KAHV010023532021

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE & SPECIAL JUDGE (COMMERCIAL COURT), AT HAVERI.

DATED THIS THE 24th DAY OF JUNE, 2026

PRESENT: **Sri.Biradar Devindrappa N.,**
B.A., LL.B.,(Spl)
Prl. District & Sessions Judge &
Special Judge (Commercial Court),
Haveri.

COM.O.S.No.42/2021

PLAINTIFF:

Union Bank of India,
A Banking Company constituted under Banking Companies, (Acquisition and transfer of Undertakings) Act, 1970 and having its Central Office at 239, Vidhan Bhavan Marg, Nariman Point Mumbai and branches among other places and a Branch office at Byadgi

Represented by its Branch Manager,
Sri.Dandu Nayak S/o Laxman Nayak,
Age; 38 years, Occ: Manager,
Union Bank of India, Branch Byadgi,
R/o Byadgi, Taluk: Byadgi.

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

Vs.

DEFENDANTS:

1. Kiranakumar
S/o Rameshappa Katwa,

Age 33 years, Occ: Business,
R/o Rattihalli Road, Gandhinagar,
Near Guttemma Temple, Byadgi.
Taluk: Byadgi, District: Haveri.

2. Rameshappa
S/o Hanumantappa Katwa,
Age 73 years,
Occ:Kirana Shop/Business
R/o Rattihalli Road, Gandhinagar,
Near Guttemma Temple, Byadagi,
Taluk: Byadgi, District: Haveri.
Since deceased by LRs

2.a) Smt.Meenakshi
W/o Rameshappa Katwa
Age 70 years, Occ: Household,
R/o Gandhinagar,
Near Guttemma Temple, Byadagi,
Taluk: Byadgi, District: Haveri.

2.b) Ravikumar
S/o Rameshappa Katwa,
Age 30 years, Occ: Business,
R/o Gandhinagar,
Near Guttemma Temple, Byadagi,
Taluk: Byadgi, District: Haveri.

2.c) Smt.Aprna
W/o Yallappa Yadav,
Age 34 years, Occ: Business,
R/o Gandhinagar,
Near Guttemma Temple, Byadagi,
Taluk: Byadgi, District: Haveri.

By Sri. M.J.Mulla, Advocate.D-1 &2(a&b)
Defendant No.2(c)-Exparte.

Date of Institution of the Suit Before Senior Civil Judge, Byadagi	31.01.2020

Before this court	16.09.2021		
Nature of the suit (suit on pronote, suit for declaration and possession, suit for injunction etc.,)	Suit for recovery of money		
Date of the commencement of recording of evidence.	04.02.2021		
Date on which the judgment was pronounced	24.06.2026		
Total Duration:	Year/s	Month/s	Day/s
Senior Civil Judge, Byadagi	01	07	15
Before this court	04	09	09
	06	**06**	**24**

JUDGMENT

Plaintiff the Union Bank of India, Branch Byadgi, having Head Office in Mumbai, represented by its Manager filed this suit against defendant Nos.1 and 2 for recovery of Rs.6,33,860=13 with interest at the rate of 14.15% per annum from the date of suit till complete realisation of decretal amount and costs.

2. The defendant No.2 is dead and represented by his LRs., the defendant Nos.2(a to c).

3. Brief facts of plaintiff's case are that, the defendant No.1 has approached the plaintiff bank on 28.03.2016 for commercial loan to install groundnut Decortication Unit under

the name and style of Harshita Food Industries. Plaintiff bank sanctioned the loan a sum of Rs.8,00,000/-. The defendant No.1 availed said loan. Defendant No.2 the father of defendant No.1 stood surety and a guarantor for repayment of said loan amount. Both defendant No.1 and 2 executed sanction communication letter, General term loan agreement, on demand promissory note, hypothecation agreement, agreement on rate of interest, debit balance confirmation and acknowledgments, letter of continuity and guarantee agreement on 29.03.2016 agreeing all the terms and conditions agreeing to repay the loan amount with interest at the rate of 12.15% per annum in 75 equal monthly installments commencing from 31.11.2016. Defendants have also agreed to pay penal interest. Loan account of defendant No.1 was maintained by the plaintiff bank during the course of business. Rs.6,33,860=13 was due on 31.07.2019. Plaintiff bank demanded the defendants to repay balance amount and interest but they did not pay. Notices were also issued. Loan account of defendant No.1 was classified as NPA (Non Performing Asset). On 12.06.2019, notice was issued to defendants but defendants failed to clear of the dues. Accordingly, it is prayed to decree the suit.

