

IN THE COURT OF THE MUNSIF, KANJIRAPPALLY
Present : Smt. Smitha Susan Mathew, Munsiff

Tuesday 31st day of March 2026
10th day of Chaitra 1948

O.S. 203/2022

Plaintiff:-

Canara Bank, A Scheduled Bank having Head Office at Bangalore and branch at Kanjirappally among other places, Represented by its Branch Manager, Kanjirappally, PIN: 686 507, Kanjirappally Taluk, Kottayam District.

By Adv. Joy K. George

Defendant:-

Sabu John, Aged 52 years, S/o John, Residing at Pazhayaparambil House, Pattimattam, Palambra P.O, PIN: 686 518, Koovappally Village, Kanjirappally Taluk, Kottayam District.

By Adv. T.S Raju.

This suit having been finally heard on 28.03.2026 and the Court on 31.03.2026 delivered the following:-

J U D G M E N T

Suit for realization of money.

2. The plaint averments, in brief, are as follows:- The plaintiff is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 with its Head office at Bangalore and branch at Kanjirappally. Defendant applied for a loan of ₹4,32,000/- to the plaintiff on 22/03/2014 for purchasing a motor vehicle. The plaintiff bank sanctioned the loan on

24/03/2014. The defendant purchased LMV Goods Carriage Vehicle bearing No.KL-34C-7460 and hypothecation details are entered in the registration certificate. The defendant executed deed of hypothecation on 24/03/2014, hypothecating the LMV - Goods Carriage as a security for the loan availed. It was also stipulated that the rate of interest to be 10.75% per annum and the defendant should repay ₹7,500/- per month from April 2014 so as to complete the repayment of the loan in 84 months. The defendant signed and executed a letter of undertaking on 24/03/2014 and promised to abide by all the terms and conditions as the bank might impose on him relating to the grant loans/advance/credit facility. The defendant furnished Specimen Signature Card signed by him on 24/03/2014 with the plaintiff. The plaintiff disbursed the loan amount to the loan account No.2680768000025 of the defendant which he maintained in the plaintiff bank. Defendant has signed the acknowledgment of debt and security on 07/02/2017 and thereby confirmed the liability for an amount of ₹4,57,713/- as on 22/01/2017. The defendant has signed another acknowledgment of debt and security on 28/01/2020 and thereby confirmed his liability for an amount of ₹6,57,063/- as on 22/01/2020. The defendant was highly irregular to repay the loan amount. Even after several requests by the officers of the plaintiff, the defendant did not care to repay the arrears of loan. As on 21/04/2022, an amount of ₹8,52,721/- (Rupees Eight Lakhs Fifty Two Thousand

Seven Hundred and Twenty One only) is due from the defendant. Hence the suit.

3. Defendant filed written statement and the crux of the defense is as follows:- The defendant did not purchase Goods Carriage vehicle having No. KL-34C-7460 using the loan allotted by the plaintiff. The friend of defendant, Shakkeer was in need of a Good Carriage vehicle for the business of selling fish. He told the defendant that the loan would only be allotted to the persons having title over certain property. Shakkeer demanded the land tax receipt and copy of a ration card of the defendant for obtaining loan in the name of the defendant, on the assurance that he would repay the loan amount without any default. Hence defendant submitted copy of land tax receipt and ration card and the loan was sanctioned in the name of defendant. The defendant and Shakkeer approached the Bank Manager and he agreed to sanction loan for Shakkeer in the name of defendant. The bank officials obtained land tax receipt and copy of ration card from the defendant, caused him to sign some documents and sanctioned the loan in his name. The vehicle was purchased and registered in the name of defendant. Shakkeer gave ₹1,000/- to the defendant for his service. Shakkeer did not repay the loan amount. Hence defendant filed a petition before the SHO, Kanjirappally. Shakkeer agreed to clear off the liability due to the bank and his consent to repay the said amount was recorded in the police station.

Another agreement was also executed between Shakkeer and defendant as per the direction of the police. The statement of account filed by the plaintiff is false and the amount is calculated on exorbitant rate of interest. As a hypothecation was executed, the plaintiff could have realised the loan amount by attaching and selling the vehicle. The suit valuation is incorrect and the court fee paid is insufficient. Hence he seeks for dismissal of the suit with costs.

4. Heard both sides. Perused the case records.

5. **Following issues are settled for determination :-**

1. Is the suit valued correctly and paid sufficient court fees ?
2. Is the plaintiff entitled for a decree of realization of the amount as prayed for ?
3. Reliefs and costs.

6. PW1 to PW4 were examined and Exts.A1 to A10 were marked from the side of plaintiff. DW1 to DW3 were examined and Ext.B2 was marked from the side of defendant. Ext. B1 marked subject to proof.

