

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

THIS THE 29th DAY OF NOVEMBER 2021

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

Com.O.S.No.6331/2019

PLAINTIFF :

BANK OF BARODA (Earlier Vijaya Bank)

A body Corporate constituted by and under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having Head office situated at Baroda Bhavan, R C Dutt Road, Alkapuri, Vadodara, Gujarat State and inter alia Branch office at Vidyaranyapura Branch, Bangalore. Represented by its Sr.Branch Manager & P.A.Holder Sri.Lachamappa R. Narer, S/o Rangappa Narere, Aged about 34 years,

AND

DEFENDANTS:

- 1. Sri. Surendra S.,**
Aged about 42 years,
S/o. Shivarama Shetty,
R/at, #15-A, 6th Main,
Chamundeshwari Layout,
Vidyaranyapura Post,
Bangalore – 560 097.

Proprietor,
Hotel Durgashree Upahar,
#52/1, Nanjappa Circle,
Vidyaranyapura Main Road,
Dodda Bommansandra,
Bangalore – 560097.

2. Smt. Mallika K.,
Aged about 33 years,
W/o. Sri.Surendra S.,
R/at, #15-A, 6th Main,
Chamundeshwari Layout,
Vidyaranyapura Post,
Bangalore – 560 032.

Date of Institution of the suit	28.08.2019
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	09.11.2021
Date on which judgment was pronounced	29.11.2021
Total Duration	Year/s Month/s Day/s 02 03 01

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

J U D G M E N T

The Plaintiff Bank has filed the suit for recovery of a sum of Rs.19,06,032.14/- (Rupees Nineteen lakhs six thousand thirty two and fourteen paisa only) from the Defendants with interest at 10.60% per annum, in respect of first loan Account No.141408411000077 and 12.25% p.a. in respect of Account No. 1414092210000001 and penal interest at 2% p.a. from 01.08.2019, compounded monthly till realisation.

2. It is the case of the Plaintiff bank that the defendant No.1 being principal borrower and defendant No.2 gaurantor availed loan of Rs.12,50,000/- under the loan account No.141408411000077 by executing necessary loan documents on 11.11.2013, agreeing to pay the same with interest at 10.60% p.a. Further, defendant No.1, being the proprietor of Durgashree Upahar, availed additional loan facility of Rs.22,00,000/- by executing necessary documents on 16.01.2014, under V-Restaurant loan account No.14140929221000001, by agreeing to repay the same at

12.25% p.a. with monthly rests. The defendants after availing loan, were highly irregular in the matter of repayment of the loan. They have executed loan documents for both the loans. As per as first loan is concerned, they are due in a sum of Rs.6,16,434.14/- and Rs.12,85,598/- towards second loan. The cause of action for the suit has arisen on 11.11.2013, 16.01.2014, the date of loan and execution of loan documents within jurisdiction of this Court. Accordingly, the Plaintiff has prayed for judgment and decree.

3. After service of summons, the Defendants did not appear, accordingly, they were placed ex-parte. The Plaintiff Bank got examined the present Manager as PW1 and got marked 21 documents at Ex.P1 to Ex.P.21.

4. Heard.

5. The points that arise for my consideration are:-

1. Whether the plaintiff is entitled to the relief claimed?

2. What Order?

6. My answer to the above points are:

Point No.1 :- In the Affirmative.

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

REASONS

7. **Point No.1 :-** In order to prove the points, the Plaintiff mainly relies upon evidence of PW-1 and documents at Ex.P1 to Ex.P21. Ex.P1, is the loan application submitted by the defendants for the sanction of loan of Rs.12,50,000/- which was sanctioned with certain terms and conditions. Ex.P4, is the demand promissory note executed by first defendant as proprietor besides execution of letter of repayments at Ex.P5. The loan agreement is at Ex.P6, and hyphothecation is at Ex.P7, which discloses the terms and conditions agreed upon by the defendants. Ex.P8, is guarantee agreement executed by second defendant. The demand notice was issued as per Ex.P12, which was unserved. As far as second loan is concerned, the loan

application is marked as Ex.P15, and it is towards loan of Rs.22,00,000/-. Similarly, after sanctioning the loan, the defendant executed loan agreement at Ex.P17, and executed acknowledgment of liability at Ex.18. Similarly, another demand notice was issued by the bank to the defendants and said notice was also unserved. The account extracts at Ex.P14 and Ex.P21, disclose the payment due as on the date of suit. With the help of these documents, learned counsel for the Plaintiff would argue that when the Defendants are placed *ex-parte*, the evidence of the Plaintiff and documents are sufficient to prove the liability. In view of the above fact, I am of the view that the Plaintiff is entitled to the relief claimed. Hence, I answer point No.1 in the **Affirmative**.

8. **Point No.2** :- For the reasons stated in the above said paras, I proceed to pass the following.

ORDER

The suit of the Plaintiff is decreed with costs.

The Defendants are hereby directed to pay to

the Plaintiff a sum of Rs.19,06,032.14/- (Rupees five lakhs thirty one thousand two hundred and forty one and paise sixty only) with future interest at 10.60% per annum, in respect of account No.141408411000077 and at Rs.12.25% p.a in respect of account No.1414092210000001 with penal interest at 2% p.a. compounded monthly from 01.08.2019, till realisation. The liability of defendants is joint and several.

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.

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 her, corrected
and then pronounced by me in open Court on this the **29th
day of NOVEMBER, 2021**).

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

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF

PW-1 MAHESH B

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF

Ex.P-1	Loan application
Ex.P-2	Sanction letter
Ex.P-3	Barrower detail
Ex.P-4	Demand promissory note
Ex.P-5	Letter of repayment
Ex.P-6	Loan agreement
Ex.P-7	Hyphothecation agreement
Ex.P-8	Guarantee agreement
Ex.P-9 to Ex.P-12	3 acknowledgments
Ex.P-13	Unserved envelope
Ex.P-14	Account extract
Ex.P-15	One more loan application

Ex.P-16	Sanction letter
Ex.P-17	Loan agreement
Ex.P-18	Acknowledgment of debt
Ex.P-19	Demand notice
Ex.P-20	Unserved envelope
Ex.P-21	One more account extract

**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.

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