

**IN THE COURT OF LXXXVII ADDL.CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH.88)**

THIS THE 26th DAY OF FEBRUARY 2021

**PRESENT:
SRI.CHANDRASHEKHAR U., B.Sc., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.O.S.No.2081/2019

PLAINTIFF

: **Canara Bank,**
SME Peenya Branch,
Bengaluru -560 058.
Represented by Manager
Sri. C.P. Omnath
S/o Sri. V.V. Chandran,
aged about 30 years.

(Reptd by Sri.Ramanand Achar &
Rohit.R.Achar – Advocates)

AND

DEFENDANTS :

- 1. M/s Max Oven Tech India Pvt.Ltd.,**
Represented by its Director,
Mr. V. Pradeep Kumar,
No.1, - D, 2nd Phase,
Peenya Industrial Area,
Bengaluru – 560 058.
- 2. Mr. T. Anil Kumar,**
S/o Sri. V.K. Thankappan Nair,
Aged about 49 years,
R/a No.48, "Thushavam",
5th Cross, P.M.K. Road,
Prashanth Nagar, T. Dasarahally,
Bengaluru – 560 057.

(Exparte)

Date of Institution of the suit	15.03.2019
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Suit for recovery of money
Date of commencement of recording of evidence	02.02.2021
Date on which judgment was pronounced	26.02.2021
Total Duration	Year/s 01 Month/s 11 Day/s 11

**(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
Bengaluru.**

J U D G M E N T

This is a suit filed by the Plaintiff for recovery of a sum of Rs.4,56,230/- with interest at 11.45% per annum, compounded monthly from the date of suit till the date of realization and for the costs of the suit.

2. The plaintiff has stated that 1st defendant is a private limited company represented by its Director, approached them for financial help of Rs.15,00,000/- for the purchase of Maruthi Swift vehicle. Thereafterwards, the plaintiff bank sanctioned loan of Rs.15,00,000/- on 8.7.2015 and in consideration to above, the 1st defendant has executed Sanction Memorandum, CanMobile Agreement on 8.7.2015. The 2nd defendant has stood as

guarantor and executed Guarantee Covering Letter, Guarantee Agreement in favour of the plaintiff Bank. The defendants have agreed to pay interest at 10.30% per annum, compounded monthly. They have also agreed to pay interest at varied rate as per the changes in the rate of interest. The defendants have not properly operated the vehicle loan account and as on the date of suit they were in due for a sum of Rs.4,56,230/-. The plaintiff has stated that it is entitled to current and future interest on the suit claim at the rate of 11.45% per annum, compounded monthly from the date of suit till the date of realization. The 1st defendant being the borrower, 2nd defendant being the guarantor are jointly and severally liable to pay the suit claim. The cause of action of the suit has arisen on 8.7.2015 and subsequent date of execution of loan documents, loan installments paid by them and date of legal notice within the jurisdiction of this Court. Accordingly, plaintiff has prayed for judgment and decree.

3. After service of summons, the defendant did not appear. Accordingly, they were placed *exparte*. The present Assistant Manager of the plaintiff bank got examined himself as PW1 and got marked 8 documents Ex.P1 to P8.

4. Heard.

5. The 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 ?

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

1. Point No.1 :- In the Affirmative.

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

REASONS

7. **Point No.1 :-** In order to prove the points, the plaintiff mainly relies upon the evidence of PW-1 and documents Ex.P1 to P8. Ex.P1 is the loan application submitted by 1st defendant company and signed by him for the purpose of purchase of a Maruthi Swift Car and it was agreed to repay the same with monthly installment having 36 months. They have also hypothecated three Maruthi vehicles as could be seen from the application form. Ex.P2 is the sanction letter issued by the plaintiff Bank for sanctioning of loan of Rs.15,00,000/- with interest at 10.30% per annum. Ex.P3 is the loan agreement executed by the 1st defendant as Director of the company agreeing to pay interest as stated in the plaint by hypothecating

three brand new Maruthi Zuzuki Swift cars. Ex.P4 is the Guarantee covering letter given by the 2nd defendant, who stood as Guarantor by executing Guarantee agreement at Ex.P5. Ex.P6 is the Hypothecation letter, which discloses the hypothecation of cars in favour of the plaintiff Bank. Ex.P7 is the letter issued by the Bank calling upon the 1st defendant to pay the loan amount and also informing him about irregular in payment of loan account. Ex.P8 is the Account extract pertaining to account particulars as on the date of the suit, the defendants were in due for a sum of Rs.4,26,754/-. So, with the help of these documents and evidence of PW1, learned counsel for the plaintiff tried to convince the Court that the defendant having availed the loan of Rs.15,00,000/-, fell due to a sum of Rs.4,26,754/- as per the Account extract, which they are liable to pay with interest at 11.45% per annum, compounded monthly. He has also sought for the sale of hypothecated vehicles for realization of the amount. Since, defendants are placed exparte under Order VIII Rule 10 of C.P.C. this Court can pass decree on admission. Since, they are placed exparte admitted facts need not be proved as per Section 58 of Indian Evidence Act. Here are the defendants who having availed the loan, failed to make good to the plaintiff as agreed in the loan agreement and therefore, they are liable to pay the suit claim as prayed for.

Hence, I answer point No.1 in the **Affirmative**.

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

ORDER

The suit of the Plaintiff bank is hereby decreed.

The Defendants are hereby directed to pay to plaintiff bank a sum of Rs.4,56,230/- (Rupees four lakhs fifty six thousand two hundred and thirty only) with interest at 11.45% per annum compounded monthly from the date of suit till the date of realization.

Further, the defendants are hereby directed to pay cost of the suit to the plaintiff bank. The Advocate for the plaintiff is directed to file Memorandum of Cost before the Office within 5 days from today.

The decretal amount shall be recovered by sale of schedule vehicles.

Draw decree accordingly.

The Office is directed to send copy of this judgment to plaintiff and defendants to their email ID as required under Order XX Rule 1 of the Civil Procedure Code read with Section 16 of the Commercial Courts Act.

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in open Court on this the **26th day of February, 2021**).

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
Bengaluru.

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS

PW-1 Mr. Raghu.N

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFFS

Ex.P-1	Loan application
Ex.P-2	Sanction Order
Ex.P-3	CanMobile agreement
Ex.P-4	Guarantee covering letter
Ex.P-5	Guarantee agreement
Ex.P-6	Particulars of vehicles
Ex.P-7	Entire loan (over due) notice
Ex.P-8	Account extract (Statement)

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE
DEFENDANT**

NIL

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE
DEFENDANT**

NIL

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
Bengaluru.

26.02.2021

P –
D1-
D2 – Exparte
For Judgment

The Judgment is pronounced in Open Court. The operative portion of the said Judgment is as follows :-

ORDER

The suit of the Plaintiff bank is hereby decreed.

The Defendants are hereby directed to pay to plaintiff bank a sum of Rs.4,56,230/- (Rupees four lakhs fifty six thousand two hundred and thirty only) with interest at 11.45% per annum compounded monthly from the date of suit till the date of realization.

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**LXXXVII ACC&SJ,
B'LURU.**

