

**IN THE SUPREME COURT OF SEYCHELLES**

**SEY. SAVINGS BANK**

**Vs**

**JEAN BAPTISTE PADAYACHY**

*Civil Side No: 183 of 2005*

=====

Mr. Ally for the plaintiff

Mr. Juliette for the defendant

**Judgment**

**Renaud, J.**

The Plaintiff, a commercial bank operating in Seychelles is suing the Defendant, one of its customers, praying this Court for a judgment ordering the Defendant to pay the Plaintiff the sum of **SR35,852.45** with continuing interest thereon at 10% per annum as from end of January 2005 and charges and costs.

**Matters in Dispute**

The Plaintiff alleged that the Defendant breached the Agreement by his failing to repay the loan and interest in the manner agreed upon in the Agreement. This is denied by the Defendant who averred that he repaid the said loan and he is not indebted to the Plaintiff in the sum claimed or at all.

The Plaintiff claimed that by reason of the matters pleaded the Defendant as of **31<sup>st</sup> January 2005** is indebted to it in the sum of **SR35,852.45** representing the outstanding balance of the loan, interests and charges, which sum is increasing.

This allegation is also denied by the Defendant who again averred that he repaid the said loan and that he is not indebted to the Plaintiff in the sum claimed or at all.

The Plaintiff's pleaded that despite its demands to the Defendant to pay the balance of the loan, interests and charges more specifically by a notice dated 24<sup>th</sup> November 2004 (**Exhibit P2**) the Defendant has failed to pay all the said balance. The Defendant further denied this allegation save that he received a letter from the Plaintiff.

### **Findings**

By virtue of a Loan Agreement between the Plaintiff and the Defendant dated **15<sup>th</sup> February 2000** (the Agreement) the Plaintiff granted the Defendant a loan in the sum of **SR75,000.00** with interest at the rate of 10% per annum and subject to other charges. The interest had been calculated thereon at the time, in the sum of **SR16,305.30** making a total of capital and interest of **SR91,305.00**.

The Defendant had to repay the said loan and interest in 48 monthly installments of **SR1,902.19** commencing on **28<sup>th</sup> February 2000** and the total balance of the loan, interests and any other charges would have to be repaid not later than **28<sup>th</sup> January 2004**.

As security for the loan the Defendant, on 15<sup>th</sup> February, 2000, pledged his car S8025 in favour of the Plaintiff.

By a letter dated 14<sup>th</sup> September, 2000 (**Exhibit P4**) the Defendant informed the Plaintiff that he wanted to sell the pledged vehicle and he undertook to deposit the

proceeds of sale with the Plaintiff and will continue to repay his loan as usual. By that letter he also sought the release of the pledged vehicle.

On 4<sup>th</sup> January 2001 the Plaintiff authorized the release of the pledge on the motor vehicle (**Exhibit D1**).

After the pledge on the car was released the Defendant sold that car, S8025, and deposited the proceeds of sale in the sum of **SR40,000.00** in his Savings Account with the Plaintiff. The Plaintiff then blocked that SR40,000.00 of the Defendant's Savings Account as security.

On 30<sup>th</sup> January, 2001 the Defendant wrote to the Plaintiff another letter (**Exhibit P5**) requesting the Plaintiff to unblock his Savings Account in order to allow him to purchase another vehicle. He informed the Plaintiff that he had alternative security in the form of his Savings Bank Bonds worth **SR25,000.00 (Exhibit P9)** and Fixed Deposit in the sum of **SR10,000.00** in his Account. He also proposed the name of a guarantor as further collateral. That request was approved by the Plaintiff.

On 22<sup>nd</sup> March, 2001 the Defendant wrote to the Plaintiff (**Exhibit P6**), *inter alia*, confirming that he was in arrears with his loan repayment and fearing that the surcharge would accumulate, he sought Plaintiff's permission to release the **SR10,000.00** in his Fixed Deposit Account and to apply it as a credit towards his loan. The Defendant also surrendered to the Plaintiff "*Term Deposit Certificate*" in respect of his Fixed Deposit Account.

The Plaintiff issued the Defendant a Bank Statement (**Exhibit D2**) showing the loan account position from **1<sup>st</sup> January, 2001 to 28<sup>th</sup> November, 2001**. It shows that up to the end of November 2001 the Defendant had repaid 23 installments totaling **SR30,915.91**. Of those repayments reflected in Exhibit D2 there is **no credit entry** shown in respect of the **SR10,000.00** surrendered by the Defendant from his Savings Account in March 2001 in order to credit his loan account.

On the same **Exhibit P8** there is a handwritten note stating – *“Please note that your Saving Bonds worth **SR25,000.00** had been cancelled to clear part of the arrears”*.

There is no evidence that the Plaintiff ever advised the Defendant of any change in the original agreed interest rate of 10% per annum.

At the sitting of the Court on 6<sup>th</sup> July 2009 all interest was frozen because Learned Counsel of the Plaintiff had to seek adjournment in order to adduce more evidence in support of the Plaintiff’s case.

### **Conclusion**

The Defendant took a loan of **SR75,000.00** at 10% interest amounting to **SR16,305.30**, to be repaid over 48 months by **SR1,902.19** per month making a total of **SR91,305.12**. The 48 months period started from **February 2000** and ended at the end of **January 2004**.

From 28 February 2000 to 28 November 2001 the Plaintiff admitted that the Defendant had repaid 23 installments amounting to a total of **SR30,915.91** as shown by Exhibit D2 emanating from the Plaintiff.

On **22<sup>nd</sup> March, 2001** the Defendant released **SR10,000.00** that was in his Fixed Deposit Account to be applied towards his loan.

The handwritten remarks on **Exhibit P8** confirmed that the Plaintiff applied the proceeds of the Defendant Saving Bonds worth **SR25,000.00** to clear his loan.

The Defendant did not adduce evidence of any other repayments that he had made towards his loan with the Plaintiff.

In the final analysis I conclude that the Defendant repaid a total of (SR30,915.91 plus SR10,000.00 plus SR25,000.00 ) – **SR65,915.91** from February 2000 to 31<sup>st</sup> January, 2004 when he was supposed to have repaid his loan leaving the balance of **SR25,689.21** outstanding as at 31<sup>st</sup> January, 2004 was (SR91,305.12 less SR65,915.91).

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the sum of **SR25,689.21** with interest at 10% per annum from 1<sup>st</sup> February, 2004 to 6<sup>th</sup> July 2009, with costs.

.....  
B. RENAUD  
JUDGE

*Dated this 22 March, 2013*