Presented on : 03.10.2022
Registered on: 04.10.2022
Decided on : 12.07.2024
Duration: Years Months Days
01 09 08

IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION, AT MARGAO.

(Before Ms. Teisy Mascarenhas, Civil Judge Junior Division 'C' Court Margao.)

Bank Matter No. 36/2022/C
CNR No. GASG02-003134-2022

UCO Bank,
A Body Corporate constituted under
the Banking Companies
(Acquisition & Transfer of Undertakings) Act, 1970
Having its Head Office at No. 10, B.T.M.,
Sarani, Kolkota and branch office at
IBM Fatorda Branch,
Cross Road Avenue Commercial Plaza,

Eastern Bypass Road, Raia 403720
Represented by its Manager and bRanch Head
Mrs. Preety Singh,
Wife of Mr. Praveen Kumar Singh,
Aged about 33 years,
Married, Having Address at Fatorda Goa … Plaintiff

v/s

Mrs. Reshma Sidarai Murgodi,
Wife of Mr. Sidarai Murgodi,
Aged about 42 years, Business
Resident of H.no. 205, Zoriwaddo,
Davorlim, Nr.Ashok Flour Mill,
Navelim South Goa 403707. …. Defendant

APPEARANCES BY:

Learned Advocate S.Kolwalkar present for the plaintiff.

Defendant proceeding Exparte.

J U D G M E N T

(Delivered on this the 12th day of the month of July, of the year 2024)

This is a suit for recovery of money under section 9 of the Civil Procedure Code, 1907 (Hereinafter referred to as CPC for the sake of brevity).

2. It is the case of the plaintiff that the plaintiff is a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970 having its Head Office at No. 10, B.T.M., Sarani, Kolkota and branch office at IBM Fatorda Branch,Cross Road Avenue, Opp. Fatorda Police Station, Fatorda, Salcete, Goa. The plaintiff bank is engaged in the business of rendering financial/credit facilities in the form of Loans to the intending borrowers.

3. The defendant had approached the plaintiff bank for availing Loan facility under Gold loan scheme for a sum of Rs.9,99,000/-. Accordingly, the plaintiff bank sanctioned the said loan. Further that the gold was pledged by the defendant to the plaintiff on the terms and conditions mentioned in the loan documents.

4. As per routine inspection conducted by the plaintiff it was found that the gold ornaments were fake/imitation jewels.

5. Further that the loan was obtained in connivance with a gold

appraiser in a fraudulent manner. Further that the defendant defaulted in the repayment of loan in respect of account no. 19140610007013 and the same was declared as NPA.

6. The plaintiff thereafter issued a legal demand notice dated 17.05.2022 calling upon the defendant to repay the loan amount of Rs.10,51,874/- as on 30.04.2022 alongwith interest @ 8.5% per annum, which the defendant failed to repay. Further that a sum of Rs.10,51,874/- with interest @ 8.5% per annum from 01.06.2022 is due from the defendant. Hence, the present suit.

7. Heard Learned Advocate S.Kolwalkar for the plaintiff. I have duly perused the records and considered the same. The only point that falls for my determination alongwith my Reasons and finding thereon:-

Sr. No.	Point for determination	Finding

1	Whether the plaintiff is entitled to recover an amount of Rs.10,51,874/- with interest @ 8.5% p.a. from 01.06.2022 till the actual realization of the amount ?	Yes
2	What Order? What Relief?	As per final Order

REASONS

POINT NO. 1

8. The plaintiff bank has also placed the application forms for loan dated 27.09.2021 at exhibit C-9, Agreement for pledge dated 25.09.2021 at exhibit C-10, Schedule of gold at exhibit C-11, Demand Promissory note at exhibit C-12, Letter of repayment by installment at exhibit C-13, Sanction letter at exhibit C-14, Loan process note at exhibit C-15, Schedule of gold dated 01.02.2022 at exhibit C-16, Notice dated 22.03.2022 at exhibit C-17, Legal notice dated 17.05.2022 alongwith AD card at exhibit C-18, statement of loan Account, savings account and the Certificate of Bankers Book Evidence Act, 1891 at exhibit C-19 (a) to (c).

9. The documents produced on record by the plaintiffs show that the defendant was granted loan as claimed by the plaintiff at the rate of interest as pleaded in the plaint. Further that the plaintiff has also produced Statement of Loan Account of the defendant which shows that the outstanding balance of the loan account as on 31.05.2022 is Rs.10,51,874/- .

10. In the Present case the defendant despite being duly served remained absent and has not tendered any defence nor contested the matter. Hence, in the absence of any defence or cross-examination, the evidence brought on record by the Plaintiff will have to be accepted at face value for want of challenge and in the absence of anything contrary appearing on record, a presumption arises in favour of the Plaintiff and against the defendant under section 114(g) of the Indian Evidence Act, that the evidence which can be produced and is not produced would, if produced, be unfavourable to the person who withholds it, as the defendant despite being duly served failed to appear and lead evidence.

Hence the evidence tendered by the Plaintiff being un-rebutted can be presumed to be true.

11. Now coming to the interest due on the said amount is concerned, Reference to section 34 CPC is necessary :

"Section 34. Interest — *(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:*

Provided that where the ***liability*** *in relation to the sum so adjudged had* ***arisen out of a commercial transaction****, the rate of such further interest* ***may exceed six per cent****, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*

Explanation I. — In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II. — For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

12. In the present case since the claim of the plaintiff has gone unrebutted and unchallenged and in the absence of any defence or evidence to the contrary, I find that the Defendant had incurred the liability of Rs.10,51,874/- by virtue of the Loan facility availed by the defendant. Now in light of the provision under section 34 of CPC the transaction between the Plaintiff and the defendant being business transaction would fall within the ambit of the term Commercial Transaction as envisaged under section 34 CPC. Thus

it can be said that the liability in relation to the sum so adjudged had arisen out of a commercial transaction.

13. In the present case, the Loan Agreement is in writing and the rate of interest agreed therein is 8.5% p.a. (floating). The plaintiff has pleaded in its plaint that the amount of Rs.10,51,874/- is due to the Plaintiff alongwith interest at the rate of 8.5% per annum. Thus in the facts and circumstances of the present case and considering the material on record, I find that an interest at the rate of 8.5% p.a. from 01.06.2022 till actual payment and realization would be appropriate.

14. Hence considering the above, I answer the Point no.1 in the Affirmative.

15. Section 35 of CPC provides that the costs shall follow the event and in the facts and circumstances of the present case, I find no reasons or special circumstances to deviate from the said rule.

16. Thus, considering the above, I pass the following:

ORDER

The summary suit stands decreed with costs awarded to the plaintiffs.

The defendant is directed to pay the amount of Rs.10,51,874/- along with agreed future interest, @8.5% p.a. from 01.06.2022 till the actual realization of the amount.

Draw Decree accordingly.

Pronounced in the Open Court

Margao Goa.

Dated: 12.07.2024

(Teisy Mascarenhas)
Civil Judge Junior Division,
'C' Court, Margao, Goa.