

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

Present :

The Hon'ble Justice Krishna Rao

**CS-COM/670/2024
[Old No.CS/238/2023]**

NEWEVER VINCOM PRIVATE LIMITED

-VS-

DEBABRATA GHOSH

Mr. Ratanlal Joshi, Adv.

Mr. K. C. Garg, Adv.

Mrs. Sunita Agarwal, Adv.

... for the plaintiff

Hearing concluded on : 27.08.2024

Judgment on : 27.08.2024

Krishna Rao, J. :

1. The plaintiff has filed the present suit praying for decree for a sum of Rs.1,58,46,390/- along with interest @ 15% per annum.
2. The plaintiff is a non-banking financial company registered to carry on the business of Non-Banking Financial Institution without accepting public deposits. The defendant is carrying business as developer in real

estate. The defendant in the process of developing certain piece and parcel of a land admeasuring an area of 4 Cottahs, located and situated as part of premises No.12, Sitaram Road, Bansdronei, Kolkata-700070 and approached the plaintiff to finance the said project of the defendant. As per the request made by the defendant, the plaintiff had agreed to provide temporary financier and short-term credit facilities for the development of the said project undertaken by the defendant by executing a Memorandum of Understanding dated 7th March, 2013.

3. The plaintiff had agreed to pay as loan to the defendant amounting to Rs.1 crore. Initially the plaintiff has paid Rs.30 lakhs to the defendant on 7th March, 2013 as part payment of the total loan of Rs.1 crore. The defendant in order to show his bona fide, consequent to disbursement of the first tranche of Rs.30 lakhs agreed to give possession of the entire 2nd floor of premises no.134/B, Block-G, New Alipore, Kolkata and premises no.44 Humayun Kabir Sarani, Ward no.81, Kolkata as temporary security of the advance amount paid by the plaintiff to the defendant in terms of the Memorandum of Understanding. The balance loan amount of Rs.70 lakhs was paid by the plaintiff to the defendant in five tranches i.e. Rs.20 lakhs at the time of execution of Sale Agreement of two flats, Rs. 20 lakhs at the time of commencement of Civil Work, Rs.10 lakhs after completion of 1st slab casting of the front portion, Rs.10 lakhs after completion of 2nd slab casting of the front portion and Rs.10 lakhs after completion of 3rd slab casting of the front portion.

4. The defendant has paid the interest up to December 2019 and thereafter the defendant has neither paid the interest nor returned the principal amount and failed to comply with the terms and conditions of the Memorandum of Understanding dated 7th March, 2013.
5. Subsequently, the defendant has issued cheque of Rs.1,16,45,000/- but the same was also dishonoured. After the dishonour of the cheque, the plaintiff has issued notice to the defendant for repayment of the loan amount along with interest but in spite of receipt of the notice, the defendant failed to pay the said amount. The plaintiff had initially filed a suit before the Regular Division being CS/152/2023 but by an order dated 8th August, 2023 the plaintiff has withdrawn the said suit praying leave to file a fresh suit by complying with the statutory requirement in terms of the Commercial Courts Act. After withdrawal of the said suit, the plaintiff had initiated pre-litigation process but the defendant failed to appear before the mediation and non-starter report was filed on 11th October, 2023. After receipt of the non-starter report, the plaintiff has filed the present suit.
6. After filing of the suit, the plaintiff has taken appropriate steps for issuance of writ of summons but the writ of summons could not be served upon the defendant either through the Bailiff of this Court or through postal authorities. Accordingly, as per the order passed by this Court, the plaintiff has published the notice of the suit in English and Bengali newspaper for information of the defendant regarding the pendency of the suit but in spite of the publication of the notice, none

appeared on behalf of the defendant and by an order dated 1st July, 2024 this Court has fixed the matter in the list of Undefended Suit.

- 7.** To prove the case, the plaintiff has examined one witness, namely, Pradip Kumar Bhimrajka who is one of the share holders of the plaintiff company. During his evidence, the plaintiff has exhibited altogether 9 (nine) documents which are as follows :

Exhibit-A is the authorization of the plaintiff company in favour of P.W.1.

Exhibit-B is the Memorandum of Understanding entered between the plaintiff and the defendant, dated 7th March, 2013.

Exhibit-C is the declaration given by the defendant dated 20th January, 2017.

Exhibit-D is another declaration given by the defendant dated 16th January, 2021.

Exhibit-E (collectively) is the cheque No.039209 dated 30th April, 2021 of Rs.1,16,45,000/- along with cash deposit receipt and cheque return memo.

