CHCH020032982022

Presented on : 04-10-2022
Registered on : 06-10-2022
Decided on : 02-12-2024
Duration : 2 years, 1 months, 29 days

IN THE COURT OF
Civil Judge Jr. Div. AT Chandigarh,Chandigarh
Presided Over by Ms. Chinu Sharma

CS CJ/1780/2022

Canara Bank, a body corporate, Erstwhile Syndicate Bank constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act of 1970 having is Head Office a 112 JC Road, Bangalore-560002 (Karnataka) and a Branch Office, amongst other places at Sector 45, Chandigarh through its Authorized Officer Sh. Ashu Puggal.

...Plaintiff

Versus

1. M/s Khan Electronics Shop At H. No.1558/7, near Gugga Mari, Burail, Sector 45, Chandigarh through its Proprietor Sher Khan.
2. Sherkhan Proprietor M/s Khan Electronics Residence of H. No.1565, Room No. 5, Top Floor, Burail, Sector 45, Chandigarh-160047

...Defendants

Suit for recovery of Rs.3,37,952.44/- in the following accounts against defendants in the name of the defendant no. 1.

i. Rs.2,59,873.43/- in Syndicate Mudra CC Limit account No.96531400000380 inclusive of interest

& banking charges upto & including 31.08.2022 and pdendente lite and future interest thereon @9.95% per annum along with penal inerest 2% per annum with monthly rests, from 01.09.2022 till actual realization thereof along with cost.

ii. Rs.37,447.01/- in GECL Loan account No.96539160000162 inclusive of interest & banking charges upto & including 07.09.2022 and pendente-lite and future interest thereon @8.90% per annum along with penal interest @ 2% per annum with monthly rests, from 08.09.2022 till actual realization thereof along with cost.

iii. Rs.4896/- in RFITL-2.0-1 Loan account No.17300031364 inclusive of interest & banking charges upto & including 10.09.2022 and pendente-lite and future interest thereon @10.95% per annum along with penal interest @2% per annum with monthly rests from 11.09.2022 till actual realization thereof along with cost.

iv. Rs.9879/- in RFITL-2.0-2 Loan account No.17300031603 inclusive of interest & banking charges upto & including 10.09.2022 and pendente lite and future interest thereon @ 10.95% per annum along with penal interest @2% per annum with monthly rests, from 11.09.2022 till actual realization thereof along with cost.

v. Rs.25857/- in Guaranteed Emergency Credit extension Loan account No.170003062754 inclusive of interest & banking charges up to & including 29.08.2022 and pendente-lite and future interest thereon @8.90% per annum along with penal interest @2% per annum with monthly rests from 30.08.2022 till actual realization thereof along with cost.

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Present: Ms. Kanchan Sehgal, counsel for plaintiff.
Defendants exparte VOD 03.07.2024.

<u>JUDGMENT</u>

The plaintiff has filed the present suit for recovery as detailed in the head note of the plaint mentioned above. As per the gazette notification dated 04.03.2020, Syndicate Bank has been amalgamated with Canara Bank in pursuance of the order of Govt. of India. The transferee bank i.e. Canara Bank has overtaken the assets and the liabilities of the said Syndicate Bank and as such, the present suit has been filed by Canara Bank by virtue of aforesaid notification. That the present case is being filed by Sh. Ashu Puggal, authorized officer of plaintiff bank.

2. The case of the plaintiff is that defendant no. 1 is the proprietorship concern and defendant no. 2 is the proprietor of defendant no. 1 concern. That defendants have been doing the business of manufacturing of stabilizers etc. defendant no. 2 on behalf of defendant no. 1 & on his own behalf approached the

