MHCO130002492008

Presented on:- 04/07/2008

Registered on:- 04/07/2008

Decided on :- 24/07/2026

Duration :- Y.18 M.00 D.20

IN THE COURT OF JUDGE CO-OPERATIVE COURT SOLAPUR

(Presided over by Smt. S. D. Mukkanwar)

Co-op Case No.1265/2008 **Exh.No. 64.**

The Laxmi Co-op.Bank Ltd. Solapur
(through liquidator)
A Bank duly registered under the
Maharashtra Co-operative Societies **.......... Disputant**
Act 1960 having its registered office at 319,
south Kasaba, Solapur .

Versus

1. Ashok Sidramappa Devarmani (Deceased)

1a) Rajeshwari Ashok Devarmani
Age - 43 Years – Occu –not known
R/at Glaxi Apartment, Flat No.1 **.......... Opponent**
Ashok Chowk, Solapur

1b) Pooja Amit Jain
Age - 28 Years – Occu – not known
R/at Glaxi Apartment, Flat No.1
Ashok Chowk, Solapur

2) Shri. Rajshekhar Mallikarjun Shetty
Age - Adult Years – Occu – Business
R/at 90 C3/6 Bhavani Peth, Solapur

3) Shri. Mahesh Nagendrappa Hallimani,
Age - Adult Years – Occu – Business,
R/at 94/191 Jodhbhavi peth,Solapur.

Claim:- Suit for Recovery of money.

Mr. U.B. Marathe, Advocate for the disputant.

Mr.S.S Dulange, Advocate for the opponent.

JUDGMENT

(Delivered on 24 Jully 2026)

In nutshell case of the disputant is,

The disputant is Co-operative bank duly registered under the Maharashtra Co-operative societies Act,1960. The opponent No. 1 is propritory concern. The opponent No.1 is having business of sale of silver ornament and articles. The opponent No.1 was in need of the financial assistance for the said business therefore, the opponent No.1 has applied to the bank for granting the loan. At the same time the opponent No.1 has furnished surety of opponent No.2 and 3 they have accepted the liability of repayment of the loan in the capacity of Guarantors. The opponent no. 1 to 3 are the members of the disputant Bank. Accordingly, the opponent request was considered by the board and term loan of Rs. 3,80,000/- was sanctioned to the opponent on 03.08.2005. Opponent has executed the demand promissory note, continuing security letter agreement and guarantee bond in favour of the bank and agreed to pau repay both the loan limits with interest thereon at the rate of 14% p.a with monthly rate. Opponent have made transaction for some period satisfactorily. There after they have stopped the entire transaction and allowed the amount to be non performing assets. The opponents were called upon from time to time to pay the dues of the bank. However, the opponent give assurances only. Thereafter, also opponent have not taken any steps to repay the dues. Ultimately in the month January 2008 i.e. on 07.01.2008 opponent has not taken any steps inspite the notices. Therefore, the dispute is filed for recovery of amount of Rs.3,68,716/-against opponent no. 1to 3 joint and severally.

2. Defendant no. 1A and 1B are appeared in the matter and filed their written statement at Exh. 39. They denied all adverse allegations against them and submitted that, they are not member of the bank. Therefore, suit is not tenable before this court. They have not taken any loan from the disputant bank. So also, they have no personal knowledge about the loan taken by husband of opponent no. 1 A and father of 1B. The deceased Ashok Devarmani was leaving separate from the opponent. Therefore, they are not liable for the recovery as prayed. They have not taken the benefit of said loan. The properties mentioned in the bank document are ancestral properties of opponent therefore deceased Ashok Devarmani and Disputant Bank has no right to create any transaction without prior permission of opponent. Opponent has right in the said property therefore, bank cannot create any interest

in the property. Branch manager of the bank has no right to file the suit. No any resolution passed against him. Further, contended that, disputant has not properly calculated the amount. No any contract is executed between the bank and opponent. They have no concern with the dispute. Hence, suit is liable to be dismissed.

3. On the basis of rival pleadings of both the parties, my learned predecessor has framed issues at Exhibit 40. I have reproduced the same along with my findings thereon. For the reasons is given below.

Sr. No.	**ISSUES**	**FINDINGS**
1.	Does disputant society proves that it has sanctioned and disburse the loan of Rs. 3,80,000/- to the opponent?	In Affirmative.
2.	Does disputant society proves that the loan documents are duly executed by the opponent?	In Affirmative.
3.	Does disputant society proves that loan account of the opponent is properly maintained?	In the Affirmative.
4.	Does disputant society proves that it is entitled to recover an amount of Rs. 3,68,716/- along with interest @ 17% p.a from opponent no. 1A to 3 joint and severally?	In the partly Affirmative
5.	What order and Award ?	As per final order.