4. Defendant No.1 filed a written statement and defendant No.2 adopted the same.

5. In his written statement, defendant No.1 contends that, he was an unemployed and filed an application under Pradhana-mantri self employment scheme in the year 2015-16. He was selected as one of the beneficiaries and directed the bank to sanction subsidy loan. Bank itself called the defendant No.1 and informed about sanction of loan, asked him to furnish name and address of company or owner who can supply machinaries. He furnished name and address of Trinity packaging company. Plaintiff bank paid Rs.2,03,500/- and Rs.4,13,000/- through two DDs in the name of Trinity Packaging, Bangalore on 27.05.2016 and paid Rs.1,00,000/- to the defendant No.1 on 31.03.2016 to put up a tin shed. Trinity packaging Company Bangalore did not supply machinaries. Defendant No.1 went in search of said company but said company was closed and not in existence. He went to Laxmipuram police station Bangalore to file a complaint but said police have not received complaint. Neither amount of two DDs addressed to Trinity Packaging Company was paid to defendant No.1 nor machinaries were supplied. Subsidy

amount was not paid to him. He has no movables and immovable. His father defendant No.2 the guarantor owns house and open place at Gandhinagar, Byadagi. The defendant No.2 is having wife and other children, he is 73-74 years old. Date of sanction of loan is important but not specifically pleaded in the plaint. No loan amount was paid to the defendant No.1. Suit is filed with an intention to dupe the subsidy amount and recover suit claim. He denies the case made out by the plaintiff. Accordingly, it is prayed to dismiss the suit.

6. Initially, suit was filed before the learned Senior Civil Judge & JMFC., Byadagi in O.S.No.5/2020.

7. Learned Senior Civil Judge and JMFC., Byadagi has framed the following issues:

1. Whether the plaintiff Bank proves that it has advanced a loan of Rs.8,00,000/- to the defendant No.1 on 28.03.2016 on interest at the rate of 12.15% p.a. and defendant No.2 has stood as surety to the said loan amount?
2. Whether the plaintiff Bank proves that as on the date of suit, the defendants were due to the plaintiff Bank for Rs.6,33,860=13?
3. Whether the plaintiff Bank is entitled for the suit amount?

4. Whether the plaintiff Bank is entitled for current and future interest at rate of 14.15% p.a.?
5. What order or decree?

8. Plaintiff examined one witness as PW-1 and produced Ex.P1 to 16 documents and closed its side. The defendants have examined defendant No.1 as DW-1 and produced four documents Ex.D1 to 4 and cross examination of DW-1 was deferred. Thereafter, case was transferred to this Court vide order dated:16.08.2021 in view of the provisions of Commercial Courts Act.

9. After receipt of the records, case was registered in OS No.42/2021 on the file of this court. This court issued summons to the defendant No.1 and 2. Both parties appeared. DW-1 was fully examined and defendants' side was closed.

10. Meanwhile defendant No.2 is reported as dead. His LRs are brought on record.

11. Heard the arguments and perused the records including written arguments thereafter, my findings to the above issues are as under:

Issue No.1: :In the affirmative,
Issue No.2: :In the affirmative,
Issue No.3: :In the affirmative,

<u>Issue No.4</u>: :Partly in the affirmative,
<u>Issue No.5</u>: As per final order,
for the following:

<u>R E A S O N S</u>

12. **<u>Issue No.1</u>:-** It is the case of the plaintiff that, defendant No.1 approached the plaintiff bank for commercial loan as pleaded. The bank sanctioned the commercial loan of Rs.8,00,000/-. The defendant No.2 father of defendant No.1 stood as guarantor and both defendants have executed necessary documents.

