

**IN THE COURT OF JUDGE, COMMERCIAL COURT  
(DISTRICT JUDGE CADRE), COIMBATORE**

**Present: Thiru. K.Hariharan, M.L.,**  
Judge,  
Commercial Court (District Judge Cadre),  
Coimbatore

**Wednesday, the 25th Day of March 2026**

**C.O.S. No.51 of 2025**  
(CNR No.TNCB22-000112-2025)

**M/s. Fivestar Business Finance Ltd.,**  
Rep. by its Authorized Signatory Mr.S.Madhusandan  
(Formerly known as M/s. Fivestar Business Credits Ltd.,) ... Plaintiff

**// Vs //**

- 1. R.O. Palanisamy (deceased)**  
S/o late Mr.Othiyappa Gounder,
- 2. Mrs. P.Kannammal**  
W/o R.O.Palanisamy,
- 3. Mr.P.Tharanidharan,**  
S/o R.O.Palanisamy, .... Defendant

This suit came up for final hearing before me on 13.03.2026 in the presence of **Mr.K.Sethuram, Advocate** for the plaintiff and **Mr.A.A.Xavier Suresh, Advocate** for the defendants and upon perusing the records, hearing arguments on both sides and having stood over for consideration till this date, this Court passes the following:-

## JUDGMENT

The suit has been filed by the plaintiff for the relief seeking to pass a Preliminary decree directing the defendants 2 and 3 to make a payment of Rs.48,36,076/- as on 29.04.2024 along with interest @ 6 % per annum from the date of the suit till the date of realization and in the event of failure to pay the said amount, the plaintiff seeks to foreclose and order for the sale of the suit immovable property and for cost.

### **2. The Plaint averments which are found essential for the disposal of the suit is that:-**

a) The plaintiff is a company and is involved in the financial business and extending credit facilities in the form of various types of loans to the borrowers. In the course of business the defendants approached the plaintiff company seeking for sanctioning a Mortgage Loan against the suit property. The 1st defendant is the borrower and the 2nd and 3rd defendants are co-borrowers / co-applicants and guarantors for the said loan. The defendants all together have executed the loan agreement guaranteeing the due performance of the terms and conditions contained therein. The 1st defendant is the title holder of the suit schedule property and purchased the same vide Sale Deed dated 10.02.1994. On 15.07.2011 the 1st defendant executed a Mortgage of Deposit of Title Deeds (MODT) in favour of the plaintiff and the same was registered as document

No.6990 of 2011 on the file of SRO, Singanallur. For the purpose of the Memorandum of Deposit of Title deeds the sale deed dated 10.02.1994 and MODT dated 15.07.2011 have been submitted to the plaintiff company. After considering the documents, the plaintiff company has sanctioned the loan and in pursuance of the sanction the plaintiff also has executed a loan agreement, letter of indemnity, letter of guarantee and other connected documents. The plaintiff company has also sanctioned three mortgage loan against the suit property which are with Loan No.LA95087 dated 15.07.2011 for a sum of Rs.1,00,000/-, LA95088 dated 15.07.2011 for a sum of Rs.7,00,000/- and LA95316 dated 15.06.2012 for a sum of Rs.5,00,000/-. The principal outstanding as on 01.02.2014 for the first loan is Rs.73,524/-, for the second loan is Rs.5,25,119/- and for the third loan is Rs.4,32,951/-, was the outstanding and after adding the interest for the period between 01.02.2014 to 29.08.2022 and from 30.08.2022 to 29.04.2024 the value of the outstanding as on the date of suit was Rs.3,44,666/- for the first loan, Rs.24,61,746/- for the second loan and Rs.20,29,664/- for the third loan, as such the total outstanding amount due from the defendants to the plaintiff is a sum of Rs.48,36,076/-. The plaintiff submit that after duly disbursed the loan amount to the defendants, the defendants have agreed to repay the loan amount along with annualized rate of interest @ 27.15% and 29.45% per annum and the defendants are also liable to pay the due amount jointly and severally along with interest.

b) The plaintiff further submit that the loan amount was also payable in 60 equated monthly installments and which comes to end on 15.06.2016 and 15.05.2017. The defendants have also created a mortgage by deposit of title deeds and the Deposit of title deed also has made by the defendants along with MODT and the MODT also specifies the title deed of the document submitted to plaintiff by the defendants. As per the MODT, the name of the mortgagors are 1) Mr.R.O.Palanisamy, 2) Mrs.P.Kannammal and 3) Mr.P.Tharanidharan. The plaintiff further submit that as per the agreement the defendants have not come forward to make the payment of the outstanding amount to the plaintiff and committed default in payment of the EMI / installments and hence the plaintiff is empowered to take possession of the immovable property which are in the possession of the defendants. The loan was recalled, since the defendants has committed the act of default. The loans were recalled by the plaintiff by way of notice dated 01.02.2014. Even after the recall notice the defendants did not come forward to settle the entire due amount and have not sent any reply to the same. The defendants were also not inclined to make the repayment and were evading the payment. The plaintiff was also with reliable understanding that the defendants are no longer ready to make the payment of outstanding dues and submit that as on 23.04.2024 the outstanding due from the defendants to the plaintiff is a sum of Rs.48,36,076/- and subsequently the issue was also referred to Arbitral Tribunal on 03.05.2014 and the proceedings were initiated in

C.P.No.12 of 2014 and C.P.No.13 of 2024 and the Award has been passed by the Tribunal on 21.10.2016 on both the claim petition and aggrieved over the said Award the defendants have preferred the appeal before the Hon'ble High Court in O.P.No.241 and 252 of 2017 and A.Nos.1760 and 1821 of 2017 and the said Award was set aside by the Hon'ble High Court vide Orders dated 05.01.2021.

