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

THIS THE 14TH DAY OF JULY 2021

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

<u>Com. OS. No. 8724/2019</u>

BETWEEN:

CANARA BANK
SME, Peenya Branch,
Bangalore-560058.
Represented by its Mnager,
Sri. C.P. Omnath
S/o Sri V.V. Chandran,
aged about 30 years.

: PLAINTIFF

(Represented by Sri. Rohit R. Achar – Advocate)

AND

M/s. S.L.R.S. ENTERPRISES
Represented by its Proprietor,
Sri. Vasanth,
S/o Sri. Suggarangaiah,
Aged about 36 years,
1st Main Road, Achyuth Nagar Main Branch,
Soladevanahalli,
Chikkabanavara,
Bangalore -560 107. **: DEFENDANT**

(By Ex-parte)

Date of Institution of the suit	**02.12.2019**
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	**14.07.2021**
Total Duration	**Year/s 01 Month/s 07 Day/s 12**

(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 total sum of Rs.14,20,098/- along with court costs, current and future interest on the suit claim @ 13.60% p.a., compounded monthly from the date of suit till realization and also for consequential relief of hypothecated stocks tailoring materials i.e., (1) Industrial Direct Drive Single Needle Sewing Machine – 20 Nos. (2) Industrial Single Needle Edge Cutting Machines –

1 No. (3) Industrial Double Lock Stitch Fix Bar Sewing Machine – 1 No. (4) Industrial 4th Real Over lock Sewing Machine – 2 Nos. (5) Industrial Cloth Cutting Machine – 1 No. (6) Jack Iron Box and Tables – 2 Nos., as mentioned in the plaint schedule and hereinafter referred to as the suit schedule property.

2. The brief facts of the plaintiff's case is that, the plaintiff is a Banking Company constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having its Head Office at No.112, J.C. Road, Bengaluru-560 002 and plaintiff’s branch office at SME, Peenya 3rd Stage, Bengaluru-58 represented by its Manager. It is plaintiff’s further case that the Defendant a proprietorship firm represented by its Proprietor carrying on its Tailoring Business approached the plaintiff bank for Credit Facilities. Considering the same, on 19.3.2018 plaintiff’s bank granted OCC facility of Rs.1,00,000/- and Term Loan of Rs.13,90,000/- to the defendant for business needs. The defendant ensuring its promise repayment of loan amount executed as many as six documents i.e., Sanction Letter dated 22.2.2018, On Demand Pro Note for Rs.1,00,000/- dated 19.3.2018, Cash Credit agreement dated 19.3.2018, Agreement regarding collateral security dated 19.3.2018, Deed of Hypothecation regarding Machineries dated 19.3.2018 and Letters of Undertaking dated 19.3.2018 as mentioned in para-3 of the plaint. It is plaintiff's further case that, the defendant also greed to repay the OCC facility along with interest at 10.95% p.a., compounded monthly and term loan at 11.35% p.a., compounded monthly and another 2% penal interest in case of any default. Though defendant firm agreed to repay the term loan in 60 Equated Monthly Instalment of Rs.26,000/- each with repayment holiday of 6 months and interest to be paid as and when due. The defendant became defaulter and did not adhere to the terms and conditions of the credit facilities and committed defaults. The defendant did not operate the OCC account satisfactorily and committed default even inspite of repeated demands. Having no other way, plaintiff bank issued demand notice dated 27.11.2019. Inspite of the same, the defendant not cleared the amount. It is mentioned in para-6 of the plaint that as per Ledger Extract the defendant is due of Rs.14,20,098/- including demand notice charges of Rs.1,500/- and interest calculated till filing of the suit. It is further mentioned that plaintiff's bank is also entitled for the sale of the suit schedule property and adjust the sale proceeds towards its claim. Further, it is entitled to recover the amount with current and future interest on the suit claim at the rate of 13.60% p.a., compounded monthly on both loan from the date of suit till realization. It is further asserted that plaintiff’s bank also paid huge court fee of Rs.83,130/- and hence the same has to be recoverable from the defendant with costs and such other reliefs. Hence, this suit for the reliefs mentioned supra.

3. On issuance of suit summons to 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 the 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 was dispensed with relying upon the provisions of Order 8 Rule 10 CPC.

5. I have carefully scrutinized the entire records placed before me. Perused the plaint averments and also original documents produced and relied upon by the plaintiff’s bank along with plaint. Heard the arguments.

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

1) Whether the Plaintiff's bank is entitle to recover a sum of Rs.14,20,098/- from the defendant enterprises by sale of hypothecated suit schedule property and also personally from the defendant as claimed along with interest and cost?