7. **Issue No.1 and 2:-** The present Branch Manager of the plaintiff bank is examined as PW1. As per the plaint allegations, the defendant availed a loan of ₹4,32,000/- for the purchase of a motor vehicle on condition that the amount would be repaid in 84 equated monthly installments. He failed to repay the amount and is liable to pay ₹8,52,721/- to the plaintiff bank. PW1 deposed in tune with the plaint averments. He produced Ext.A1, the loan application dated

22.03.2014 filed by the defendant. Ext.A2 is the sanction memorandum. Ext.A3 is the deed of hypothecation and Ext.A4 is the letter of undertaking with respect to sanctioning of loan as per Ext.A1. These documents are signed by defendant. Ext.A2 would show that the loan was sanctioned on 24.03.2014. Ext.A3 was executed on the same day. Ext.A5 is the specimen signature card of the defendant. Exts.A6 and A7 are the acknowledgment of debt and security signed by the defendant on 07.02.2017 and 28.01.2020. Ext.A8 is a copy of notice issued to the defendant on 03.02.2017 by the plaintiff bank. Ext.A9 is the postal receipt with respect to Ext.A8. Ext.A10 is the statement of account with respect to the loan transaction. Defendant did not deny the correctness of any of these documents.

8. The contention of defendant is that the loan was availed to purchase Good Carriage Vehicle for his friend Shakkeer who intended to conduct the business of selling fish. As Shakkeer had no landed property, the loan was availed in the name of defendant on the assurance that Shakkeer would repay the amount without any default. The admission of availing loan from the plaintiff bank can be seen from the written statement. Defendant who is examined as DW1 deposed that as Shakkeer had not paid any installment of the loan amount, he filed a complaint before the SHO, Kanjirappally. He produced a photocopy of the application filed before the SHO, Kanjirappally. This was marked Ext.B1 (subject proof) on the condition that the certified

copy of the document would be produced later. Defendant failed to bring the certified copy of said application. Hence Ext.B1 being a self serving document is not considered for appreciation of evidence. DW1 contends that Shakkeer agreed to repay the loan amount, and as per the direction of the police authorities, Shakkeer and defendant entered into an agreement. DW1 produced Ext.B2, an agreement dated 13.07.2017 executed between defendant and Shakkeer.

9. On perusal of Ext.B2, it can be seen that Shakkeer agreed to purchase the vehicle in the name of defendant and promised that he would repay Rs.4,32,000/- before the plaintiff bank to discharge the liability of the defendant. DW1 examined DW2 to prove execution of Ext.B2. Evidence of DW2 could not be rebutted by plaintiff. DW3 deposed that he knew that the vehicle in question given to Shakeer on an agreement. The execution of Ext.B2 while a hypothecation is in existence, without addressing the hypothecator is invalid. The defendant cannot claim that the liability of repaying the loan amount is shifted to Shakkeer. The registration of the vehicle is still in the name of defendant who availed loan from the bank to purchase the said vehicle. Hence defendant is liable to repay the amount.

10. PW1, PW2, PW3 and PW4 are the Branch Managers of the plaintiff bank in different periods from the date of availing loan by defendant from the plaintiff bank. PW3 and PW4 deposed that Exts. A7 and A6 are signed by the defendant in front of them on the respective

dates seen on those documents. PW2 is the Manager who filed the suit before the court. All witnesses stated that defendant defaulted repayment of the loan amount. The evidence adduced by the plaintiff bank could not be rebutted by the defendant.

11. The defendant claims that the interest claimed by plaintiff bank is exorbitant and against law. Ext.A1 would show that he agreed to repay the loan amount at the rate of interest 10.75% per annum. Ext.A3 was also executed on the same condition. The plaintiff bank is presently demanding rate of interest at 10.40% only. Defendant could not prove that the interest calculated is exorbitant and against the guidelines of the Reserve Bank of India. The defendant raised contention regarding execution of Ext.A6 and Ext.A7. The signatures thereon are not denied by defendant. Hence defendant is not entitled to question the genuineness of execution of those documents after availing loan.

12. When PW1 was cross-examined, he admitted that when a vehicle is purchased by availing loan by hypothecating that vehicle, the security of that loan is the hypothecated vehicle. He also stated that the bank can realise the loan amount by attachment and sale of the said security. His evidence shows that as the vehicle in this case could not be traced out, the bank did not take any steps to attach the vehicle. When he was cross-examined regarding the steps the plaintiff bank had taken to trace out the vehicle in this case, he deposed that

defendant approached the plaintiff bank in continuation to a notice issued to him to produce the vehicle and orally informed them that the vehicle is non-traceable. But plaintiff could not produce copy of the notice allegedly issued to defendant. Evidence of PW1 further shows that on enquiry regarding the vehicle, plaintiff came to know that defendant transferred the vehicle to another person. During cross-examination he deposed that the plaintiff did not file complaint before the SHO concerned against defendant though he understood that the hypothecated vehicle was transferred to another person by defendant, without changing the registration of the vehicle. The plaintiff bank could have taken steps against the defendant for transferring a vehicle hypothecated with the bank, without the knowledge of the bank and to recover the vehicle illegally transferred. The evidence of PW1 that the plaintiff bank had taken steps to trace out the hypothecated vehicle is unbelievable as they neither filed any complaint before the police to trace out the vehicle nor brought any evidence to establish their attempt to attach the vehicle.