c) The plaintiff further submit that subsequently yet another Arbitration proceeding was also initiated by the plaintiff against the defendants, since the defendants did not co-operate and the Arbitrator has recused from the proceedings. Subsequently yet another step was initiated by the plaintiff for Arbitral proceedings and the reference was also sent to the defendants on 27.12.2022, but the defendants have not come forward to choose any Arbitrators referred by the plaintiff nor referred any new Arbitrator from their side. Again the plaintiff has tried to settle the dispute through Arbitral proceedings and the plaintiff has nominated one Arbitrator Mr.A.Manivasakan, Retired District Judge, and the Arbitrator has also issued notices to the defendants to appear before the Tribunal. Since the defendants agitating strongly for the Arbitral proceedings, the Arbitrator has also recused from the Arbitral Proceedings. The defendants subsequently filed their preliminary objection under Section 12(1)(b) and (5), 13 & 16 of Arbitration and Conciliation Act. Subsequently Mr.P.Ganesan, Retired District Judge was appointed as Arbitrator. Since the defendants were not co-operated, the Arbitrator has recused from conducting the

Arbitral proceedings. Subsequently the plaintiff has approached the Hon'ble High Court vide Arb.O.P.No.448 of 2024 seeking appointment of Arbitrator and the Hon'ble High Court has observed that the mortgage claims are not arbitrable and it is an action in rem and advised the petitioner to approach the Civil Court for redress and the plaintiff was given opportunity to approach the Civil Court by the Hon'ble High Court. Since the defendants have not come forward to make the payment, the plaintiff has constrained to file the present suit demanding the outstanding amount and the plaintiff has also filed the accounts statement by computing the penal interest as per the judgment of Hon'ble Supreme Court in Ravindra vs Central Bank of India and hence the suit for aforementioned relief.

**3. By denying the plaint averments the defendant has filed the written statement. The sum and substance of the written statement averments which are found essential for the disposal of the suit is that:-**

a) It is the submission of the defendant that the 1st defendant approached the plaintiff's Coimbatore branch for financial Assistance and the plaintiff sanctioned loan of Rs.8,00,000/- in the month of July 2011. The defendants agreed to the loan only after knowing the interest and EMI to be paid in 60 Installments. The documents enlisted as executed by the defendants were subsequently cleverly executed by the Plaintiff in the accordance to their

convenience by acquiring just the signature of the defendants in various blank forms. The 2nd and 3rd defendants stood as Guarantors for the loan transaction and also handed over the title deeds as demanded by the plaintiff, as the 1st defendant was in dire financial need for his business project. The defendants submit that the property as mentioned in the description of property has not been given towards collateral security and the defendants have no intention to create mortgage and the documents were obtained by force by the plaintiff. It is the submission of the defendants that the plaintiff obtained the signature of the defendants in bunch of blank forms after the loan amounts were sanctioned and disbursed to the defendants. The defendants submit that the additional financial charges at 36% for default is exorbitant and arbitrary and it was brought to the knowledge of the defendants only in the Plaintiffs letter dated 01.02.2014. The plaintiff have contradicted his own claim of interest as 27.15% per annum and 29.45% per annum with his claim of 36% which is against Law. From the date of sanction of loan and from the 1st installment, the 1st defendant had been very prompt in repayment and never committed default even once and state that it does not attract any additional financial charges as alleged by the plaintiff. The claim amount worked out at Rs.48,36,076/- is false and incorrect and the Plaintiff has arrived the sum levying the additional financial charges, service tax, legal and other charges according to its convenience and arbitrarily and submit that the amount arrived by the plaintiff also includes future installments.

b) The defendants submit that so far the actual amount which has to be repaid by the 1st defendant to the plaintiff is Rs.1,66,580/- for the first loan Account No.LN.95088 and Rs.21,420/- for the second loan Account No.LN.95087 and in total a sum of Rs.1,88,000/- is alone mentioned as due to the plaintiff by the defendants. Further it is mentioned that no proper statement of account given by the plaintiff in the present suit and submit that the claim of interest is also highly exorbitant and it is higher than the loan amount sanctioned and the payment made by the 1st defendant have not been given credit properly by the plaintiff. The defendants submit that the defendants had been very prompt and regular in repaying the said loans along with interest and the last payment was made by the 1st defendant on 27.09.2013 for a sum of Rs.75,000/- towards loan account No.95088, Account No.LN.95087 and account No.95316 by way of cheque bearing no.534955 dated 27.09.2013. Though the 1st defendant had paid a sum of Rs. 75,000/- towards EMI for both loans, the statement of account reflect only entry of Rs.32,500/- on that said date. It is mentioned that there is gross discrepancy in the statement of accounts and the respective pass book. After repaying the EMI for the month of September 2013 and as the statements of accounts did not reflect the amount actually paid by the 1st defendant, the 1st defendant demanded a receipt for the same. The 1st defendant approached the Plaintiff and requested for the receipt several times and upon the assurance made by the plaintiff, the defendants was pacified.

