

KAUP010025392024



**IN THE COURT OF THE II ADDITIONAL
DISTRICT/COMMERCIAL COURT JUDGE AT UDUPI**

Present

Sri.A.SAMIULLA. B.Sc, LL.B.,

**II Addl. District & Sessions Judge,
Udupi.**

Dated: 06th Day of March 2026

Com.OS.No.150 of 2024

* * *

PLAINTIFF:

IDBI Bank Ltd., a Company incorporated and registered under the Companies Act, 1965, & a Banking Company within the meaning of Section 5(C) of the Banking Regulation Act, 1949, carrying on the business of Banking and having the Registered Office at IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai-400005, in Maharashtra State, and a Branch Office amongst other offices at Udupi Branch, Manipal Centre, Ground Floor, Maruthi Veethika, Chitharanjan Circle, Udupi-57610. R/by its authorized principal officer Sri.Nagaraj Kumbar.

(By Sri.BMV)

Versus

DEFENDANTS:

1. M/s Shree Gajanana Enterprises,
R/by its Proprietor Vishwanatha,
Door No.4/335-I 1,
Sharada Nagar,



80 Badagabettu Village,
Manipal Post,
Udupi Taluk & District-576104.

2. Sri.Vishwanatha,
Proprietor of Shree Gajanana Enterprises,
S/o Jagannatha Kanchan,
Age; 35 years,
R/at No.3-3-1234,
Ambalpady,
Srinivasa Acharya Compound,
Udupi Taluk and District-576103.

(Ex parte)

Date of Institution	18.12.2024
Nature of the Suit	Recovery of Money
Date of recording of evidence	04.02.2026
Pronouncement of judgment	06.03.2026
Total duration	YY MM DD 01 02 18

***II Addl. District & Sessions Judge,
Udupi.***

J U D G M E N T

Suit is for recovery of ₹6,51,654.15 with interest at 12.4% per annum, till realization.

2. The bank asserted that; the first defendant – Shree Gajanana Enterprises, is a proprietor concern



represented by its proprietor second defendant Vishwanatha, who availed credit facility of ₹5 lakh under A/c No.0186651100060048 on 14.09.2021 for the purpose of business agreeing to repay with interest 9.9% per annum by executing necessary documents, for the period of 36 months, subject to the terms & conditions contained in the loan agreement. The loan application form Pradhan Mantri Mudra Yojana dated 01.09.2021 has been submitted by the defendants and hand delivery letter of intent dated 14.09.2021.

i) The defendants executed a demand promissory note & hypothecation agreement for the loan agreeing to repay with interest Repo linked lending rate (RLLP) plus 2.20%, at the rate of 9.9% per annum compounded monthly for value received. The RLLR rate is 7.7% per annum with annual reset clause.



Second defendant stood as guarantor and executed Guarantee Deed dated 14.09.2021 in favor of bank. Defendants are irregular in the repayments. In spite of repeated requests and demands defendants failed to pay the amount in due.

ii) Plaintiff has issued recall notice on 05.08.2023 calling upon the defendants to pay the loan amount within 15 days, they neither paid the amount nor replied the notice. Plaintiff issued a legal notice on 14.01.2024 but to no use. Defendants are liable to pay due amount with interest at 12.40% per annum. In default to pay penal interest at 2% per annum.

iii) Plaintiff approached the District Legal Services Authority, Udupi, in PIMS 169/25. In spite of issuance of notice, defendants remained absent, as such non-starter report is issued on 03.04.2024. Cause of action for the suit arose on 14.09.2021 when



loan availed and in view of making part payments.

Hence, the suit is filed.

3. After registration of suit; summons were issued; in spite of service of summons; defendants remained absent; consequently, they were placed *ex-parte*.

4. Following points arise for consideration;

POINTS

1. *Whether bank proves that, defendants availed a credit facility of ₹5 lakhs by executing documents as contended?*
2. *Whether bank proves that; the defendants have agreed to pay interest as claimed in the plaint & further proves that it is entitled for future interest 12.4.% PA as prayed?*
3. *Whether suit is in time?*
4. *What relief bank is entitled for?*
5. *What Order or Decree?*

5. To prove the case; bank examined its Principal Officer as Pw1; documents Exhibits P1 to P14 were marked.

6. Heard arguments; Perused records.



7. Answer to the above points is as follows;

Point-1: Affirmative.

Point-2: Partly affirmative.

Point-3: Affirmative.

Point-4: Partly affirmative.

***Point-5: As per final order
for the following;***

REASONS

8. **Point-1:** Bank asserted that; the defendants availed OD facility subject to the terms and conditions of the bank by executing documents.

