

M/S Syndicate Bank vs Smt. Asha K.C on 1 April, 2021

1 Com.O.S.No.6057/2018

IN THE COURT OF THE LXXXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT):
BENGALURU CITY. (CCH-89)

Present: Sri. P.J. SOMASHEKARA, B.A.,LL.M,
LXXXVIII Addl. City Civil & Sessions Judge
Bengaluru City.

Dated this the 1st day of April 2021

Com.O.S.No.6057/2018

Plaintiff: M/s Syndicate Bank,
Chickpet Branch,
Bangalore - 560 053.
Represented by its Senior
Branch Manager Sri. Sathish K.

(By Sri. J.B.R., Advocate)

-vs-

Defendant: Smt. Asha K.C., W/o M.G. Ravikumar,
R/at No.17, Kamalaya, SLV Layout,
Somanahalli 3rd Block,
Uttarahalli Hobli,
Bengaluru - 560 082.

(Exparte)

Nature of the suit Money suit

Date of institution of the suit 20.08.2018

Date of commencement of 16.03.2021
recording of the evidence

Date on which the judgment was pronounced 01.04.2021

Total duration Year/s Month/s Day/s
02 07 12

2 Com.O.S.No.6057/2018
JUDGMENT

This is a suit filed by the plaintiff bank against the defendant for recovery of Rs.4,98,273/- with interest @ 15% p.a. from the date of the suit till its realization.

2. Brief facts of the plaint are as under :

The plaintiff bank in its plaint has alleged that the defendant had applied for financial facility of Rs.6,40,000/- on 05.03.2015 and the loan was sanctioned for the purpose of purchase of new Swift VDI four wheeler and the said amount has been disbursed in favour of the defendant on 05.03.2015 by way of vehicle loan facility. The defendant had executed composite hypothecation agreement along with stamp paper signed by the defendant on 05.03.2015 for sum of Rs.6,40,000/- and the defendant had acknowledged the loan by executing (OG-28A & B Combined) for a sum of Rs.6,40,000/- and acknowledged the loan by executing confirmation of delivery of machinery/vehicles on 05.03.2015.

The defendant has agreed to repay the loan amount together with interest @ 10.9% p.a. along with monthly rests and also agreed to pay over due interest @ 0.65% p.a. with monthly rests and the present rate of interest is 10.15% p.a. and agreed to pay over due interest @ 2% p.a. and agreed to pay interest varying with the change in PLR/PTLR from time to time and the loan is repayable in 83 equal monthly installments of Rs.11,102/- per month starting from 30.04.2015 to 30.03.2022 but the defendant has not adhere the terms of sanction and not repaid the loan amount and failed and neglected to repay the loan amount with interest accrued thereon in spite of repeated request and reminders and the defendant is liable to pay a sum of Rs.4,98,273/- which includes interest up to 31.12.2017. The defendant failed and neglected to repay the loan amount in spite of repeated request and reminders. So notice got issued and classified the loan as NPA and got issued legal notice dated 14.02.2018 demanding for payment of the loan amount with interest, but the defendant failed to comply the said notice.

3. The plaintiff bank in its plaint has further alleged that the defendant has availed loan facility for the purpose of purchasing new car and liable to pay agreed rate of interest with monthly rests. The defendant is due and liable to pay sum of Rs.4,98,273/- which includes interest up to 31.12.2017 as per the loan account statement, though initiated action for recovery, but postponed till the final settlement became due and 3 years from thereof action could be initiated as per the article 36 and 37 of the Limitation Act. The defendant has acknowledged loan by executing receipts dated 05.03.2015. The cause of action for the suit which arose on 05.03.2015 when the defendant has applied for the loan facility, availed on 05.03.2015 and when the last installment has been paid on 25.10.2016 and when the receipt dated 05.03.2015 signed and acknowledged by the defendant and when the legal notice has been issued and subsequently dispute has arisen within the jurisdiction of this court and prays for decree the suit.

4. In response of the suit summons the defendant did not appear nor filed her written statement as she was placed *exparte*.

