IN THE COURT OF DISTRICT MUNSIF

BODINAYAKANUR.

Present : Thiru.A.Mohamed Hashim, B.A.,B.L.,
District Munsif, Bodinayakanur.

Saturday, the 18th day of April 2026

O.S.No. 21/2025

CNR No.TNTH12-000019-2025

AAR Permanent Fund Nidhi Ltd.,
Rep. by its Power Agent Sivaprakash. **... Plaintiff**

-- Vs --

1. Saraswathi
2. Ramesh **... Defendants**

This suit was taken on file on 03.02.2025 and was coming on 06.04.2025 before me for final hearing, in the presence of Mrs. Krishnaveni, Learned Advocate for the plaintiff and in the presence of Mr.P.Pradeep, Learned Advocate for the Defendants. Upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following.

JUDGMENT

This Suit is filed by the plaintiff praying this court to direct the defendants to pay a sum of Rs.51,356/- to the plaintiff with subsequent interest and for costs.

2. The case of the Plaintiff :-

The plaintiff is a registered company and it is represented by its power agent. The defendants have availed financial assistance to the tune of Rs.35,000/- from the plaintiff on 29-07-2023 and the defendants have agreed to repay the same along with interest of sum of Rs.17,500/- in 25 monthly installments. The defendants have also executed promissory note this effect. The defendants have paid only Rs.6,520/- and thereafter they have defaulted in payment. Since the defendants have failed to repay the loan within 25 monthly installments, the plaintiff has sent a notice to the defendants on 21-12-2024 and despite receiving the same, the defendants have failed to remit the balance amount of Rs.23,486/-. The defendants are liable to pay sum of Rs.23,486/- towards principal, interest and penalty. Hence this suit.

3. The case of the defendants :-

All the averments in the plaint are denied as false. The plaintiff has to prove that they have lent money to the defendants. The defendants disputes the execution of promissory note and the plaintiff has to prove the same. The cause of action pleaded in the plaintiff is wrong and the court fees paid by the plaintiff is wrong.

4. Framing of Issues:-

On the basis of the above pleadings of the parties, on 25-09-2025, this court had framed the following issues….

1) Whether the plaintiff is entitled to the suit claim?

2) Whether the plaintiff is entitled to relief of recovery of money as prayed for?

3) To what other reliefs, the parties are entitled to?

5. On the basis of the above issues, trial is commenced. The Branch Manager and Power Agent of the plaintiff company, Mr.Sivaprakash is examined as PW1 and Exs. A1 to A10 have been marked through him. No oral and documentary evidence is adduced on the side of the defendants.

6. Issues No: 1 & 2:-

i) As both the issues are interconnected, they are taken up together for consideraton.

ii) The learned counsel for the plaintiff in his arguments while reiterating the averments contained in the plaint had submitted that the defendants have availed the loan and they have executed promissory note (Ex.A1) and as per the loan transaction summary (Ex.A5), the defendants are liable to pay sum of Rs.51,356/-. She would further submit that the defendants have not adduced any evidence to rebut the version of the plaintiff and therefore the defendants cannot take advantage of the flaws in the administration of the plaintiffs company. She further submits that the defendants themselves agreed to the interest at the rate of 24% per annum and hence they are bound to pay 24% per annum till filing of the suit.

iii) Per contra, the learned counsel appearing for the defendants vehemently argued by taking this Court to various provisions of Nidhi Rules,2014 and Companies

Act,2013 and submitted that the plaintiff cannot maintain this suit since the plaintiff has floated many rudimentary procedures established under the law. He further submitted that the PW1 has no locus to file this suit and he has suppressed several material facts. He further submitted that PW1 has no authority to sanction loans and the loan can be approved only through the board resolution. He would further submit that as per Sec. 179(3) of the Companies Act, only the Board has the powers to sanction loan by passing resolution and no such resolution has been passed in the present case. He would further submit that no notice has been given to the defendants as mandated u/s. 173 of Companies Act before scheduling the board meeting. He would also submit that the plaintiff has not maintained any ledger book and therefore the present suit is liable to be dismissed.

iv) This Court carefully considered the rival contention and perused the materials available on record.

