IN THE COURT OF SH. AMIT BANSAL,
DISTRICT JUDGE (COMMERCIAL COURT)-03,
SOUTH-WEST DISTRICT, DWARKA COURTS, NEW DELHI.

CS (COMM) 477/2022

CNR No. DLSW01-010335-2022

Canara Bank erstwhile Syndicate Bank
Having its head office at:-
112 JC Road,
Bangalore – 560002.
Having Branch office at:
Canara Bank erstwhile Syndicate Bank
DTC Dichaon Depot, Dichaon Kalan,
Near Bani Camp, New Delhi – 110043.
Through its authorized officer.
Mrs. Asha Pruthi.

.....Plaintiff

VERSUS

1. Raghu Raj Prop Balaji Electronics
S/o Shri Akbar Singh
Office: Shop No. 6, Old Roshanpura, Opp. SBI Bank,
Najafgarh, New Delhi – 110043
Mob:- 7838323309, 9990008868
Email ID: sir.raj82@gmail.com

Also at:-
R/o- H. No. 64, Gali No. 7, B-Block, Prem Nagar,
Najafgarh, New Delhi – 110043

Also at:-
R/o – RZ-39 AB, Gopal Nagar, Phase – 2,
Near Yadav Bhawan, Najafgarh, Delhi – 110043.

2. Rajender Kumar Surana
S/o Shri Jaskaran Surana
R/o – B-4, Mahendra Enclave, