IN THE COURT OF LXXXVIII ADDL.CITY CIVIL & SESSIONS JUDGE, (EXCLUSIVE DEDICATED COMMERCIAL COURT) AT BENGALURU (CCH.89)

THIS THE 12th DAY OF DECEMBER, 2023

PRESENT:
SRI. VIRUPAKSHAIAH H. M.,
B.Com., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU

Concurrent Charge of
LXXXVIII ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU (CCH-89)

Com.O.S.No. 1507/2022

PLAINTIFF The Jammu and Kashmir Bank Limited, a Banking Company Registered under then Jammu and Kashmir Companies Act of 1977, (samvat), Branch Office at First floor, 8th Edifice, CMH Road, Indiranagar, Bangalore – 32, Rep. by its Manager and GPA Holder, Mr. Sanjeev Kumar, S/o Sri. Roshan Lal, Employee Code 4109, aged about 55 years.

(Rep. by Sri.S.B.A.R., Advocate)

AND

DEFENDANT 1. M/S BRILLIANCE ART GALLERY, A Partnership concern

UNIT ADDRESS:
No.2-226-115, MS Ramaiah Road, Movenpic Hotel and SPA Gokula, Bangalore – 560 054.

2. Mr. ADIL AHMAD JAN, Aged about 38 years, S/o Bashir Ahmad Jan, No.8/1, 1st Floor, 3rd Cross, Marappa Garden, Benson Town, Bangalore – 560 046.

3. Mr. SAMEER AHMAD JAN, Aged about 42 years, S/o Bashir Ahmad Jan, No.8/1, 1st Floor, 3rd Cross, Marappa Garden, Benson Town, Bangalore – 560 046.

4. Mr. SHAFAT AHMAD NAQASH, Aged about 58 years, S/o Mr. Ghulam Mohammed Naqash, No.333, 1st Floor, 8th Main, 5th Cross, HAL 3rd Stage, Bangalore – 560 075.

5. Mr. MUKHTAR AHMED JHAN, Aged about 64 years, S/o Ali Mohammed Jhan, Apartment No.B301, 2nd Floor, Rosary Apartment, No.97, St. Jhones Church Road, Bangalore – 560 005.

6. Mr. AIJAZ AHMED MAKHDOOMI, Aged about 58 years, S/o Assadullah Makhdoomi, No.8, 3rd Main, Vasanthanagar, Bangalore – 560 052.

(Exparte)

Date of Institution of the suit	**15.10.2022**
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	**Recovery of money**

Date of commencement of recording of evidence	**18.08.2023**
Date on which judgment was pronounced	**12.12.2023**
Total Duration	**Year/s 01 Month/s 01 Day/s 27**

(VIRUPAKSHAIAH H M),
C/c LXXXVIII Addl.City Civil & Sessions Judge,
(Exclusive Commercial Court)
Bengaluru.

J U D G M E N T

The Plaintiff Bank has filed this suit against the Defendants for recovery of a sum of Rs.4,96,180/- with interest @ 12.30% p.a. and additional interest @ 2% over and above the prime lending rate plus interest tax PA compounded monthly in respect of A/c No.054002010000041 with costs and interest from the date of the suit till its realization.

2. The Plaintiff's case in brief is that, the 2nd and 3rd defendants along with one Mr. Azad Ahmad Bhat S/o Late Mr. Ghulam Hassan Bhat as partners of partnership firm

i.e. 1st defendant as partnership concern has availed cash credit facility of Rs.7,00,000/- for business purpose on 06.03.2018 under Account No.054002010000041 agreeing to repay said sum along with interest at 1 year MCLR + 3.50% i.e., 12.30% p.a. (Floating) and additional interest @ 2% over and above the prime lending rate plus interest tax. In this regard, the defendant has executed demand promissory note, loan agreement, letter of continuity, hypothecation agreement and deed of guarantee and other documents in favour of the plaintiff bank.