5. The plaintiff bank in order to prove its plaint averments has examined its Senior Branch Manager as P.W.1 and got marked the documents as Ex.P.1 to P.10. The plaintiff bank has not examined any witnesses in its favour.

6. Heard the arguments on the plaintiff side.

7. Now the points that arise for court consideration are:

1. Whether the plaintiff bank is entitled for the relief as prayed for?
2. What order or decree?

8. My answer to the above points are as under:

Point No.1: In the Affirmative;

Point No.2: As per final order, for the following;

REASONS

9. POINT NO.1: The plaintiff bank has approached the court on the ground that the defendant had availed loan of Rs.6,40,000/- accordingly, loan has been sanctioned in favour of the defendant for the purpose of purchase of vehicle and the defendant has executed documents by agreeing to repay the loan amount with interest @ 10.9% p.a. with penal interest @ 2% p.a. in 83 equal monthly installments of Rs.11,102/- but the defendant did not keep up her promise as agreed, in spite of repeated request and demand thereby the plaintiff bank has filed the instant suit against the defendant.

10. The plaintiff bank in order to prove the plaint averments has examined its Senior Branch Manager as P.W.1 who filed his affidavit as his chief-examination by reiterating the contents of the plaint stating that the defendant has applied for financial facility of Rs.6,40,000/- on 05.03.2015 for the purpose of purchase of new Swift VDI car, accordingly loan has been sanctioned and which was disbursed on 05.03.2015 and the defendant has executed the documents by agreeing to repay the said loan amount with interest @ 10.9% p.a. in 83 equal monthly installments of Rs.11,102/- but in spite of repeated request and demand, the defendant did not repay the loan amount with interest as agreed, thereby got issued legal notice to calling upon her for payment of loan amount which due, but the defendant instead of repayment of loan has executed acknowledgment of debt, but in spite of execution of AOD did not adhere for payment of loan amount with interest. Now the defendant is due a sum of Rs.4,98,273/- with interest @ 15% p.a. from the date of suit till its realization.

11. Now the question is whether the suit which filed is maintainable before this court and whether this court having the pecuniary jurisdiction to consider the relief which sought by the plaintiff bank. Though no dispute either on the jurisdiction point nor maintainability of the suit before this court. However, it is necessary to consider these aspects before considering the materials on record as the plaintiff bank has filed the instant suit against the defendant for recovery of loan amount of Rs.4,98,273/- with interest at the rate of 15% p.a. on the ground that the defendant had availed loan of Rs.6,40,000/-, thus this court drawn its attention on Sec.2(c)(i) of Commercial Courts Act, 2015 which reads like this:

(c) "commercial dispute" means a dispute arising out of-

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment

agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits; (xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and (xxii) such other commercial disputes as may be notified by the Central Government.

The provision under Sec.2(c)(i) which referred above is very much clear the first category which referred above, includes disputes of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents. The definition naturally will cover the dispute of all kinds of ordinary transactions of merchants, bankers, financiers and traders. The banks are established under Banking Regulation Act for the purpose of business and commerce, naturally all transactions of bank about giving of loans, recovery thereof, deposits in banks etc., should fall within the category of commercial dispute, if the specified value there of is more than Rs.3,00,000/-. So the facts which pleaded in the plaint comes under the commercial dispute.

12. Now the question is whether the dispute which stated supra comes under the jurisdiction of commercial court. Thus, this court drawn its attention on Sec.6 of Commercial Courts Act, 2015 which reads like this:

Section 6: Jurisdiction of Commercial Court.

6. The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.-For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

The above provision is very much clear that the commercial court shall have the jurisdiction to try all suits and applications relating to commercial dispute.

13. Now the question is whether this court having the pecuniary jurisdiction to adjudicate the matter which is in dispute. Thus, this court drawn its attention on Sec.3 of Commercial Courts Act, 2015 which reads like this:

Section 3: Constitution of Commercial Courts.

