High Court Form no (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT

IN THE COURT OF MUNSIFF NO.5, AT KAMRUP METRO

DISTRICT: KAMRUP (METRO)

PRESENT: Smti. Bhashyarima Bhuyan, AJS

23rd Day of March, 2023

MONEY SUIT NO. 455 of 2022

ICICI BANK LIMITED,

1. A public Company incorporated under the Companies Act, 1956 and a Banking Limited within the meaning ofg Banking Regulation Act 1949 having its registered office at Vadodara Landmark Race Course Circle Vadodra 390007 and a branch office at Ohio Shopping Complex, Fancy Bazar Guwahati, represented by Arindam Deka , Assistant Manager and Power Of Attorney holder of ICICI Bank Limited.

……………. Plaintiff

VERSUS

Mr. Moinuddin Ahmed
S/O Md. Abdul Rashid, Village Rongagara, Huzrangagara, Haiborgaon, Nagaon, Assam

……………… Defendant

This suit coming for final hearing on 02/02/2023 in presence of Learned counsels Mr. S. R Gogoi, Mrs. P. R Mahanta, Mr.

H. Baruah, Mr. N. K Deka and Mr. P.Borah appeared for the Plaintiff.

None appeared on behalf of the defendant.

And having stood for consideration to this day, the court delivered the following judgment.

JUDGMENT

1. This is a suit filed by the Plaintiff for the recovery of money amounting to Rs. 3,62,952,/- (Rupees Three Lakhs Sixty Two Thousand Nine Hundred and Fifty Two) Only.

Plaintiff's Case

2. The brief fact of the case of the plaintiff is that the Plaintiff is a public limited company incorporated under the Companies Act, 1956 and the defendant approached the plaintiff company for availing a loan for purpose of a personal car and as such submitted a Preliminary Credit Facility Application Form bearing no. TT056414227 Dated 13/06/200.

3. That the Plaintiff Bank after being satisfied with the creditability of the defendant agreed to grant acredit/ loan facility of Rs. 6,76,000/- (Rupees Six Lakhs Seventy-Six Thousand) only in favour of the Defendant against the hypothecation of the Asset with the Plaintiff Bank. Accordingly, the Defendant have accepted the

terms and conditions of the said facility by executing and entering into a credit facility agreement with the Plaintiff vide credit facility agreement No. LANGO00010658127 wherein it was agreed by the Defendant that he will repay the agreed amount Rs. 6,76,000/- (Rupees Six Lakhs Seventy-Six Thousand) only in 60 Equated Monthly Instalments of Rs. 15,642/- (Rupees Fifteen Thousand Six Hundred and Forty-Two only) each. The instalments were commencing from 10.07.2007 and ending on 10.06.2012. The rate of interest for the Loan Account was fixed at 13.42% P.A. The defendant also executed the credit facility agreement, a deed of hypothecation to hypothecate the asset to the Plaintiff Bank by way of a first and exclusive charge in favour of the Plaintiff Bank. In the said Deed of Hypothecation, it was specifically agreed by the Defendant that the Asset so purchased under the said credit facility shall remain hypothecated to the Plaintiff Bank and shall serve as security for repayment of the Loan Account till the entire Loan Amount has been repaid.

4. That, after securing the loan amount the defendant started to commit irregularities and failed to adhere to the terms and conditions of the Loan Agreement inter alia regarding repayment towards Principal, Interest and charges thereon and cheques /ECS mandate/Auto Debit towards monthly instalments issued by the Defendant for repayment of aforesaid loan. Various requests,

reminders and letters were issued to the Defendant(s) to pay the amount

5. Further, vide credit facility agreement it was agreed by the Defendant that in the event of default in repaying the credit facility amount, the defendant would surrender the secured assets/property to the Plaintiff or allow the Plaintiff or its agents, officers to take possession of the asset. However, to the utter dismay of the Plaintiff Bank, the asset which has been purchased by the Defendant under the credit facility agreement in question is not allowed to be inspected or produced even after repeated requests.
6. That due to defaults committed by the Defendant under the aforesaid credit facility agreement, an amount of Rs 3,62,952/- (Rupees Three Lakhs Sixty-Two Thousand Nine Hundred and Fifty-Two) only, had become outstanding which is inclusive of interest and other charges. Therefore, the Plaintiff Bank was constrained to recall the entire credit facility with accrued interest and charges vide its letter dated 27.07.2013 issued through the Authorised Officer of the Bank. That the officials of the plaintiff approached the defendant several times to repay the loan amount but the Defendant has neither paid the outstanding dues nor replied to the said letter issued by the Bank.
7. That the Defendant have neglected in repaying the credit facility amount along with interest and other ancillary charges. The Plaintiff has performed its part of