c) The 1st defendant expressed his apprehension to pay the future EMIs fearing that the exact/actual amount of his payment will not be entered correctly in the statement of accounts maintained by the Plaintiff. Thereafter the 1st defendant time and again represented in person seeking to issue the respective receipt for the actual payment made in order to safeguard his interest. Instead of issuing the receipt sought for, the Plaintiff resorted to unlawful means of sending henchmen to 1st defendants house to recover the dues. The 1st defendant received a letter dated 01.02.2014 from the Plaintiff stating that the failure of the defendant to repay the loan amount would attract penal interest and service taxes etc., The defendants never had any intention from evading their liability to repay the said loans or to cheat the Plaintiff. The 1st defendant only require that the Plaintiff has to maintain transparency and accuracy in the statement of accounts for the amounts paid by the 1st defendant. Further, the defendants were not aware of the contents of the loan agreement as the same is executed cleverly by the Plaintiff by receiving signature in all blank papers and hence the defendants were not aware or the Arbitration clause. More over the appointment of Sole Arbitrator is arbitrary, unilateral and therefore is opposed to public policy and submit that several arbitrators were appointed unanimously and arbitrarily by the plaintiff company which was opposed by the defendants and inspite of that arbitration proceedings were conducted and defendants has participated and defended tooth and nail and some of the arbitrators were

unwilling to adjudicate and terminated the proceedings. The plaintiff had filed an arbitration petition before the Hon'ble High Court and defendants had defended the case and has raised the plea of limitation as one of the contention.

d) Further it is mentioned that the suit is barred by limitation and no suit or recovery proceedings was initiated by the plaintiffs against the defendants for recovery of money on or before 15.07.2014 or 15.06.2015 and submit that the suit has no cause of action and the signatory of the plaint Mr. Madhusandan is an incompetent person to sue and be sued by and on behalf of the company. Further it is mentioned that the plaintiff company has not passed any resolution and no document filed to show that the plaintiff company and its Directors have granted power to Mr. Madhusandan to sign the pleadings and to sue against the defendants on behalf of the company. Further, the value mentioned in the statement of account is denied by the defendants and further it is mentioned that the defendants 2 & 3 never stood as guarantor or co-borrowers/Co-applicants guarantors in the transaction and submit that no guarantee agreement is produced by the plaintiff to show that the defendants 2 & 3 are the guarantors. Only after checking the credential of the defendants the loan amount is sanctioned by the plaintiff to the defendants and submit that the defendants had no intention to evade the payment or escape from their liability to settle their loans and submit that they are law abiding Senior Citizen. Though the defendants had only insisted for the receipts, but a letter dated 01.02.2014 has

been issued by the plaintiff to the defendants to the pay the accrued sum along with penal interest and service tax. Further it is mentioned that as per the accounts the 1st defendant is only liable to pay the due amount of Rs.1,66,580/- in account No.95088 and Rs.21,420/- in account No.95087, in total a sum of Rs.1,88,000/- was only as outstanding. Hence for the above mentioned reasons the defendants have sought for to dismiss the suit.

4. After the pleadings, the plaintiff and the defendants was given with opportunity to file the admission and denial of documents statement. Both parties have filed the admission and denial of documents statement along with affidavit. Further, prior to the case management hearing, parties were called upon to respond as to the possibility of settlement of the suit dispute. Since the parties have not come forward for settlement, the case management hearing in this suit has been commenced.

5. At the commencement of the case management hearing the following issues were framed by this Court on 06.02.2026:-

- (1) Is the suit is barred by limitation?
- (2) Whether the plaintiff has failed to give the credit of certain amount / installations paid by the Mortgagor?
- (3) Whether the defendants are left to pay a sum of Rs.1,88,000/- as due to the plaintiff towards the loan number 95088 and 95087?
- (4) Whether the interest charged by the plaintiff is exorbitant?

(5) Whether the plaintiff is entitled for recovery of suit amount as prayed for?

(6) To what relief?

6. During trial on the side of the plaintiff, the Authorized Signatory of plaintiff firm Mr.Madhukumar Rajangan was examined as PW.1 and Ex.A1 to Ex.A14 were marked and on the side of the defendant, the 3rd defendant Mr.P.Tharanidharan was examined as DW.1 and no documentary evidence has been adduced.

### **Issues No.1**

7. It is admitted fact that the loan has been borrowed by the defendants from the plaintiff. In the written statement at paragraph No.2 for the loan borrowed by the 1st defendant, the defendants 2 and 3 are also mentioned as Guarantors. It is the claim of the plaintiff that the defendants has executed the deposit of title deed by mortgaging the suit property towards the loan borrowed by the defendants from the plaintiff financial company. Whereas it is the contention of the defendants that the suit is barred by limitation. In support of their stand the plaintiff has also filed the Ex.A4 deed of simple mortgage executed by one R.O.Palanisamy on 15.07.2011 and the mortgage was executed for a value of Rs.1,00,000/- and on the same day the promissory note was also executed by R.O.Palanisamy for a sum of Rs.7,00,000/- for which he has agreed

to make the repayment along with interest at the rate of 30% per annum for the value received by him and the said promissory note is filed as Ex.A5 before this Court and the 2nd defendant and 3rd defendant are also stood as guarantors. The loan agreement was also executed by the defendants and the loan agreements shows that they are the co-borrowers of loan for a sum of Rs.8,00,000/- in total.

**8.** Subsequently, the loan sanction letter dated 14.06.2012 is also issued by the plaintiff to the defendants for a sum of Rs.5,00,000/- and for the said sum of Rs.5,00,000/- a promissory note was also executed by the deceased 1st defendant on 15.06.2012 and the 2nd and 3rd defendant are also stood as Guarantors. In the said promissory note also the defendants have agreed to repay the loan amount along with interest at the rate of 30% per annum. For which a separate loan agreement also has been executed. In the loan agreement dated 15.07.2011 the rate of interest is specified as @ 17.5% per annum flat and annualized rate of interest is specified as at the rate of 29.45% per annum. The loan agreement also specifies that the penal interest at the rate of 2% per annum is to be collected and the said documents are marked as Ex.A6 and Ex.A7 in the present suit.

