KADW210141302023

IN THE COURT OF THE II ADDL.CIVIL JUDGE & JMFC-III., HUBBALLI

Present : Smt. RAKSHATHA S., LL.B.
II Addl.Civil Judge & JMFC-III,
Hubballi

Dated this the 07th day of January 2025

O.S.No.789/2023

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PLAINTIFF : Karnataka Vikas Grameena Bank,
Madhura Colony Branch,
Hubballi
By its Branch Manager,
Sri. Bhawankumar
S/o Jagdish Kumar Gauri,
Age: 33 years
Occ: Branch Manager
R/o Hubballi

(By Sri. C.B.P, Advocate)

Vs.

DEFENDANTS 1) Sri. Aayath A. Kanakgeri,
Age : 36 years, Occ: Business,
R/o Ramalingeswar Nagar,
Gokul Road,
Hubballi-30

2) Sri. Shabbirammad Mulla,
Age : 34 years, Occ: Business,
R/o 236, Ramalingeswar Nagar,
Gokul Road,
Hubballi-30

(Placed exparte)

1.	Nature of the suit	:	Recovery of money	
2.	Date of Institution of the Suit	:	11.09.2023	
3.	Date of commencement of evidence	:	12.12.2024	
4.	Date of Judgment pronounced on	:	07.01.2025	
5.	Total duration	:	Year/s 01	Month/s 03 / Day/s 26

(Smt. RAKSHATHA S.)
II Addl.Civil Judge and
JMFC-III, Hubballi

J U D G M E N T

The plaintiff has filed the present suit against the defendants for recovery of amount of Rs.1,14,860/- along with future interest @ 13.5 % p.a. + 2% O.D. from 06.09.2023 till realization with cost.

2. Facts of the plaintiff's case:

The defendants have approached to the plaintiff bank and requested to advance them a loan of Rs.1, 50, 000/- for tailoring business. The plaintiff bank on the defendants assurance that, they should repay the loan as per the terms of the plaintiff bank and the plaintiff bank has advanced the loan of Rs.1,50,000/- on 09.02.2016. In consideration of having received the said loan amount the defendants have executed agreement of loan paper etc, in favor of the plaintiff bank on 09.02.2016 and the defendant No.1 has agreed to repay in 36 monthly installments, of Rs.5,282/- each and 1st installments due starts from 09.03.2016 and the last installment due on 09.02.2019. After taking the above said loan the defendants, they should pay some installments, further they failed to repay the said loan amount as per the agreed terms of the plaintiff bank and the defendants have requested and given Demand Promissory Note along with Revival letter for Time Barred Debts for further more period to pay the due amount of Rs.95,273/- on 20.06.2022. Even then the defendants have not paid the installments regularly. Hence, the plaintiff banks several times demanded to pay the loan amount and plaintiff bank had issued legal notice through his advocate to the defendants on 02.07.2022. But, the defendants have utterly failed to pay the due amount to the plaintiff bank. The plaintiff bank has maintained the ledger of the loan account of the defendants in its ordinary course of banking business under thier loan A/c. No. 89069314133 the present rate of interest payable by the defendant at the rate of 13.5% p. a. + 2% O. D. Interest payable by the defendants. Hence, the Defendant No. 1's Ledger Extract of the loan account of the Defendant shows the balance of Rs.1,14,860/- as on 05.09.2023 along with up to date interest. Hence both are jointly and severally are liable to pay the said loan amount along with interest accrued thereon as agreed by them. Hence the suit.

3. Inspite of due service the defendants neither appeared before the Court nor contested the suit. Thus the defendants were placed exparte.

4. In order to prove the case of the plaintiff, the manager of the plaintiff bank was examined as P.W.1 and reiterated the averments made in plaint in his affidavit filed

in lieu of his examination- in - chief and got exhibited Exs.P.1 to 9.