REASONS

4. In order to substantiate their claim disputant examined shri. Sadashiv Dikshit at Exh.47, Apart from oral evidence he relied upon documentary evidence i.e. Resolution, loan application, promissory note, Agreement, Account statement at exh.60 to 63-a Plaintiff filed evidence closing pursis at Exh. 48

5. On the other hand, defendant has not filed any oral or documentary evidence on record. Opponent filed evidence closing pursis at Exh. 49

AS TO ISSUE NO. 1 TO 3 :

6. Disputant has argued that, opponent no.1 has business of sale of silver ornament and articles. He was in need of financial assistance for the said business therefore he applied for to the bank for granting loan. Considering the request loan of Rs. 3,80,000/- was sanctioned to opponent to which opponent no. 2 and 3 accepted the liability to repay the loan as guarantors. Opponent has executed loan document in favour of bank. After the death of opponent no.1 legal heirs are brought on record. As opponent failed to repay the loan therefore being borrower and guarantor for the loan opponent no.1A to 3 are joint and severally liable for the payment of Rs. 3,68,716 with interest of 17% p.a. from the date of dispute till its realization.

7. To prove his case disputant has examined shri. Sadashiv Dikshit at Exh.47. He reiterated the contention made in the affidavit. During his cross he admitted that he is retired from the

bank in the year 2018 opponent no. 1a to 1B are not member of the bank. Opponent no. 1 a and 1 B have no concern with the transaction made by opponent no.1 with bank. The transaction is not informed to the legal hairs as because they have no concern with the transaction. The alleged loan between the disputant and bank was personal. Ashok Devarmani was is liable for the profit and loss of the loan. Opponent no. 1 a and 1 b are not personally concern with the loan. For the alleged loan F.D, property at Bhavani Peth, stock in the shop at Mangalwar peth, and furniture was taken as mortgage. The property at Bhawani Peth was auctioned and the amount is deposited in loan account. As the legal hair have no concern therefore, their consent has not taken at the time of auction. Legal hairs having responsibility of the loan. Opponent no 1 A and 1 B has not applied for the loan. No agreement was taken place between disputant bank and opponent no. 1 A and 1 B. Except this he denied all adverse suggestions given by ld. Adv for the opponent.

8. On the other hand Opponent has not lead any oral or documentary evidence on record. So also failed to advance argument. Hence the matter is proceed further without the argument by opponent.

9. considering the evidence on record on record. Disputant has examined shri. Vithhal Dikshit at Exh.47 who duly proved the execution of loan document at 61 to 63acotending that it bears the signature of opponent no.1 and he knows the signature of opponent

no. 1. Further, the krj rokha at Exh.61 shows that the loan of Rs. 380,000/-has been sanctioned to the opponent no. 1 vide resolution passed dt on 28.07.2008 subject no. 2 and as per account page no. 12/1 the amount of Rs. 3,80,000/- is disbursed on 03.08.2005. which is duly corroborated by the promissory note and account statement at Exh.62 and 63 A. Opponent no.1 had admitted and acknowledged the receipt of loan amount with the interest of 15% it also shows that opponent no.1 has acknowledge the receipt of the amount with interest of 380,000/-it also shows that opponent no.2 and 3 are stood as guarantors to opponent no.1 and have accepted the joint and several liability to repay the loan amount. Considering the account statement at Exh.63A it shows that including due interest 46268/-and principal amount of Rs. 322448/- an amount of Rs.368716/- was due and outstanding to disputant bank from opponent no.1 the sanctioned loan amount has been debited by disputant bank in the name of opponent and the interest of 15% p.a has been charged. Opponent has not challenged the entries in loan account statement by leading any oral or documentary evidence. Hence the account statement is remained unchallenged and presumption can be drawn that the entries are true and correct. Therefore, there remains no reason to Disbelieve the evidence adduced by the disputant. Hence, it can be said that disputant has proved the amount of loan has been duly sanctioned and disbursed to the opponent no.1. Hence, I answer Issue No. 1 to 3 in the affirmative.

AS TO ISSUE NO. 4

10. As discussed above it is duly proved by the disputant that opponent no.1 has executed the loan document and opponent no. 2 and 3 are stand as a surety to the said loan. The document at Exh. 61 to 63 A shows the name of opponent no.2 and 3 are as guarantor and has signed the document by accepting the surety. As per section 128 of the contract act the surety's primary role is to pay if borrower defaults as their liability is co-extensive with the borrower therefore, in the case in hand as opponent no.1 who is being principle borrower failed to pay the amount and as already discussed above opponent no.2 and 3 had accepted the liability as such being co borrower hence, opponent no.2 and 3 are joint and severally liable for the loan taken by opponent no.1.

