

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
CHENGALPATTU.**

**Present:- Tmt.K.Kayathri, M.A.B.L.,  
Additional District Judge, Chengalpattu**

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**OS No.2/2021**

**Saturday, the 7<sup>th</sup> day of October 2023**

The Karnataka Bank Ltd.

Carrying the Banking Business head office

at Mangalore and in Chennai -Nanganallur Branch

Nanganallur, Chennai-61 Represented by

its Branch Manager

...Plaintiff

/Vs./

1.Asif Mohammed

2.Mrs.Jareena Asif

3.M/s.Harihar Research and Information Services Pvt.Ltd.,

Lakshmi (Ground Floor), Royapettah, Chennai-600 014

4.M/s.Vishnu Cars and Services, Kattupakkam

5.M/s.Yes Bank Ltd., Rep.

by its Manager, Nungambakkam branch,

Nungambakkam, Chennai-600 034.

....Defendants

This Suit coming before this court for final hearing on 29.9.2023 in the presence of Thiru.M.Venkatesan and Thiru.R.Damodaran counsel for the Plaintiff and the defendants 1, 2, 4 and 5 remained exparte and Thiru.M.Anandeeswaran, counsel for the 3<sup>rd</sup> defendant and subsequently the 3<sup>rd</sup> defendant has not filed his written statement and the 3<sup>rd</sup> defendant remained exparte and upon hearing the plaintiff's side and perusing the pleadings, evidence, and documents on the

plaintiff's side and having stood over for consideration till this day, this court delivered the following:-

### **JUDGMENT**

The suit filed for the relief to pass a decree for a sum of Rs.11,94,584/- in favour of the plaintiff bank by directing the defendants to pay the said sum jointly and severally with present interest thereon at 14.90% per annum compounded with monthly rest from 9.11.2020 till the date of realization and for cost of the suit.

#### **2. The Plaint averments in brief:-**

The plaintiff in the course of their banking business the 1<sup>st</sup> defendant along with the 2<sup>nd</sup> defendant approached the plaintiff on 23.5.2017 for opening a saving bank account and for availing a car loan stating that the 1<sup>st</sup> defendant is working as Quality Analyst in the establishment of M/s.NTT Data Global Technology Services Pvt.LTd. situate at DLF IT SEZ Park, Ramapuram Chennai-89. Both the defendants 1 and 2 have produced KYC requirement for opening the account and also produce a proforma invoice dated 17.5.2017 for a new ERTIGA VDI – Maruthi Car issued by 4<sup>th</sup> defendant. The verification was made by the 3<sup>rd</sup> defendant in compliance of the Service contract dated 28.4.2016 entered into by the 3<sup>rd</sup> defendant with the plaintiff. The 3<sup>rd</sup> defendant as they have inspected and verified the KYC document for account opening of the 1<sup>st</sup> defendant and other loan documents filed their report dated 3.6.2017 as the particulars given by the 1<sup>st</sup> and 2<sup>nd</sup> defendant and the supporting documents are true. Based on the KYC produced by the 1<sup>st</sup> and 2<sup>nd</sup> defendant a saving bank account bearing No.1702500100223901 was opened in the name of the 1<sup>st</sup> defendant after execution of necessary documents by the 1<sup>st</sup> defendant.

Based on the verification report dated 3.6.2017 given by the 3<sup>rd</sup> defendant and believing such report proceeded the car loan account and sanctioned by the plaintiff bank CPC a sum of Rs.8,00,000/- dated 5.6.2017 on the terms and

conditions. Accepting the above terms and conditions of the said sanction, the 1<sup>st</sup> and 2<sup>nd</sup> defendants availed the above facility and executed the loan documents. The period of repayment of loan is 60 months and equated monthly installments of Rs.16,959/- and commenced on 5.7.2017. and rate of interest as per the sanction terms of the loan was @9.90% p.a. and at that time of sanction was 8.90% p.a. revisable from time to time. At the request of the 1<sup>st</sup> and 2<sup>nd</sup> defendant said loan amount transferred to the credit of fourth defendant in the account maintained with the 5<sup>th</sup> defendant as per the mail issued by the manager of the 4<sup>th</sup> defendant on 5.6.2017 enable him to purchase the car and make necessary endorsement hypothecating the vehicle Registration Certificate in favour of the plaintiff by the 1<sup>st</sup> and 4<sup>th</sup> defendant and they produce the same to the plaintiff. However, the 1<sup>st</sup> and 4<sup>th</sup> defendant had failed to produce hypothecated Registration Certificate of the vehicle for the loan availed to the plaintiff and delayed the same for one or other reasons after availing the loan. The plaintiff having waited sufficient to get the hypothecated RC book of the vehicle in their favour, then manager made personal visit to the resident of first and second defendants but shockingly came to know that they vacated their residence just 4 to 5 days back from the said place. Thereafter, the plaintiff came to know that with the help, facilitation, collusion and conspiracy by the 3<sup>rd</sup> and 4<sup>th</sup> defendants the 1<sup>st</sup> and 2<sup>nd</sup> defendant have fraudulently availed the above said car loan by causing wrongful loss to the plaintiff. The 3<sup>rd</sup> defendant, in dereliction of their duty in contrary to the service agreement they entered into with the plaintiff, and in conspiracy with the defendants 1, 2 and 4 facilitated and aided to avail a bogus and fraudulent car loan from the plaintiff and all of them have swindled away the said loan. The 5<sup>th</sup> defendant had deliberately declined to give any details as about the 4<sup>th</sup> defendant and hence the plaintiff strongly believe that the 5<sup>th</sup> defendant also in collusion and conspiracy in availing and swindling the above car loan. The plaintiff issued a letter dated 10.7.2017 by

