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IN THE COURT OF THE SENIOR CIVIL JUDGE
& PRL. JMFC., KUMTA.

Dated this the 10rd day of June, 2022

PRESENT
Smt.Bhamini, B.A., L.L.B.,
Senior Civil Judge & Prl. JMFC.,
Kumta.

S.C.No.5/2022

Plaintiff:	Karnataka Bank Limited, a Banking Company, incorporated under the Indian Companies Act 1913 having its Registered and Head Office at Mahaveer Circle, Kankanady, Mangaluru represented by its Gokarna Branch Manager, the present Branch Manager, Shri. Ganapati Bhat H. S/o. K.H. Ishwar Bhat, Aged about 46 years, Residing at Gokarna, Tq. Kumta. *(By Sri. P.G.H., Advocate)*

V/s

Defendants:	1. Murkundi Huliyappa Naik, S/o. Huliyappa Naik, Aged about 62 years, Occ: Fishing and Fish Business, R/o. House No.170/1, Tadadi, Post: Tadadi,

Tq. Kumta- 581 326.

2. Smt. Sharada Murkundi Naik,
W/o. Murkundi Naik,
Aged about 54 years,
Occ: Fishing and Fish Business,
R/o. House No.170/1,
Tadadi, Post: Tadadi,
Tq. Kumta- 581 326.

(By Sri. N.M.N., Advocate)

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Date of institution of the suit	: 15.02.2022
Nature of the suit	: Recovery of Money
Date of the commencement of recording of the evidence	: 03.06.2022
Date on which the Judgment was pronounced	: 10.06.2022
Total Duration	: Year/s Month/s Day/s
	00 03 25

JUDGMENT

This is the suit filed by the plaintiff Bank against the defendants for recovery of a sum of Rs.36,106-23 with interest at the rate of 14.75% p.a. from 02-01-2022 till realisation.

2. That the case of the plaintiff can be summarized as follows:

On 17-03-2014, the defendant No.1 being the borrower and the defendant No.2 being the guarantor borrowed a sum of Rs.1,00,000/- from the plaintiff to purchase fishing boat and nets, defendants have executed declarations, consent letters, term loan agreement, hypothecation agreement and other documents on the aforesaid date agreeing to repay the aforesaid loan amount with interest at the rate of 11.75% p.a. subject to variation as per the direction of the Reserve Bank of India with penal interest of 3% in case of default, defendants have also agreed to repay the aforesaid amount with 34 equated monthly installments of Rs.1,667/-, defendants did not repay the loan amount as agreed, on 13.01.2017 and 09-12-2019, the defendants have executed acknowleldgments of debt acknowledging their liability to pay loan amount and inspite of repeated requests including issuance of notices, the defendants have not repaid the aforesaid loan amount. Hence, the plaintiff is constrained to file this suit.

3. On receipt of suit summons, the defendants appeared through their counsel and filed their common written statement denying the entire plaint averments. Defendants have contended that, as per the rules and regulations of R.B.I. the plaintiff shall not impose interest at the rate of 11.75% p.a. and penal interest at the rate of 3% p.a. Hence, prayed for dismissal of this suit.

4. In order to prove the case of the plaintiff, the manager of the plaintiff bank has been examined as PW 1 and got marked 15 documents at Ex.P1 to P18. Learned advocate for defendants has cross examined the PW-1. Inspite of giving an opportunity to the defendants, they have not adduced their evidence. Hence, this Court was pleased to take the evidence of the defendants as nil.

5. I have heard the arguments addressed by the learned advocates for plaintiff and the defendants.

6. Following points arise for my consideration:

Points

1. Whether the plaintiff has proved that on 17-03-2014, the defendant No.1 being the borrower and the defendant No.2 being the guarantor have borrowed a sum of Rs.1,00,000/- from it to purchase fishing boat and nets with interest at the rate of 11.75% p.a. with penal interest of 3% p.a.?

2. Whether the plaintiff is entitled for interest? If so at what rate?

3. Whether the plaintiff is entitled for the reliefs claimed in the plaint?

4. What order or decree?

7. My findings on the above Points are as follows:

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

8. **Point No.1:** Examination in chief of PW1 is the reiteration of plaint averments. Though the learned advocate for defendants has cross examined thePW-1 in length, nothing relevant has been elicited in his mouth to discard his sworn testimony. It is the case of the plaintiff that on 17-03-2014, the defendant No.1 being the borrower and the defendant No.2 being the guarantor have borrowed a sum of Rs.1,00,000/- from it to purchase fishing boat and nets and agreed to repay the said amount with interest at the rate of 11.75% p.a. subject to variation as per the direction of the Reserve Bank of India with penal interest of 3% p.a. in case of default and on 13-01-2017 and on 09-12-2019 the defendants have executed acknowledgments of debt acknowledging their liability to pay the loan amount.

