IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

CS/72/2024
[OLD NO. CS/149/2018]

M/S. SETHIA BROTHERS
VS
SMT. SOMA KUMAR

For the Plaintiff	:	Mr. Anuj Singh, Adv. Mr. Aman Agarwal, Adv. Mr. Rupal Singh, Adv. Mr. Ashok Kr. Singh, Adv.
Hearing concluded on	:	06/09/2024
Judgment on	**:**	**11/09/2024**

Sugato Majumdar, J.:

This is an undefended suit for recovery of money.

The sum and substance of the plaint case is that:

i) The Plaintiff is a partnership firm registered under the Indian Partnership Act, 1932 having its registered office at 76, Khengrapatty Street, Kolkata – 700007 within jurisdiction of this

Court. All the partners are family members with whom the Defendant was well-acquainted with being neighbor.

ii) In the last week of January 2014, the Defendant and her husband approached the Plaintiff for extending financial assistance to the former with assurance that the borrowed amount along with interest would be repaid in the month of August, 2014. The Defendant and her husband were next door neighbors of the Plaintiff and had cordial relationship. This was a consideration for extending financial assistance to the extent of Rs.8,00,000/- to the Defendant by the Plaintiff. It was agreed upon that the loan amount would carry E.M.I. at a rate of Rs.10,000/- per month to be payable on the 10th day of each month with further stipulation that the balance amount should be paid within the month of August, 2014.

iii) Grant of loan was recorded in a promissory note executed on 30/01/2014 by the Defendant wherein the later acknowledged that a sum of Rs.5,00,000/- had been paid to her on 28/01/2014 and a further sum of Rs.3,00,000/- had been paid to her on 30/01/2014. Thus, a sum of Rs.8,00,000/- was paid by the Plaintiff to the Defendant in cash. The promissory note was executed by the Defendant at the Plaintiff's registered office. The Defendant furnished as collateral security, two cheques for Rs.4,00,000/- each, favouring the Plaintiff.

iv) The Defendant neglected and failed to pay the loan or any part of it. On repeated persuasions and follow up, made by the Plaintiff, the Defendant agreed to repay the entire loan along with interest amount by 1st August, 2015 and further agreed to reduce the statement in writing on 22/07/2015. The Defendant made undertaking and acknowledged to repay the outstanding loan amount of Rs.8,22,000/-, as due on 22/07/2015. The Defendant made a part payment of Rs.1,00,000/- to the Plaintiff in cash, leaving a sum of Rs.7,22,000/- as the principal outstanding amount. The Defendant further promised to pay a sum of Rs.3,00,000/- on 28/07/2015 and a further sum of Rs.4,22,000/- on 01/08/2015 to the Plaintiff. The Defendant assured to repay the loan within the month of August 2015.

v) In spite of repeated persuasions and notice to pay by the Learned Advocates of the Plaintiff, the Defendant neglected and failed to pay the outstanding amount with interest. The following mount was due owe and payable by the Defendant to the Plaintiff.

<u>Particulars</u>

Details		Amount
Admitted principal sum due as on 22/07/2015	:	Rs.7,22,000/-
Accrued interest @ 18% from 23/07/2015 to 24/07/2018	:	Rs.3,89,880/-
Total	:	Rs.11,11,880/-

On being constrained, the Plaintiff instituted the suit, praying for recovery of the outstanding amount of money.

Although the writs of summons were served, the Defendant did not appear to contest the suit. Therefore, a Co-Ordinate Bench marked this suit as undefended in terms of the Order dated 23/06/2022.

The Plaintiff adduced oral as well as documentary evidences. The documentary evidences were marked variously. The Plaintiff adduced certificate of registration of the partnership firm; deed of reconstitution of the firm, on death of the original partners; demand notices; balance sheet of the farm; promissory note executed by the Defendant and blank cheques issued by the Defendant as collateral security; acknowledgment of debt in writing made by the Defendant.

One of the present partners of the Plaintiff, Mr. Siddharth Sethia deposed as P.W. 1.

From the documentary evidences which are unchallenged it is established that the Defendant took a loan to the tune of Rs.8,00,000/- from the Plaintiff, handwriting of the promissory note as well as the handwriting of acknowledgment was identified by the P.W. 1 as that of the Defendant. Loan was taken on 28/01/2014 and 30/01/2014. It was unpaid. Acknowledgment of loan in writing which is Ext. G was made on 22/07/2015. It was executed on 22/07/2015. Ext. G is undertaking to repay the principal amount of Rs.7,22,000/- within 1st August, 2015. The outstanding amount became payable on 1st August, 2015. The suit was filed on 27/07/2018 within the period of limitation.

Unchallenged testimony of P.W. 1 as well as documentary evidences, establish that a sum of Rs.7,22,000/- is due owe and payable by the Defendant to the Plaintiff. Therefore, the Plaintiff is entitled to recover the principal of sum of Rs.7,22,000/- with interest.

In nutshell, the instant suit succeeds.

It is ordered that the Plaintiff do get a decree of Rs.7,22,000/- with interest at a rate of 12% per annum from 23/07/2015. If the Defendant fails to pay the decretal amount within 90 days from the date of decree the Plaintiff shall be at liberty to execute the decree. The Plaintiff shall also be entitled to enhanced interest at a rate of 18% per annum on expiry of aforesaid 90 days till realization.

Let the decree be drawn up.

The instant suit is disposed of along with the pending application, if any.

(Sugato Majumdar, J.)