[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 22nd day of October, 2021

Com.O.S.No.8700/2019

Plaintiff/s :	Union Bank of India (formerly Corporation Bank) Madiwala Branch, No.6 & 7, SVR Privilege, Hosur Road, Madiwala, Bangalore-560 068. Represented its Senior Manager & G.P.A. holder Smt.Divya Singh, W/o. Sri. Sanjeev Singh, Aged about 28 years. (By Sri.S.N.,Advocate)
	- Vs -
Defendant/s :	Sri. Bhoopal M. Aged about 38 years, R/at. No.24, 2nd Main, Behind Ayappa Temple, Madiwala, Bangalore-560 068. Also at Room No.2, 13, Venkateshwara Nilaya, 3rd Main, 3rd Cross, Madiwala New Extension, Bangalore-560 068. (Defendant placed exparte)

Date of institution of the suit	:	30.11.2019
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	:	01.10.2021
Date on which the Judgment was pronounced	:	22.10.2021

	Year/s	Month/s	Day/s
Total Duration	**01**	**10**	**22**

(**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 defendant for Judgment and Decree directing the defendant to pay an amount of Rs.3,70,420/- (Rupees Three Lakhs Seventy Thousand Four Hundred and Twenty Only) together with interest at the rate of 13.10% p.a compounded on monthly rests from the date of suit till realization.

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

The plaintiff is a Body Corporate constituted under the Banking Companies (Acquisition Transfer of Undertakings) Act. 1980, having its head office at Mangalore and branch office at Madiwala, Bangalore.

3. The defendant had approached the plaintiff-bank for a Commercial Vehicle loan of Rs.6,50,000/- to purchase a brand new Toyota Etios Vehicle. The defendant had agreed to repay the said loan in sixty equal monthly installments of Rs.14,427/- with interest at the rate of 11.90% p.a compounded on monthly rests and also the revised rate of interest by the bank from time to time. The defendant had executed the agreement of loan cum hypothecation dated 09.06.2016 and other documents in favour of the plaintiff bank.

4. It is the allegation of the plaintiff-bank that the defendant has failed to abide by the terms and conditions of the agreement and has committed default in repayment of the loan. The defendant is liable to pay an

amount of Rs.3,70,420/- as on the date of the suit. Hence, on these grounds the plaintiff-bank has prayed to decree the suit.

5. The cause of action for the suit is mentioned as it arose on 09.06.2016 when the defendant availed the loan by executing loan documents and subsequently on 20.10.2018 when the defendant acknowledged the loan debt by executing fresh DPN & Take delivery letter and 16.08.2019 when the seizure notice was issued and the same is evaded and claim.

6. 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.

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

1. Whether the plaintiff-bank proves that the defendant had availed the term loan of Rs.6,50,000/- on 09.06.2016 for the purpose of purchasing vehicle by executing the loan

agreement cum hypothecation and necessary document in favour of the bank?

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 the relief as prayed for?

4. What order or decree?

8. The plaintiff-bank in order to substantiate its case has got examined its Senior Manager as P.W.1 and got marked the documentary evidence, which are at Ex.P.1 to Ex.P.19.

9. 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 : As per final order for the following;

REASONS

10. **Points No.1 to 3:-** For the sake of convenience all these points are taken together for discussion since they require common discussion.

The specific case of the plaintiff-bank is that the defendant had availed the term loan of Rs.6,50,000/- on 09.06.2016 for the purpose of purchasing the vehicle by executing the agreement of loan cum hypothecation and agreed to repay the loan in sixty equal monthly installments of Rs.14,427/- with interest at the rate of 11.90% compounded at monthly rests subject to change the rate of interest and also agreed to pay overdue interest at the rate of 2% p.a. over and above the normal rate, in case of default. It is the allegation of the plaintiff-bank that the defendant has failed to repay the loan as agreed and committed breach as terms and conditions of the agreement.

11. The purpose of sanction of loan is for purchase of vehicle and hence the nature of the transaction is commercial in nature as defined U/s 2 (1) (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/- (Three Lakhs Rupees Only) and hence this court has jurisdiction to entertain the suit.

12. The manager of the plaintiff-bank who has been examined as P.W.1 has reiterated the averments of the plaint in his evidence. Ex.P.1 is the the loan application of the defendant. Ex.P.2 is the Credit sanction intimation, wherein the terms and conditions of repayment of the loan has been mentioned. Ex.P.3 is the agreement for term loan executed by the defendant agreeing for the terms and conditions. Ex.P.4 is the agreement for hypothecation vehicle executed by the defendant for the security of the loan. Ex.P.5 is the letter of undertaking given by the defendant. Ex.P.6 is the letter of authority. Ex.P.7 is the office copy of the letter sent to the dealer. Ex.P.8 is the proforma invoice. Ex.P.9 is the delivery receipt. Ex.P.10 is the tax invoice. Ex.P.11 is the delivery note. Ex.P.12 is customer receipt. Ex.P.13 is the challan

issued by the transfer department. Ex.P.14 is the demand promissory note. Ex.P.15 is the take delivery letter. Ex.P.16 is the copy of the letter. Ex.P.17 is the returned postal cover. Ex.P.18 is the statement of account. Ex.P.19 is the certificate u/s 65B of the Indian Evidence Act.

13. On going through the oral and documentary evidence available on record, the plaintiff-bank has proved that the defendant has obtained the term loan of Rs.6,50,000/-. The allegation of the plaintiff-bank is that the defendant is defaulter in repayment of the loan, but the defendant has not appeared and resisted the said contention. The evidence of P.W.1 on oath and the documentary evidence relied upon the plaintiff remains unchallenged. 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.3,70,420/-.

14. The plaintiff has claimed future interest at the rate of 13.10% p.a compounded on monthly 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'.

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

O R D E R

The suit of the plaintiff-bank against the defendants 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.3,70,420/- (Rupees Three Lakhs Seventy Thousand Four Hundred and Twenty Only) with interest at the rate of @13.10 % p.a compounded monthly 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 hypothecated vehicle for realization of the decreetal dues as per the hypothecation deeds.

Draw the decree accordingly.

[Dictated to the stenographer online, transcribed & computerized by her, corrected on computer and signed by me then pronounced in the Open Court, dated this the 22nd day of October, 2021]

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

ANNEXURE

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

P.W.1 : Harish G

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

Ex.P.1 : Loan application of the defendant furnished by the manager.

Ex.P.2 : Credit sanction intimation.

Ex.P.3 : Agreement for term loan.

Ex.P.4 : Agreement for hypothecation vehicle.

Ex.P.5 : Letter of undertaking.

Ex.P.6 : Letter of authority.

Ex.P.7 : Office copy of the letter sent to the dealer.

Ex.P.8 : Proforma invoice.

Ex.P.9 : Delivery receipt.

Ex.P.10: Tax invoice.

Ex.P.11: Delivery note.

Ex.P.12: Customer receipt.

Ex.P.13: Challan issued by the transfer department.

Ex.P.14: Demand promissory note.

Ex.P.15: Take delivery letter.

Ex.P.16: Copy of the letter.

Ex.P.17: Returned postal cover.

Ex.P.18: Statement of account.

Ex.P.19: Certificate u/s 65 b of the Indian Evidence Act.

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.