IN THE HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS-COM 506 of 2024

(Old No. CS 97 of 2023)

Shining Vyapaar Private Limited

Versus

M/s. Priyanti Construction & Ors.

Mr. Rohit Banerjee
Mr. Sudarshan Agarwal
Ms. Kanchan Jaju

... For the plaintiff.

Hearing Concluded On : 22.07.2024

Judgment on : 09.08.2024

Krishna Rao, J.:

1. The plaintiff has filed the present suit praying for Decree for a sum of Rs.11,05,000/- along with interest at the rate of 18% per annum.

2. Plaintiff is a company incorporated under the provisions of the Companies Act, 1956.

3. The defendant no.1 is a partnership firm, who is carrying on business of building construction under the name and style of "M/s. Priyanti Construction", wherein the defendant nos. 2, 3 and 4 are partners of the defendant no.1 company.

4. In the second week of December, 2009, the defendants approached the director of the plaintiff, for grant of temporary accommodation of business loan for a sum of Rs.10,00,000/-, carrying an interest at the rate of 15% per annum for a period of 6 months and considering the relation between the plaintiff's director and the defendant's director share, the plaintiff agreed to provide for the same on the basis of the terms and conditions discussed between the parties.

5. The entire loan amount was disbursed in favour of the defendants by way of an account payee cheque bearing No. 960193 dated 17th December, 2009 for an amount of Rs.10,00,000/-. Upon receipt of the loan amount the defendant firm acknowledged the receipt of the same. The defendants also acknowledged their liability to repay the loan amount and issued confirmation of account for the period from 1st April, 2017 to 31st March, 2018; 1st April, 2018 to 31st March, 2019 and 1st April, 2019 to 31st March, 2020.

6. The defendants had paid the quarterly interest to the plaintiff, and such payment of interest after deduction of TDS was being remitted by the defendants either by way of account payee cheque or by way of NEFT to the bank account of the plaintiff and the last interest was paid for the quarter period ended on 30th September, 2022 being Rs.22,500/- plus TDS at the rate of 10%, i.e. Rs.2,500/- aggregating to Rs.25,000/-.

7. On 1st October, 2022, the defendants issued a cheque bearing No.133143, towards realisation of the principal sum of Rs.10,00,000/-, wherein the defendants requested the plaintiff to present the said cheque in the middle of the month of November, 2022 and assured that the cheque would be honoured for encashment upon presentation.

8. As per the request made by the defendants, the plaintiff had presented the said cheque on 14th November, 2022 for encashment but the said cheque was dishonoured for the reason "Advice not received".

9. The plaintiff upon such default on the part of the defendants issued a notice dated 24th November, 2022, through its Advocate, calling upon the defendants to forthwith repay the said sum of Rs.10,00,000/- along with the accrued interest at the rate of 18% per annum from the date of receipt of such notice and the said notice was duly served upon the defendants.

10. Despite receipt of such notice, the defendants neither replied to the notice nor had made any payment regarding the amount due to the plaintiff.

11. On 19th December, 2022, the plaintiff filed a complaint case before the Court of the Learned Chief Metropolitan Magistrate at Calcutta against the defendants for the offence under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881, being Case No. CS/121633 of 2022.

12. On 5th April, 2024, Learned Counsel for the plaintiff has produced the service report issued by the Deputy Sheriff of Calcutta of this Court wherein it was certified that the Writ of Summons were duly served upon the defendants and as per the report of the Deputy Registrar (Legal) the defendants have not entered appearance either in person or through advocate. On the basis of the report, this Court placed the matter in the list of undefended suit.

13. The plaintiff has examined one witness, namely, Mr. Prasanna Kumar Nahata, a practising Chartered Accountant of the plaintiff company and during his evidence altogether 8 (eight) documents were exhibited being **"Exhibit A to Exhibit F"** which are as follows:

> ***Exhibit – A:*** *Copy of a 'Board Resolution' dated 17th November, 2022, wherein Mr. Prasanna Kumar Nahata, was appointed as an authorised person on behalf of the plaintiff company, by the Board of Directors of the plaintiff company to depose.*
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> ***Exhibit – B:*** *Original copy of the Memorandum and Article of Association of the Plaintiff Company.*

Exhibit – C: *Copies of bank statement of the plaintiff company, by its bank, the Union Bank of India, from the period of 11th February, 2022 to 4th December, 2022.*

Exhibit – D: *Copy of Confirmation of Accounts of the defendants, for the period of 1st April, 2017 to 31st March, 2018.*

Exhibit – D/1: *Copy of Confirmation of Accounts of the defendants, for the period of 1st April, 2018 to 31st March, 2019.*