9. In this case, initial burden of proof is on the bank. To discharge burden; bank's Principal Officer filed affidavit evidence reiterating plaint averments. He stated that the defendants availed credit facility of ₹5 lakhs agreeing to repay with interest.

10. To justify verbal evidence; bank relied on the documents (Exhibits P1 to P14). Exhibit P1; authorization letter. Exhibit P2; Loan application. Exhibit P3; Letter of intent. Exhibit P4; Demand



Promissory Note. Exhibit P5; Take delivery letter. Exhibit P6; Hypothecation agreement. Exhibit P7; Common guarantee deed. Exhibit P8; Recall notice. Exhibit P9; Legal notice dated 04.01.2024. Exhibit P10; Two postal receipts. Exhibit P11 & 12; Two returned RPAD covers. Exhibit P11(a) & 12(a); notice copies. Exhibit P13; statement of account with certificate. Exhibit P14; non-starter report issued by the DLSA, Udupi indicating that before approaching this Court the plaintiff had approached the DLSA and made an attempt to settle the dispute. When defendants didn't come forward to settle the said authority gave report stating that defendants remained absent for negotiation.

11. The oral & documentary evidence made available by the bank is left unchallenged. Defendants failed to contest the suit, which shows that they have no



defense to the claim put forth by the bank. Genuineness & admissibility of documents stated *supra* are not in dispute. There is no reason to disbelieve said documents, which have presumptive value. Factual matrix remained intact. In the absence of contrary absolutely there is no impediment to believe the plaintiff's case.

12. Bank successfully demonstrated that; the defendants availed credit facility and failed to repay the same as agreed upon. Bank is entitled for the recovery of said amount. Hence, point-1 is answered in the affirmative.

13. Point-2: Bank stated that; the defendants have agreed to repay the loan amount with interest in terms of loan availed by them. Discussion of documents *supra* manifest that; defendants agreed to pay the interest as claimed by the bank. Bank claims



future interest 12.4% per annum. The defendants availed a credit facility of ₹5 lakhs and defaulted in the repayment of loan amount.

14. Proviso to Section 34 CPC envisages that; *Provided that where the liability in relation to the sum so adjudged has arisen out of a commercial transaction, the rate of such further interest may exceed six percent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transaction.*

Here, transaction is a commercial transaction. The contractual rate of interest is 9.9% per annum. bank claims future interest 12.4% per annum. Thus, bank is not entitled for future interest 12.4% per annum but entitle for contractual interest 9.9% per



annum. Hence, above point is answered in the partly affirmative.

15. Point-3: As per documents the loan was raised on 14.09.2021. Repayment period limit valid for 36 months. Part payments were made up to 2023. Suit is filed on 18.12.2024. Suit is filed within three years from the date of availment of credit facility. Hence, point-3 is answered in the affirmative.

16. Point-4: Discussion *supra* manifest that; bank proves that the defendants availed loan subject to the terms and conditions of the bank by executing documents. Thus, bank is entitle to recover the loan amount with interest 9.9% per annum. Accordingly, point-4 is answered.

17. Point-5: By virtue of findings *supra* Court proceeds to pass the following;

**ORDER**

Suit is decreed in part with costs.

Defendants are directed to repay **₹6,51,654** along with *pendente lite* and future interest **9.9% per annum** (inclusive of penal interest), compounded monthly from the date of suit till its complete realization, within three months from the date of decree.

Draw decree accordingly.

(Dictated to the Stenographer-III transcribed and typed by her directly on computer, corrected and initialed by me and then pronounced in the open Court on 06.03.2026)

(A.SAMIULLA)
II Addl. District & Sessions Judge,
Udupi.

ANNEXURE

Number of witness examined on behalf of plaintiff:-

Pw.1 Sri.Nagaraj Kumar

List of documents marked on behalf of plaintiff:-

Ex.P1 Authorization letter
Ex.P2 Loan application
Ex.P3 Letter of intent



- Ex.P4 Demand Promissory Note
Ex.P5 Take delivery letter
Ex.P6 Hypothecation agreement
Ex.P7 Common guarantee deed
Ex.P8 Recall notice
Ex.P9 Legal notice dated 04.01.2024
Ex.P10 Two postal receipts
Ex.P11 & 12 Two returned RPAD covers
Ex.P11(a) & Notice copies
12(a)
Ex.P13 Statement of account with certificate
Ex.P14 Non-Starter report

Number of witnesses examined for defendants:- Nil

List of the documents marked for defendants:- Nil

***II Addl. District & Sessions Judge,
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