IN THE COURT OF THE MUNSIFF, KATTAPPANA
PRESENT: FELIX JOHN, CIVIL JUDGE (JUNIOR DIVISION)
Wednesday the 27th day of November, 2024 / 6th day of Agrahayana, 1946.

OS 524/2022

Plaintiff	:	Union Bank of India, Eattithoppu Branch represented by its Branch Manager, Lijo P.Jose, S/o Jose P.J.
		By Adv: K.J.Benny & Adv: Sunny Cherian
Defendant	:	Jerry Jose, S/o Jose @ Varghese, aged about 37 years, Muthuplackal House, Santhigram Kara, Erattayar Village, Udumbanchola Taluk.
		By Adv:Saji Augustine

This Suit is filed under Section 26, Order VII, Rules 1 and 2 and Order 34 of the CPC and coming before me for hearing on 26.11.2024 and having been stood over for consideration till 27.11.2024 in the presence of the above counsel and the Court on the same day delivered the following :

JUDGMENT

The suit is for realization of money.

2. Plaintiff's case in brief is as follows:- The union bank of India is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1970 having its head office at Mumbai and having one of its branch offices at Eattithoppe. The plaintiff granted an Agricultural Loan of Rs.4,00,000/- to the defendant on 23.09.2016. On acceptance of the loan amount, the defendant executed a Demand Promissory Note and Hypothecation Agreement in favour of the plaintiff on 23.09.2016 itself. As per the hypothecation agreement, the defendant hypothecated the standing crops in his property extending to 1 Hectare 6.43 Ares of land in Sy.No. 1/1 of Erattayar Village too. A separate Interest Agreement itself was executed by the defendant on 23.09.2016 whereby he has agreed and confirmed that the applicable rate of interest would be 'MCLR" (Marginal Cost of funds Lending Rate) plus 'Spread', which in turn would be MCLR +1.9 i.e, 11.3%. Apart from that, as collateral security, the defendant created an Equitable Mortgage, by way of deposit of title deed, with respect to his 1 Hectare 6.43 Ares of land in Sy No. 1/1 of Erattayar (formerly Kalkoonthal) Village covered by and Settlement Deed No. 2352/11 dated 13.05.2011 and Settlement Deed No. 2479/11 dated 23.05.2011 of SRO Kattappan. The defendant deposited his title deed stated above with the plaintiff's Eattithoppu Branch on 23.09.2016 with the intention of creating an equitable mortgage.

3. The defendant agreed to repay the loan amount with interest at 11.30% per annum with half yearly rests within a period of 1 year. The defendant further agreed to pay an additional interest in case of default in the repayment schedule. The schedule property is liable for the transaction and the plaintiff is entitled to recover the amount by sale of the schedule property.

4. The defendant was not prompt in repaying the loan amount. Notices including legal Notices were served on the defendants. Legal Notice was issued to the defendants on 11.04.2022. Inspite of all that, the defendants did not care to settle the accounts. Now the plaintiff is entitled to realise an amount of Rs.5,93,923/- from the defendants.

5. <u>The defendant filed written statement averring as follows:-</u> The signatory to the plaint has no authority to sign the plaint and the suit as filed is not maintainable. The availing of the loan is admitted. But the execution of agreement 23/09/2016 agreeing the the of interest at 11.3% is denied. It is also submitted that this defendant had not issued any receipt confirming the equitable mortgage. So there is no mortgage of the property and a suit for foreclosure of the mortgage is not maintainable. The plaintiff is not entitled for any half yearly rest and the rate of interest stated is not allowable. So also the plaintiff is not entitled for any additional interest also. In a suit for money based on mortgage plaintiff is not entitled for any interest above 6% per annum.

6. Based on the pleading of the plaintiff, the following issues arise for consideration:

1. Whether the plaintiff is entitled to the plaint amount claimed?
2. If so, what is the rate of interest ?
3. Reliefs and costs ?

7. When the case was listed for trial, the defendant was absent. Hence he was set exparte.

8. The Branch Manager of the plaintiff bank filed proof affidavit in lieu of examination in chief and was examined as PW1. Exts.A1 to A9 were marked.

9. Heard the learned counsel for the plaintiff.

10. **<u>Issue Nos.1 & 2:-</u>** The Branch Manager of the plaintiff bank filed affidavit in lieu of examination in chief and deposed in tune with the plaint averments. Ext.A1 is the demand promissory note dated 23.09.2016. Ext.A2 is the letter of sanction dated 23.09.2016. Ext.A3 is the Hypothecation Agreement dated 23.09.2016. Ext.A4 is the memorandum of deposit of title deed dated 23.09.2016. Ext.A5 is the letter of deposit of title deed dated 23.09.2016. Ext.A6 is the interest agreement dated 23.09.2016. Ext. A7 is the letter of continuity dated 23.09.2016. Exts.A8 series are the copy of legal notice dated 11.04.2022, postal receipts and acknowledgment cards. Ext.A9 is the statement of account with certification.

11. As the defendant was set exparte, the evidence adduced by the plaintiff is unrebutted and uncontroverted. From the evidence of PW1 and Exts.A1 to A9, this Court is of the finding that the plaintiff is entitled to realise an amount of Rs.5,93,923/- from defendant. Considering the nature of the transaction, interest at the rate of 6% per annum from the date of suit till the date of realization is sufficient in this case. Hence issue Nos.1 to 2 are answered in favour of the plaintiff bank.

12. **<u>Issue No.3:-</u>** In the result of finding in issue Nos.1 to 2, the plaintiff is entitled to recover an amount of Rs.5,93,923/- from the defendant. The plaintiff is also entitled to interest rate at 6% (Six percent) per annum from the date of suit till the date of realization. The plaintiff is entitled to recover the amount from the defendant and from his assets. The property of the defendant shall remain as charge towards the decree. Considering the facts and circumstances of the case, the plaintiff is entitled to realise the costs of the suit from the defendant.

In the result, the suit is decreed with costs as follows:-

The plaintiff is entitled to recover an amount of Rs.5,93,923/- (Rupees Five Lakhs Ninety Three Thousand Nine Hundred and Twenty Three only) from the defendant with 6% interest from the date of suit till the date of realisation. The plaintiff is entitled to recover the amount from the defendant and from his assets. The property of the defendant shall remain as charge towards the decree. The plaintiff is entitled to a statutory charge over the plaint schedule property to realize the decree amount. Communicate the order to the SRO and VO concerned.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 27th day of November, 2024.

FELIX JOHN,
CIVIL JUDGE (JUNIOR DIVISION)

APPENDIX

Plaintiff's Exhibits :		
A1	23.09.2016	Demand Promissory note
A2	23.09.2016	Sanction letter
A3	23.09.2016	Hypothecation Agreement
A4	23.09.2016	Memorandum of deposit of title deeds
A5	23.09.2016	Letter of deposit of title deed
A6	23.09.2016	Interest agreement
A7	23.09.2016	Letter of continuvity
A8 series	11.11.2022	True copy of legal notice with postal receiptand acknowledgment card
A9	24.11.2022	Statement of account with certification

Defendant's Exhibits :		NIL
Court Exhibits :		NIL
Plaintiff's Witnesses :		
PW1	12.09.2024	Ajeesh E.A.
Defendant's Witnesses :		NIL
Court Witnesses :		NIL

CIVIL JUDGE (JUNIOR DIVISION)

Typed by :Lekha T.S.

Compd. by : Simi

FAIR JUDGMENT IN OS 524/2022
DATED:27.11.2024.