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

Dated this the 28th day of January 2021

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

Com.O.S.No.7216/2019

PLAINTIFF :	Canara Bank Koramangala Branch, No.348, 100ft road, 4th Block, St.John Medical College Post, Koramangala, Bengaluru-560034. Rep. by its Manager Mr.Rathan Kumar A S/o Annegowda, Aged about 35 years. **(By Sri.T.P.Muthanna, Adv.)**
Vs	
DEFENDANT :	Mr.Manikanta S S/o Shekhar.P, Aged about 32 years, R/at No.122, 3rd Cross, 1st main A road, ISRO Layout, Bengaluru. **(Ex-parte)**

Date of Institution of the suit	27-09-2019		
Nature of the suit	Money Suit		
Date of Commencement of recording of evidence	10-03-2020		
Date on which judgment was pronounced	28-01-2021		
Total Duration	**Year/s** **01**	**Month/s** **04**	**Day/s** **01**

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

JUDGMENT

This is a suit for recovery of ₹.3,08,605 with current and future interest at 11.75% p.a. from the defendant.

2. Brief facts of the plaintiff's case are that considering the defendant's application dated 10-08-2016 for term loan to purchase a vehicle, it sanctioned loan of ₹.6,67,000/- on 24-08-2016. The defendant executed deed of hypothecation

in respect of the vehicle and agreed to repay the loan in 60 monthly installments of ₹.15,351/- each starting from 25-10-2016 with interest at 12.50% per annum. On 10-01-2019 defendant executed letter of revival confirming execution of documents in its favour. However, he has been defaulter and entire liablity has become overdue. In spite of repeated demands, the defendant failed to repay the amount, as such, it has taken over the physical possession of the vehicle and auctioned it for Rs.3,79,500/- on 06-03-2019 and issued notice demanding repayment of balance sum of ₹.3,04,309/-.

3. The defendant has failed to appear in response to service of summons and therefore placed exparte.

4. The manager of the plaintiff bank has filed affidavit in lieu of examination-in-chief, examined herself as Pw1 and got marked Ex.P1 to Ex.P9.

5. Heard arguments.

6. The point that arise for my consideration is:

1) Whether the plaintiff is entitled for recovery of ₹.3,08,605/- from the defendant as prayed?

2) What order?

7. My findings on the above points are

Point No.1: In the Affirmative

Point No.2: As per the final order for following

REASONS

8. Point No.1: Ex.P.1 is authorization for deposing in this case, issued in favour of Pw1. He has filed affidavit reiterating the plaint averments with regard to the defendant borrowing vehicle loan of ₹.6,67,000/ by hypothecating the vehicle and agreeing into repay the same in 60 monthly installments of ₹.15,351/- starting from 25-10-2016 and interest at 12.50% and then defaulting in repayment of the same, Ex.P2 shows that the defendant purchased the vehicle to run as taxi and therefore the transaction is commercial in nature.

9. Ex.P3 is the loan sanction letter. Ex.P4 is the 'B' Register extract in respect of the vehicle purchased by the defendant, by availing loan from the plaintiff and Ex.P5 is the deed of hypothecation. Ex.P6, the letter of revival in favour of bank on 10-01-2019 shows that the defendant, on his failure to repay the amount as agreed, as acknowledged the liability for the purpose of Sec.18 of Limitation Act. Therefore, the suit is in time.

10. The legal notice Ex.P7 dated 16-09-2019 sent by post as seen from the receipt at Ex.P8 shows that as on that day the defendant was due only a sum of ₹.3,04,309/-. Pw1 has stated that on the defendant's failure to repay the amount, the hypothecated vehicle was auctioned and only a ₹.3,79,500/- could be recovered and the defendant is liable to pay the balance with current rate of interest of 11.75% and penal interest at 2% per annum. Ex.P9 is the certified loan account extract pertaining to this transaction for the period 01-01-2016 to 23-08-2019.

11. The defendant, as discussed earlier has remained absent even after sufficient service of suit summons and thereby chose not to oppose or deny or dispute the plaintiff's claim with regard to nature of transaction, disbursement of loan, execution of hyphothecation deed, revival letter, issuance and service of demand notice at Ex.P7. As such, there is no reason to disbelieve the same as well as the evidence of Pw1 that the defendant, inspite of demand, has not come forward to repay the loan.

12. As provided U/s 34 of the Code of Civil Procedure, at the time of passing of decree, the Court has discretion to award reasonable interest on the principal sum from the date of suit till the date of decree and also interest not exceeding 6% p.a. from the date of decree till the date of payment. However, so far as the interest accrued prior to the filing of the suit is concerned, the Court has no such descretion and it is bound to award the interest at the agreed rate.

13. The proviso to Sub-section (1) of section 34 of CPC provides that where the liability in relation to the sums adjudged has arisen out of a commercial transaction, the rate of further interest may exceed 6% p.a., but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by Nationalized Banks in relation to commercial transactions.

14. Explanation II provides that for the purpose of section 34 CPC, a transaction is a commercial transaction if it is connected with the industry, trade or business of the party incurring the liability. Further, “Business” is any activity or enterprise (including employment, occupation, profession or commercial activity) carried on for gain, benefit, advantage or livelihood as observed in **Syndicate Bank Vs Mrs. K.Chandrakala Bhaktha & Anr.** reported in **2002 (6) KarLJ 414 (DB).** However, the documents produced during Pw1's evidence do not support the claim with regard to penal interest of 2% on delayed payment.

15. For the forgoing reasons, I am of the opinion that the plaintiff bank is entitled for ₹.3,08,605/- together with interest at 11.75% per annum from the date of suit till the date of decree and 8% per annum from the date of decree till the date of realization. Further, it is also entitled for cost of ₹.15,000/- towards legal fees, expenses incurred prior to and during pendency of the suit, as provided under clause (ii),(iii) of Explanation to Sub. Section (1) of Sec.35 and clause (d) of Sub. Section (4) of Sec.35 CPC. Accordingly, the point for consideration is answered in favour of the plaintiff.

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

ORDER

Suit of the plaintiff is decreed with cost of ₹.15,000/-.

The plaintiff bank is entitled to recover Rs.3,08,605/- from the defendant together with interest at 11.75% per annum from the date of suit till the date of decree and future interest @ 8% per annum from the date of decree till the date of realization.

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 her, corrected and then pronounced by me in the open court on this the **28th** day of **January 2021**)

(Smt.H.R.Radha)
LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

ANNEXURE

List of witnesses examined on behalf of Plaintiff:

Pw1 : Rathan Kumar

List of Exhibits marked on behalf of plaintiff:

Ex.P1	:	Authorization letter
Ex.P2	:	Loan Application
Ex.P3	:	Letter of Sanction
Ex.P4	:	B Register extract
Ex.P5	:	Deed of Hypothecation
Ex.P6	:	Letter of Revival
Ex.P7	:	Office of legal notice
Ex.P8	:	Postal receipt
Ex.P9	:	Statement of Accounts

List of witnesses examined on behalf of Defendant: NIL

List of Documents marked on behalf of defendant: NIL

(Smt.H.R.Radha)
LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

Pronounced in the open court vide separate

ORDER

Suit of the plaintiff is decreed with cost of ₹.15,000/-.

The plaintiff bank is entitled to recover Rs.3,08,605/- from the defendant together with interest at 11.75% per annum from the date of suit till the date of decree and future interest @ 8% per annum from the date of decree till the date of realization.

Draw decree accordingly.

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