IN THE COURT OF THE IV ADDL.CIVIL JUDGE & J.M.F.C., MANGALURU, D.K.

PRESENT: Smt. Kaveramm M.,**B.A., LLB.**,
IV Addl.Civil Judge & JMFC.,
Mangaluru.

Dated on this 15th day of June, 2023

ORIGINAL SUIT No.1046/2022

Between:

Syndicate Bank now "**Canara Bank",**
A Bank constituted and governed by the provisions of Banking Companies (Acquisition and Transfer of undertakings) Act 1970 and having its Head Office at 112, JC Road, Halsurpete, Nagarathpete Bengaluru, Karnataka and a branch office at Bunder, Mangaluru, Represented by its Branch Manager Mr.Naveenchandra K.G., S/o Late K. Ganapathi Acharya, Aged about 53 years, working at Canara Bank, Bunder Branch, Mangaluru. ... **PLAINTIFF**

(By Adv.: Smt. Shubhani Prashanth)

-And-

1. S Ayub
   S/o Late Adam,
   MJM 536, Kasba Bengre,
   Mangaluru – 575 013.

2. Aboobakker Siddiq
   S/o M H Moosa,
   D.No.24/66, MJM 108,
   Kasba Bengre,
   Mangaluru – 575 013. ... **DEFENDANTS**

(Exparte)

Date of Institution of the suit	:	19.10.2022
Nature of the suit	:	Suit for Recovery of Money
Date of commencement of recording the evidence	:	13.06.2023
Date on which the judgment was pronounced	:	15.06.2023
Total Duration	:	Year/s 00 Month/s 07 Day/s 27

(Kaveramma M)
IV Addl. Civil Judge,
Mangaluru, D.K.

JUDGMENT

The plaintiff bank has filed this suit against the defendants for recovery of sum of Rs.1,19,730.47 along with future interest at the rate of 12% p.a. compounded monthly from the date of suit till the date of payment and for cost of the suit and for such other reliefs.

2. The brief facts of the plaintiff's case are as under:

It is submitted that, the plaintiff is a nationalized bank carrying out the financial business. The defendant No.1 as a principal borrower and defendant No.2 as a guarantor had approached the plaintiff bank seeking financial assistance of Rs.2,00,000/- for the purpose of improving his existing fish business under MSME Term loan. After considering the loan application of the defendants, plaintiff sanctioned loan on 01.02.2017 by executing Composite Hypothication Agreement and other necessary loan documents. The said loan was numbered under A/C No.01909910000498.

3. It is further averred that the defendants have failed to pay the said amount as agreed and undertaken. The defendants have committed default in repayment of the said amount. In order to realize the bank dues, the plaintiff evoking Hypothecation Agreement created in favor of the bank in terms of Security executed by the defendants. The said loan account came to be classified as NPA on 11.01.2022. The plaintiff is entitled to charge 10% plus 2% penal interest on the overdue interest, installments and overdue account, when the accounts itself becomes overdue on account of non-payment of stipulate installments/recall of loan by the plaintiff. In spite of repeated requests and demands made by the plaintiff bank, the defendants have failed to repay the loan installments as undertaken by them. Hence, the plaintiff bank was constrained to file the suit for the above said reliefs.

4. After institution of the suit, summons was issued to defendants. Inspite of service of summons, the defendants

remained absent and they were placed exparte. Thus, the case was posted for evidence of plaintiff.

5. To substantiate the case of the plaintiff bank, the branch Manager of the plaintiff bank viz., Mr. Naveenchandra K.G examined as PW1 and got marked Ex.P1 to P7, 7(a) documents and closed his side. As the defendants were placed exparte, cross examination of PW1 was taken as nil and case was posted for arguments.

6. Heard arguments of learned counsel for the plaintiff and perused the materials placed on record.

7. Now the points that arise for the consideration of this court are:

1. Whether the plaintiff bank proves that the defendants have borrowed a sum of Rs.2,00,000/- from it?

2. Whether the plaintiff further proves that the defendants are liable to pay a sum Rs.1,19,730.47 along with future interest at the rate of 12% p.a. from the date of suit till the date of payment?

3. What order or decree?

8. My findings to the above points as follows:

Point No.1:- In the Affirmative

point No.2:- Partly in the Affirmative

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

REASONS

9. **Point No.1:-** It is the case of the plaintiff that, the defendants have approached the plaintiff bank on 10.01.2017 seeking financial assistance of Rs.2,00,000/- for purpose of improving his existing fish business, under MSME Term Loan facility. After considering the loan application of the defendants, plaintiff sanctioned loan on 01.02.2017. The defendants have agreed to repay the loan with interest at the rate of 10.00% p.a. But the defendants were highly irregular in repayment of loan installments.

10. In order to substantiate the case of the plaintiff, the Branch Manager of the plaintiff bank stepped into the witness box and filed affidavit in lieu of oral examination-in-chief as PW1 and got marked Ex.P1 to P7, P7(a). He has reiterated the contents of plaint in his examination-in-chief. Ex.P1 is the Loan application form, Ex.P2 is the Sanction Memorandum, Ex.P3 is the Composite Hypothecation Agreement, Ex.P4 is the Guarantee Agreement, Ex.P5 is the Particulars of Assets and Liabilities of defendant No.1, Ex.P6 is the Particulars of Assets and Liabilities of defendant No.2, Ex.P7 is the Statement of account and Ex.P7(a) is the Certificate under Section 2A of Bankers Book Evidence Act.