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** **:-** As I have already stated, this is a suit filed by the plaintiff bank for recovery of huge amount with interest, cost and also for consequential relief of sale of hypothecated schedule property and adjust the sale proceeds to the amount due and further to proceed against defendant for the balance. The defendant remained absent inspite of service of summons to the last address known to the plaintiff bank and also by way of paper publication. Plaintiff's bank has produced as many as 10 documents in support of its plaint averments. First document is the loan sanction letter dated 22.2.2018. This is a document sent to the defendant enterprises from the plaintiff bank. In this document the address of the defendant is forthcoming which is similar to that of the address mentioned in the cause title. When such being the case, when suit summons were issued to defendant through this court through RPAD to the same address, it was returned as 'address not traceable'. If at all defendant changed the address or its address is not correct, it is his responsibility to inform the bank in this regard and provide proper address for communication. Though suit summons were sent to the last address known to the plaintiff's bank and such service of summons is considered as deemed service, the plaintiff's bank got issued summons to the defendant even through paper publication. Inspite of all these exercise defendant neither appeared before the court nor represented. Apart from sanction letter plaintiff's bank has also produced original on demand pronote dated 19.3.2018 executed by defendant ,cash credit agreement, agreement with regard to collateral security dated 19.3.2018 which is in respect of suit schedule property, so also hypothecation deed, letter of undertaking dated 19.3.2018. All these documents establishes the claim of plaintiff's bank. In the sanction letter plaintiff's bank has mentioned the loan facility sanctioned in favour of the defendant enterprises and also rate of interest, purpose of sanction of said loan amount of Rs.13,90,000/- which is towards purchase of machineries to set up new plant as mentioned in plaint schedule and also other terms and conditions. Whereas the account extract produced by the plaintiff's bank establishes that defendant enterprises has not at all complied with the said terms and conditions and became defaulter. Inspite of service of legal notice dated 27.11.2018, the plaintiff counsel submits that defendant not approached the bank. In the absence of specific defence with regard to claim made by the plaintiff's bank, there is no reason to disbelieve these original documents which are inconsistent with the claim made by the plaintiff bank. Apart from balance amount due, the bank is claiming court cost, current and future interest of 13.60% p.a., compounded monthly. In the sanction letter, there is reference about the interest chargeable by the plaintiff's bank. That apart, the loan was given to defendant for commercial purpose that is set up its tailoring plant with the help of suit schedule property. Having availed the huge loan the defendant was under obligation to repay the same in accordance with terms and conditions mentioned in the sanction letter. That apart, in the absence of specific plea, there is no reason for this court to consider the question of reduction of interest rate. The amount involved with the plaintiff's bank is a public money. The defendant having availed the loan committed default and further not bothered to approach the bank inspite of demand notice and also this court inspite of service of summons to its business place. The loan granted being commercial in nature, in the absence of specif defence more particularly plea with regard to interest claimed, question of considering the same does not arise. In the interest of public at large and also relying upon the plaint averments and the documents produced before this court, this court opines that plaintiff bank is entitled to recover the amount as claimed. Further by executing hypothecation deed, defendant himself concedes to seize the suit schedule property and auction the same, adjust the sale proceeds to the amount due. Under such circumstances plaintiff's bank is also entitled for consequential relief as 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.14,20,098/- along with court cost, current and future interest @ 13.60% p.a., compounded monthly from the date of suit till realization is decreed with costs. The plaintiff bank can seize the suit schedule property and sell the same in public auction and appropriate the sale proceeds towards the suit claim due by the defendant and proceed further against defendant for the balance if any in accordance with law.

Draw decree accordingly.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in open Court on this the **14^{th} 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 Sanction Letter dated 22.02.2018
2) Original On Demand Pro Note dated 19.03.2018
3) Original Cash Credit Agreement dated 19.03.2018
4) Original Agreement regarding Collateral Security dated 19.03.2018
5) Original Deed of Hypothecation dated 19.03.2018
6) Original Letter of Undertaking dated 19.03.2018
7) Original Letter of Undertaking dated 19.03.2018
8) Office copy of Legal Notice dated 27.11.2018
9) Certified copy of Account Extract (OCC)
10) Certified copy of Account Extract (Term Loan).

LIST OF WITNESSES *EXAMINED ON BEHALF OF THE* DEFENDANT

NIL

LIST OF DOCUMENTS *EXHIBITED ON BEHALF OF THE* DEFENDANT

NIL

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