

**In the Court of LXXXIV Additional City Civil and
Sessions Judge (CCH-85 Commercial Court) Bangalore**

Dated this the 26th day of March 2021

Present: Smt.H.R.Radha B.A.L., LL.M.
LXXXIV Addl. City Civil and Sessions Judge,
(CCH-85 - Commercial Court)
Bangaluru

Com.O.S.No.1755/2019

PLAINTIFF:	Canara Bank, 26 th Main, 40 th Cross, Jayanagar 9 th Block Branch, Bengaluru-560041. Rep by its Manager and GPA holder Smt.Bhagya (By Sri.N.Shankaranarayana Bhat, Adv.)	
Vs		
DEFENDANT:	M/s Pooja Agarbhathi Manufacturing rep by its Proprietrix Smt.Prabhavathi W/o Oblesh, Aged about 39 years, R/at No.47/48, 2 nd Cross, 1 st Main, MTB Area, Marenahalli, J.P.Nagar 2 nd Phase, Bengaluru-560078. (By Sri.Nagegowda.D, Advocate)	
Date of Institution of the suit		05.03.2019
Nature of the suit		Money Suit

Date of first case management hearing	04.03.2021		
Date of Commencement of recording of evidence	19.03.2021		
Date on which judgment was pronounced	26-03-2021		
Time taken for disposal from the date of first case management hearing	22 days		
Total Duration	Year/s	Month/s	Day/s
	02	00	16

LXXXIV Addl.City Civil and Sessions Judge
(C.C.H-85 Commercial Court), Bengaluru

JUDGMENT

This is a suit for recovery of Rs 5,45,354/- with interest at 13.10% p.a. compounded monthly and miscellaneous expenses of Rs 1,000/- from the defendant.

2. Brief facts of the plaintiff's case are that, the defendant availed financial assistance of Rs 4,23,000/- for manufacturing agarbathi and executed hypothecation deed cum agreement dated 18.11.2016 along with other

documents agreeing to pay interest at 11.70% p.a. compounded monthly and to repay the loan in 60 EMIs of Rs.9,529/- starting from 8.2.2017 and also to pay penal interest at 2% p.a. over and above the agreed rate, in the event of default. However, on his failure to adhere to repayment schedule, legal notice dated 6.10.2017 was issued. On the same day defendant received the letter but failed to clear the dues. He is liable to repay the Rs.5,45,354/- including interest as the date of this and future interest at 13.10% per annum compounded monthly.

3. The defendant has filed the written statement denying the case of the plaintiff in toto and contending that she has not availed any loan, as such the question of repayment in installments does not arise. She is an illiterate person working as a Sweeper in BBMP getting a meager salary and not eligible for the scheme of the Bank which offered the loan. Certain Geetha Chengappa, a resident of Nagarabhavi, Bangalore, obtained her signature on loan application assuring to get the same sanctioned for the purpose of business in the name and style of Pooja Agarbathi Manufacturing Company. However, by creating

documents said Geetha chengappa got the loan sanctioned in her name in collusion with Bank officials and managed to receive the DD from the Bank. In this connection, she has lodged a complaint before J.P.Nagar Police Station.

4. Based on the above, the following issues have been framed:

ISSUES

1. Whether the plaintiff proves that the defendant availed loan of Rs.4,23,000/- by submitting application dated 28.09.2016 and executed agreement cum hypothecation deed dated 08.02.2017 ?
2. Whether the plaintiff is entitled for recovery of Rs 5,45,354/- as prayed?
3. What decree or order ?
5. The Manager of the plaintiff has filed affidavit in lieu of examination-in-chief, examined herself as Pw1 and got marked Ex.P1 to Ex.P7 documents. The defendant has not chosen to cross-examine Pw1 or to lead evidence.

