IN THE COURT OF THE MUNSIFF, KATTAPPANA
PRESENT: SHRI. SIJI N.N. B.A. LLB., MUNSIFF

Monday, the 8th day of October, 2018.
16th day of Aswina, 1940.

O.S. 408/2015

PLAINTIFF : M/s. KLM Fincorp Ltd., 1st Floor, Mathewsons Trade Centre, Kaloor Kochi – 17, represented by its Legal Officer, Abin Mathew S/o Mathew Mani, aged 32 years, Kizhakkevazhakalayil House, Thoppippala P.O., Ayyappancovil Village.

(By Adv. K Baiju)

DEFENDANTS

1. Lincy Joy, aged 43 years, W/o Joy, Kottarathil House, Vellayamkudy Kara, Kattappana Village, Idukki Taluk.
2. Joy Abraham, aged 45 years, S/o Abraham, Kottarathil House, Vellayamkudy Kara, Kattappana Village, Idukki Taluk.
3. Thankamma, aged 80 years, W/o Bhaskaran Nair, Konnackal House, Nariyampara Kara, Ayyappancovil Village.

(By Adv. Saji Augustine for D2
&
No Vakkalath for D1 and D3 Set exparte)

This suit filed Under Section 26 and Order VII Rule 1 of the Civil Procedure Code and coming before me for hearing on 19.09.2018 and having been stood over for consideration till 08.10.2018 in the presence of the above counsel and the court on the same day delivered the following:-

JUDGMENT

The above suit is for realisation of money.

2. The averments contained in the plaint, in short, are as follows: The plaintiff is a company incorporated under Indian Companies Act,1956 and is engaged in finance business. The legal officer of the company is authorised to represent the plaintiff through power of attorney dated 23.9.15 on the basis of resolution passed by the Board of Directors on 16.5.15. On 18-02-2014 the first defendant had availed a loan of Rs.7.5 Lakhs from the plaintiff by executing a loan agreement and demand promissory note. The 2nd and 3rd defendants were guarantors. On the same date of execution of loan agreement and demand promissory note Rs. 7.5 Lakhs was disbursed to the 1st defendant. Defendants are bound to repay the same with 16% interest by 15 monthly installments of Rs.50,000/- from 18.02.14 and also bound to pay penal interest at the rate of 18% if they become defaulters. Agreement was executed and money was given at Kattappana office of the plaintiff.

3. Defendants defaulted to repay monthly installments from 17.5.14. After several demands, the first defendant issued cheque bearing No.259018 dated 5.8.15 for Rs.7.5 Lakhs drawn on SBT, Kattappana branch for discharging the said liability. But it was returned dishonoured on collection stating that funds insufficient. On 20.8.15 the plaintiff sent lawyers notice to the first defendant to

pay the cheque amount. But she has not paid the amount till date. Defendants are jointly and severally liable to pay a sum of Rs.8,17,750/-. Hence the above suit has been instituted.

4. The 2nd defendant appeared and filed written statement contended as follows: The above suit is not maintainable either under law or on facts. The suit is an abuse of process of law. The plaintiff is not a legal entity and the signatory to the plaint has no right to institute the suit. There is no resolution as claimed. It is not true that on 18-02-2014 the first defendant had availed a loan of Rs.7,50,000/- by executing a loan agreement and demand promissory note. On the other hand, officers of KMLM chits India Ltd had approached the defendants 1 and 2 and enticed them to join a chit had a sala of Rs.10,00,000/- (Rupees Ten Lakhs only). They had informed the defendant that an amount of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) will be paid to them immediately thereon. Thus the first defendant had subscribed chitty conducted by KMLM India Pvt. Ltd. Rs.7,50,000/- was received by the first defendant. Defendants 2 and 3 stood as guarantors. The said company had obtained the signature of the defendants on various papers, both blank and printed form. In addition to that they had obtained two cheques leaves of the defendants. It was informed that the subscription to the chitty will be Rs.50,000/-. Defendants remitted the amount and had paid five installments. Later the plaintiff had unauthorized presented the cheque bearing No.259018 and the same was dishonoured.

5. The plaintiff is not entitled to realize Rs.8,17,750/-. On the other hand, out of the 7,50,000/- received by the defendants they had repaid Rs.2,90,000/- to the KMLM chits India Pvt. Ltd. The plaintiff has no right to demand any amount from the defendant. Defendants had not availed any loan from the

plaintiff and agreed to pay back the same by 15 installments of Rs.50,000/- with 16% interest. Plaintiff is not entitled to charge penal interest at the rate of 18%. Defendants have no transaction whatsoever with the plaintiff. In fact the KMLM chit India Pvt. Ltd was conducting chitty business at Kattappana without any authority and against law. They are not entitled to claim any amount. The plaintiff has no right to present the cheque issued to KMLM chits India Ltd. 2nd defendant prayed to dismiss the above suit.