13. PW-1 the branch manager of plaintiff bank, reiterated plaintiff's case and produced Ex.P-1 to 16 documents.

14. Sanction communication letter, General Term loan agreement, hypothecation agreement, interest agreement, letter of guarantee, debit balance confirmation and acknowledgment, guarantor's undertaking letter in the form of annexure 2, one more undertaking letter in the form of annexure 1, Demand Promissory note, letter of continuity, copy of legal notice, two postal acknowledgments, two postal receipts and loan account extract of defendant No.1 are the documents produced by the plaintiff bank.

15. Plaintiff's documents establish that, the bank has informed the defendant No.1 about sanction of loan vide Ex.P-1 dated 29.03.2016. Said document establishes that, on 09.02.2016, defendant No.1 approached the plaintiff bank and moved an application for loan and thereby bank informed him about sanction of loan vide Ex.P-1 dated 29.03.2016.

16. Other documents establish that, defendant No.1 executed Ex.P-2 General Term Loan agreement, Ex.P-3 hypothecation agreement and Ex.P-4 rate of interest agreement. The defendant No.2 executed Ex.P-5 letter of guarantee. Defendant No.1 also executed Ex.P-6 debit balance confirmation and acknowledgment and Ex.P-8 undertaking in the form of annexure 1. Defendant No.2 executed Ex.P-7 undertaking in the form of annexure 2. Further, the defendant No.1 executed Ex.P.9 demand promissory note and Ex.P-10 continuity letter.

17. PW-1 branch manager of plaintiff bank was cross examined by the defendants. It can be gathered from cross examination of PW-1 that, loan was sanctioned in the self employment scheme, the amount was paid to purchase machinaries and defendant No.1 paid 5% of machinery costs

and it was not shown in the loan account statement of defendant No.1, subsidy granted to the defendant No.1 was shown in the loan account but no interest was charged over the subsidy amount etc.,

18. Further, it can be seen from the cross examination of PW.1 that, defendant No.1 himself suggested that, he was not in a position to start the business for want of supply of machinaries, he is not liable to pay interest over the loan amount in view of scheme under which loan was granted etc.,. The witness has denied the said suggestions. No other facts are elicited.

19. DW-1 reiterates his case in his chief examination. In the cross examination, DW-1 clearly admits that, he availed loan under the employment guarantee scheme in the year 2016 and did not pay the installments. He furnished quotation to the bank and bank issued cheque amount in infavour of machinery dealer. Though he explained that, he went to Laxmipuram police station, Bangalore to lodge a complaint that machinaries were not supplied, complaint was not received, machinery supplier was not there in the given address and he informed the

bank about non supply of machinery but said explanation is without plea.

20. Defendant No.1 produced Ex.D-1 interview card by District Industrial Center, Haveri, Ex.D-2 registration certificate of Harshita Food industry, Gandhinagar, Byadagi, Ex.D-3 bank notice in the style of adjustment of over dues addressed to M/s Kirankumar Rameshappa Katwa and Ex.D-4 bank passbook.

21. I have carefully considered the case made out by the plaintiff and defendants and evidence on record. Though the defendant No.1 denied loan transaction, facts pleaded by him and admission given by DW-1 coupled with pleadings and evidence of PW-1 and also contents of Ex.P-1 to 10 establish that, the defendant No.1 availed loan of Rs.8,00,000/- from the bank and defendant No.2 stood as guarantor.

22. Ex.P-16 loan account extract establishes debit of the loan amount of Rs.1,00,000/- + 2,00,000/- + 4,00,000/- + 20,000/- was disbursed on different dates. Rs.2,37,737/- was credited towards subsidy.