Exhibit-F is the Cheque No.039210 dated 28th June, 2021 of Rs.1,16,45,000/-.

Exhibit-G is the legal notice dated 7th July, 2021.

Exhibit-H collectively are the speed post receipts and track reports.

Exhibit-I is the non-starter report.

- 8.** Exhibit-B i.e. the Memorandum of Understanding proves that the defendant has entered into a Memorandum of Understanding with the plaintiff on 7th March, 2013 wherein the plaintiff has agreed to pay Rs.1 crore as loan amount to the defendant for development of the property out of which the plaintiff has paid Rs.30 lakhs as first instalment out of Rs. 1 crore. The plaintiff has paid the balance amount of Rs.70,00,000/- in five tranches.
- 9.** It is not denied that the plaintiff has not paid the said amount as agreed between the parties. By a declaration dated 20th January, 2017 the defendant has agreed that he will pay the amount within 15 to 30 days and in case he fails to pay the said amount, he will sell his own property of New Alipor being Flat No. 134/B, Block-G, New Alipore, Kolkata and liquidate the entire amount to the plaintiff. The said document is marked as Exhibit-C. In spite of the declaration, executed by the defendant, the defendant has not paid the said amount and accordingly, the defendant has executed second bond on 16th January, 2021 wherein the defendant has declared that he will repay the loan amount immediately by selling his property and will register the second floor premises of the property in favour of the plaintiff on or before 31st January, 2021.
- 10.** In spite of the execution of the bond dated 16th January, 2021 which is marked as Exhibit-D, the defendant failed to pay the said amount and accordingly, the defendant had issued cheque being No.039209 dated 30th April, 2021 of Oriental Bank of Commerce for Rs.1,16,45,000/- in favour of the plaintiff which is marked as Exhibit-E. The plaintiff has

presented the said cheque but the same was dishonoured. After the dishonour of the said cheque, the defendant had issued another cheque dated 28th June, 2021 of Oriental Bank of Commerce in the name of the plaintiff for a total sum of Rs.1,16,45,000/- being Exhibit-F and the said cheque was also presented by the plaintiff for encashment but the same was also dishonoured. After the dishonour of the said cheque, the plaintiff had issued the notice to the defendant on 7th July, 2021 calling upon the defendant to pay the amount of Rs.1,16,45,000/- along with the interest within 15 days from the date of receipt of the notice. The said notice was duly served upon the defendant but in spite of receipt of the notice, neither the defendant has paid any amount nor has sent any reply to the plaintiff and accordingly, the plaintiff has filed the instant suit.

11. Considered the submission made by the counsel for the plaintiff. Perused the plaint and the documents as exhibited and the evidence of the plaintiff's witness.

12. This Court finds that as per the request made by the defendant, the plaintiff has entered into a Memorandum of Understanding with the defendant on 7th March, 2013. As per the said Memorandum of Understanding, the plaintiff has paid the total amount of Rs. 1 crore to the defendant. The defendant has paid the interest to some extent till the month of December 2019. Thereafter the defendant has neither paid interest nor has returned the principal amount. In the meantime, the defendant has executed an undertaking in favour of the plaintiff

confirming that he will repay the said amount but neither the defendant has paid the amount nor had transferred the flat in favour of the plaintiff as per the undertaking given by the defendant.

13. From the record it reveals that the defendant has not fulfilled the undertaking submitted by him and accordingly, he had issued cheques of Rs.1,16,45,000/- but both the cheques were dishonoured and the same was also informed to the defendant but the defendant has neither paid the amount nor has given any reply. After filing of the suit, writ of summon was sent through the Bailiff as well as postal authorities but the same could not be served upon the defendant and accordingly, the plaintiff has taken appropriate steps for publication of the notice of the suit. In spite of the publication of the notice, the defendant failed to appear in the suit.

14. Considering the above materials on record, this Court finds that the plaintiff has proved its case that the plaintiff has paid an amount of Rs. 1 crore to the defendant but the defendant has not returned the said amount in spite of execution of the undertakings and in spite of issuance of cheques in favour of the plaintiff.

15. In view of the above, this Court finds that the plaintiff is entitled to get a decree for a sum of Rs.1,16,45,000/- along with interest with effect from 30th April, 2021 till the realization of the said amount. Hence, the defendant is directed to pay the amount of Rs.1,16,45,000/- along with interest at the rate of 15% per annum from 30th April, 2021 till the realization of the said amount.

16. CS-COM/670/2024 (Old No.CS/238/2023) is disposed of.

17. Decree be drawn accordingly.

(KRISHNA RAO, J.)