plaintiff bank requesting for grant of credit facilities i.e. Syndicate Mudra – CC Limit Account No.96531400000380 for Rs.2,50,000/- for their business. The said application for credit facilities i.e. loan application dated 07.08.2018 was sanctioned vide sanction letter dated 08.08.2018. Thereafter, on the basis of the documents provided by the defendants and documents/agreements executed by the defendants in favour of the plaintiff bank and in view of the defendants agreeing to the various terms and conditions therein including hypothecation of the raw material, finished and semi-finished sock in favour of plaintiff bank, the plaintiff bank sanctioned and disbursed the above said loan and the said loan was covered under CGTMSE scheme of Govt. and it was running limit. Defendant agreed to the terms and condition of the loan agreement and under to make the payment as and when the liability arose. Thereafter, defendant no. 2 on behalf of defendant no. 1 again approached the plaintiff bank for renewal of working capital limit of Rs.2.5 lacs which was permitted by plaintiff bank. That defendant no. 2 on behalf of defendant no. 1 on his behalf again approached the plaintiff bank after amalgamation in to Canara Bank on 15.10.2020 for renewal of working capital limit of Rs.2.5 lacs which was permitted by plaintiff bank. That in consideration of renewal of said CC to the defendants, defendant no. 2 executed and delivered documents to plaintiff bank at Chandigarh. That on execution of relevant documents, the limit was renewed by plaintiff bank on 15.10.2020. Defendants again approached the plaintiff bank requesting for fund based working capital demand loan due to covid 19 affected customers which was given for operational liabilities, restart business and to meet temporary liquidity mismatch arising out of covid 19 outbreak including payment of statutory dues, wages, electricity bills etc. The loan of Rs.50,000/- was sanctioned to defendants vide sanction letter dated 20.06.2020. Thereafter, on the basis of the documents provided by the defendants and documents/agreements executed by the defendants in favour of the plaintiff bank and in view of the defendants agreeing to the various terms and conditions in favour of plaintiff bank, the plaintiff bank sanctioned and disbursed the above said loan and the said loan. The repayment of loan was to be made in 36 installments with 12 months holiday. That defendants again approached the plaintiff bank for moratorium i.e. deferment of payment of interest in terms of RBI Covid-19 regulatory package for the credit facilities. As such, it was permitted to convert the accumulated interest debited in Working Term Loan (CFITL), in terms of the guidelines of the RBI. That plaintiff Bank permitted for reconstructing of working capital limit of Rs.2.5 lacs and conversion of interest accrued of Rs.5500/- and to be accrued in next 6 months of Rs.11,100/- in to FITL loan. That defendants executed relevant documents in consideration of reconstruction of credit facilities. That on execution of relevant documents, the RFITL loans were disbursed to defendants. Defendants again approached the plaintiff bank requesting for sanction of GECL extension loan for heir working capital requirement which was permitted. Thereafter, on the basis of the documents provided by the defendants and documents/agreements executed by the defendants in favour of the plaintiff bank and in view of the defendants agreeing to the various terms and conditions therein including hypothecated agreement in favour of plaintiff bank, the plaintiff bank sanctioned the loan. However, the defendants did not adhere to financial discipline of bank & started making default in the repayment of loan and plaintiff bank number of times requested the said defendants to deposit amount outstanding in the loan account but all in. That plaintiff bank taking into consideration the conduct of defendants, who are defaulters regarding the borrowed loan amount has sent various notices including legal notice dated to deposit the amount but defendants did not clear the liability till today. That liability of defendants are joint and several. After taking into consideration all the debits and credits, a sum of Rs.3,37,952.44/- as detailed in the headnote of the plaint. The defendant did not adhere to the financial discipline of the plaintiff Bank and did not repay the loan amount on agreed terms despite issuance of the legal notice. The defendant did not pay the loan installments on due dates despite number of requests and demands made by the Bank due to which the account was declared NPA on 21.06.2022 and again when the defendants failed to make the payment even after service of the notice dated 20.09.2022. Hence, the present suit.

3. The defendants were duly served in the present case through publication but they failed to appear before the Court and was proceeded against exparte vide order dated 03.07.2024.

4. During ex parte evidence, in order to prove his case the plaintiff deposed through its Manager Ms. Ashu Puggal who while stepping into witness-box tendered into evidence her duly sworn and attested affidavit i.e. Ex.PW1/A and proved on record the following documents: -

Exhibits	Documents
Ex.A1	Copy of notification.
Ex.A2	Copy of Authority Letter.

Ex.A3	Copy of loan application dated 07.08.2018.
Ex.A4	Copy of loan Sanction letter dated 08.08.2018.
Ex.A5	Copy of agreement along with schedule dated 08.08.2018.
Ex.A6	Copy of letter of renewal dated 26.09.2019.
Ex.A7	Loan application dated 15.10.2020.
Ex.A8	Sanction memorandum dated 15.10.2020.
Ex.A9	Copy of letter of proprietorship dated 15.10.2020.
Ex.A10	Copy of letter of undertaking not to avail book debt facility elsewhere.
Ex.A11	Copy of letter of undertaking/consent regarding coverage of loan under CGTMSE.
Ex.A12	Copy of letter of renewal dated 15.10.2020.
Ex.A13	Copy of link letter in respect of Rs.2.50 lacs dated 15.10.2020.
Ex.A14	Copy of AOD dated 15.10.2020.
Ex.A15	Sanction memorandum dated 30.12.2021.
Ex.A16	Sanction memorandum dated 20.06.2020.
Ex.A17	Copy of offer letter with acceptance letter for GECL dated 20.06.2020.
Ex.A18	Copy of undertaking from the borrowers dated 20.06.2020.
Ex.A19	Copy of letter of undertaking re-loan/advances dated 20.06.2020.
Ex.A20	Copy of take delivery letter to DPN dated 20.06.2020.
Ex.A21	Copy of pronote dated 20.06.2020.
Ex.A22	Copy of link letter dated 20.06.2020.
Ex.A23	Copy of loan application dated 10.06.2021.
Ex.A24	Copy of loan Sanction letter.
Ex.A25	Copy of undertaking from the borrowers dated 10.06.2021.
Ex.A26	Copy of debt restructuring agreement dated 10.06.2021.
Ex.A27	Copy ofdebtor creditor agreement dated 10.06.2021.
Ex.A28	Copy of pronote dated 29.12.2021.
Ex.A29	Agreement-cum-deed of Hypothecation executed dated 29.12.2021.
Ex.A30	Copy of undertaking dated 29.12.2021.
Ex.A31 & A33	Legal notices.
Ex.A32 & A34	Postal receipts.
Ex.A35 to Ex.A39	Copy of loan account statements.