**9.** It is admitted fact that the claim has been filed by the plaintiff on the basis of the Ex.A2 title deed deposited with the plaintiff, Ex.A4 memorandum of documents registered by the plaintiff on the basis of loan sanction letter for a

sum of Rs.8,00,000/- which is filed as Ex.A3. Further, in support of the claim of the plaintiff, the plaintiff also has filed the Ex.A5 & Ex.A7 which are the loan agreement for a sum of Rs.8,00,000/- and Rs.5,00,000/- and Ex.A3 and Ex.A6 are the loan sanctioned letters and Ex.A4 is MODT. In Ex.A3 sanction letter the loan has been sanctioned for a sum of Rs.8,00,000/- to Mr.R.O.Palanisamy and on the basis of said Ex.A3 Sanction letter a loan agreement has been executed by Mr.R.O.Palanisamy. For the said sum of Rs.8,00,000/- one Mrs.Kannammal / 2nd defendant stood as guarantor in the loan agreement and the loan agreement along with the promissory note also has been signed by the 2nd defendant and the the promissory note and loan agreement is also signed by 3rd defendant. The date of loan loan agreement is 15th July 2011 (Ex.A5). As per the agreement, the defendants have agreed to repay the loan amount borrowed on 15.07.2011 in 60 installments and the payment period is completed only after 60 months and the said period 60 months expires by 15.06.2016.

**10.** Like wise through Ex.A6 sanctioned letter a sum of Rs.5,00,000/- was also sanctioned to the deceased 1st defendant by the plaintiff and in which the defendants 2 and 3 stood as guarantors. The said loan was sanctioned on 15.06.2012 and on 15.06.2012 the loan agreement and promissory note have been executed by the borrower R.O.Palanisamy (deceased 1st defendant) and also by the guarantors - the defendants 2 and 3. As per the agreement, the defendants have agreed to repay the loan amount borrowed on 15.06.2012 in 60

installments and the said period of installments completes by 15.05.2017 and the said loan agreement has been filed as Ex.A7.

**11.** It is the submission of the plaintiff in the plaint that the plaintiff has recalled the loan by way of letter dated 01.02.2014 and the said recall notice dated 01.02.2014 have not been filed by the plaintiff in the present suit. Whereas the defendants have also denied the receipt of said notice dated 01.02.2014. Hence this Court is of considered stand that the claim of the plaintiff that the loan was recalled by way of notice dated 01.02.2014 in the considered view of the court have not been established by the plaintiff in the present suit.

**12.** Apart from the above documents, the plaintiff also have filed Ex.A8, Ex.A9 and Ex.A10 documents which are account statement for the aforesaid three loans. As per the above said three accounts statement Ex.A8, Ex.A9 and Ex.A10, it is found that the defendants had not continued to repay the loan amount after 27.09.2013. Since 1st defendant has borrowed the loan and the defendants 2 and 3 as per the loan agreement have stood as guarantors and they have also agreed to make the payment in 60 equated monthly installments. Under the above circumstances the limitation to sue will commence only after the aforementioned duration of 60 months.

**13.** In this regard this Court would find it appropriate to refer to the judgment of Hon'ble High Court of Delhi in ***Kotak Mahindra Bank Ltd. vs***

**Anuj Kumar Tyagi** reported in **2015 SCC (online) Delhi 14130 = CDJ 2015 DHC 1268** in which the Hon'ble High Court of Delhi at paragraph No.11 have held as follows:-

*"11. To my mind, Article 55 could have possibly been made applicable, to this case as well, as the loan agreement had a tenure extending from 10.08.2007 till 10.06.2012, but for one aspect of the matter which I have adverted to in the following paragraph. In so far as Article 55 is concerned, the fact that that the respondent failed to adhere to the schedule of repayment, would not deprive the right of the appellant to treat each breach as a fresh cause of action. The last breach, quite clearly, in the instant case, would have occurred only in May-June, 2012, assuming the last installment was to be adjusted by virtue of the respondent having paid an initial amount of Rs. 7544/- as an advance. The suit, admittedly, was instituted on 20.07.2012."*

**14.** As per the above judgment of the Hon'ble High Court and As per Article 55 the limitation to sue will commence only after the expiry of repayment period of 60 months. Further, the present loan is being in nature of Mortgage loan, whether the provision under Article 62 of the Limitation Act will

be applicable or not, was the fact considered by this Court. For availing the suit loans from the plaintiff the 1st defendant had executed the Memorandum of deposit of title deed (MODT) for a value of Rs.1,00,000/-. Subsequently, for the value of Rs.7,00,000/- in the loan agreement Ex.A5 the defendants is noted to have deposited their title deed as mentioned in the sanction letter Ex.A3. Like wise yet another loan was also sanctioned vide Ex.A6 sanction letter for a sum of Rs.5,00,000/- on the basis of deposit of title deed. So, one title deed has been deposited by the 1st defendant for the loan borrowed by him for a sum of Rs.1,00,000/- and availing the loan for Rs.7,00,000/- also has been included in the loan agreement on the basis of the above deposit of title deed. Like wise the sum of Rs.5,00,000/- was also sanctioned as per Ex.A6 on the basis of title deed handed over by the deceased 1st defendant to the plaintiff. Hence, whether this will create the equitable mortgage and the limitation on the basis of mortgage will be applicable to the present transaction, is the fact considered by this Court.

**15.** It is the admitted fact that the 1st defendant has deposited the title deed to avail the loan from the plaintiff on 15.07.2011 and subsequently on 15.06.2012 yet another loan has been availed by the 1st defendant for which as per the loan sanction letter the deposit of title deed have been recorded for the loan amount of Rs.7,00,000/- and Rs.5,00,000/- and a separate MODT has been registered for a sum of Rs.1,00,000/-. Under the circumstances, the transaction taken place between the plaintiff and the defendants have been considered by

this Court and this Court would consider that this transaction would fall within the ambit of equitable mortgage by deposit of title deeds.