v) On perusal of records, it could be seen that the 1st defendant has submitted membership application form (Ex.A6) on 24-07-2023 and the said membership application was accepted by the Manager (PW1) on the very same day. The 1st defendant has submitted loan application (Ex.A7) on 24-07-2023 itself. The 1st defendant has applied for sum of Rs.35,000/- and tenure of loan is fixed as 2 year and a month. The loan was sanctioned on the same day by loan officer and director of the plaintiff company. Interestingly, in the occupation column, the details of the director of the plaintiff's company is filled. To be noted, the 2nd defendant was cited only as a nominee for the security given by the 1st defendant and the 2nd defendant has not signed as guarantor or co-borrower. But the 1st & 2nd defendants have jointly executed a promissory note (Ex.A1) on 26-07-2023 and the interest rate fixed is 24% per annum. The plaintiff has issued legal notice (Ex.A3) to the defendants on 21-12-2024 calling upon them to pay sum of Rs.51,355/- and the said notice was received by the defendants as could be seen from the acknowledgment card (Ex.A4).

vi) The suit is founded on the promissory note (Ex.A1). Hence the first issue that requires determination is whether the defendants executed Ex.A1 and received the loan amount. In the written statement the defendants have not specifically denied the execution of the promissory note. The denial is only general in nature without meeting the specific pleading of the plaintiff. The signature found in Ex.A1 has not been disputed either in the written statement or during the cross-examination of PW1. There is also no plea or suggestion that the promissory note was obtained by fraud, coercion or misrepresentation or that the loan amount was not disbursed. When execution of the promissory note is not specifically denied and the signature remains unquestioned, the evidence of PW1 supported by the loan records is sufficient to prove the transaction. The defendants have not produced any material to rebut the evidence of disbursal placed by the plaintiff. There is nothing on record to show that the defendants did not receive the loan amount. In view of the above materials on record, this Court holds that the execution of Ex.A1 stands proved.

vii) When execution of the promissory note stands proved, the statutory presumption under Section 118 of the Negotiable Instruments Act arises in favour of the plaintiff. The law presumes that the promissory note was made for consideration and that the amount mentioned therein represents the amount due, unless the defendant adduces evidence sufficient to rebut the presumption. In the present case, apart from a general and evasive denial, the defendants have not produced any material to dislodge the presumption or to show that the loan amount was not disbursed or that the promissory note was obtained under circumstances affecting its validity. Therefore, the presumption remains unrebutted and the execution of Ex.A1 coupled with the statutory presumption establishes the liability of the defendants to repay the principal amount.

viii) Upon perusal of records, it is seen that the plaintiff's company has been registered under the Companies Act as per Certificate of Incorporation (Ex.A8) dated 08-04-2021. The Memorandum Of Association (Ex.A9) of the company states that the object of the company is to lend, grant loans to members on security of immovable properties either by way of registered mortgage or by deposit of title deed, against Deposit Receipts issued by the company, Movable Assets, such as Gold, Silver, Jewellery, at a favourable rate of interest as may be decided by the Board of directors from time to time.

ix) The plaintiff company has been registered u/s.7(2) and 8(2) of the Companies Act. But no materials have been placed to substantiate that the company was notified in the official gazette as “Nidhi” by following the procedures contemplated under Sec.406 of the Companies Act. Nor any materials produced to show that the plaintiff’s company is Non Banking Financial Institution registered with the Reserve Bank of India and even there is no pleadings to that effect. The certificate of incorporation (Ex.A8) explicitly contains a disclaimer which reads as follows:-

> “ *Disclaimer : This certificate only evidences incorporation of the company on the basis of documents and declarations of the applicant (s). This Certificate is neither a license nor permission to conduct business or solicit deposits or funds from public. Permission of sector regulator is necessary wherever required. Registration status and other details of the company can be verified on www.mca.gov.in”*

x) Though the primary object of the plaintiff company is money lending, the plaintiff company has not been registered interms of Tamil Nadu Money Lenders Act,1978. The learned counsel for the plaintiff submitted that since the plaintiff is lending money only to the members of the company, no license is necessary under Tamil Nadu Money Lenders Act.

xi) At this juncture, the pivotal question that arises for consideration is whether the plaintiff, by virtue of being incorporated under the Companies Act, 2013, can claim immunity from the operation of the Tamil Nadu Money-Lenders Act, 1957. This Court is unable to accept such a proposition. The certificate of incorporation

(Ex.A8) itself contains a clear statutory disclaimer that incorporation does not amount to permission to carry on regulated financial business and that the permission of the sectoral regulator is necessary wherever the law so requires. Admittedly, no document has been produced to show that the plaintiff is a Nidhi notified under Section 406 of the Companies Act, nor is there any material to show that it is a Non-Banking Financial Company duly registered with the Reserve Bank of India. In the absence of any of these, the plaintiff is only a finance company formed under the Companies Act and nothing more.

