IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE:: KANDUKUR

Present**: Sri N. Nikhil Reddy**

Addl. Civil Judge (Junior Division), Kandukur.

FAC Principal Civil Judge (Junior Division), Kandukur.

Friday, this the 23rd day of August, 2024

ORIGINAL SUIT No.357/2023

Between:

Union Bank of India,
Singarayakonda (Previously called as
Corporation Bank),Rep. By its Branch
Manager. **... Plaintiff**

Vs.,

1. Yalla Thirupathamma, w/o Srinivasa Rao, aged about 54 years, r/o Narasarajupalem village,MarripudiMandal, Prakasam district.

2. Thanikonda Koteswara Rao, s/o Subbaraidu, aged about 44 years, r/o 24-4-142, Gaddamvarikostalu, Kandukur town, SPSR Nellore district. **... Defendants**

The suit is coming on 23-08-2024 for final hearing before me in the presence of **Sri. K. Hari Koteswara Rao,** Advocate for Plaintiff and **Sri Ch.Nageswara Rao,** Advocate for D-2, and the defendants1 & 2 are *having remained **exparte,*** and after hearing arguments and having stood over for consideration till this day, the Court delivered the following:

// J U D G M E N T //

1. This suit is filed for passing preliminary decree for recovery of a sum of **Rs.15,87,938/- (Rupees Fifteen lakhs eighty seven thousand nine hundred and thirty eight only)** from the defendants and for costs of the suit.

2. **The brief averments of the plaint are as follows:**

The plaintiff submits that the 1st defendant personally approached the plaintiff's Bank for the loan for Land Development and and sanctioned an amount of Rs.9,90,000/- on 20-04-2017. The 2nd defendant is guarantor of the 1st defendant and the suit schedule property mortgaged by the 1st defendant. The 1st defendant executed loan application for Agriculture

Credit Short Term Loan and other necessary documents and 2nd defendant is executed deed of guarantee dated 20-04-2017 in favour of plaintiff bank under loan account No.560931000113814 with the plaintiff bank. The deed of simple mortgage executed by the 1st defendant on 30-03-2017 agreeing to repay the same with interest at 12% p.a. (over 3.25%) or at as such rates as may be revised by the Bank as per the instruction of RBI. The 1st defendant agreeing to repay the above said loan amount in 7 yearly installments plus interest. Subsequently the 1st defendant failed to repay the loan as per the repayment schedule agreed upon and the loan account become NPA. The plaintiff's Bank demanded the defendants personally the defendants did not respond and did not discharge loan debt amount. Hence, he plaintiff bank constrained to file the suit.

3. Inspite of service of summons to the defendants-1 & 2 failed to appear before this Court. Hence, the 1st defendant remained exparte to the proceedings on 18.07.2023 and the 2nd defendant remained exparte to the proceedings on 18.10.2023.

4. To substantiate the case, the Plaintiff's Bank examined its Branch Manager as P.W.1 and got marked Exs.A.1 to A.10 in favour of PW1.

5. Heard the arguments of learned counsel for Plaintiff. Perused the record.

6. ***<u>Now the point for consideration is that :</u>***

Whether the plaintiff is entitled for preliminary decree as prayed for?

To what relief?

7. **<u>POINT NO.1</u>**:

As per the plaint averments, it is the contention of the plaintiff bank that tthe 1st defendant personally approached the plaintiff's Bank for the loan for Land Development and and sanctioned an amount of Rs.9,90,000/- on 20-04-2017. The 2nd defendant is guarantor of the 1st defendant and the suit schedule property mortgaged by the 1st defendant. The 1st defendant executed loan application for Agriculture Credit Short Term Loan and other necessary documents and 2nd defendant is executed deed of guarantee dated 20-04-2017 in favour of plaintiff bank under loan account No.560931000113814 with the plaintiff bank. The deed of simple mortgage executed by the 1st defendant on 30-03-2017 agreeing to repay the same with interest at 12% p.a. (over 3.25%) or at as such rates as may be revised by the Bank as per the instruction of RBI. The 1st defendant agreeing to repay the above said loan amount in 7 yearly installments plus interest. Subsequently the 1st defendant failed to repay the loan as per the repayment schedule agreed upon and the loan account become NPA. The plaintiff's Bank demanded the defendants personally the defendants did not respond and did not discharge loan debt amount. There upon the plaintiff bank authorities demanded the defendant, personally, even then Defendants-1 & 2 did not respond. To substantiate the same, the plaintiff bank got examined its Branch Manager as P.W.1 and got exhibited Exs.A.1 to A.10. The said chief examination is just replica of plaint pleadings.