asking to give the details about the 4<sup>th</sup> defendant in respect of account maintained by the 5<sup>th</sup> defendant. But the 5<sup>th</sup> defendant refused to disclose the details by its letter dated 10.8.2017. The 5<sup>th</sup> defendant ought to have disclosed the particulars when the same was demanded by the plaintiff to safeguard the interest of the similar banking institution. Hence all the defendants are jointly and severally liable to pay the suit claim to the plaintiff. The plaintiff issued a demand notice dated 15.7.2020 through their counsel by RPAD calling the defendants to pay and settle the above car loan, The said notice was returned undelivered from the defendants 1, 2, and 3 with endorsement they are not in the given address. The 4<sup>th</sup> defendant received the above demand notice had given some evasive reply dated 24.7.2020 to the plaintiff's counsel addressing to a wrong address which received by the plaintiff's counsel later and no reply received from the 5<sup>th</sup> defendant for the above demand notice even after the receipt of notice on 17.7.2020. Even prior to the filing of the suit also the plaintiff by its letter dated 23.9.2020 requested the 5<sup>th</sup> defendant to disclose the details of the 4<sup>th</sup> defendant but as of no use. The defendants are liable to pay a sum of Rs.11,94,584/- and the defendants are also liable to pay interest at the present rate at 9.90% per annum on the sanctioned loan and are liable to pay a penal interest of 5% per annum on the amount due for the belated period in terms of agreement and promise made to the plaintiff. Hence the suit for recovery of money filed by the plaintiff

**3.** The defendants 1, 2, 4 and 5 were remained exparte. Though the 3<sup>rd</sup> defendant filed vakalath subsequently the 3<sup>rd</sup> defendant has not filed the written statement and remained exparte.

#### **4. Issues:-**

1) Whether the plaintiff is entitled for the recovery of money from the defendants jointly and severally as prayed for?

On the side of the plaintiff the Branch Manager of the plaintiff's bank

examined as PW1 and Ex.A1 to Ex.A27 were marked.

**5. Issue No.1 :-**

The suit is filed for the relief of recovery of money for a sum of Rs.11,94,584/- in favour of the plaintiff's bank by directing the defendant to pay the said sum jointly and severally with present interest at 14.90% per annum compounded with monthly rest from 9.11.2020 to till the date of realization.

The case of the plaintiff is that the plaintiff in the course of their banking business the 1<sup>st</sup> defendant along with the 2<sup>nd</sup> defendant approached the plaintiff on 23.5.2017 for opening a saving bank account and for availing a car loan stating that the 1<sup>st</sup> defendant is working as Quality Analyst in the establishment of M/s.NTT Data Global Technology Services Pvt.LTd. situate at DLF IT SEZ Park, Ramapuram Chennai-89. Both the defendants 1 and 2 have produced KYC requirement for opening the account and also produce a proforma invoice dated 17.5.2017 for a new ERTIGA VDI – Maruthi Car issued by 4<sup>th</sup> defendant. The verification was made by the 3<sup>rd</sup> defendant in compliance of the Service contract dated 28.4.2016 entered into by the 3<sup>rd</sup> defendant with the plaintiff. It is the further case of the plaintiff that the 3<sup>rd</sup> defendant as they have inspected and verified the KYC document for account opening of the 1<sup>st</sup> defendant and other loan documents filed their report dated 3.6.2017 as the particulars given by the 1<sup>st</sup> and 2<sup>nd</sup> defendant and the supporting documents are true. Based on the KYC produced by the 1<sup>st</sup> and 2<sup>nd</sup> defendant a saving bank account bearing No.1702500100223901 was opened in the name of the 1<sup>st</sup> defendant after execution of necessary documents by the 1<sup>st</sup> defendant. It is the further case of the plaintiff that based on the verification report dated 3.6.2017 given by the 3<sup>rd</sup> defendant and believing such report proceeded the car loan account and sanctioned by the plaintiff bank CPC a sum of Rs.8,00,000/- dated 5.6.2017 on the terms and conditions and accepting the above terms and conditions of the said sanction, the 1<sup>st</sup> and 2<sup>nd</sup> defendants availed the above facility