xii) In this regard, it is useful to refer to the judgment of Hon'ble Division Bench of Kerala High Court in **M/s. Sundaram Finance Ltd Vs State of Kerala [2010 AIR Kerala 80]** while dealing with the provisions of Kerala Money Lenders Act, 1958 which is almost para materia to the Tamil Nadu Money Lenders Act, 1957 has categorically held that the definition of "money-lender" takes within its fold every person or entity whose main or subsidiary occupation is advancing loans for interest, unless such entity is specifically excluded under the exceptions in the statute. The Hon'ble Division Bench rejected the contention that a company registered under the Companies Act stands outside the definition, observing that the term "person" includes artificial juridical persons as well. The Hon'ble Division Bench further held that mere registration under the Companies Act or mere compliance with RBI norms does not render the State Money-Lenders Act inapplicable, unless the lender is a statutory corporation created by a special enactment to conduct lending under that enactment. It was emphasized that NBFCs are also not automatically exempt, and that the State Money-Lenders Act operates in its own field to protect borrowers, while RBI regulations deal with depositor protection.

xiii) The plaintiff may take up a stand that they are lending money to its members alone and hence the rigor of TN Money Lenders Act might not apply to them. This Court is unable to appreciate that submission that the plaintiff does not come within the purview of the Money-Lenders Act merely because it lends money only to its "members." The test under the statute is whether the entity is engaged in the business of advancing and realising loans for interest and the Act does not carve out any exemption based on the internal classification adopted by the lender as to whom it lends. A lender cannot insulate itself from the operation of the statute by unilaterally describing every borrower as a "member." What matters is the substance of the activity, not the label affixed by the lender. If lending business is carried on as a regular commercial occupation for earning interest, the character of "money-lender" is attracted irrespective of whether the borrowers are called members, clients, associates or otherwise.

xiv) This Court is constrained to record that the factual matrix placed on record exposes the manner in which the plaintiff seeks to project every borrower as a "member". From the documents, it is unmistakably clear that the membership application and the loan application are invariably submitted on the same day and sanctioned on the same day, leaving no room to infer any genuine admission of membership upon evaluation by the Board of Directors. There is not a shred of evidence to show that the borrowers have ever been reflected in the statutory register of members or that any Board resolution has been passed approving their admission. In essence, the so-called membership is nothing but a procedural facade, for the plaintiff receives an application, sanctions the loan and immediately obtains a promissory note without conferring even a single incident of membership contemplated under company law.

xv) It is equally relevant to note that the Memorandum of Association (Ex.A9) of the plaintiff company authorises lending only against security, whether by way of mortgage of immovable properties or pledge of movable properties such as gold or jewellery. In stark contrast, the present loan is admittedly unsecured, resting solely on a promissory note, and therefore runs counter to the very objects of the company. Even if this Court were to place the plaintiff in the category of a Nidhi merely because its name carries the suffix "Nidhi Ltd.", the Nidhi Rules, 2014 leave no scope for ambiguity, for loans are permitted to be advanced only against adequate security. Hence, even on the plaintiff's own premise, its conduct is wholly inconsistent with the statutory framework governing Nidhis.

xvi) Having regard to the above factual and legal position, this Court is unable to accept the plea that the plaintiff stands outside the sweep of statutory regulation merely because it lends to its so-called members or because it is incorporated under the Companies Act. The nature of the activity carried on by the plaintiff is the decisive test, and the records unmistakably show that the plaintiff is engaged in the systematic business of advancing loans for interest as a regular commercial occupation.

xvii) The deposition of PW1 also provides clarity on the internal functioning of the plaintiff company. PW1 has stated that he is not aware of how many directors are presently in the company. He further admits that he himself was a director earlier and that he passed a resolution appointing one Mr. Thileepkumar as director to handle the affairs of the company. The same Thileepkumar has thereafter executed a power of attorney in favour of PW1, under which PW1 now claims capacity to represent the company as its manager. While the Court is not concerned with the internal affairs of the company beyond what is necessary for the present lis, this evidence reinforces the conclusion already reached that the plaintiff is essentially engaged in money-lending under the form of a company rather than operating as a company which incidentally advances loans in the course of its activities.

xviii) Be that as it may, the defendants cannot escape from their liability to repay the loan merely on the ground that the plaintiff has not complied with the Nidhi Rules, the Companies Act formalities or the Tamil Nadu Money-Lenders Act. Even if the plaintiff has failed to adhere to the regulatory framework applicable to its lending business, such infractions do not render the loan transaction void nor do they extinguish the debt arising out of Ex.A1. The defendants have executed the promissory note, received the loan amount and have not repaid the same. The defendants, having enjoyed the benefit of the funds, cannot now avoid repayment by pointing to the lapses on the part of the plaintiff. Once execution and consideration are proved and the statutory presumption stands unrebutted, the civil liability to repay the principal amount remains unaffected.