11. Since the defendants did not contest the suit and have been placed exparte, the oral version o P.W.1 and the documents furnished as per Ex.P1 to Ex.P7, P7(a) have remained unquestioned and unchallenged.

12. On perusal of Ex.P1 discloses that the defendant no.1 has approached the plaintiff bank seeking financial assistance for the purpose of improving the existing fish business. The said loan of Rs.2,00,000/- was sanctioned to the defendant no.1 on 01.02.2017 as could be seen from Ex.P2 sanction letter, wherein the defendants have agreed to the terms and conditions of the plaintiff bank by putting their signatures. The said fact is also forthcoming in the loan account statement of the defendant no.1 produced as per Ex.P7.

13. On perusal of Ex.P3 it appears that the defendant no.1 has executed Deed of Hypothecation dated 01.02.2017 in favour of the plaintiff bank and agreed to the terms and conditions of the bank and also agreed to repay the loan with interest. The Ex.P4 is the letter of guarantee executed by the defendant No.2, wherein defendant No.2 stood as guarantor to the loan borrowed by defendant No.1.

14. The evidence given by the plaintiff (PW.1) has remained unquestioned and documents produced at Ex.P1 to P7, P7(a) are neither disputed nor the correctness of the same are challenged by the defendants. The pleadings placed

before the Court is in consonance with the documents placed before the Court. After scrutinizing all the documents put forth by the plaintiff, it is forthcoming that the defendant has borrowed loan of Rs.2,00,000/- from the plaintiff bank and executed necessary documents in favour of plaintiff bank agreeing to repay the same with interest at 10.00% p.a. **Accordingly, Point No 1 is answered in the Affirmative.**

15. **<u>Point No.2</u>**:- It is the contention of the plaintiff bank that the defendants have become defaulter by not repaying the loan amount. To substantiate the said fact, ExP7 is produced. Ex.P7 loan account statement establishes that the defendants were due of Rs.1,19,730.47 to the plaintiff Bank as on 31.05.2022. The said loan ledger extract is appended with the certificate issued by the Branch Manager of plaintiff bank U/S.2A of Indian Evidence Act. The said loan ledger extract has a presumptive value under Section 4 of Banker's Book Evidence Act and the same has not been rebutted.

16. PW1 has deposed that the defendants were liable to pay the amount of Rs.1,19,730.47 towards the due loan amount along with future interest at the rate of 12% p.a. from the date of suit till realization. The Plaint discloses that the plaintiff has claimed Rs.1,19,730.47 as on 31.05.2022 with future interest at the rate of 12% p.a. compounded monthly. Perusal of loan account statement discloses that plaintiff has

calculated the interest till 31.05.2022. Hence, defendants are liable to pay total sum of Rs.1,19,730.47 to the plaintiff bank.

17. The plaintiff Bank has sought for future interest on the principal sum adjudged at the rate of 12% per annum from the date of suit till realization. On perusal of loan documents it appears that the defendants had agreed to repay the loan along with interest at the rate of 10% per annum and also had agreed to pay overdue interest at 1.25% in case of default. In the plaint it is averred that present rate of interest is 10% plus 2% penal interest. Hence, plaintiff bank has claimed future interest at the rate of 12%. The loan lent to the defendants was for the purpose of business. If the interest is awarded at the rate of 10% p.a from the date of suit till the date of decree and 6% p.a. from the date of decree till realization along with the cost, it would meet ends of justice. Accordingly, **Point No.2 is answered Partly in the Affirmative**.

18. **Point No.3:-** In view of my answers to the Point Nos.1 and 2 as above, I proceed to pass the following:

O R D E R

The suit of the plaintiff bank is partly decreed with costs.

The defendants are hereby directed to pay a sum of Rs.1,19,730.47 to the plaintiff bank along with interest at the rate of 10% p.a. from the date of suit till the date of decree and at 6% p.a from the date of decree till realization.

The defendants are liable to pay the above said amount within 3 months from this date.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected by me, signed & then pronounced by me in open Court on this **15th day of June, 2023.**)

(Kaveramma M)
IV Addl Civil Judge,
Mangaluru, D.K.

ANNEXURES

List of witnesses examined on behalf of plaintiff/s:

PW-1 : Mr. Naveenchandra K.G

List of witnesses examined on behalf of Defendant/s:

-None-

List of documents exhibited on behalf of plaintiff/s:

Ex.P1 : Loan application form

Ex.P2 : Sanction Memorandum dated 01-02-2017

Ex.P3 : Composite Hypothecation Agreement dated 01-02-2017

Ex.P4	:	Guarantee Agreement dated 01-02-2017
Ex.P5	:	Particulars of Assets and Liabilities of defendant no.1
Ex.P6	:	Particulars of Assets and Liabilities of defendant no.2
Ex.P7	:	Statement of account
Ex.P7(a)	:	Certificate under Sec.2A Evidence Act.

List of documents exhibited on behalf of defendant/s:

-Nil-

(Kaveramma M)
IV Addl.Civil Judge,
Mangaluru, D.K.