3. To ensure prompt repayment, the defendant has hypothecated the stocks in trade as primary security and collateral security of third party guarantee of two persons namely Mr. Mukhtar Ahmed Jan and Mr. Aijaz Ahmed Makhdoomi and have guaranteed the payment of loan by the 5th and 6th opposite parties in favour of the plaintiff bank. The aforesaid cash credit facility was renewed yearly and last such renewal was on 01.03.2018. Further

the partnership firm was reconstituted and 2nd defendant was included as partner of the firm and the said Mr. Azad Ahmed Bhat retired from partnership business and hence the renewal of loan and execution of renewal documents were signed by the 2nd, 3rd and 4th defendants for and on behalf of 1st defendant and executed demand promissory note, letter of continuity. Further the 5th and 6th defendants have further executed fresh deed of guarantee dated 04.06.2014 and other documents.

4. The defendants have failed to comply with the terms of repayment and he is still due a sum of Rs.4,96,180/- in respect of cash credit Account No.0540020100000041 as on 30.04.2022 as per loan ledger. The defendants are liable to pay interest at 1 year MCLR + 3.50% i.e. 12.30% p.a. compounded monthly on Rs.7,00,000/- from the date of suit till realization.

5. In spite of repeated requests and demands, the defendants failed to clear the dues. However, an

application under Rule 3 (4) and (6) is filed before the DLSA, Bengaluru Urban in PIM No.1207/2022 for initiation of mediation process against the defendants and after coming to conclusion that notice is served through E-Mail and the defendants called out absent and closed. The DLSA, Bengaluru Urban has issued Non Starter Report in PIM No.1207/2020.

6. The suit is in time as the defendants have availed cash credit facility of Rs.7,00,000/- on 06.03.2018 and have not repaid the loan along with interest regularly and that the defendants have deposited a sum of Rs.6,000/- but the defendants failed to repay the loan amount.

7. The cause of action for filing this suit arose on 06.03.2018, when and where the defendants have availed cash credit facility loan of Rs.7,00,000/- and on 25.09.2020 when and where the defendants have deposited the amount in the loan account and executed suit documents 2 to 5 and subsequently, when the

defendants have failed to clear the dues, in spite of registered notice and non starter reporting per-institution mediation PIM No.1207/2022.

8. In spite of issue summons to the defendants through RPAD, and the same was served on defendant No.5, defendant No.6. The suit summons was returned unserved against the defendant No.1 to 4 and returned with postal shara that the defendant No.1 company vacated, defendant No.2 and 3 unserved as No such Person and against the defendant No.4 was returned unserved as Left Address. Thereafter, the summons issued through paper publication as per Order V Rule 20 r/w Sec.151 of CPC. The defendants No.1 to 6 remained absent, hence they are placed exparte.

9. The Manager/ GPA holder of the plaintiff Bank got examined himself as PW1 and got marked documents as Ex.P1 to P12.

10. Heard the arguments by the learned counsel for the plaintiff and perused the records.

11. The following points that arise for my consideration are:-

1. Whether the plaintiff is entitled to the relief claimed in the plaint ?
2. What Order or decree ?

12. My findings on the above points are as under:

Point No.1 :- Partly in Affirmative.

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

REASONS

13. **Point No.1 :-** In order to prove the case, the plaintiff mainly relies upon the oral evidence of PW-1 and documents at Ex.P1 to P2. The Learned counsel for the plaintiff would argue to support the pleadings, oral and documentary evidence of the plaintiff and lastly prays to decree the suit.

14. PW-1 specifically deposed by way of filing affidavit in

lieu of his chief-examination and reiterated the facts as averred in the plaint once again on oath and has produced the documents at Ex.P1 to P12 i.e., Notarized copy of GPA, Sanction letter renewal dated 01.03.2018, Loan agreement, Particulars of stock, Particulars of stock, Demand promissory note dated 09.03.2013, Deed of guarantee dated 05.03.2013, Deed of guarantee dated 04.06.2014, Demand promissory note dated 06.03.2018, Letter of continuity, Account extract and PIM report. They are all establishes that the plaintiff bank executed GPA in favour of P.W.1 to conduct the case against the defendants, defendants have availed working cash credit facility from the plaintiff Bank for a sum of Rs.7,00,000/- for the purpose of business on 06.03.2018 under account No.0540020100000041 have executed necessary documents and agreed to pay interest at 1 year MCLR + 3.50% i.e. 12.30% pa. (Floating) and additional interest at 2% over and above prime lending rate plus interest tax. But defendants have failed to repay the dues and they are liable to pay the same along with interest.