13. PW2 during cross-examination deposed that the security of a vehicle loan is that vehicle itself. According to him, if the borrower defaulted repayment of the loan, the bank is entitled to realise the loan amount by attaching and selling the hypothecated vehicle. He admitted that no steps were taken to seize the vehicle in this case as the vehicle is too old and loan amount could not have been realised by attaching

and selling the said vehicle. His evidence further shows that notices are usually being issued to the defaulters of loan payment. But, in this case he is unaware whether such notices were issued to defendant. He could not produce copies of those notices. PW2 during cross-examination reiterated that the bank had not initiated proceedings for auction sale of the vehicle, as it was certain that the expenses likely to be incurred for conducting such proceedings would exceed the amount that could be realised from the sale of the vehicle. He further stated that the sale of hypothecated vehicle would fetch only scrap value. It is clear from the evidence of PW1 to PW4 that no steps were taken to attach and sell the hypothecated vehicle in this case to realise the loan amount. PW2 deposed that, as the vehicle was 10 year old, the auction would not bring an amount exceeding 10% of the loan amount. The evidence of PW1 to PW4 would show that the defendant had not paid any amount towards the loan availed by him. PW2 could not state any reason for not taking steps to attach and sell the vehicle in time, though the default was grave.

14. There is no evidence before the court to prove that the vehicle would bring only 10% of the loan amount. Evidence of PW1 to PW4 would show that they had not taken any steps to realise any portion of the loan amount by selling the vehicle. No documents are produced before the court to establish that the defendant pledged his immovable property as security towards the loan amount. Plaintiff could have

taken steps to realise the loan amount from the security of the loan and recover the balance amount, if any, from the defendant personally. None of the witnesses deposed that they are entitled to proceed against the defendant personally, before proceeding against the hypothecated vehicle. They had not taken any steps to trace out the vehicle which is still in the name of the defendant. Without proving that the hypothecated vehicle is irrecoverably lost, the plaintiff bank is not entitled to proceed against defendant personally. The plaintiff bank failed to prove that they had taken steps to attach and sell the hypothecated vehicle which is their primary source to realise the loan amount. Hence the plaintiff is not entitled for the reliefs as sought for. The issues are answered accordingly and the suit is liable to be dismissed.

15. Issue No.3:-

In the result, the suit is dismissed. Considering the nature and circumstances of the case, the parties are directed to bear their respective costs.

Dictated to the Confidential Assistant, typed by him, corrected by me and pronounced in open court on this the 31st day of March, 2026.

**SMITHA SUSAN MATHEW
MUNSIFF**

APPENDIX

Exhibits marked for the Plaintiff :

A1	:	22.03.2014	:	Loan application
A2	:	24.03.2014	:	Sanction Memorandum
A3	:	24.03.2014	:	Deed of Hypothecation
A4	:	24.03.2014	:	Letter of Undertaking
A5	:	24.03.2014	:	Specimen signature card for borrowal accounts signed by the defendant.
A6	:	07.02.2017	:	Acknowledgement of Debt and Security
A7	:	28.01.2020	:	Acknowledgement of Debt and Security (NF 760)
A8	:	03.02.2017	:	Copy of Lawyers notice prepared by Adv. Joy K. George.
A9	:	Nil	:	Postal receipt
A10	:	20.05.2022	:	Certified copy of statement of account No. 2680768000025 for the period from 24.03.2014 to 20.05.2022 issued from Canara Bank, Kanjirappally Branch.

Exhibits marked for the Defendant:

B1	:	06.08.2022	:	Copy of complaint filed by Sabu John, Pazhayaparambil House, Pattimattam before the Kanjirappally Police Circle Inspector (subject to proof).
B2	:	13.07.2017	:	Agreement between PJ Sabu, S/o John, Pazhayaparambil, Pattimattam and Shakkeer V.I, S/o K.P Ismail, Thaipparambu (H).

Court Exhibits: NIL

Third party Exhibits: NIL

Witnesses examined for the Plaintiff:

PW1 : 24.09.2025 : Sujith V. George
10.09.2025
PW2 : 24.10.2025 : Nithin Sebastian
PW3 : 14.11.2025 : Fancy Elizabeth
PW4 : 15.11.2025 : George Joseph

Witnesses examined for the Defendant:

DW1 : 15.12.2025 : Sabu John
DW2 : 07.02.2026 : Shaiju V.S
DW3 : 07.02.2026 : Ayoob P.M

Typed By : Rajalakshmi T.P.

Compd. By : Jayamol V.M.

MUNSIFF