9. In order to prove that the defendants have borrowed the aforesaid amount, the plaintiff got marked the loan application, valuation report, sanction order, declaration of defendant No.1, declaration of defendant No.2, consent letters of the defendants, term loan agreement, hypothecation

agreement, acknowledgments of debt and the account extract at Ex.P2 to Ex.P12 and Ex.18 respectively.

10. That on perusal of the aforesaid documents, I am of the opinion that the plaintiff has proved that on 17-03-2014 defendant No.1 being the borrower and the defendant No.2 being the guarantor have borrowed a sum of Rs.1,00,000/- from the plaintiff to purchase fishing boat and nets and agreed to repay the said amount with interest at the rate of 11.75% p.a. subject to variation as per the direction of the Reserve Bank of India with penal interest at the rate of 3% p.a., in case of default and as on 01-01-2022, the defendants were due of Rs.36,106.23. Accordingly, I answered the point No.1 in the affirmative.

11. **<u>Point No.2</u>**: That the defendants have agreed to pay interest at the rate of 11.75% p.a. subject to variation as per the direction of the Reserve Bank of India and penal interest at the rate of 3% p.a. in case of default and the plaintiff has calculated the interest at the said rate till 01-01-2022 and there is a specific agreement to pay interest at the said rate

between the plaintiff and the defendants. Unless there is a specific prohibition, the contractual rate of interest cannot be reduced. Hence, I am of the considered opinion that the plaintiff's claim for interest at the said rate till 01-01-2022 is proper and valid.

12. Now the court has to consider about the rate of interest for the period from 02-01-2022 till the date of decree and from the date of decree till realization. Section 34 of CPC is a procedural provision regarding the granting of interest. The purpose of loan is to purchase fishing boat and nets and the said purpose cannot be considered as commercial purpose. Moreover, in the sanction order marked at Ex.P4 it is clearly stated that, the category of loan is agriculture. Plaintiff is claiming interest at the rate of 14.75% p.a., which is in my opinion is not reasonable. Hence, I am of the opinion that the plaintiff is entitled for recovery of a sum of Rs.36,106.23 with interest at the rate of 6% p.a. from 02-01-2022 till realization. Accordingly, I answered point No.2 in the affirmative.

13. **Point No.3** : In view of my findings on point Nos. 1 and 2, I hold that the plaintiff has proved that it is entitled to recover a sum of Rs. 36,106.23 with interest at the rate of 6% p.a from 02-01-2022 till realization from the defendants and the defendants are jointly and severally liable to pay the aforesaid amount. Accordingly, I answered point No.3 in the affirmative.

14. **Point No.4** : In view of my findings on point Nos. 1 to 3, I proceed to pass the following :

ORDER

The suit filed by the plaintiff against the defendants is decreed with cost. Defendants are jointly and severally liable to pay a sum of Rs.36,106.23 with interest at the rate of 6% p.a. from 02-01-2022 till realization to the plaintiff.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open Court on this the 10th day of June, 2022)

(Smt.Bhamini)
Senior Civil Judge
& Prl. JMFC., Kumta.

A N N E X U R E

List of witnesses examined for plaintiff:

PW1 : Sri. Ganapati Bhat H.

List of document exhibited for the plaintiff:

Ex.P1 : Certified copy of power of attorney.
Ex.P2 : Loan application.
Ex.P3 : Valuation report.
Ex.P4 : Sanction order.
Ex.P5 : Declaration of defendant No.1.
Ex.P6 : Declaration of defendant No.2.
Ex.P7 : Consent letter of defendant No.1.
Ex.P8 : Consent letter of defendant No.2.
Ex.P9 : Term loan agreement.
Ex.P10 : Hypothecation agreement.
Ex.P11 : Acknowledgment of debt.
Ex.P12 : Acknowledgment of debt.
Ex.P13 : Office copy of legal notice.
Ex.P14 &15 : Postal Receipts.
Ex.P16 &17 : Postal acknowledgments.
Ex.P18 : Loan account extract with certificate.

List of witnesses examined for defendants:

--Nil--

List of documents exhibited for the defendants:

--Nil--

Senior Civil Judge
& Prl. JMFC., Kumta.

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