11. Coming towards determining the liability of opponent no.1 A and 1 B is concern, disputant has argued that legal heirs have avail the benefit of the loan taken by the opponent no.1 and the property of opponent no.1 is devolved upon them as such being legal heirs of deceased borrower, they are joint and severally liable to pay the loan amount taken by opponent no.1. Record shows that in the loan application at Exh.61 disputant has mentioned the property bearing plot no. 90 C, 3/2 in Vrushali Apartment,Bhavani peth Solapur which is owned by the deceased opponent no.1 who is principal borrower.But, during cross examination it is admitted by the disputant witness that, bank has taken the property at Bhavani peth , furniture and stock of the shop at mangalwar peth, F.D's of

the opponent has been auctioned and the sale amount has been credited in the loan account of the opponent no.1. Now, except the said property deceased owned other property and that property is devolved upon the legal hairs is to proved by the disputant. However, no documentary evidence brought on record to show that deceased owned the other property and which is inherited by the legal hairs i.e opponent no.1 A and 1 B from the deceased.

12. In such circumstances, even if it consider that being legal hair opponent no.1 A and 1 B are liable to pay the amount to the extent of property devolved upon them from the deceased borrower. In absence of proof as to the property left by deceased borrower and received by legal hair the liability cannot be imposed upon the legal heirs. Hence, legal hairs cannot be held liable for the repayment of loan in question. As such legal hairs are not liable to be held liable for the recovery of loan.

13. Now imposing joint and several liability of the sureties are concern, as already discussed above opponent no2 and 3 had accepted the liability. Opponent no.2 and 3 are not appeared in the matter and has not challenged the suit. As per section 128 of contract act the sureties liability is co-extensive with that of principal borrower. The liability of both runs concurrently. Hence being guarantor/surety to deceased opponent no.1 they can be held joint and severally along with opponent no.1. Hence, I answer issue no. 4 in partly affirmative.

AS TO ISSUE NO.5 :

14. In view of discussion made above, I am of the view that, disputant are entitle to recover an amount of Rs.368716 /-. So far as imposing rate of interest as alleged by disputant is 17 % p.a from opponent. However, the loan document shows that agreed rate of interest 15% was fixed and therefore future interest cannot exceed more than the said rate. Hence disputant bank is entitled to recover from opponent no.2 and 3 an amount of Rs. 368716/-with the interest at the rate of 15% from the date of filing dispute until its full realization. Hence, I pass following order,

ORDER

1. Suit is partly decreed with costs.
2. Disputant Bank is entitled to recover an amount of Rs.368716/-(Three Lakh Sixty Eight Thousand Seven Hundred Sixteen Rupees only) with interest of 15% p.a from opponent No. 2 and 3 joint and severally from the date of filing suit until its full realization
3. Decree/ Award be drawn up accordingly.

SD/-

(S.D. Mukkanwar)

Date : - 24.07.2026

Judge Co-operative Court

Solapur

(Award U/Sec 96 of MCS Act 1960)

IN THE COURT OF JUDGE CO-OPERATIVE COURT SOLAPUR
(Presided over by Smt. S. D. Mukkanwar)

Co-op Case No.1265/2008 **Exh.No. 65.**

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Act 1960 having its registered office at 319,
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1a) Rajeshwari Ashok Devarmani
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R/at 94/191 Jodhbhavi peth,Solapur.

Claim:- Suit for Recovery of money.

Mr. U.B. Marathe, Advocate for the disputant.

Mr.S.S Dulange, Advocate for the opponent.

AWARD

Whereas the disputant has filed the dispute against the Opponents, for Suit for Recovery, Therefore after having summoned the parties, having heard the concerned and for the reasons recorded in judgment in dispute No.1265/2008, dated 24/07/2026, I pass the following award.

1. Suit is partly decreed with costs.

2. Disputant Bank is entitled to recover an amount of Rs.3,68,716/-(Three Lakh Sixty Eight Thousand Seven Hundred Sixteen Rupees only) with interest of 15% p.a from opponent No. 2 and 3 joint and severally from the date of filing suit until its full realization

This award is prepared on 24/07/2026 and issued under the seal and signature of this court.

Bill of cost

Sr. No.	Perticulars	Disputant	Oppponent
01	Stamp on Dispute	Rs.2340/-	--
02	Court Fee deposit	Rs.500/-	--
03	Advocate Fee	--	--
04	Total	Rs.2840/-	--

SD/-

Place:- Solapur
Date :- 24/07/2026.

(S. D. Mukkanwar)
Judge
Cooperative Court, Solapur.