6. Heard the learned counsel for the plaintiff. The defendant has failed to address the arguments

7. My findings on the above issues are :

Point No.1 and 2: In the affirmative

Point No.3: As per the final order for following:

REASONS

8. Point No.1 and 2 : Since inter-related, these issues are taken up together for discussion, convenience.

9. Pw1 states in her affidavit filed in lieu of examination-in-chief that the defendant approached the plaintiff bank for loan of Rs.4,23,000/- for manufacturing agarbathi by submitting application dated 28.9.2016. After considering her request, the Bank sanctioned the same on 8.11.2016 and disbursed the loan amount. Inconsideration thereof, the defendant executed agreement cum deed of hypothecation on the same day along with other documents agreeing to repay the loan with interest at 11.70% compounded monthly and in 60 EMIs of Rs 9,529/- commencing from 8.2.2017 and also to pay penal interest at 2% p.a, in the event of default.

10. In support of the same, the plaintiff has produced Ex.P1 to P4 documents. As seen from Ex.P1 the defendant engaged in business in the name and style of M/s Pooja Agarbathi Manufacturing, in MTB area of J.P.Nagara, Second phase, Bengaluru; her educational qualification is SSLC, and she was the customer of the plaintiff Bank with Account No. 2613101014190. The said application is signed by the defendant. Ex.P2 sanction memorandum dated 8.11.2016 is affixed with the defendant photograph. Ex.P3 deed of hypothecation and Ex.P4 the letter of undertaking are executed by the defendant in the capacity of Proprietrix of Pooja Agarbathis Manufacturing and her signature is found on each page thereof.

11. Ex.P5 is the plaintiff's notice dated 16.10.2017 narrating in detail the suit transaction and the defendant default to repay the loan installments as agreed and demanding repayment of Rs.4,54,996/- with accrued interest at 11.70% p.a. till the date of payment. Ex.P6 postal acknowledgement speaks to the effect that it was served on a person called Pooja in the defendant's address furnished in the loan application. The defendant has not disputed

service of the notice at Ex.P5 in her written statement. There is no explanation from her side as to why a reply was not sent immediately refuting the plaintiff's claim and narrating the defence as put forth in the written statement.

12. Further, Pw1 is not cross-examined by the defendant either to deny or dispute execution of Ex.P1, P3 and P4 or to dispute her signatures thereon. The defendant has not even entered the witness box to substantiate the defence that some one else transacted with the Bank in her name by forcibly obtaining the signatures on the loan application. It is not the case of the defendant that she has initiated any criminal proceedings against the said Geetha Chengappa forcing her to sign on the loan documents or for receiving money from the Bank in her name.

13. Under the above circumstances, the defence that the defendant has not availed the loan cannot be accepted. Considering the same and having regard to unchallenged evidence of Pw1 with regard to execution of Ex.P1, P3 and P4 by the defendant by receiving loan of Rs.5,45,354/- and failing to repay the same within time, I am of the considered

opinion that the plaintiff Bank has proved the suit transaction and is entitled for recovery of Rs.5,45,354/- from the defendant with interest at 9% p.a. from the date of suit till the date of realization together with miscellaneous expenses of Rs.1,000/- and notice charges of Rs.2,500/- as prayed.

14. Point No.2: In the result, I pass the following:

ORDER

Suit of the plaintiff is decreed with cost.

The plaintiff is entitled to recover Rs.5,45,354/- from the defendant with interest at 9% p.a. from the date of suit till the date of realization together with miscellaneous expenses of Rs.1,000/- and notice charges of Rs.2,500/-.

Draw decree accordingly.

Issue copy of the judgment to the parties to the dispute through e-mail as

provided U/o XX Rule 1 of CPC, if mail ID
is furnished.

(Dictated to the Stenographer, transcribed and typed by him,
corrected and then pronounced by me in the open court on
this the **26th** day of **March, 2021**)

(H.R.Radha)

LXXXIV Addl.City Civil and Sessions Judge,
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ANNEXURE

List of witnesses examined for the Plaintiff:

Pw1 Bhagya V.

List of Exhibits marked for the plaintiff:

Ex.P1 Loan application dated 29.09.2016
Ex.P2 Sanction memorandum dtd 08.11.2016
Ex.P3 Agreement com deed o hypothecation
Ex.P4 Letter of undertaking
Ex.P5 Copy of legal notice dated 06.10.2017
Ex.P6 Postal acknowledgment
Ex.P7 Certified extract loan account.

List of witnesses examined for the Defendant: NIL

List of Documents marked for the defendant: NIL

(H.R.Radha)

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