the date of the suit is Rs.12,53,222/- including the interest. The plaintiff-bank has maintained the regular account of the loan of the defendant. Hence, on these grounds the plaintiff-bank has prayed to decree the suit.

4. The cause of action for the suit is mentioned as it arose on 04.11.2015, the date of sanction for loan and further on 23.09.2019 when the legal notice was issued to the defendant.

5. Inspite of issuance of suit summons through court, registered post and also by way of paper

publication, the defendant has failed to appear and hence he has been placed exparte.

6. On the basis of the averments of the plaint and the materials available on record, the following points arise for my consideration:

1. Whether the plaintiff-bank proves that the defendant had availed the loan of Rs.8,50,000/- on 04.11.2015 for purchasing the Nissan Sunny Vehicle by executing the loan agreement and other documents?

2. Whether the plaintiff-bank further proves that the defendant has failed to repay the loan as agreed and committed breach of the terms and conditions of the agreement?

3. Whether the plaintiff is entitled for future interest at the rate of 12.2% p.a. as claimed in the plaint?

4. Whether the plaintiff-bank is entitled to the reliefs sought for?

5. What order or decree?

7. The plaintiff-bank in order to substantiate its claim has got examined its manager as P.W.1 and got marked the documentary evidence, which are at Ex.P.1 to Ex.P.7 .

8. Having heard the arguments of the counsel for the plaintiff and considering the oral and documentary evidence available on record, I answer the above points as under:

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

Point No.4 : In the affirmative.

Point No.5 : As per final order for the following;

R E A S O N S

9. **Point No.1 to 4**:- For the sake of convenience all the points are taken together for discussion since they require common discussion.

It is the specific case of the plaintiff-bank that the defendant had availed the loan of Rs.8,50,000/- for purchasing the Nissan Sunny Vehicle by executing the loan agreement and other documents in favour of the plaintiff-bank. The defendant had agreed to repay the loan in 57 equal monthly installments of Rs.15,000/- commencing from February 2015 and the last installment of Rs.10,000/- with interest at the rate of 2.25% above the base rate subject to a minimum of 12.2%. It is the allegation of the plaintiff-bank that the defendant has failed to repay the loan as agreed and has committed the breach of the terms and conditions of the agreement. As on the date of suit the defendant is liable to pay an amount of Rs.12,54,472/- with future interest at the rate of 12.2% p.a. compounded on quarterly rests from the date of suit till realization.

10. The purpose for which the loan was granted was for purchasing Nissan Sunny Vehicle and hence the nature of the transaction is commercial as defined U/s 2 (c) of the Commercial Courts Act, 2015 and the specified value of the subject matter of the suit as defined U/s 2 (c) (I) of the said act is more than Rs.3,00,000/- and hence this court has jurisdiction to entertain the suit.

11. The manager of the plaintiff-bank has been examined as PW.1 and he has reiterated the averments of the plaint and got marked the documentary evidence, which are at Ex.P.1 to P.7. Ex.P.1 is the loan application dated 13.09.2015 given by the defendant in which his particulars and the purpose of the loan and other particulars have been mentioned. Ex.P.2 is the term loan agreement dated 04.11.2015 executed by the defendant. Ex.P.3 is the deed of hypothecation executed by the defendant hypothecating his vehicle for the security of the loan in case of default in repayment of the loan as agreed. Ex.P.4 is the letter of undertaking dated 04.11.2015 executed by the defendant. Ex.P.5 and Ex.P.6 are the office copy of the legal notice and the returned postal cover. Ex.P.7 is the account extract maintained by the plaintiff-bank with respect to the loan of the defendant supported by the certificate under the Bankers Book of Evidence.

12. On going through the oral and documentary evidence available on record, the plaintiff-bank has proved that the defendant had availed the loan of

Rs.8,50,000/- and out of the said loan, he has purchased Nissan Sunny vehicle. The allegation of the plaintiff-bank is that the defendant has committed default in repayment of the loan, but the defendant has not appeared and resisted the said contention. The plaintiff-bank has established and proved that the defendant has committed default in repayment of loan and the outstanding balance amount as on the date of the suit is Rs.12,54,472/-. The due execution of Ex.P.1 to P.4 is proved by the plaintiff-bank. The evidence of PW.1 on oath and the documentary evidence relied upon by the plaintiff-bank remains unchallenged. Under the facts and circumstances of the case there are no impediments to decree the suit in favour of the plaintiff-bank.

13. The plaintiff has claimed future interest at the rate of 12.2% p.a compounded on quarterly basis from the date of suit till the date of payment, which appears to be exorbitant. The court is empowered to grant future interest exceeding 6% p.a. but shall not exceed the contractual rate of interest in a commercial suit. Considering the nature of the suit and the purpose of loan

obtained by the defendant I am of the opinion that future interest at the rate of 9% p.a. till realization is proper and appropriate. Hence, the defendant is liable to pay future interest at 9% p.a from the date of suit till realization. Under the facts and circumstances of the case there are no impediments to decree the suit in favour of the plaintiff-bank. Hence, I answer points No.1 to 3 in the 'Affirmative' and point No.4 'Partly in the Affirmative'.

14. **Point No.5:**- Since I have answered points No.1 to 3 in the 'Affirmative' and point No.4 'Partly in the Affirmative', I proceed to pass the following;

O R D E R

The suit of the plaintiff-bank against the defendant is hereby decreed with costs.

It is ordered and decreed that the defendant is liable to pay to the plaintiff-bank a sum of Rs.12,54,472/- with future interest @ 9% p.a compounded at quarterly rests under term loan facility from the date of suit till realization.

It is hereby further ordered and decreed that the plaintiff bank is at liberty to seize and sell the vehicle of the defendant mentioned in the deed of hypothecation which is at Ex.P.3 for realization of the decreetal amount.

Draw the decree accordingly.

[Dictated to the stenographer online, computerized by her, corrected on computer and signed by me then pronounced in the Open Court, dated this the 26th day of July, 2021]

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.

A N N E X U R E

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

P.W.1 : Gopesh Lal

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

Ex.P.1 : Loan application dated 30.09.2015

Ex.P.2 : Term loan agreement dated 04.11.2015

Ex.P.3 : Hypothecation agreement for term loan dated 04.11.2015.

Ex.P.4 : Letter of undertaking of Borrower dated 04.11.2015.

Ex.P.5 : Legal notice dated 17.05.2019

Ex.P.6 : Returned postal Cover

Ex.P.7 Statement of loan account under term loan facility

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

-NIL-

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

-NIL-

LXXXVI Addl. City Civil Judge
Bangalore.