IN THE COURT OF PRINCIPLE CIVIL JUDGE AT:SINDHANUR.

PRESENT:
Sri. Ravikumar K. B.A.,(Spl.) LL.B.
Prl. Civil Judge & J.M.F.C, Sindhanur.

O.S.No.201/2015

Dated this the 30th November 2018

PLAINTIFF :	ICICI Bank Ltd, a body corporate incorporated and registered under the Indian Companies Act 1956 and licensed as a Bank under the Banking Regulation Act 1949 having Regulation Act 1949 having Registered Office at "Landmark", Race Course Circle, Vadodara-390007 and having its Corporate Office at ICICI Bank Towers, Bandra Kurla Complex, Bandra (East), Mumbai-400051 and a Branch office at RAPG, Ground Floor, Eurekha Junction, T.B. Road, Deshpande Nagar, Hubli-580029 through authorized Mr. Shivanand Pauskar, S/o. Divakar Pauskar, Age:36 years.
	(**By Sri V.C Advocate)**

//VERSES//

DEFENDANTS :	1.	Huliyamma W/o Sngappa ., Age:62years, R/o. Geeta Camp, Devargudi, Tq.:Sindhanur, Dist.:Raichur.
	2.	Hanumanth S/o Sangappa, Age:50 years, R/o. Geeta Camp, Devargudi, Tq.:Sindhanur, Dist.:Raichur.
	3.	Mallappa S/o Ayyappa, Age:50 years, Geeta Camp, Devargudi, Tq.:Sindhanur, Dist.:Raichur.
		(**Exparte**)

Date of Institution of the suit	:	30/03/2015
Nature of the suit	:	Suit for recover of money.
Date of recording of evidence.	:	13.12.2017
Date of judgment	:	30.11.2018

		Year/s	Month/s	Day/s
Total duration	:	03	08	00

JUDGMENT

Suit is for recovery of amount of Rs.1, 54,462/- as on 16.09.2014 with future interest of @ 17.51% P.A. from 17.09.2014 to till realization.

2. The sum and substance of this case is as follows: Plaintiff bank asserted that, defendant approach the bank for financial assistance on 21.08.2006, obtained the loan of Rs.1,00,000/- for his agricultural necessities. As a security for the loan, hypothecated Suit schedule property he executed registered simple mortgage deed on 29/11/2008. Defendants also executed hypothecation agreement. Defendant agreed to repay the loan amount by way of installments and executed documents in favour plaintiff bank. Preliminary credit facility form, loan agreement, deed of hypothecation mortgage of agricultural land, irrevocable power of attorney. Defendant executed credit facility application dated 21.08.2006 and agreed to abide by the condition. At the time of availing loan defendant is aware of rate of interest, tenure of the loan same can be ensured by the documents executed by the defendants.

4. Defendant after availing loan failed to repay the installments, inspite of several demands and request. Inspite of loan recall notice dated 27-05-2014 defendants failed to repay the loan amount and respond to recall notice defendant is total due as on 16.09.2014 is Rs.1,54,462/-, Hence, this suit.

3. In response of the suit summons, the defendants did not appeared nor filed their written statement thereby the defendants placed *exparte*.

4. The plaintiff-bank in order to prove the plaint averments has examined its manager as PW-1 and got marked documents as Ex.P-1 to P-7.

5. Heard arguments on the plaintiff side.

6. The points that arise for court consideration are as under;-

~:POINTS :~

1) Whether the plaintiff-bank is entitled for the relief as prayed for ?
2) What order?

7. My answers to the above points are as under;-

Point No.1: In the Negative.

Point No.2: As per final order for the following:-

REASONS

8. **Point No.1** :- The plaintiff-bank in order to prove the plaint averments has examined its manager as PW-1. The PW- 1 has filed his affidavit as his chief examination by reiterating plaint averments stating that defendant approach the bank for financial assistance on 21.08.2006, obtained the loan of Rs.1,54,462/- for his agricultural necessities. As a security for the loan, he executed registered simple mortgage deed on 29/11/2008. Defendants also executed hypothecation agreement. Defendant agreed to repay the loan amount by way of installments and executed documents in favour plaintiff bank. Preliminary credit facility form, loan agreement, deed of

hypothecation mortgage of agricultural land, irrevocable power of attorney. Defendant executed credit facility application dated 21.08.2006 and agreed to abide by the condition. At the time of availing loan defendant is aware of rate of interest, tenure of the loan same can be ensured by the documents executed by the defendants. Defendant after availing loan fail to repay the installments, inspite of several demands and request. Inspite of loan recall notice dated 27-05-2014 defendants failed to repay the loan amount and respond to recall notice defendant is total due as on 17.09.2014 is Rs.1,54,462/-.