and executed the loan documents. The period of repayment of loan is 60 months and equated monthly installments of Rs.16,959/- and commenced on 5.7.2017. and rate of interest as per the sanction terms of the loan was @9.90% p.a. and at that time of sanction was 8.90% p.a. revisable from time to time. At the request of the 1<sup>st</sup> and 2<sup>nd</sup> defendant said loan amount transferred to the credit of fourth defendant in the account maintained with the 5<sup>th</sup> defendant as per the mail issued by the manager of the 4<sup>th</sup> defendant on 5.6.2017 enable him to purchase the car and make necessary endorsement hypothecating the vehicle Registration Certificate in favour of the plaintiff by the 1<sup>st</sup> and 4<sup>th</sup> defendant and they produce the same to the plaintiff. It is the further case of the 1<sup>st</sup> and 4<sup>th</sup> defendant had failed to produce hypothecated Registration Certificate of the vehicle for the loan availed to the plaintiff and delayed the same for one or other reasons after availing the loan. The plaintiff having waited sufficient to get the hypothecated RC book of the vehicle in their favour, then manager made personal visit to the resident of first and second defendants but shockingly came to know they vacated their residence just 4 to 5 days back from the said place. Thereafter, the plaintiff came to know that with the help, facilitation, collusion and conspiracy by the 3<sup>rd</sup> and 4<sup>th</sup> defendants the 1<sup>st</sup> and 2<sup>nd</sup> defendant have fraudulently availed the above said car loan by causing wrongful loss to the plaintiff. The 3<sup>rd</sup> defendant, in dereliction of their duty in contrary to the service agreement they entered into with the plaintiff, and in conspiracy with the defendants 1, 2 and 4 facilitated and aided to avail a bogus and fraudulent car loan from the plaintiff and all of them have swindled away the said loan. It is the further case of the plaintiff is that the 5<sup>th</sup> defendant had deliberately declined to give any details as about the 4<sup>th</sup> defendant and hence the plaintiff strongly believe that the 5<sup>th</sup> defendant also in collusion and conspiracy in availing and swindling the above car loan. The plaintiff issued a letter dated 10.7.2017 by asking to give the details about the 4<sup>th</sup> defendant in respect of account maintained by the 5<sup>th</sup> defendant. But

the 5<sup>th</sup> defendant refused to disclose the details by its letter dated 10.8.2017. The 5<sup>th</sup> defendant ought to have disclosed the particulars when the same was demanded by the plaintiff to safeguard the interest of the similar banking institution. Hence all the defendants are jointly and severally liable to pay the suit claim to the plaintiff. The plaintiff issued a demand notice dated 15.7.2020 through their counsel by RPAD calling the defendants to pay and settle the above car loan, The said notice was returned undelivered from the defendants 1, 2, and 3 with endorsement they are not in the given address. It is the further case of the plaintiff that the 4<sup>th</sup> defendant received the above demand notice had given some evasive reply dated 24.7.2020 to the plaintiff's counsel addressing to a wrong address which received by the plaintiff's counsel later and no reply received from the 5<sup>th</sup> defendant even after the receipt of notice on 17.7.2020. The defendants are liable to pay a sum of Rs.11,94,584/- and the defendants are also liable to pay interest at the present rate at 9.90% per annum on the sanctioned loan and are liable to pay a penal interest of 5% per annum on the amount due for the belated period in terms of agreement and promise made to the plaintiff and prayed to decree the suit. To substantiate their suit claim the plaintiff also filed the documents under Ex.A1 to Ex.A27 which are all Service Agreement, Loan documents, Police complaint and demand notices and acknowledgement card and reply notice, statement of accounts.

In order to disprove the above contention of the plaintiff, the defendants has not chosen to appear before this court either themselves or through their counsel and the defendants were remained *exparte*.