3. (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

2[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.] 3[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.] The above provision is very much clear that by virtue of the notification specified the pecuniary value of this court which shall not be less than Rs.3,00,000/- Admittedly, the plaintiff in the plaint itself has stated that the defendant is due a sum of Rs.4,98,273/- with interest and the commercial court Act has been amended in the year 2018 which effects from 03.05.2018, admittedly, the plaintiff has filed the instant suit after the amendment i.e. on 20.08.2018. So this court having the pecuniary jurisdiction to adjudicate the matter which is in dispute by virtue of the provision which stated supra.

14. Now let me know the materials on record, as the plaintiff bank in support of oral evidence has produced documents which marked as Ex.P.1 to Ex.P.10. Ex.P.1 is the loan application which filed by the defendant is very much clear the defendant has approached the plaintiff bank and sought for loan amount of Rs.6,40,000/- for the purpose of purchase of the vehicle. Ex.P.2 is the letter of sanction reflects the loan amount of Rs.6,40,000/- has been sanctioned in favour of the defendant. Ex.P.3 is the composite hypothecation agreement reflects the defendant has executed the composite hypothecation agreement in favour of the plaintiff bank by agreeing to repay the loan amount with interest in 83 EMI's of Rs.11,102/- commencing from 30.4.2015 Ex.P.4 is the OG28(A & B) dated 05.03.2015 is reflects an amount of Rs.6,40,000/- has been sanctioned to the defendant. Ex.P.6 is the legal notice reflects the plaintiff bank has got issued legal notice to the defendant calling upon him for payment of loan amount with interest. Ex.P.7 is the paper publication reflects the plaintiff bank has taken the summons through paper publication, but in spite of service of summons, the defendant did not appeared nor resisted the claim of the plaintiff bank. Ex.P.9 is the unserved postal cover reflects the plaintiff bank has got issued legal notice. Ex.P.10 is the statement of accounts reflects the defendant is due a sum of Rs.4,98,273/- as on the date of the suit.

15. If at all the defendant was not availed the loan of Rs.6,40,000/- for the purpose of purchase of the vehicle nor executed the document in favour of the plaintiff bank, in response of the suit summons she would have appeared and resisted the claim of the plaintiff bank, but the reasons best known to her in spite of service of summons did not appear nor resisted the claim of the plaintiff bank and the plaintiff bank has proved its case through oral and documentary evidence and the documents which are marked as Ex.P.1 to P.10 are coupled with the oral evidence of P.W.1. Hence, I am of the opinion that the point No.1 is answered in the Affirmative.

16. POINT NO.2: In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER The suit of the plaintiff bank is decreed with cost.

The defendant is hereby directed to pay the decretal amount of Rs.4,98,273/- with interest @ 15% p.a. at monthly rests from the date of the suit till its realization Draw decree accordingly.

(Dictated to the Stenographer, transcript thereof corrected by me and then pronounced in the open court on this the 1st day of April, 2021) (P.J. Somashekara) LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City ANNEXURE List of witnesses examined on behalf of plaintiff:

P.W.1 Sri. Venkata Shiva Reddy List of witnesses examined on behalf of defendant:

Nil List of documents exhibited on behalf of plaintiff:

Ex.P.1	Loan application
Ex.P.2	Sanction letter
Ex.P.3	Hypothecation agreement
Ex.P.4	O.G. 28 (A & B)
Ex.P.5	Confirmation vehicle delivery
Ex.P.6	Legal notice
Ex.P.7	Paper publication
Ex.P.8	Postal receipt
Ex.P.9	Unserved RPAD
Ex.P.10	Statement of account

List of documents exhibited on behalf of defendant:

Nil (P.J. Somashekara) LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City Judgment pronounced in the open court, vide separate;

ORDER The suit of the plaintiff bank is decreed with cost.

The defendant is hereby directed to pay the decretal amount of Rs.4,98,273/- with interest @ 15% p.a. at monthly rests from the date of the suit till its realization Draw decree accordingly.

(P.J. Somashekara) LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City