15. The evidence is unchallenged by the defendants in any manner. On scrutinize the oral and documentary evidence of PW1, which are corroborate with each other and in conformity with the plaint contents. They are support the suit claim of the plaintiff. There is no any doubt to believe the version of PW1 and the documents relied upon by the plaintiff Bank.

16. The proceedings being civil in nature, the appreciation of evidence necessarily under the touch stone of preponderance of probabilities as against the proof beyond all reasonable doubt in a criminal case. The very fact that the defendants remained absent and not contested the case indicates that they are not disputing the claim of the plaintiff alleged against them in the plaint. When the defendants does not enter into the witness box and deny the case of the plaintiff and states their own case on oath and does not offer themselves to

be cross-examined by the plaintiff, a presumption would arise that a case set up by the plaintiff Bank is correct. It would give rise to an inference adverse against them and drew a presumption under Section 114 of Evidence Act against the defendant. When the defendants failed to disprove the case of the plaintiff and discard the evidence, there is no impediment to decree the suit.

17. Further, I would like to rely upon a decision in the case of **S.S. Steel Industry v. Hargovind Steel reported in (2019) SCC Online Del 9964,** held that - Once summons in the prescribed form have been directed to be issued and duly served, the defendant is obliged to enter appearance within the statutory period, and on failure of the defendant to enter appearance within the statutory period, the averments in the plaint are deemed to be admitted and the plaintiff is entitled to a decree forthwith.

18. The transaction involved in the suit is a commercial one, the defendants agreed to pay rate of interest on the

loan specified in the loan documents executed by them in favour of plaintiff Bank. Considering the facts and circumstances and evidences on record, this court comes to the conclusion that the defendants jointly and severally held liable to pay the interest at the rate of 10.00% per annum on the total award amount to the plaintiff Bank from the date of suit till realization. Hence, I am of the view that the suit of the plaintiff bank is deserves to be decreed in part. Hence, I answer point No.1 in **Partly Affirmative**.

19. **Point No.2 :-** For the aforesaid reasons, I proceed to pass the following:

ORDER

The suit of the Plaintiff Bank is hereby decreed in part with costs.

The Defendants are jointly and severally held liable to pay a sum of Rs.4,96,180/- (Rupees Four lakh Ninety Six thousand and One hundred and Eighty only) together with interest at the rate of 10.00% per annum to the plaintiff from the date of suit till the date of realization.

The advocate for the plaintiff is directed to file Memorandum of cost before the Office within 5 days from today.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me in open Court on this the **12th day of December, 2023**).

(VIRUPAKSHAIAH H M),
C/c LXXXVIII Addl.City Civil & Sessions Judge,
(Exclusive dedicated Commercial Court)
Bengaluru.

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF

PW-1 Mr. Sanjeev Kumar

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF

Ex.P.1	Notarized copy of GPA
Ex.P.2	Sanction letter renewal dated 01.03.2018
Ex.P.3	Loan agreement
Ex.P.4	Particulars of stock etc.,
Ex.P.5	Particulars of stock etc
Ex.P.6	Demand promissory note
Ex.P.7	Deed of guarantee
Ex.P.8	Deed of guarantee

Ex.P.9	Demand promissory note
Ex.P.10	Letter of continuity
Ex.P.11	Account extract
Ex.P.12	PIM Report

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANT

NIL

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANT

NIL

(VIRUPAKSHAIAH H M),
C/c LXXXVIII ACC & SJ,
Bengaluru.