8. A careful perusal of the unchallenged evidence of P.W.1 coupled with Exs.A.1 to A.10, this court is of the view that plaintiff Bank has established that the plaintiff's Bank sanctioned an amount of Rs.9,90,000/- on 20-04-2017 to the 1st defendant. The 2nd defendant is guarantor of the 1st defendant and the suit schedule property mortgaged by the 1st defendant. The 1st defendant executed loan application for Agriculture Credit Short Term Loan and other necessary documents and 2nd defendant is executed deed of guarantee dated 20-04-2017 in favour of plaintiff bank under loan account No.560931000113814 with the plaintiff bank. The deed of simple mortgage executed by the 1st defendant on 30-03-2017 agreeing to repay the same with interest at 12% p.a. (over 3.25%) or at as such rates as may be revised by the Bank as per the instruction of RBI. The 1st defendant agreeing to repay the above said loan amount in 7 yearly installments plus interest. Subsequently the 1st defendant failed to repay the loan as per the repayment schedule agreed upon and the loan account become NPA.

9. Since the evidence of PW.1 as well as the contents of Exs.A1 to A10, remained unchallenged and unrebutted by the defendants, the court finds no reason to disbelieve the same. Hence, the court is of the view that plaintiff is entitled to recover the suit amount from the defendant. Accordingly, Point is answered in favour of the plaintiff against the defendant.

10. At this stage this court relied the decision In Vidyadhar Vs Manic Rao (AIR 1999S.C.1441) The Hon'ble Apex court held's that in para 16" where a party to the suit doesnot appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side a presumption would arise that the case set up by him is not correct............". Here in the present case the defendants did not adduce any evidence on his behalf and did not come to the witness box to prove his defence on his behalf. As such I hold that an adverse inference has to be drawn against the defendants U/Sec.114 (g) of Indian Evidence Act, 1972.

11. And another decision reported in AIR 2007 SUPREME COURT PAGE 2025 between Adivekka & Others Vs Hanamavva Kom Venkatesh (deceased by LR's) and another where in their lordships held that " Evidence Act (1 of 1872), S 114 - Adverse inference - Non examination of party to the suit -Adverse inference can be drawn against the party". In my humble view and in the light of the above said decisions, the defendant who is a party to the suit did not come to the witness box and states his own case on oath and does offer himself to be cross examined by the other side, a presumption would arise that the case set up by defendant is false and when the defendant did not enter into the witness box to deny such pleas which are taken in the written statement an adverse inference can be drawn against the defendant as contemplated U/Sec 114 (g) of Indian Evidence Act.

12. POINT NO.2

In the result, the suit is preliminary decreed with costs, directing the Defendants-1 & 2 to pay a sum of **Rs.15,87,938/- (Rupees Fifteen lakhs eighty seven thousand nine hundred and thirty eight only)** with subsequent interest at the rate of 12% per annum from the date of filing suit till the date of decree and thereafter at the rate of 6% per annum from the date of decree till the date of realization. The redemption period is granted for a period of three months.

*Typed to my dictation by the Stenographer, corrected and pronounced by me in the open court on this the **23rd day of August, 2024.***

Sd/- N.Nikhil Reddy

ADDL. CIVIL JUDGE (JUNIOR DIVISION), KANDUKUR.
FAC PRL. CIVIL JUDGE (JUNIOR DIVISION), KANDUKUR.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PLAINTIFF:	**FOR DEFENDANTS:**
PW.1: Veera Rajesh Chandra	Exparte

EXHIBITS MARKED

FOR PLAINTIFF:

Ex.A1 is the application for agriculture credit short term loan dated 02.04.2015 executed by the 1st defendant.

Ex.A2 is the credit sanction intimation dated 20.04.2017 executed by the 1st defendant.

Ex.A3 is the agreement for term loanS dated 20.04.2017 executed by the 1st defendant.

Ex.A4 is the demand promissory note dated 20.04.2017 executed by the 1st defendant.

Ex.A5 is the common deed of Hypothecation of crops dated 20.04.2017 executed by the 1 st defendant.

Ex.A6 is the guarantee agreement dated 20.04.2017 executed by the 2nd defendant.

Ex.A7 is the letter of undertaking/declaration from the borrower, dated 20-04-2017 executed by the 1st defendant.

Ex.A8 is the take delivery letter to DPN dated 20-04-2017 executed by the 1st defendant.

Ex.A9 is the deed of simple mortgage deed dated 30-03-2017 under mortgage deed No.1481/2017,SRO, Kandukur executed by the defendant.

Ex.A10 is the Account Copy.

FOR DEFENDANTS: NIL

Sd/- N.Nikhil Reddy
AJCJ, KDKR
FAC: PJCJ, KDKR