xix) At the highest, the failure of the plaintiff to comply with the Nidhi Rules, the Companies Act formalities or the Tamil Nadu Money-Lenders Act may invite regulatory proceedings or penalty at the instance of the competent authorities. It does not, in any manner, wipe out the civil liability of the defendants arising from the execution of Ex.A1. These enactments are intended to regulate and control the conduct of the lender and not to confer a right on the borrower to retain money already borrowed. Therefore, even if it is taken that the plaintiff has floated several statutory provisions, such lapses cannot be treated as a ground for the defendants to avoid repayment of the principal amount.

xx) Admittedly, the promissory note (Ex.A1) contains an interest clause of 24 percent per annum. The question is whether such rate can be granted in the facts and circumstances of the present case. The transaction attracts the provisions of the Tamil Nadu Money-Lenders Act, 1957 and the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Both enactments are designed to regulate the lending activity and to prevent the imposition of excessive and oppressive interest on borrowers. As per the TN Money- Lenders, the Government has fixed interest rate at 12 % per annum for unsecured loans and 9 % per annum for the secured loans.

xxi) It is useful to refer to the recent judgment of Hon'ble Division Bench of Madras High Court in **K. Vasantha Vs S. Kalyani [A.S(MD) No: 102 of 2024 dated 29-04-2025]** wherein Hon'ble Court has held as follows:-

" 18. In the decisions relied on by the learned counsel for the plaintiff, Section 12 of the Tamil Nadu Act 38 of 2003 was not fully appreciated. Section 12 of the Act reads as follows:- "12. Applicability of provisions of Money-lenders Act. - Subject to the provisions of the Act, the provisions of the Money-lenders Act, in so far as they are applicable to money-lenders shall mutatis mutandis apply to a person referred to in Section 3 of this Act" The expression "subject to" has been interpreted in the decision reported in AIR 2007 SC 1984 (S.P. Industries Co. Ltd vs Electricity Inspector and E.T.I.O) as conveying the idea of a provision yielding place to another provision or other provisions subject to which it has been made. A Four Judges Bench of the Hon'ble Supreme Court in the decision reported in AIR 1966 SC 1318 (vide Punjab Sikh Regular Motor Service vs Regional Transport Authority) held that when Provision A is subject to Provision B, a case falling under Provision B is taken out of Provision A. The phrase "subject to" is a simple provision which merely subjects the provisions of the subject section to the provisions of the master section. When there is no clash, the phrase does nothing ; if there is collision, the phrase shows what is to prevail (vide Ram Gopal Sharma v Madhya Pradesh State Road Transportation (1978 SCC OnLine MP 151)). Section 12 opens with

"Subject to". Therefore, the provisions of the Tamil Nadu Money Lenders Act, 1957 cannot prevail over the provisions of the Tamil Nadu Act 38 of 2003. Section 3 of the 2003 Act states that no person shall charge exorbitant interest on any loan advanced by him. The word "person" has to be interpreted expansively and not in a narrow sense. It would include a money lender or any person advancing a loan. There can be only one qualification. The loan transaction has to fall within the scope of Section 2(6) of the 2003 Act. It is only this interpretation that will further the object of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

19. Since the borrower is in desperate need of funds, he would definitely be signing on the dotted lines. It is well settled that there can be no estoppel against the statute. Giving precedence to the contract entered into between the parties over the statutorily stipulated percentage of interest is definitely not contemplated by the legislature. In other words, what is impermissible on account of a statutory limitation cannot be resorted to by taking shelter under the terms of the contract. We are therefore of the view that the judgments that had concluded that if a loan is given on the basis of a negotiable instrument for a sum in excess of Rs.10,000/-, it would fall outside the purview of Tamil Nadu Act No.38 of 2003 and that the contract would prevail, do not lay down the correct law. We overrule the same.

20. The plaintiff in this case would fall within the expression "person" occurring in Section 3 of the 2003 Act. The loan advanced by her attracts the definition set out in Section 2(6) of the said Act. Once these two ingredients are fulfilled, the transaction will fall within the prohibitory sweep of the 2003 Act. It is well settled that there can be no estoppel against statute. Even if the borrower had agreed to pay in excess of the ceiling set out in the Act, the lender cannot enforce the same. In this view of the matter, we hold that the principal sum stated in the plaint can only be Rs.20,00,000/- + interest @ 12% p.a. In the deeds mentioned in Ex.A.1 to Ex.A.3 (Rs.40 Lakhs), the plaintiff would be entitled to charge interest @ 9% p.a. during the pendency of the suit and 6% p.a. on the decree amount. Accordingly, the impugned judgment and decree are modified."