16. In this regard this Court would find it appropriate to refer to the judgment of Hon'ble Supreme Court decided in ***A.B.Govardhan vs P. Ragothaman reported in 2024 INSC 640*** in Civil Appeal No.9975-9976 of 2024 in SLP.No.5034-5035 of 2019. The Hon'ble Supreme Court in paragraph No.27 and 28 of the judgment have held as follows:-

***"27. In Syndicate Bank v Estate Officer & Manager, APIIC Ltd., (2007) 8 SCC 361, this Court held:***

*"28. The requisites of an equitable mortgage are : (i) a debt; (ii) a deposit of title deeds; and (iii) an intention that the deeds shall be security for the debt. The existence of the first and third ingredients of the said requisites is not in dispute. The territorial restrictions contained in the said provision also does not stand as a bar in creating such a mortgage. The principal question, which, therefore, requires consideration is as to whether for satisfying the requirements of Section 58(f) of the Transfer of Property Act, it was necessary to deposit documents showing complete title or good title and whether all the documents of title to the property were required to be deposited. A fortiori the question which would arise for consideration*

*is as to whether in all such cases, the property should have been acquired by reason of a registered document.*

*"38. In **K.J. Nathan v. S.V. Maruty Reddy** [AIR 1965 SC 430: (1964) 6 SCR 727] this Court held: (AIR pp. 435- 36, para 10)*

*"10. The foregoing discussion may be summarised thus: Under the Transfer of Property Act a mortgage by deposit of title deeds is one of the forms of mortgages where under there is a transfer of interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan. Therefore, such a mortgage of property takes effect against a mortgage deed subsequently executed and registered in respect of the same property. The three requisites for such a mortgage are, (i) debt, (ii) deposit of title deeds; and (iii) an intention that the deeds shall be security for the debt. Whether there is an intention that the deeds shall be security for the debt is a question of fact in each case. The said fact will have to be decided just like any other fact on presumptions and on oral, documentary or circumstantial evidence. There is no presumption of law that the mere deposit of title deeds constitutes a mortgage, for*

*no such presumption has been laid down either in the Evidence Act or in the Transfer of Property Act. But a court may presume under Section 114 of the Evidence Act that under certain circumstances a loan and a deposit of title deeds constitute a mortgage. But that is really an inference as to the existence of one fact from the existence of some other fact or facts. Nor the fact that at the time the title deeds were deposited there was an intention to execute a mortgage deed in itself negatives, or is inconsistent with, the intention to create a mortgage by deposit of title deeds to be in force till the mortgage deed was executed. The decisions of English Courts making a distinction between the debt preceding the deposit and that following it can at best be only a guide; but the said distinction itself cannot be considered to be a rule of law for application under all circumstances. Physical delivery of documents by the debtor to the creditor is not the only mode of deposit. There may be a constructive deposit. A court will have to ascertain in each case whether in substance there is a delivery of title deeds by the debtor to the creditor. If the creditor was already in possession of the title deeds, it would be hypertechnical to insist upon the formality of the creditor delivering the title deeds to the debtor and the debtor redelivering*

them to the creditor. What would be necessary in those circumstances is whether the parties agreed to treat the documents in the possession of the creditor or his agent as delivery to him for the purpose of the transaction.”

*The question which arose therein was that what would be the extent of subject-matter of mortgage; the entire property forming the subject-matter of mortgage or a part thereof.”*

*"28. In the interest of completeness, we may note that the Bench of 2 learned Judges in Syndicate Bank (supra) had referred to a larger Bench, the question as to whether a property could be equitably mortgaged by deposit of documents other than the title deeds or registered title document. However, the 3-Judges Bench in Syndicate Bank v Estate Officer and Manager (Recoveries), Andhra Pradesh Industrial Infrastructure Corporation Limited, (2021) 3 SCC 736 was “of the opinion that the reference need not be answered in the peculiar facts and circumstances of the case since in our opinion the State of Andhra Pradesh and its successor viz. APIIC and Telangana Industrial Infrastructure Ltd., are estopped from challenging*

*the validity of the mortgage.” In State of **Haryana v Narvir***

**Singh, (2014) 1 SCC 105**, this Court observed:

*“11. A mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non- testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. A mortgage by deposit of title deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title deeds of the property for the purpose of security, it becomes a mortgage in terms of Section 58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is*

*the handing over, by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration.*

*12. This Court had the occasion to consider this question in **Rachpal Mahraj v. Bhagwandas Daruka [1950 SCC 195: AIR 1950 SC 272]** and the statement of law made therein supports the view we have taken, which would be evident from the following passage of the judgment: (AIR p. 273, para 4)*

*“4. A mortgage by deposit of title deeds is a form of mortgage recognised by Section 58(f) of the TP Act, which provides that it may be effected in certain towns (including Calcutta) by a person*

*‘delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon’. That is to say, when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under Section 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under Section 17 of the Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable.”*

*13. This Court while relying on the aforesaid judgment in United Bank of India Ltd. v. Lekharam Sonaram & Co. [AIR 1965 SC 1591] reiterated as follows: (AIR p. 1593, para 7)*

*“7. ... It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under Section 17 of the Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered it cannot be used*

*in the evidence at all and the transaction itself cannot be proved by oral evidence either.”*

*14.2. But the question is whether a mortgage by deposit of title deeds is required to be done by an instrument at all. In our opinion, it may be effected in a specified town by the debtor delivering to his creditor documents of title to immovable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only showing deposit of the title deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates rights, liabilities or extinguishes those, the same requires registration.*

*14.3. In our opinion, the letter of the Finance Commissioner would apply in cases where the instrument of deposit of title deeds incorporates the terms and conditions in addition to what flows from the mortgage by deposit of title deeds. But in that case there has to be an instrument which is an integral part of the transaction regarding the mortgage by deposit of title deeds. A document merely recording a transaction which is already*

concluded and which does not create any rights and liabilities does not require registration.