contract and as such the Defendant is now in possession of the assets. Further, it was agreed by the Defendant by executing the credit facility agreement, that in the event of default in repaying the credit facility amount, the Defendant would surrender the secured assets/property to the Plaintiff or allow the Plaintiff or its agents, officers to take possession of the asset/property. However, the Defendant have neither surrendered the asset/property to the Plaintiff nor allowed the Plaintiff or its agents, officers to take possession of the asset/property.

8. That, the Plaintiff further states that, it is clear that the intention of the Defendant has become dis-honest and he is deliberately trying to cause loss and damage to the Plaintiff with malafide intentions. The Credit Facility Agreement itself has given the right to the Plaintiff to enforce the security namely the above-mentioned asset/property to recover the credit facility amount.
9. The Plaintiff Bank further submits that it is agreed between the parties to the aforesaid credit facility agreement that upon the occurrence of any default and any time thereafter, the Plaintiff shall be entitled to claim and the Defendant shall be liable to pay all sums due and payable including foreclosure charges, unpaid instalments, interest, late payment charges etc.
10. The failure on the part of the Defendant to make payment of the dues owed to the plaintiff and the conduct of the Defendant gives rise to and apprehension

that the defendant in order to frustrate the claim of the Plaintiff, may sell, alienate, deal with, dispose of, transfer and / or otherwise encumber the said asset and/ or the part with components thereof. In the circumstances, it is just, proper and necessary that the defendant be restrained by an appropriate order of injunction dealing with, disposing of, transferring, alienating and/or in any manner encumbering the said asset/property such order of injunction is also necessary in order to avoid multiplicity of proceedings.

11. Further, in the credit facility agreement it was agreed by the Defendant that in the event of default in repaying the loan amount, he/they will surrender the assets with the Plaintiff or allow the Plaintiff or its agents, officers to take possession of the assets. However, to the utter dismay of the Plaintiff the asset/property which has been purchased by the Defendant under the loan agreement in question is not allowed to be inspected or produced even after repeated requests. The Defendant has failed to adhere to any of the conditions laid down under the loan agreement.

12. The cause of action for the suit arose on 15/06/2007, i.e., the date when the loan was sanctioned and on 13/06/2007 when the credit facility agreement was executed between the parties and on each and every date of default made by the defendant at ICICI Bank, Fancy Bazar, Guwahati Branch.

13. Hence the plaintiff has filed this suit against the defendant and Plaintiff prays:

a) For realization of Rs 3,62,952/- (Rupees Three Lakhs Sixty-Two Thousand Nine Hundred and Fifty-Two) only in favour of the Plaintiff Bank against the Defendants with Pendente Lite and future interest at the contractual rate of interest at 13.42% P.A. till realization of the decreetal amount in full.
b) For attachment and sale of the hypothecated asset (fully described in Schedule-A of this Plaint) on declaration of the charge of the Plaintiff thereon and if the sale proceeds are found not sufficient enough to cover the decreetal amount, for realization of the balance amount from the defendant by attachment and sale of the other assets and properties of the defendant.0
c) For attachment and sale of the other properties of the defendant, if the sale proceeds of the hypothecated asset/ property found insufficient.

14. The notice of the case was served on the defendant on 10/01/2022 but he did not contest the suit and therefore the suit proceeded ex-parte against him.