9. The plaintiff-bank in support of the oral evidence has produced the documents marked as Ex.P-1 to P-6. The Ex.P-1 is loan application, which depicts that on 05.08.2006 plaintiff has applied for loan for financial assistance of Rs.1,00,000/- for his agricultural necessities, Ex.P-2 is Hypothecation agreement, which depicts that the agreement between the plaintiff-bank and defendants. Ex.P-3 is the Demand promissory note, which depicts that mortgage deed executed by defendant No. 1 to 3 in favour of plaintiff bank on 29.11.2008, Ex.P-4 Loan recall notice dated 27-05-2014, which depicts that notice was issued to defendant calling upon make payment of loan amount with interest. Ex.P-5 is ledger extract which depicts that the statement of account plaintiff on 21.08.2006 to 16.09.2014 is Rs.2,90,798/-, Ex.P-6 is Affidavit copy. Though the plaintiff-bank has got issued legal notice to the defendant to calling upon him for payment of loan amount with interest, but inspite of the notice he did not clear the loan amount with interest. Thereby the plaintiff-bank has filed the instant suit against the

defendants. So, the documents marked as Ex.P-1 to 06 are coupled with the oral evidence of the PW- 1 and the PW- 1 who is the bank manager has clearly stated that the defendant has availed a loan of Rs.1,54,462/- from the plaintiff-bank and executed the documents in favour of the plaintiff bank, but she did not repay the same. Thereby the plaintiff-bank has filed the instant suit against the defendants. The plaintiff–bank has proved it's case through oral and documentary evidence. But the defendants did not appeared nor filed their written statement thereby they have placed *exparte*. So, the contents of the plaint and oral evidence of PW- 1 as well as Ex.P-1 to 06 are remained unchallenged.

10. Since loan transaction is agricultural loan the defendants are liable to pay interest at 6% P.A. on Rs.1,54,462/- which is outstanding as on the date of the suit till realization. Findings on the above shows that plaintiff is entitled to recover amount of Rs. 1,54,462/- with future interest at the rate of 6% PA on principle amount.

11. Before parting it is necessary to consider whether claim of the Plaintiff Bank is within time or not. The date of loan is 29.11.2008, repayment period is three years. The last payment is defendant on 5-12-2011, legal notice is issued 27.5.2014 tenure of loan is 10 years, by defendant and thereby defendant acknowledged debt within time. But the plaintiff has not produced any acknowledgment of debt executed by the defendants. All documentary evidence produced by the plaintiff bank is shows that the defendants has borrowed the loan on 05.08.2006 and as per Ex.P-1 and got executed Ex.P-2 either hypothecation agreement and on demand promissory note on 20.01.2006, as per Ex.P-2 the lost due to date 22.08.2008, but it is not explained or produced any documentary evidence to cover the period from 22.08.2008 to 05.12.2011. Hence, it will create doubt about the limitation. As plaintiff has not produced any documentary evidence to show

that the suit of the plaintiff is with in limitation, in the above circumstances, in my humble opinion the suit of the plaintiff is not with in limitation. Hence, I am of the opinion that the point No.1 is answered in the '**Negative**'.

12. **<u>Point No.2:</u>** In view of my answer to above point, I proceed to pass the following;

<u>ORDER</u>

The suit of the plaintiff-bank is dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer, transcript typed by him, corrected and them pronounced by me in the open court on this the 30th day November 2018)

(**Ravikumar .K**)
Prl. Civil Judge & J.M.F.C.,
Sindhanur.

<u>ANNEXURE</u>

WITNESSES EXAMINED FOR PLAINTIFF:

PW-1 Shivanand Pauskar S/o. Divakar Pauskar.

DOCUMENTS SUBMITTED BY THE PLAINTIFF:

Ex.P- 1	Loan application.
Ex.P- 2	Deed of Hypothecation.
Ex.P- 3	Demand promissory note.
Ex.P- 4	Loan recall notice.
Ex.P- 5	Ledger extract.
Ex.P-6	Affidavit .

WITNESSES EXAMINED FOR DEFENDANT:

-NIL-

DOCUMENTS MARKED FOR DEFENDANT :

-NIL-

Prl. Civil Judge & J.M.F.C.,
Sindhanur.

(Judgment pronounce in the open court, vide separate order)

ORDER

The suit of the plaintiff-bank is dismissed with cost.

Draw decree accordingly.

Prl. Civil Judge Sindhanur.