14.4. Nothing has been brought on record to show existence of any instrument which has created or extinguished any right or liability. In the case in hand, the original deeds have just been deposited with the Bank. In the face of it, we are of the opinion that the charge of mortgage can be entered into revenue record in respect of mortgage by deposit of the title deeds and for that, an instrument of mortgage is not necessary. A mortgage by deposit of the title deeds further does not require registration. Hence, the question of payment of registration fee and stamp duty does not arise.

14.5. By way of abundant caution and at the cost of repetition we may, however, observe that when the borrower and the creditor choose to reduce the contract into writing and if such a document is the sole evidence of the terms between them, the document shall form an integral part of the transaction and the same shall require registration under Section 17 of the Registration Act.”

17. From the judgment of Hon'ble Supreme Court as extracted above, the Hon'ble Supreme Court has referred to the judgment of ***K.J. Nathan v. S.V. Maruty Reddy reported in AIR 1965 SC 430*** at paragraph No.27 have particularly held and have settled the position of law that a memorandum reducing the terms and conditions of deposit of title deeds in the form of document the same shall require a registration. But, in case in which such document does not incorporate any terms and condition, it is mere evidential for the transaction of deposit of title deeds and held that such entries does not require a registration and also has laid down the position of law that a mortgage by deposit of title deeds need not to be done by an registered instrument. At the same time when the parties have recorded the memorandum of deposit of title deeds in writing and creates rights and liabilities and its extinguishment, the said document or record shall require registration. A document merely recording the transaction which is already concluded and when it do not create any rights or liabilities and the same does not require the registration.

18. Further the Hon'ble Supreme Court in the above extracted judgment have also referred to the provision under ***Section 59 of Transfer of Property Act*** and also have held that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument and held that when the debtor deposits with the creditor title deeds of the property for the purpose of security, it becomes a mortgage in terms of Section 58 (f) of the Transfer of Property Act and further held that no registered instrument is required under

Section 59 thereof as in other classes of mortgage. When this Court has considered the settled proposition of law as discussed by the Hon'ble Supreme Court in the above extracted passages this Court is of considered stand that an equitable mortgage have been created in the present transaction between the plaintiff and the defendants. In particular for creation of mortgage of deposit of title deeds for Rs.7,00,000/- and Rs.5,00,000/- other than the sanction letters Ex.A3 and Ex.A6 and Ex.A5 and Ex.A7 loan agreements specifying the deposit of title deeds no rights or liabilities related to mortgage have been entered between the parties. In particular Ex.A3, Ex.A6, Ex.A5 and Ex.A7 documents are the documents in writing evidencing the deposit of title deeds. Hence, this Court would consider that as already the title deeds have been deposited by the defendants to the plaintiff by creating simple mortgage through Ex.A4 document, the title deed of the document is in the hands of the plaintiff for the loans availed by the defendants. In the above circumstances this Court is of considered stand that for loan value of Rs.7,00,000/- and Rs.5,00,000/- the equitable mortgage by deposit of title deeds have been created and further this Court is of considered stand that the same do not require registration. When the equitable mortgage is created, the application under Article No.62 of the Limitation Act would come into play and accordingly the limitation period has to be reckoned and the limitation period will be commenced only from the date when the loan amount has become due.

**19.** In this suit dispute the loan amount has become due only after the expiry of last date of installment, which is 12 years after 2016 for the first loan amount of Rs.1,00,000/- and for the loan amount of Rs.7,00,000/-. The limitation period commences / starts for the loan of Rs.5,00,000/- from 15.05.2017 and the limitation period would run for a period of 12 years from the above said period 15.06.2016 and 15.05.2017 respectively. From the said above two dates the 12 years time period would lapse as per Article 62 of the Limitation Act, only after the year 2028 and 2029 respectively. **Hence the present suit filed before this Court in the year 2025 is considered to have been filed within the limitation period.**

#### **Issues No.2.**

**20.** It is the contention of the defendants that the plaintiff have failed to give credit to certain amounts paid by the defendants towards the installments for the loan availed from the plaintiff. But to show that on the side of the defendants no documents have been filed before this Court, nor the defendants have come up any specific stand that on which of the date they have made the payments. Morefully the defendants have not come up with any specific stand as to how much of amount have not been given credit by the plaintiff. Under the circumstances without specifying any of the details of payment before this Court by the defendants, this Court is of considered stand that the defendants

have failed to prove that the plaintiff have failed to give credit for certain installment amount paid by the defendants towards the outstanding due amount.

### **Issues No.3**

**21.** Further it is also the submission of the defendants that the defendants are left to pay only a sum of Rs.1,88,000/- as the due amount to the plaintiff. But, in support of plaintiff's claim, the plaintiff has filed the Ex.A8, Ex.A9 and Ex.A10 documents to compute the outstanding due amount. Morefully the defendants have not come up with any calculation or documents to show that only a sum of Rs.1,88,000/- was due from them to the plaintiff and no documents have been filed by the defendants. Hence this Court is considered stand that the defendants have failed to prove that the defendants are left to pay only a sum of Rs.1,88,000/- to the plaintiff.