Points for determination

15. On the basis of the plaint, I have formulated two points for determination –

a) **Firstly, whether the defendant took a loan of Rs.6,76,000/- (Rupees Six Lakhs Seventy SixThousand) only from the plaintiff bank on**

13/06/2007 and having failed to repay the same, he is liable to pay Rs.3,62,952/- (Rupeesthree Lakhs Sixty Two Thousand Nine Hundred and Fifty Two)plus interest?

b) **Secondly, Whether the plaintiff is entitled to the reliefs as prayed for?**

16. In support of their case the plaintiff has examined one witness and has exhibited certain documents.

<u>Discussion, Decision and Reasons thereof</u>

17. I have carefully perused the evidence on affidavit of the witness for the plaintiff, PW1 namely Sri Arup Chanda, S/O Late Himangshu Chanda, Area Debt Manager, ICICI Bank, Fancy Bazar Branch. The PW1 in his evidence-in-chief on affidavit has reiterated the statements made in the plaint itself.

18. Further, the plaintiff side has exhibited certain documents in support of their case.

a) Exhibit-1 is the Loan Account Statement for LANGO00010658127

b) Exhibit-1(i) to 1 (XLIX) are the signature of the Plaintiff's witness.

c) Exhibit-2 is the Credit Facility Application Form

d) Exhibit-3 is the Unattested deed of Hypothecation

e) Exhibit-4 is the Irrevocable power of attorney

f) Exhibit-5 is the Deed of Guarantee

g) Exhibit-6 is the Demand Notice

h) Exhibit-7 is the Power of Attorney of Shri Arup Chanda

19. Although, the suit proceeded ex-parte against the defendant and the defendant was barred from filing any written statement or his own evidence, he was at liberty to cross examine the plaintiff witnesses on point of law and also to challenge the genuineness of the exhibits of the plaintiff. However, the defendant neither turn up at any date of the hearing dates nor cross examined or had challenged any of the evidence adduced by the plaintiff.

20. Hence, there is nothing on record to disbelieve the statements of the PW1 and also the documentary evidence submitted by the plaintiff in support of the case. Moreover, evidence in chief submitted by the plaintiff witness remained unrebutted as the witness was not cross examined by the defendant and same is the case with the documentary evidence adduced by the plaintiff.

21. Therefore, as the genuineness of the exhibits as well as the deposition of the plaintiff witness remained undisputed and unrebutted, and also in the absence of anything contrary on record to the plaintiff’s claim, the allegations and claims made by the plaintiff stand proved.

22. Thus In view of the above discussion and on the basis of the evidence on record it is found that the plaintiff

bank is entitled to recovery of an amount of **Rs.3,62,952/- (Rupees three Lakhs Sixty Two Thousand Nine Hundred and Fifty Two) only** along with interest from the defendant.

ORDER

23. It is hereby decreed ex-parte and declared that the plaintiff is entitled for recovery of **Rs.3,62,952/- (Rupees three Lakhs Sixty Two Thousand Nine Hundred and Fifty Two) only along with interest from the defendant with interest at the rate of 13.42 % p.a. with effect from the date of filing of the suit till full recovery in favour of the plaintiff**.

    Plaintiff is also entitled for attachment and sale of the other properties of the defendant and any other reliefs to which the plaintiff is entitled.

24. Plaintiff is also entitled to the cost of the suit as recoverable from the defendant.

25. Prepare a decree accordingly within 15 days.

26. Judgment is pronounced in open court. The Suit is disposed of **exparte.**

    Given under my hand and seal of this court on the **23rd day of March, 2023**.

(Bhashyarima Bhuyan)
Munsiff No.5,
Kamrup Metro, Guwahati.

APPENDIX

Plaintiff's Witness:

PW1- Arup Chanda

Plaintiff's Exhibits:

Exhibit 1-is the Loan Account Statement for LANGO00010658127

Exhibit-1(i) to 1 (XLIX) are the signatures of the Plaintiff's witness.

Exhibit 2 - Credit Facility Application Form

Exhibit 3 - Unattested deed of Hypothecation

Exhibit 4 - Irrevocable power of attorney

Exhibit 5 -Deed of Guarantee

Exhibit 6 - Demand Notice

Exhibit 7 - Power of Attorney of Shri Arup Chanda

Defendant's witnesses: None

Defendant's Exhibits: None

(Bhashyarima Bhuyan)
Munsiff No.5,
Kamrup Metro, Guwahati.