30.04.2024

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OA No.973/2023 stands allowed, with interest, ~~penal interest~~ and costs, vide separate order

Presiding Officer

IN THE DEBTS RECOVERY TRIBUNAL - I, KARNATAKA
AT BENGALURU

Dated this the 30th day of April, 2024

Present: Sri Imtiaz Ali
Presiding Officer

OA No.973/2023

BETWEEN:
Karnataka Bank Ltd.
Heard Office at Mangaluru
P. M Rao Road Branch
1st Floor, Kelle Court
Near Post Office
Mangaluru-575 001
Represented by its Branch Manager
Sri B Ajaya Pai .. **APPLICANT**

AND:

1. **Sri K M Monu**
   Aged about 68 years
   S/o. Sri Moidin Kunhi
   D. No.44A
   Bismillah Compound
   AL Madeena manzil
   Badaje, Hosanagadi
   Manjeshwar-671 323-Kerala

2. **Smt. Khadeeja**
   Aged about 58 years
   W/o. Sri K M Monu
   D. No.44A
   Bismillah Compound
   AL Madeena manzil
   Badaje, Hosanagadi
   Manjeshwar-671 323-Kerala

3. **Sri Abdul Rahiman Mushtaq**
   Aged about 39 years
   S/o. Sri K M Monu
   D. No.44A

Bismillah Compound
AL Madeena manzil
Badaje, Hosanagadi
Manjeshwar-671 323-Kerala .. **DEFENDANTS**

Counsels on record/appeared for:

Applicant	:	T S Krishna Murthy
Defendants	:	*Ex-parte*

FINAL ORDER

The present OA has been filed by the Applicant Bank under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, seeking recovery of money of **Rs.22,18,553.74 (Rupees twenty-two lakhs eighteen thousand five hundred and fifty three and paise seventy four only)** together with costs, interest, etc.

2. The case of the Applicant Bank is that, the Defendant No.1 is the borrower, Defendant No.2 is the co-obligant/guarantor and Defendant No.3 is the mortgaged/given as security have approached the Applicant Bank for financial facility working capital/Over Draft Loan Facility for the purpose of manufacturing wood products/business purpose. Accordingly, the Applicant Bank has considered the request of the Defendants and sanctioned the financial facility working capital/Over Draft Loan Facility sum of Rs.12,00,000/- on 24.08.2024, in terms of loan agreements. In order to secure the loan, the Defendants have executed the documents viz., On Demand Promissory Note, Take Delivery Letter,

Letter of Authority, Declaration Executed by the Defendants, Letter of Authorisation, CIBIL Letter, Memorandum of Deposit of Title Deeds executed by Defendants etc.,

3. Further, the Defendants have agreed to repay the above loan with variable rate of interest, as applicable from time to time as per the directions of the Head Office/Central Office of the Applicant Bank and penal interest in case of default and keep the accounts regular by paying installments as and when due to the satisfaction of the Applicant Bank, as detailed in the OA by the Applicant Bank.

4. The Defendants after utilising the said loan have failed and neglected to make the repayment of the loan dues as agreed and Defendants have not serviced the interest thereon as per the terms and condition agreed by the Defendants. In spite of several reminders, the Defendants were not regularized the loan account. Further, the Applicant Bank issued the Demand Notice on 16.07.2020 to the Defendants calling upon to repay the outstanding dues in the loan account. In spite of receipt of Demand Notice, the Defendants have failed to pay the outstanding dues and hence the recovery process is initiated to recover the dues.

5. In the light of these factors, it is contended by the Applicant Bank that Defendants are jointly or severally liable to pay a total sum of **Rs.22,18,553.74 (Rupees twenty-two lakhs eighteen thousand five hundred and fifty three and paise seventy four only)**.

6. After filing this OA, summons were sent and served to the Defendants through RPAD. When the Defendants were called out, they remained absent and hence, placed ex-parte.

7. To prove the case of the Applicant Bank, its Manager, Sri B Ajaya Pai, has filed his affidavit by way of evidence the same was considered as evidence of AW.1 and marked at Ex.A1 and list of documents came to be marked at Ex.A2 and 15 documents came to be marked at Ex.A3 to A17.

8. No evidence on behalf of the Defendants.

9. Arguments of Learned Counsel for the Plaintiff/ Applicant Bank heard and perused the records of the case.

10. Following points arise for my consideration:

1) Whether Plaintiff/Applicant Bank proves its case as contended in the plaint/application?

2) What Order?

11. For the following reasons, I answer the above-referred points in the following manner:

REASONS

12. The Manager of the Applicant Bank came to be examined as AW.1. his affidavit by way of evidence reiterated the facts pleaded in the plaint and her affidavit is also corroborated by the above-referred Ex.A3 to A-17 which clearly establish the case of the Applicant Bank to allow the present OA. Added to this, the Defendants have remained absent, hence it is to be construed that Defendants have admitted the entire case pleaded by the Applicant Bank in the present OA.

13. Therefore, for these reasons, present OA is to be allowed with costs as sought by the Applicant Bank.

ORDER

Present OA stands allowed as prayed for with interest and costs.

In the event of failure of the Defendants who are jointly and severally liable to pay the said OA amount, the Applicant Bank is at liberty to sell the schedule properties of the main application in accordance with law as sought by the Applicant Bank in the OA.

In spite of sale of the schedule properties, if the OA amount is not fully realised, then the Applicant Bank is at liberty to proceed against the persons and other Properties of the Defendants in accordance with law.

Applicant Bank shall file latest Memo of Calculation of OA amount together with interest, costs etc., to be paid by Defendants duly taking into account the amount/s, if any, paid by the Defendants and/or amount realised by sale of assets, etc., during the intervening period after filing the OA, to enable the office to prepare Recovery Certificate for the amount to be paid by the Defendants to the Applicant Bank.

Office is directed to issue Recovery Certificate as sought by the Applicant Bank in the OA and do the needful as required under the law forthwith.

The Office is directed to issue, as far as possible, free copy of this order to the parties concerned.

(Dictated to the Stenographer, after its transcription and necessary corrections, signed and pronounced by me in the Open Court on this the 30th day of April, 2024)

(Imtiaz Ali)
Presiding Officer
DRT-I, Bengaluru

ANNEXURES

Witness Examined for the Applicant Bank:

AW-1 : Sri Ajaya Pai

The Manager of the Applicant Bank

List of Documents Exhibited for the Applicant Bank:

Ex.A-1	:	Affidavit of AW-1
Ex.A-2	:	List of Documents
Ex.A-3 to A-17	:	15 documents

Witness Examined for the Defendants:

- **Nil -**

List of Documents Exhibited for the Defendants:

- **Nil -**

30.4.24

(Imtiaz Ali)
Presiding Officer
DRT-I, Bengaluru

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