### **Issues No.4**

**22.** It is the stand of the defendants that the interest charged by the plaintiff is exorbitant in the present suit. It is admitted fact that the defendants had availed the loan amount of Rs.8,00,000/- on 15.07.2011 and Rs.5,00,000/- on 15.06.2012 from the plaintiff and out of availing the said loan amount of Rs.8,00,000/-, Rs.1,00,000/- was availed by way of simple mortgage and the mortgage deed mentions the rate of interest as 16.75% per annum and subsequently for the same said loan the plaintiff has also executed Ex.A5 loan

agreement and also executed a promissory note in the Ex.A5 and in the promissory note for value of Rs.7,00,000/- the rate of interest have been fixed as 30% per annum. In the loan agreement the rate of interest has been fixed as Rs.16.75% for flat rate and annualized rate @ 27.15% and further the terms also specifies the additional interest of 3% in the loan agreement for the delayed payment of installments.

**23.** Like wise in Ex.A7 loan agreement dated 15.06.2012 for the said of loan of Rs.5,00,000/-, the interest rate has been specified as flat rate of 17.5% and annualized rate as 29.45% and and further the additional interest of 3% is also specified in the loan agreement for the delayed payment of installments. Further in the promissory note along with Ex.A7 also reflects the interest at the rate of 30% per annum.

**24.** On the basis of the aforesaid interest rate the present suit has been instituted by the plaintiff by adding interest at the rate of 27.15% per annum for the loan amount of Rs.8,00,000/- and the rate of interest at 29.45% per annum has been charged for the loan amount of Rs.5,00,000/-. The total claim amount of the plaintiff after computing the interest at the above rate the principal amount have been arrived by the plaintiff as Rs.48,36,076/-. In the suit the plaintiff has also claimed the interest at the rate of 6% per annum from the date of suit till the date of realization. The above charging of interest by the plaintiff

as specified in the plaintiff and in the documents is mentioned as exorbitant by the defendants. Whether the said amount of interest claimed by the plaintiff as mentioned in the loan agreement Ex.A5 and Ex.A7 would be sustainable, was the fact considered by this Court.

25. In this regard this Court would find it appropriate to refer to the judgment of Hon'ble High Court decided in **Mrs.HAMSALAKSHMI vs S.CHANDAR** in C.S.No.80 of 2022 and O.A.No.292 of 2022 dated 06.02.2026 and in a mortgage suit regarding of charging of interest at the rate of 36% by the plaintiff from the defendant for the loan amount of Rs.56,00,000/- the Hon'ble High Court have laid the proposition as follows:-

*"(f) As far as the interest for the mortgage amount is concerned, 18% has been mentioned in the mortgage deed, though the recitals shows the rate of interest is 18%, according to the plaintiffs, the 1stdefendant is charging exorbitant interest. Already the plaintiffs borrowed money from the 1st defendant and again, the 1stdefendant paid the money, therefore, it shows that the 1stdefendant is a money lender and he is doing money lending business, such being the manner, charging exorbitant interest is nothing but usurious. As per Section 3 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, no person shall*

*charge exorbitant interest and as far as the secured loan is concerned, 9% simple interest per annum is reasonable. In such view of the matter, when loan is secured and mortgage deed is executed by the plaintiffs, certainly, the 1st defendant is entitled to 9% simple interest from the date of mortgage for the principal amount of Rs.1,06,00,000/- from the date of Mortgage, i.e., 30.09.2016 till the date of realization.*

*(g) At this juncture it is relevant to refer the judgment of this Court in **C.S.No.469 of 2019 (Velu Vs. P.Abusa and another) dated 11.03.2024**, wherein this Court in Paragraph No.12 held as follows:-*

*12. Considering the above aspects, this Court is of the view that the plaintiff is certainly entitled to recovery of mortgage money of Rs.6 Crores with interest. The mortgage deed stipulates 24% interest and though the plaint is silent about money lending, but Ex.P.20 filed by the plaintiff indicate that the primary business of the plaintiff is money lending. Such being the manner, charging exorbitant interest is nothing but usurious. It is relevant to note that as per*

*Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, no person shall charge exorbitant interest. Notes under Section 3 makes it clear that as far as secured loan is concerned, interest shall not exceed 9% simple interest per annum. Such view of the matter, when the loan is secured and the mortgage deed is executed, the plaintiff is certainly entitled to 9% interest for the mortgage money of Rs.6 Crores from the date of mortgage, ie., 08.01.2018 till the date of realization."*

*"In the said case also, this Court, after referring Section 3 of Tamil Nadu Prohibition of Charging of Exorbitant Interest Act, 2003 fixed simple interest at the rate of 9% for the secured loan through mortgage, therefore, this Court is inclined to award interest at the rate of 9% per annum, therefore, the plaintiffs are directed to pay the principal amount / mortgage amount of Rs.1,06,00,000/- along with simple interest at the rate of 9% per annum from the date of mortgage, viz., 30.09.2016 till the date of realization."*

**26.** When referring to the above dictum laid by the Hon'ble High Court in the above passages and applying the same principles in the present suit in hand, this Court would consider that the plaintiff in the present suit have charged the interest at rate of 27.15% for the loan amount of Rs.8,00,000/- and at the rate of 29.45% for the loan amount of Rs.5,00,000/-, the above rate of interest charged by the plaintiff as per the dictum laid by the Hon'ble High Court is considered to be exorbitant. Since the rate of interest is considered as exorbitant, this Court would consider appropriate that fixing the rate of interest at the rate of 9% per annum for the loan amount from the date of borrowal would be appropriate. Hence, this Court is of considered stand the plaintiff charging the interest for the outstanding amount at the rate of 9% per annum from the date of granting or sanctioning of the loan would be appropriate. Accordingly the rate of interest has been fixed at the rate of 9% per annum from the date of availing the loan.

