ORDER SHEET

OD-9

CS No. 194 of 2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGNAL CIVIL JURISDICTION

PADMA SONTHALIA
VERSUS
VIVEK KUMAR KATHOTIA

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 1st September, 2023.

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Varun Kothari, Adv.
Mr. Nikunj Berlia, Adv.
Ms. Saolini Bose, Adv.
For the plaintiff.

The Court :- The plaintiff being the sole witness is examined in chief in full. No one appears to cross-examine the plaintiff. Although on 18th August, 2023 when the plaintiff was in the witness box and had been partly examined in chief Mrs. Manju Agarwal, Advocate, instructed by L.P.Manot & Co, appeared and submitted that she had been instructed to appear on behalf of the defendant. The matter was, therefore, adjourned on 18th August, 2023 to allow Mrs. Agarwal and the defendant to take steps. No steps were taken by 25th August, 2023 and as such further examination in chief of the plaintiff took place on 25th August, 2023.

After considering the averments in the plaint and the evidence laid on behalf of the plaintiff, it is evident that the plaintiff had lent and advanced a sum of Rs.45,50,000/- to the defendant in aggregate as accommodation loan at the request of the defendant who was known to the plaintiff's husband. It is also borne out from the record that after adjustment of the repayments made and the interest paid a sum of Rs.38,91,609/- comprising of the unpaid principal and interest was due and payable by the defendant to the plaintiff as on 25th June, 2022 when the plaintiff had caused a demand notice dated 25th June, 2022 to be issued through her advocate which has been duly received by the defendant as will appear from the postal receipts, the photocopies whereof are exhibited and the track report downloaded from the official website of the India Post also exhibited in this suit. The contents of the demand notice has also been proved and exhibited.

The plaintiff has proved the remittance of the money. The plaintiff's version that the same was given as loan to the defendant is to be accepted in absence of any contrary version. The amount given to the defendant are reflected in the bank account statements in respect of the plaintiff's bank account maintained with UCO Bank at Kolkata Main Branch and ICICI Bank Limited at Sakinaka Branch, Mumbai. The passbook issued by UCO Bank has been exhibited. In absence of any contrary version, it is to be presumed that the said passbook was issued to the plaintiff in usual course of business by the bank with regard to the plaintiff's ledger maintained with the said bank. Similar has to be the presumption in respect of the bank account statement issued by the ICICI Bank Limited which is, in fact, authenticated by the seal and signature of the bank. The entries by which the money was disbursed to the defendant from the plaintiff's said two accounts have been also identified by the plaintiff in course of deposition.

The defendant neither entered appearance upon receipt of the writ of summons nor filed his written statement. The Department has issued a certificate certifying that the defendant has not entered appearance. There is also a certificate issued by the defendant that no written statement has been filed. Only after obtaining the said certificate, the defendant applied before the Registrar, Original Side and after placing the suit in the warning list, it has been brought in the list of this Court. The defendant had, therefore, been afforded ample opportunity to contest this suit. The defendant, however, chose not to do so. The defendant despite being given another opportunity on 18th August, 2023 also did not avail.

In absence of the written statement or any cross-examination, the evidence of the plaintiff has to be taken to the true in his face value. The plaintiff cannot demonstrate receipt of the money as repayment except deposing that she did not receive the same. It was for the defendant to appear and substantiate that the money or a part thereof has been repaid. The version of the plaintiff that she has received part payment and interest which on being adjusted with her dues comes to Rs.38,91,609/- as on 30th June, 2022 is to be accepted. The plaintiff has also substantiated the facts and figures of the sum owed by the defendant to the plaintiff through a ledger collated from the bank statement which was prepared by the plaintiff's son at her instruction. The plaintiff has also proved two confirmation of accounts respectively dated 1st April, 2017 and 1st April, 2018. In absence of any contrary version, the authenticity of the confirmation of accounts cannot be disputed. The confirmation of accounts also establish that the money was taken by the defendant from the plaintiff as loan.

It is also apparent from the last confirmation account that a sum of Rs.44,54,192 was due and payable by the defendant to the plaintiff as on 1st April, 2018. The plaintiff has, in fact, claimed a sum lesser than the said figure of Rs.44,54,192/-. There is as such no occasion to doubt the correctness of the deposition of the plaintiff.

The plaintiff, therefore, has proved that the plaintiff had lent out money to the defendant as accommodation loan and is entitled to recover the same as the same has not be repaid by the plaintiff. The exact figure of the principal sum is not available but the sum of Rs.38,91,609/- which comprises of the principal and interest is accepted to be the principal sum due and payable to the plaintiff as on 1st July, 2022 by the defendant.

Although, the plaintiff has claimed interest at the rate of 9% per annum, but in absence of any written document it is open to the Court to allow a reasonable rate of interest which may be less than the rate at which interest is charged and claimed. The rate of interest charged by the plaintiff is accepted for the pre-suit period but for the period from 1st July, 2022 after taking into account of the present rate of interest given by the nationalized banks to a senior citizen, the rate of interest is about 6% to 7% per annum.

In the aforesaid facts and circumstances, the plaintiff is to receive interest at the rate of 6% per annum on and from 1st July, 2022 until repayment. The rate of interest awarded is reasonable and fair taking into account the ratio laid down in the judgment reported in ***2021(11) SCC 543*** (***State of Andhra Paresh & Anr. vs. Dinavahi Lakshmi Kameswari***). Moreover, I have allowed interest at a higher rate for the pre-suit period. No cost is also awarded as the plaintiff is allowed to add the pre-suit interest with the principal to compound it as the principal due and payable on 1st July, 2022.

In the aforesaid facts and circumstances, there shall be a decree for a principal sum of Rs.38,91,609/- along with simple interest at the rate of 6% per annum. Since the defendant has remained unrepresented and the suit is being tried as an undefended suit, the plaintiff shall serve a copy of this judgment and order downloaded from the official website of this Court to the defendant at his last known address informing him that the principal sum along with accrued interest till 31st August, 2023 shall have to be paid by 30th September, 2023 failing which the interest at the rate of 6% will accrue on the principal sum of Rs.38,91,609/- on and from 1st July, 2022 until the date of repayment and the plaintiff shall be entitled to realize the same from the defendant.

The suit is, accordingly, decreed and disposed of, however, without any order as to costs.

(ARINDAM MUKHERJEE, J.)

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