5. Heard the arguments advanced by the Learned Counsel for the plaintiff.

6. On perusal of the pleadings and evidence on record, the following points do arise for my consideration:

POINTS

1. Whether the plaintiff bank proves that the defendant Nos.1 and 2 have borrowed loan of Rs.1,50,000/- and in default of outstanding amount of Rs.1,14,860/-?
2. Whether the plaintiff is entitled for the suit claim?
3. What order or decree?

7. *My answers to the above points are as under:*

Point No.1 : In the affirmative.

Point No.2 : Partly in the affirmative.

Point No.3 : As per the final order for the following:

R E A S O N S

POINTS Nos.1 & 2 :

8. Since these points are interconnected with each other I have taken up together for common determination to avoid the repetition of facts and evidence on record.

9. The plaintiff has contended that the defendant No.1 who has availed loan from it has become defaulter of loan amount. PW1 is the Manager of plaintiff bank. In his chief-examination has reiterated the averments of plaint.

10. Ex.P1 is the sanction letter. Ex.P2 is the stamp receipt. Ex.P3 is the composite hypothecation agreement. Ex.P4 is the guarantee agreement. Ex.P5 is the demand notice. Ex.P6 is the letter of revival. Ex.P7 is the copy of legal notice. Ex.P8 is the statement of accounts. Ex.P9 is the certificate.

11. The testimony of PW1 both oral and documentary has remained unrebutted as the defendants remained uncontested. Exs.P1 to P9 by corroborating the oral testimony of PW1 which goes to demonstrate that the

defendant No.1 has approached the plaintiff bank and sought for loan amount of Rs.1,50,000/- and he has executed loan cum hypothecation agreement and subsequent to availing loan amount, the defendant No.1 has become defaulter in his payment. Ex.P.8 clearly go to demonstrate that the defendant No.1 is under liability to pay the suit claim to the plaintiff bank. Thus the plaintiff has successfully proved that the defendant No.1 has approached for loan of Rs.1,50,000/- and subsequently defendant No.1 has become defaulter of suit claim and defendant No.2 has stood as guarantor to the said loan amount and he too did not turn up.

12. The defendant No.1 has availed the loan for his tailoring business from the plaintiff bank. Therefore considering the evidence on record and in view of the judgment of Hon'ble **Supreme Court of India in C.K. Sasankan V/s The Dhanalakshmi Bank Ltd., reported in AIR 2009 SC 3171**, the plaintiff bank is entitled for future interest @ 6% per annum on the principal amount from the

date of institution of suit till its realization. Thus this Court answered Point No.1 in the affirmative and Point No.2 partly in the affirmative.

POINT No.3:

13. In view of the above discussion made on Point Nos. 1 & 2. This Court proceeds to pass the following:

O R D E R

The suit of the plaintiff is hereby partly decreed with cost.

The defendant Nos.1 and 2 are jointly and severally liable to pay suit claim of Rs.1,14,860/- along with future interest @ 6% per annum on the principal amount from the date of suit till its realization.

Draw decree accordingly.

(Dictated to the stenographer directly on computer and corrected by me and then pronounced in the open court on this the **07th day of January 2025**)

(Smt. RAKSHATHA S.)
II ADDL.CIVIL JUDGE AND JMFC-III,
HUBBALLI

ANNEXURE

1. List of witnesses examined on behalf of plaintiff/s :

P.W.1 : Bhawankumar S/o Jagdishkumar Gauri

2. List of documents exhibited on behalf of plaintiff/s :

Ex.P.1	:	Sanction letter
Ex.P.2	:	Stamp receipt
Ex.P.3	:	Composite hypothecation agreement
Ex.P.4	:	Guarantee agreement
Ex.P.5	:	Demand notice
Ex.P.6	:	Letter of revival
Ex.P.7	:	Copy of Legal notice
Ex.P.8	:	Statement of accounts
Ex.P. 9	:	Certificate

3. List of witnesses examined on behalf of defendant/s :

NIL

4. List of documents exhibited on behalf of defendant/s :

NIL

(Smt. RAKSHATHA S.)
II ADDL.CIVIL JUDGE AND JMFC-III,
HUBBALLI