6. The following issues arise for consideration on the basis of the rival pleadings:

ISSUES

1. Whether the plaintiff is entitled to get a decree allowing it to realize any amount from the 2nd defendant and his assets?
2. Whether plaintiff is entitled for interest? If so, what is the rate of interest?
3. What is the order as to reliefs and costs?

7. The evidence consists of oral evidence of PW1 and DW1. The documentary evidence consists of Exts.A1 to A15 and B1 to B3. I have heard the counsel on both sides and perused case records.

8. **Issue 1 and 2:** These issues are considered together for brevity and convenience. The legal officer of the plaintiff adduced evidence as PW1. It is the specific case of the PW1 that on 18.2.14 the first defendant had availed a loan of Rs.7,50,000/- from the plaintiff. The 2nd and 3rd defendants stood as guarantors. They agreed to repay the amount by 15 monthly installments of Rs.50,000/-. They agreed to pay interest at the rate of 16%. They further agreed to pay penal interest at the rate of 18%. According to the plaintiff, defendants became

defaulters. In spite of repeated demands they did not repay the amount. Later first defendant had executed and issued Ext.A5 cheque to the plaintiff for discharging her liability.

9. It is the further evidence of PW1 that at the time of availing Rs.7,50,000/- the defendants had executed Ext.A1 agreement and Ext.A2 promissory note. The defendants agreed that they jointly and severally liable to repay the amount borrowed with agreed rate of interest. Defendants become gross defaulters. Then the plaintiff issued Ext.A3 notice to the defendants. They received it through Ext.A4 acknowledgement card. According to PW1, the first defendant in discharge of the liability issued Ext.A5 cheque to the plaintiff. When it was presented for encashment it was returned dishonoured due to insufficiency of funds is evidenced by Ext.A6 dishonour memo. Though the plaintiff issued Ext.A7 notice defendants have not cared to repay the amount. Ext.A9 is the copy of statement of account pertaining to the transaction between the plaintiff and defendants. According to PW1 he is duly authorised to represent the plaintiff and adduced evidence on the strength of Ext.A11 power of attorney. Ext.A11 power of attorney was executed on the strength of Ext.A10 resolution. Ext.A12 is the certified copy of certificate of incorporation of plaintiff. Ext.A13 is the certified copy of money lending license of the plaintiff. According to PW1, defendants are jointly and severally liable to pay 7.5 Lakhs with interest at the rate of 16% along with penal interest at the rate of 18%.

10. It is relevant to note that earlier the case was listed for trial the defendants did not appear and an ex-parte decree was passed against them. Subsequently, on the application of 2nd defendant, the ex-parte decree against him was set aside. The decree passed against D1 and D3 is still in force.

11. The main contention of the 2nd defendant is that he had a transaction with plaintiff in the year 2011. At that time the plaintiff had obtained his signature on certain blank and printed papers and also obtained photocopy of title deed of 3rd defendant herein. He discharged entire liability with plaintiff. He produced Ext.B2 document to show that he had subscribed a chit with plaintiff. The 2nd defendant had chitty transaction with plaintiff during the year 2011 is established by the contents of Ext. B2 document.

12. Another contention of the 2nd defendant that the first defendant joined a chitty with plaintiff for a sala of Rs.10,00,000/-. They obtained Rs.7.5 Lakhs on the 7th installment. The 2nd and 3rd defendants were guarantors for the chit. They did not borrow any loan from the plaintiff except Rs.7,50,000/- as chit prize. It is established that on 18.02.14 the 1st defendant had borrowed an amount of Rs.7,50,000/- from the plaintiff agreeing to repay it by 15 monthly installments with 16% interest on executing Ext. A1 and 2 documents. Defendant on the other hand denied loan transaction and contended that first defendant joined a chitty with plaintiff for a sala of Rs.10,00,000/- and received Rs.7,50,000/- as chit prize. They did not borrow any loan amount. They denied the interest claimed by the plaintiff.

13. Considering rival contentions it is seen that parties disputed the nature of transaction. The defendants admitted that the 1st defendant received Rs.7,50,000/- from the plaintiff. On going through Ext.A1 document it is seen that the first defendant borrowed a loan of Rs.7,50,000/- from the plaintiff agreeing to repay it with 16% interest by 15 monthly installments in addition to the money already paid. According to the defendants they have already repaid Rs.2,90,000/- to the plaintiff. The plaintiff admitted that fact. According to the

2nd defendants he is liable to pay the amount with interest after deducting Rs.2,90,000/-.