5. Thereafter, Ld. Counsel for plaintiff closed the ex parte evidence vide her statement on record.

6. I have heard counsel for plaintiff and carefully perused the judicial file along with the documents placed on judicial file. The evidence brought by

the plaintiff has remained unrebutted, unchallenged and uncontroverted as defendant never appeared before the Court. The defendant despite their services in the present case did not appear before the court to take any kind of stand before the court meaning thereby that defendants have nothing to say in response to the pleadings and the case set out by the plaintiff Bank with respect to recovery of the loan against them.

7. Ld. Counsel for plaintiff while referring to the evidence mustered by plaintiff in the shape of PW1 Ms. Ashu Puggal submitted that the plaintiff bank has successfully proved their claim that defendant had availed loan from the plaintiff bank but failed to repay the loan amount despite repeated requests of the Bank. As such, the suit of the plaintiff is liable to be decreed.

8. I have meticulously gone through the file and loan documents, on the file. The case of the plaintiff bank is that defendants has availed loan from the plaintiff bank as detailed above and got them renewed from time to time but the defendant has not repaid the loan with interest as per terms and committed default. Indisputably, the present suit has been filed by Manager of the bank, who is duly competent person. PW1 Ms. Ashu Puggal, Manager of plaintiff bank while stepping into witness box has deposed about the execution of the loan and execution of the documents by defendant. All these documents have been proved by him during the course of evidence. On the other hand, since the defendant was proceeded against exparte, no objection has been raised on behalf of defendant as evidence of plaintiff remained unrebutted and unchallenged.

9. As per account statements i.e. Ex.A35 of Rs.2,59,873/-, Ex.A36 of Rs.37,447/-, Ex.A37 of Rs.4,896/-, Ex.A38 of Rs.9,879/- and Ex.A39 of

Rs.25,857/- is outstanding against defendants on account of non-payment. Therefore, plaintiff bank is entitled for the recovery amount from filing of the present suit along with interest till its actual realization. Thus, it stands fully established that the defendant despite availing loan advanced by plaintiff bank, had became irregular and failed to return any payment to the plaintiff bank within time as required under rules. Therefore, defendant is liable to repay Rs.3,37,952.44/- as calculated above upto the date of filing of suit from her person.

10. Adverting to the interest claimed by the plaintiff. As per settled law in commercial transaction by public financial institutions, the contractual rate of interest should be the rule and departure a rare exception. The borrower had agreed to repay the amount along with interest as per terms and conditions all the loan accounts. The plaintiff bank has claimed pendente-lite and future interest. As such, in view of the documents adduced by the plaintiff bank, they are entitled to simple interest of 6% pendente-lite and are also entitled to future interest @ 6% per annum since the loan was not a commercial transaction.

11. In case, defendant fails to make the payment of plaintiff bank, plaintiff bank would be at liberty to get loan amount recovered from hypothecated goods vide hypothecated agreement.

12. In view of my findings returned discussed above, the suit of plaintiff bank succeeds and is hereby decreed exparte with costs. Decree for recovery of Rs.3,37,952.44/- is passed in favour of the plaintiff bank against the defendant along with pendente-lite and future interest @ 6% per annum from the date of filing the suit till its realization. As such decree is passed in favour of the plaintiff

Bank and the plaintiff bank shall make the necessary calculation and intimate the same to defendant within period of one month from today and three months time is hereby given to the defendant to make the payment of the decretal amount to the plaintiff Bank and failing to make the payment by defendant within the said period it would be open to the plaintiff Bank to approach the court for recovery of the decretal amount. It is further ordered that in case the amount is not realized from the hypothecated goods, then this decree shall also be enforceable against the personal properties of the defendant. Decree sheet be drawn up accordingly. File be consigned to the record room within time prescribed as per rules, after due compilation.

Announced:
Dated: 02.12.2024

(Chinu Sharma)
Civil Judge (Junior Division),
Chandigarh/UID 0557

Sunidhi Madan Gr.III

Present: Ms. Kanchan Sehgal, counsel for plaintiff.
Defendant exparte VOD 03.07.2024.

Today the case was fixed for exparte evidence of plaintiff. Ld. Counsel for plaintiff closed exparte evidence vide separate statement on record.

Arguments heard. Vide separate detailed judgment of this court of even date, the suit of the plaintiff is decreed exparte with costs as detailed therein. Any miscellaneous application if pending shall be deemed to be not pressed. Decree sheet be prepared accordingly and file be consigned to the record room, after due compliance.

Announced:
Dated: 02.12.2024

(Chinu Sharma)
Civil Judge (Junior Division),
Chandigarh/UID 0557

Sunidhi Madan Gr.III