xxii) Applying the above principle to the case on hand, even though the defendants have agreed under Ex.A1 to pay interest at the rate of 24 percent per annum, this Court cannot mechanically enforce the contracted rate when it runs contrary to the ceiling contemplated under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Once the rate of interest stipulated in the promissory note exceeds the permissible limit, the statutory mandate prevails and not the terms of the contract. The fact that the borrower has signed the document is irrelevant when the agreed rate is impermissible in law. There can be no estoppel against a statute. Therefore, the plaintiff is not entitled to recover interest at 24 percent per annum as mentioned in Ex.A1, and the rate of interest requires to be moderated in accordance with the statutory framework.

xxiii) In the light of the above discussion, this Court proceeds to determine the amount recoverable. The principal sum advanced under Ex.A1 is Rs.35,000/-. The plaintiff is not entitled to the contractual rate of 24 percent and the interest is restricted to 12 percent per annum from 26-07-2023, the date of execution of Ex.A1, till 30.01.2025, the date of institution of the suit. Interest at 12 percent on the principal sum of Rs.35,000/- for the said period comes to Rs.6,340/-. Even according to the plaintiff, the defendants have so far repaid Rs. 6,520/-Therefore, the total amount legally recoverable for the pre-suit period is Rs.34,820/-

xxiv) As far the penalty amount of sum of Rs.4,376/- claimed by the plaintiff, the defendants neither in promissory note (Ex.A1) nor in loan application (Ex.A7) agreed to pay penalty in case of default and hence the plaintiff cannot claim penalty.

xxv) In view of the above discussions, this Court is of the view that that the plaintiff is entitled to only claim sum of Rs.34,820/- from the defendants. The plaintiff is further entitled to interest on the principal amount of Rs.35,000/- at the rate of 6 percent per annum from the date of the plaint till the date of realisation. **Issue No: 1 & 2 are answered accordingly.**

7. Issue No: 3:-

In view of the findings already recorded, the plaintiff is entitled only to the recovery of the quantified sum and nothing further. No other relief can be granted. On the question of costs, though the plaintiff has obtained a decree for the principal with moderated interest, this Court is not inclined to award costs in its favour. The plaintiff has carried on lending activity without establishing compliance with the statutory requirements applicable to money-lenders, has sanctioned an unsecured loan contrary to its own Memorandum of Association. In such circumstances, this Court is of the view that the plaintiff is not entitled to costs. The plaintiff has also demanded penalty amount which was never agreed between the parties. The suit is therefore decreed to the extent indicated earlier and the parties are directed to bear their respective costs.

In the result, this suit is partly decreed without costs. The defendants are directed to pay sum of Rs.34,820/- along with interest at the rate of 6 % per annum on the principal sum of Rs.35,000/- from the date of plaint till the date of realization within a period of two months from today.

Dictated to the steno typist, transcribed by her corrected, and pronounced by me in open Court, on the 18 th day of April 2026.

MOHAMED HASHIM A
Digitally signed by MOHAMED HASHIM A
Date: 2026.04.18 17:22:14 +0530

District Munsif,
Bodinayakanur.

Plaintiffs' Side Witness:-

1. Pw1 – Sivaprakash, Manager in the office of plaintiff's office.

Plaintiff Side Documents:-

1.	26.07.2023	Ex.A1	Copy of Promissory Note	Original

2.	20.01.2025	Ex.A2	Power of Attorney	Certified Copy
3.	21.12.2024	Ex.A3	Copy of Legal Notice with Postal Receipt (Nos-2)	Office Copy
4.	23.12.2024	Ex.A4	Acknowledgment Card (Nos -2)	Original
5.	26.01.2025	Ex.A5	Loan Transaction Summary	Online Copy
6.	24.07.2023	Ex.A6	Copy of Membership Application Form	Original
7.	24.07.2023	Ex.A7	Copy of Loan Application Form	Original
8.	-	Ex.A8	Certificate of Incorporation	Online Copy
9.	-	Ex.A9	Memorandum of Association	Online Copy
10.	-	Ex.A10	Articles of Association	Online Copy
11.	27.05.2021	Ex.A11	Power of Attorney issued to Dilip Kumar	Certified Copy

<u>Defendants' side Witness and Documents Nil : -</u>

MOHAMED HASHIM A

Digitally signed by MOHAMED HASHIM A
Date: 2026.04.18 17:22:19 +0530

District Munsif,
Bodinayakanur.

OS No.21/2025
Fair Judgment
Date: 18.04.2025.