14. I stated earlier PW1 admitted that the defendants repaid Rs. 2.9 Lakhs. Plaintiff has no consistent case regarding the nature of transaction. It is seen from the plaint and Ext. A1 document that on 18-02-2014 the 1st defendant borrowed Rs. 7.5 Lakhs. When it was noticed that the pleadings and contents of Ext. A9 statement of account are not tallying with each other the plaintiff had changed its earlier stand and set up a new case that the plaintiff had introduced a scheme loan of Rs.10,00,000/- for its customers. According to the terms of the loan if party pay Rs.50,000/- each per month they will get Rs.9,50,000/- after 20 months. If the customer wants money during the tenure of the scheme he get money as loan with interest at the rate of 16%. The first defendant joined in that scheme. She paid 7th installments and obtained Rs.7,50,000/- as loan on the strength of Ext. A1 and 2 documents. Plaintiff produced Ext.A14 brochure to prove the same. He further produced Ext.A15 pass book also.

15. It is the settled position of law that the parties have to adduce evidence according to their pleadings. In the present case, the plaintiff pleaded that on 18-02-2014 the 1st defendants had availed a loan of Rs.7,50,000/- on the strength of Ext.A1 agreement. Plaintiff had no case, at the time of instituting the plaint, that the 1st defendant had joined any term loan for Rs. 10 Lakhs. It is pertinent to note that at the time of instituting the plaint the plaintiff was aware of the nature of transaction, amount involved in the transaction and the amount repaid by the defendants. Plaintiff has not pleaded all these facts in the plaint. There is no satisfactory reason for the same. When the defendant came with a contention that they had not borrowed any loan from the plaintiff they joined a chitty then

plaintiff had changed its earlier stand and came with a new contention. Since there is no sufficient pleading to the case advanced by the plaintiff at a belated stage, according to me, the new case of plaintiff is only to fill up lacunae in evidence.

16. At least the defendants admitted that they received Rs.7,50,000/- from the plaintiff. It is evident and admitted that they repaid Rs. 2.9 Lakhs. These facts are proved by the contents of Ext.A1 and A9 documents. Defendants have no case that they discharged entire liability with the plaintiff. The 2nd defendant is not entitled to get an unlawful enrichment on the ground that plaintiff failed to prove the nature of transaction. He is liable to repay the remaining amount of Rs 4,60,000/- (7,50,000/- - 2,90,000= 4,60,000/-) with interest. The plaintiff is entitled to realize an amount of Rs.4,60,000/- with agreed rate of interest of 16% interest from 18.02.2014 till the date of decree thereafter at 6% per annum till the date of realisation from the 2nd defendant and his assets.

17. **Issue 3:** In the result, the suit is decree8d in part as follows:- plaintiff is allowed to realize and recover Rs.4,60,000/- (Four Lakhs Sixty Thousand only) with 16% interest from 18.02.2014 till the date of decree and thereafter at 6% per annum till the date of realization from the 2nd defendant and his assets. Plaintiff is entitled for proportionate costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of October, 2018.

SIJI N.N.
MUNSIFF, KATTAPPANA

APPENDIX

Plaintiff's Exhibits:-

A1	18.02.2014	:	Loan Agreement.
A2	18.02.2014	:	Promissory Note.
A3	24.07.2015	:	Office of Demand Notice 3 Nos.
A4	-	:	Acknowledgement Cards 3 Nos.
A5	05.08.2015	:	Xerox copy of Cheque No. 259018.
A6	06.08.2015	:	Xerox copy of Dishonour Memo.
A7	20.08.2015	:	True copy of Lawyer's Notice.
A8	20.08.2015	:	True copy of Postal Receipt.
A9	18.02.2014	:	Statement of Account.
A9(a)	22.02.2018	:	Statement of Account.
A10	24.11.2016	:	Certified copy of Resolution.
A11	29.11.2016	:	Power of Attorney.
A12	-	:	Certified Copy of Incorporation.
A13	14.07.2014	:	Certified Copy of Money Lending License.
A14	-	:	Loan Repayment Brochure.
A15	-	:	Pass Book.

Defendents' Exhibits:-

B1	03.08.2015	:	Reply Notice.
B2	-	:	Pass Book.
B3	29.04.2014	:	Receipt.

Court Exhibits:-		:	Nil.
Plaintiff's Witnesses:-			
PW1	22.02.2018	:	Bineesh Mathew.
Defendents' Witnesses:-			
DW1	26.02.2018	:	Joy Abraham.
Court Witnesses:-		:	Nil.

MUNSIFF

Typed by : Mahesh
Compd.by : Simi

JUDGMENT IN O.S. 408/2015
DATED: 08.10.2018