**6.** Through the pleadings and the documents marked under Ex.A1 to Ex.A27 i.e. Loan documents executed by the defendants and Demand notice and Statement of accounts the plaintiff proved that the defendants are liable to pay the amount due with the plaintiff's bank as per the account maintained by the plaintiff's bank with interest and further there is no contra evidence on the side of the defendants 1 to 5

since the defendants 1 to 5 were set exparte. In this situation, the plaintiff is entitled for the relief claimed in the plaint and thus this issue is answered in favour of the plaintiff.

**In the result, the suit is decreed with cost and the defendants 1 to 5 are jointly and severally directed to pay a sum of Rs.11,94,584/- to the plaintiff's bank together with further interest at 6% p.a. from the date of plaint till the date of realization.**

Dictated to the stenographer directly and typed by her in to the computer and corrected and pronounced by me in open court, this the **7<sup>th</sup> day of October 2023.**

**Sd/-K.Kayathri,**  
**ADDITIONAL DISTRICT JUDGE,**  
**CHENGALPATTU**

**Plaintiff's side Witnesses**

PW1 Thiru.Shrichavan Kubanuraya S/o.Shridhara Kubanuraya

**Plaintiff's side Exhibits:-**

Ex.A1	26-04-2016	Service Agreement between the Karnataka Bank Ltd. and M/s.Harihar Research and Information Service Pvt.Ltd., Roypettah, Chennai-600 014.
Ex.A2	-	Pay Slip (Series 6 Nos.) for the month from November 2016 to April 2017
Ex.A3	17-05-2017	Proforma Invoice for car
Ex.A4	-	Copy of PAN Card of the 1 <sup>st</sup> defendant
Ex.A5	-	Copy of Electoral ID for 1 <sup>st</sup> defendant
Ex.A6	-	Copy of Electoral ID for 2 <sup>nd</sup> defendant

Ex.A7	03-06-2017	- Summary – Due Diligence Report for Vehicle Loan - Inspection Report
Ex.A8	05-06-2017	Loan Sanction Order by the plaintiff to the 1 <sup>st</sup> defendant
Ex.A9	05-06-2017	Term Loan Agreement between the 1 <sup>st</sup> and 2 <sup>nd</sup> defendant and the plaintiff
Ex.A10	05-06-2017	Hypothecation Agreement between the 1 <sup>st</sup> defendant and the plaintiff
Ex.A11	05-06-2017	Hypothecation of Vehicle/machineries and Movables
Ex.A12	05-06-2017	Declaration given by the 1 <sup>st</sup> defendant to the Branch head, Karnataka Bank Ltd, Nanganallur, Chennai
Ex.A13	05-06-2017	Consent from the Borrowers by the 1 <sup>st</sup> defendant to the plaintiff's Bank
Ex.A14	05-06-2017	Consent from the Co-obligant by the 2 <sup>nd</sup> defendant to the plaintiff's bank
Ex.A15	05-06-2017	Email from the 4 <sup>th</sup> Defendant to the Plaintiff Bank
Ex.A16	10-07-2017	Letter from the Plaintiff Bank to the Branch Manager, YES Bank, Nungambakkam, Chennai.
Ex.A17	10-08-2017	Reply Letter from the 5 <sup>th</sup> defendant to the plaintiff's Bank
Ex.A18	21-09-2017	Police Complaint given by the Plaintiff to the Commissioner of Police, Periyamet, Chennai-600 007.
Ex.A19	22-09-2017	Acknowledgement for Police Complaint
Ex.A20	15-07-2020	Demand Notice issued by the plaintiff's counsel to the defendants with postal receipts.
Ex.A21	17-07-2020	Acknowledgement Card of 4 <sup>th</sup> defendant
Ex.A22	17-07-2020	Postal Tracking for 5 <sup>th</sup> defendant
Ex.A23	19-07-2020	Undelivered Covers (3 Nos.) of 1 <sup>st</sup> , 2 <sup>nd</sup> and 3 <sup>rd</sup> defendants to the plaintiff
Ex.A24	24-07-2020	Reply Notice issued by the 4 <sup>th</sup> defendant to the plaintiff's counsel

Ex.A25	23-09-2020	Letter from the 5 <sup>th</sup> defendant to the plaintiff
Ex.A26	09-11-2020	Statement of Accounts issued by the plaintiff to the 1 <sup>st</sup> defendant (Extract)
Ex.A27	09-11-2020	Statement of Accounts (SB) issued by the plaintiff to the 1 <sup>st</sup> defendant (Extract)

**Sd/-K.Kayathri,**  
**ADDITIONAL DISTRICT JUDGE,**  
**CHENGALPATTU**

**/TRUE COPY/**

**Draft/Fair Judgment**  
**O.S.No.2/2021**  
**Dated:7.10.2023**  
**ADJ/CPT**