**27.** It is admitted fact that the defendants have also made certain payments. The payments made by the defendants so far will have to be adjusted by the plaintiff after computing the total value of the interest amount. Accordingly this Court directs the plaintiff to compute the rate of interest for the principal sum of Rs.13,00,000/- at the rate of 9% per annum from the date of availing the loan and thereby directs the plaintiff to come up with computation

till the date of filing of the suit and then in the total sum arrived by the plaintiff the sums so far paid by the defendants to the plaintiff by way of installments is directed to be deducted in the interest component. After deducting the said amount from the interest component the remaining balance amount in the interest component shall be taken as a outstanding amount due from the defendants to the plaintiff along with the principal.

**28.** Further, the plaintiff has also claimed the interest at the rate of 6% per annum from the date of suit till the date of realization. The said amount of interest claimed at the rate of 6% per annum is considered to be reasonable interest. Hence the plaintiff is entitled to claim the interest at the rate of 6% per annum from the date of suit till the date of realization for the principal outstanding sum of Rs.13,00,000/-.

#### **Issues No.5**

**29.** It is the submission of the learned counsel for the defendants that the suit is based on mortgage and the mortgage suit cannot be filed as a Commercial Suit. It is the admitted fact that the plaintiff is a financier. Section 2(1)(c)(i) of the Commercial Courts Act defines the terms commercial dispute and also defines that ordinary transactions of merchants, bankers, financiers and traders are treated as commercial dispute. Accordingly when the clause in the above definition applies to the present suit in hand, it is admitted fact that the

plaintiff is a Financier and the transaction made by the plaintiff to the defendants is considered as a "Ordinary Transaction of Financier" and hence the same is treated as a Commercial Dispute and the suit will fall within the ambit of Commercial Courts Act.

**30.** It is admitted fact that the deceased first defendant had availed the loan of Rs.13,00,000/- from the plaintiff company by executing a documents Ex.A5, Ex.A7 and also by creating equitable mortgage of deposit of title deed for the sum of Rs.12,00,000/- and also executed the simple mortgage deed for the sum of Rs.1,00,000/-. For the said loan as per the documents the defendants 2 and 3 had stood as guarantors and hence their liability also co-exist with that of the deceased 1st defendant. Hence this Court is of considered stand the plaintiff is entitled to recover the mortgaged amount of Rs.13,00,000/- from the defendants 2 & 3. Morefully the plaintiff is also entitled to charge the interest at the rate of 9% per annum from the date of sanctioning of loan and till the date of filing of the suit and the plaintiff is also entitled for recovery of principal amount of Rs.13,00,000/- along with interest at the rate of 6% per annum from the date of suit till the date of realization.

#### **Issue No.6**

**31.** Since the plaintiff is granted with the relief as he is entitled for, the plaintiff is not granted with any further relief.

**32. In the result this Court passes the preliminary decree, thereby the suit is Partly Decreed that,**

(1) The plaintiff is entitled for the relief of recovery of principal sum of Rs.13,00,000/- along with interest at the rate of 9% per annum from the date of sanctioning of loan till the date of filing the suit. The amount so far paid by the defendants (1st defendants or defendants 2 and 3) as installments shall be deducted towards the total interest component arrived by the plaintiff. Further, the plaintiff would be entitled for interest at the rate of 6% per annum from the date of suit till the date of realization along with costs.

(2) The plaintiff is directed to intimate the defendants 2 and 3 about the total sum arrived as outstanding by the plaintiff after deducting the amount paid by the defendants within one month time period. From the date of intimation the defendants 2 and 3 shall make the payment of principal along with interest and costs within three months to the plaintiff.

**(3)** In case of failure to make the payment by the defendants 2 and 3 as decreed above, the plaintiff would be entitled to file the application for passing final decree seeking for to foreclose and sell the suit property to realize the outstanding sum.

Dictated to the Steno-Typist, directly Computerized by him, Corrected and Pronounced by me, on the **25th Day of March 2026.**

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore

**List of witnesses examined on the side of plaintiff:-**

PW.1 Mr.Madhukumar Rajangan

**List of Witnesses examined on the side of defendants:-**

DW.1 Mr.P.Tharanidharan

**List of documents marked on the side of the plaintiff:-**

<b>Exhibits</b>	<b>Date</b>	<b>Description of documents</b>
Ex.A1	07.10.2024	Special Power of Attorney - Original
Ex.A2	10.02.1994	Sale Deed in favour of the 1st defendant (Original)
Ex.A3	14.07.2011	Loan Sanction Letter - Original
Ex.A4	15.07.2011	Deed of Simple Mortgage (MODT) - Original
Ex.A5	15.07.2011	Loan Agreement (LA 95087 and LA95088) - Original
Ex.A6	14.06.2012	Loan Sanction Letter - Original

Ex.A7	15.06.2012	Loan Agreement (LA 95316) - Original
Ex.A8	29.08.2022	Statement of Accounts (LA 95087)
Ex.A9	29.08.2022	Statement of Accounts (LA 95088)
Ex.A10	29.08.2022	Statement of Accounts (LA 95316)
Ex.A11	24.06.2022	Reference Letter issued by the plaintiff for adjudication and appointment of Arbitrator
Ex.A12	27.12.2022	Reference Letter issued by the plaintiff for adjudication and appointment of Arbitrator
Ex.A13	09.07.2025	Encumbrance Certificate
Ex.A14	22.08.2025	Non Starter Report in PIM No.712/2025.

**List of documents marked on the side of the defendants:-** Nil.

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore