IN THE COURT OF THE MUNSIFF, KOTTAYAM.

Present:- Smt. Deepa Mohanan, Additional Munsiff.

Wednesday, 31st day of January, 2024
17th day of Magha, 1945

O.S. No. 631/2022

Plaintiff:-

Roshan Shajan, aged 23 years, S/o Late Shajimon Mathew, Proprietor, M/s Mathew and Sons Finance,XIII/666, Mathew and Sons Complex, off T.B.Road, Kottayam, residing at Oonnukallumthottiyil House, Kattachira P.O, Kottayam Taluk, Kottayam District.

By Adv. Sri. Roy Vanchipurackal

Defendants:-

1. Mercy Joshy, aged 47 years, S/o Joshy George, Moozhiyankal House, Poonjar P.O, Poonjar Nadubhagam Village, Meenachil Taluk, Kottayam District 686581

2. Joshy George, aged 47 years, S/o Varkey, Moozhiyankal House, Poonjar P.O, poonjar Nadubhagom Village, Meenachil Taluk, Kottayam District, Pin.686581

3. Joseph.M.M, aged 81 years, S/o Miachel, Moozhiyankal House, Aruvithara P.O, Poonjar P.O, Poonjar Nadubhagom Village, Meenachil Taluk, Kottayam District 686122.

D1 to D3 Set exparte.

This Suit having been finally heard on 29.01.2024, the court on 31.01.2024 delivered the following:-

JUDGMENT

Suit for money.

2. Plaintiff’s case in brief is, as follows:- Plaintiff is engaged in the business of money lending under the name and style 'M/s. Mathew and Sons Finance' registered under the Kerala Money Lenders Act, 1958. On 15.11.2021, the 1st defendant along with the 2nd and the 3rd defendants approached the plaintiff for a loan of ₹10,00,000/- (Rupees Ten Lakh only) for the purpose of 1st defendant's business. Defendants agreed the terms and conditions and executed a Loan Cum Guarantee Agreement on 15.11.2021 and thus accepted the terms and conditions. Plaintiff advanced the said amount through vide cheque no.653877 dated 15.11.2021 of Bank of Baroda, Kottayam branch to the 1st defendant as Loan No.L1 8864/2021. The 1st defendant had also executed a voucher dated 15.11.2021 acknowledging the receipt of the above said loan amount from the plaintiff's concern. As per the Loan Cum Guarantee Agreement, the 1st defendant specifically consented to repay the loan amount along with 12% interest per annum amounts to ₹12,00,000/- in 20 equal monthly installments of ₹60,000/-, falling due on the 15th day of every month. Defendants 1 to 3 had also executed a Demand Promissory Note dated 15.11.2021 in favour of plaintiff. The 2nd and the 3rd defendants are the guarantors of the 1st

defendant. The 1st defendant has paid only 10th installment so far and has been regularly defaulting payments from the 11th installment onwards. Plaintiff contacted the defendants several times but they did not pay any amount or send a satisfactory reply. Subsequently, plaintiff issued a Legal Notice dated 17.10.2022 to the defendants. Even after the notice, defendants did not pay any amount. Therefore, plaintiffs are entitled to recover an amount of ₹5,94,000/- (Rupees Five Lakh and Ninety Four Thousand only) with 9% interest on principal amount of ₹5,94,000/- (Rupees Five Lakh and Ninety Four Thousand only) from the date of suit till realisation from the defendants and their assets with costs.

3. Even though defendants 1 to 3 were served with summons, only D3 entered appearance. But he did not file written statement. D1 and D2 did not appear or file written statement. Hence all the defendants were set exparte.

4. PW1 was examined and Exhibits A1 to A7 were marked.

5. Heard the learned counsel for plaintiff.

6. Power of attorney holder of the plaintiff was examined as PW1. She filed proof affidavit in tune with the plaint averments. Exhibit A1 is the loan cum guarantee agreement dated 15.11.2021. Exhibit A2 is the voucher dated 15.11.2021. Exhibit A3 is the promissory notes dated 15.11.2021 signed by the defendants. Exhibit A4 is the copy of lawyer notice

dated 17.10.2022 issued to the defendants demanding repayment of the loan amount. Exhibit A5 series are the postal receipts (3 in numbers). Exhibit A6 is the account statement of Loan No.L1 8864/21-22. Exhibit A7 is the copy of power of attorney executed by the plaintiff concern in favour of PW1.

7. Exhibits A1 to A7 sufficiently show that, defendants had availed the loan and received the amount. By issuing notice plaintiff demanded the amount due. Exhibit A4 is the office copy of the notice. Exhibit A5 (series) postal receipts show the issuance of notice to the defendants. As per the plaintiff, the outstanding amount was not repaid by the defendants. Thus the plaintiff is found to have proved the case.

In the result, the suit is decreed as follows ;

1) Defendants are directed to pay ₹5,94,000/- (Rupees Five Lakh and Ninety Four Thousand only) with 9% of interest per annum from the date of the suit till date of decree and thereafter also with 6% interest per annum from the date of decree till realization of money.

2) Defendants are jointly and severally liable to pay the said amount to the plaintiffs.

3) Plaintiffs are entitled to realize costs of the suit from the defendants.

Dictated to Confdl.Asst., typed by him corrected by me and pronounced in open court, on this the 31st day of January 2024).

Sd/-
Deepa Mohanan
Additional Munsiff

A P P E N D I X

Exhibits Marked For the Plaintiff:-

A1	15.01.2021	Loan cum Guarantee Agreement
A2	15.11.2021	Voucher
A3	15.11.2021	Demand promissory note
A3 (a)	15.11.2021	Demand promissory note
A3 (b)	15.11.2021	Demand promissory note
A4	17.10.2022	Office copy of Lawyers notice
A5	-	Posted receipt
A5(a)	-	Posted receipt
A6	01.11.2022	Account Statement of Loan No. LI 8864/21-22
A7	11.12.2023	Copy of power of attorney excecuted by the plaintiff in favour of PW1

Exhibits Marked For the Defendants:- NIL

Witness Examined For the Plaintiff:-

PW1	29.01.2024	Shini Shajan

Witness Examined For the Defendants:- NIL

Id/-
Additional Munsiff

Typed by: Himageetha

Compared by: Jaya

Additional Munsiff

Addl. Munsiff's Court, Kottayam
Copy of Judgment
in O.S. No. 631/2022
<u>Dated : 31.01.2024.</u>