Exhibit – D/2: *Copy of Confirmation of Accounts of the defendants, for the period of 1st April, 2019 to 31st March, 2020.*

Exhibit – E: *Copies of Annual Tax Statement of the plaintiff company*

Exhibit – F: *Certified copies of order sheet, evidence and affidavit-in-chief filed before the Learned 20th Metropolitan Magistrate in the Criminal Complaint Case No. CS/121633/2022, filed by the plaintiff against the defendants, are all marked and exhibited collectively.*

14. At the time of evidence of the plaintiff's witness, the plaintiff has exhibited the certified copy of the proceeding of criminal case initiated by the plaintiff against the defendants under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, being Exhibit –F wherein it proves the money receipt executed by one of the partners of the defendants is marked as Exhibit-2 and the cheque issued by the defendants is marked as Exhibit-4 in the Criminal Proceeding.

15. From the statement of account being Exhibit-C, it is also apparent that the defendants have paid interest from time to time to the plaintiff till 30th September, 2022. Plaintiff has exhibited confirmation of accounts signed by both the parties from 1st April, 2017 to 31st March, 2020 being Exhibit-D, D1 and D2. The plaintiff has also exhibited TDS certificates for the year 2021-2022 and 2022-2023 being Exhibit-E collectively showing the deduction of tax from payment of interest.

16. The plaintiff's witness during his evidence stated that the plaintiff has produced the Memorandum of Article of Association being Exhibit-B to show that the plaintiff company can carry on the business of money lending to persons and entity as per Clause 7 and 10 of the said Memorandum of Association. Clause 7 and 10 reads as follows:

> *"**7.** To lend and advance money out of surplus funds of the Company not immediately required either with or without security and give credit out of such fund to such persons (including government) and upon such terms and conditions as the Company may think fit but not amounting to Banking Regulations Act, 1949.*
>
> ***10.** To invest any moneys of the Company out of the surplus funds of the Company not immediately required in such investments (excluding own shares or stock of the*

> *Company) & as may be thought proper out of the surplus funds of the Company, not immediately required."*

17. The following question was put to the plaintiff witness no.1 in question no.63 which reads as follows:

> *"Drawing attention to paragraphs 6,7,8 and 9 of the affidavit of evidence wherein you have stated that an amount of Rs.10 Lakh was advanced as loan from the plaintiff to the defendants. What was the purpose of advancing this loan?/ The purposed was earning interest by advancing loans to the defendant in their Real Estate Construction business."*

18. This Court finds that as per Clause 7 and 10 of the Memorandum and Article of Association of the plaintiff company, the surplus funds of the company which is not immediately required for immediate investment can be lend and advanced. It is the specific case that the defendants have approached the plaintiff for business loan and after discussion, the plaintiff has lent and advanced an amount of Rs. 10,00,000/- to the defendants for business purposes and the same is proved from the cheque and money receipt executed by one of the partner of the defendant firm.

19. Considering the above facts and circumstances, this Court finds that the plaintiff has proved the case that the plaintiff has lent and advanced a sum of Rs. 10,00,000/- to the defendants for business purposes at the rate of interest of 15% per annum and the defendants have received the said amount. Till September, 2022, the defendants have paid the interest and subsequently, the defendants stopped payment of interest. On demand, the defendants have issued cheque but the same was also dishonoured and the defendants failed to pay the Principal amount and interest from the month of October, 2022.

20. In view of the above, the plaintiff is entitled to get an a decree for principal amount of Rs. 10,00,000/- along with interest at the rate of 15% per annum from the month of October, 2022 till the realisation of total amount.

21. Plaintiff has also filed cost budget sheet wherein the plaintiff has provided particulars of the expenditure made by the plaintiff for filing and proceeding the suit for recovery of the amount lend and advance to the defendants. As per the cost budget sheet, the plaintiff has paid Court Fee of Rs. 50,000/-, made miscellaneous expenditure of Rs. 25,000/- and Advocate Fee of Rs. 1,25,000/-. The suit filed by the plaintiff is commercial in nature and as amended Section 35 of the Code of Civil Procedure, 1908, the plaintiff is entitled to get cost. Considering Section 35 of the CPC and the cist budget sheet submitted by plaintiff this Court awarded cost of Rs.1,75,000/- against the defendants.

22. The defendants are directed to pay Rs. 10,00,000/- being principal amount along with interest at the rate fo Rs. 15% per annum from the month of October, 2022 till the realisation of the total amount. The defendants are also directed to pay Rs. 1,75,000/- being the cost of the suit.

23. CS-Com No. 506 of 2024 (Old No. CS 97 of 2023) is **disposed of**.

Decree be drawn accordingly.

(Krishna Rao, J.)