IN THE COURT OF THE CIVIL JUDGE(SENIOR DIVISION) OF HOSDURG.
(COMMERCIAL COURT, HOSDURG)
Present:- Sri. Biju.M.C., Civil Judge(Senior Division) Judge
Wednesday, the 19th day of February, 2025/28th Phalguna,1946

COMMERCIAL SUIT No.09 OF 2024

Between:-

Canara Bank, Anandashram Branch, Rep.by its Branch Manager having its Central Office at 239, Vidhan Bhanvan Marg, Nariman Point, Mumbai, 400021.	Plaintiff

And

1. M/s Sweet spot Rep.by its President having its office at door number W-8/346A of Ajanur Grama Panchayath at Mannatta Road, Moolakandam in Ajanur Village of Hosdurg Taluk, P.O.Anandashram, Pin-671531. 2. P.V.Balakrishnan, aged 61 years and Secretary. 3. Valsaraj.M, aged 40 years The second defendant is the son of Raman Maistri, R/at.Kattukulangara, Mavungal in Ajanur Village, Hosdurg Taluk, P.O.Anandashram, Pin-671531 and the third defendant is the son of Chandu.M, r/at.Manalil House, Near Muchilot Temple, Kizhakumkara, Ajanur Village, Hosdurg Taluk, P.O.Ajanur, Pin-671 531.	Defendants

This suit coming on this day for hearing before me in the presence of Sri.K.Sanjayan Nambiar., Advocate for plaintiff; Sri.V.V.Raveendran, Advocate for Defendant Nos. 2 and 3; 1st Defendant is being called absent and set exparte and the court delivered the following:-

JUDGMENT

The suit is one for recovery of money.

2. **Brief facts:** The 1st defendant is a manufacturing unit in production of Bakery items and its sales and the 2nd and 3rd defendants are the President and Secretary of the 1st defendant have availed a loan of ₹ 16,20,000/- (Rupees sixteen lakhs and twenty thousand only) from the plaintiff bank under PMEGP Scheme for manufacturing and production of Bakery items and its sale. As security for the loan, he had executed a pronote and deed of hypothecation with a stipulation to repay the loan in equated monthly installments of ₹ 28,090/- (Rupees twenty eight thousand and ninety only) with interest thereon at 12.25% per annum. But contrary to their promise, they are willfully neglected to repay the loan amount and its interest and they are liable to pay interest and overdue interest at such other rate fixed by the bank varied from time to time for such advances until the balance outstanding in the loan account are paid and regularized. The overdue interest payable is additional 2% per annum and the interest now payable on the loan inclusive of over due interest is at 14.25% per annum. In spite of repeated requests, the defendants did not turn up to repay the amount. Therefore, the loan account has been classified as Non Performing Asset of the bank with effect from 18.05.2023. The balance amount outstanding under the transaction as on 31.07.2024 is ₹ 17,41,748/- (Rupees seventeen lakhs forty one thousand seven hundred and forty eight only). Thereafter, the plaintiff approached the District Legal Service Authority, Kasargod as mandatory steps contemplated under rule 3(4) of Commercial Courts Act and filed a petition before DLSA and the same was numbered as P.I.M.No.3/2024. The defendants appeared before the DLSA on receipts of notice and submitted before the DLSA that they are not ready to pay the mediation fee. Therefore, a non-starter report was issued in favour of the plaintiff. In the above said circumstances, the suit has been filed.

3. Defendants No. 2 and 3 filed a written statement with the following contentions: Defendants No. 2 and 3 admit that the 1st defendant is the manufacturing

unit producing bakery items, and that defendants No. 2 and 3 were the President and Secretary of the 1st defendant. They also acknowledge that they availed of a loan from the plaintiff bank and signed the loan documents in their capacity as President and Secretary of the 1st defendant. However, they contend that they are not personally liable to repay the loan, as they are no longer the President and Secretary of the 1st defendant. Furthermore, it is stated that the Board of Directors of the Society has been dissolved as per the order of the General Manager of the Kasaragod District Industrial Centre, and the 1st defendant society is now under the direct control of the General Manager of the Kasaragod District Industrial Centre. Therefore, the defendants contend that the General Manager of the Kasaragod District Industrial Centre and the Senior Co-operative Inspector of Kanhangad Circle, who are currently in direct control and management of the society, are necessary parties to the suit.

4. On the basis of the above rival contentions, the following issues were settled for trail and adjudication;

1. Whether the 1st defendant is properly arrayed as party in the suit?
2. Whether the defendants No.2 and 3 are personally liable for the loan due?.
3. Whether the plaintiff is entitled to a decree as prayed for?
4. Relief and Cost?

5. When the case was posted for balance court fee, the plaintiff filed a memo dated 21.02.2025, stating that a decree may be passed against Defendant No. 1 in view of the contentions raised by the defendants in their written statement.

6. I have perused the documents and heard both sides.

7. **The Issues:** It is relevant to note that Defendants No. 2 and 3 have contended that they have no personal liability to pay the loan amount, as they availed the loan in their capacities as Secretary and President of the 1st defendant institution. The plaintiff

has admitted this contention and filed a memo stating that he is not claiming any personal decree against Defendants No. 2 and 3, and he is satisfied with a decree against the 1st defendant alone. The learned counsel for Defendants No. 2 and 3 also submitted that they have no objection to the passing of a decree against the 1st defendant alone. It may be noted that the contesting defendants, who were the Secretary and President of the 1st defendant, admit the availing of the loan. They also admit that the loan amount was not repaid. They only question their personal liability. In view of the memo filed by the plaintiff, I am of the view that a decree, as prayed for, could be passed against the 1st defendant alone. Having considered the facts and circumstances of the case, I am of the view that the future rate of interest can be fixed at 9% per annum for the loan from the date of the suit until realization. The cost of the suit shall follow the event.

In the result, the suit is decreed as follows.

1. The 1st defendant shall pay a sum of ₹ 17,41,748/- (Rupees seventeen lakhs forty one thousand seven hundred and forty eight only) to the plaintiff bank within two months with future interest at the rate of 9% per annum from the date of suit till realisation.

2. The 1st defendant shall pay the costs of the suit.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me, in open court, this the 19th day of March, 2025)

CIVIL JUDGE(SENIOR DIVISION)
COMMERCIAL COURT, HOSDURG.

Typed by:Sanitha.P.V

Compared by:Krishnaprasad.V.S

Fair of Judgment in C.S.09/2024
Dated :19.03.2025