23. Mere fact that amount was disbursed to the machinery supplier at the request of defendant No.1 on the basis of quotation furnished by him is not the ground to hold

that, loan amount was not paid to the defendant No.1. A case made out by the defendants that, subsidy amount was not taken into consideration is not acceptable and it was already taken in the credit. Plaintiffs' evidence coupled with the defendants admission is sufficient to hold that, the plaintiff bank advanced loan of Rs.8,00,000/- to the defendant No.1 on 29.03.2016 subject to repayment with interest at the rate of 12.15% pa., and the defendant No.2 stood as surety to the said loan amount thus, the plaintiff has proved issue No.1. A fact pleaded by the defendant No.1 that, date of sanction of loan is not acceptable and it is not a sole ground to disbelieve the plaintiff's case. Documents establish that loan was sanctioned on 29.03.2016 thus, issue No.1 is proved. Accordingly, issue No.1 is answered in the affirmative.

24. **Issue No.2**: Ex.P-16 is the loan account extract of defendant No.1 from 31.03.2016 to 08.07.2019 maintained by the plaintiff bank during the course of its business. Balance as on 08.07.2019 was Rs.5,93,526=13. Suit was filed in the month of September-2021, two years after 08.07.2019 the last date forthcoming from Ex.P-16. Suit is filed for recovery of Rs.6,33,860=13 including interest over Rs.5,93,526=13 for a

period of two years two months. Therefore, oral and documentary evidence produced by the bank is sufficient to hold that, the defendants were due to sum of Rs.6,33,860=13 as on the date of suit. Nothing is there to disbelieve the said fact. Evidence produced by the defendants is not sufficient to disprove the said fact thus, the plaintiff Bank proved that as on the date of suit, the defendants were due Rs.6,33,860=13 to the plaintiff bank. Accordingly, issue No.2 is answered in the affirmative.

25. **Issue No.3:** The plaintiff bank advanced loan to the defendant No.1 to which the defendant No.2 stood as surety cum guarantor. The defendants failed to repay the loan amount and interest. Therefore, the plaintiff bank is entitled to recover the said claim. Accordingly, issue No.3 is answered in affirmative.

26. **Issue No.4:** Documents executed by the defendants establish that, defendants have agreed to repay loan amount with interest at the rate of 12.15% p.a. Therefore, the plaintiff bank is not empowered and entitled to charge interest at the rate of 14.15% p.a. as claimed in the plaint. Plaintiff is entitled

to recover the said claim with interest at the rate of 12.15% p.a. Accordingly, issue No.4 is answered partly in the affirmative.

27. **Issue No.5**: In view of nature of transaction, plaintiff is entitled to recover the suit claim. Hence, I proceed to pass the following:

ORDER

Suit of the plaintiff bank is decreed in part with costs.

The defendant No.1 and defendant No.2 (a to c) shall jointly and severally pay the suit claim of Rs.6,33,860=13 to the plaintiff bank with interest at the rate of 12.15% per annum from the date of suit till complete realisation.

Draw decree accordingly.

(Dictated to Stenographer Grade-I, transcribed and typed by her, corrected and signed by me and then pronounced in open court on 24th of June, 2026.)

(Biradar Devindrappa N.)
Prl. District & Sessions Judge &
Special Judge (Commercial Court),
Haveri.

ANNEXURE

List of witnesses examined for the plaintiff :

PW.1 Dandu S/o Laxman Naik

Exhibits marked for the plaintiff :

Ex.P1	Sanction communication letter
Ex.P2	General term loan agreement
Ex.P3	Hypothecation agreement
Ex.P4	Agreement on rate of interest
Ex.P5	Letter of guarantee
Ex.P6	Debit balance confirmation and acknowledgment
Ex.P7	Annexure II
Ex.P8	Annexure I
Ex.P9	Demand Promissory note
Ex.P10	Letter of continuity
Ex.P11	Legal notice
Ex.P12&13	Two postal acknowledgments
Ex.P14 &15	Two postal receipts
Ex.P16	Copy of loan extract of defendant

List of witnesses examined for the defendant/s:

DW.1 Kirankumar S/o Rameshappa Katava

Exhibits marked for the defendant/s:

Ex.D1	Interview letter
Ex.D2	Registration under FSS Act,200 6
Ex.D3	Notice given by plaintiff bank

Ex.D4	Bank passbook
Ex.D4(a)	Passbook entry

(Biradar Devindrappa N.)
Prl. District & Sessions Judge &
Special Judge (Commercial Court),
Haveri.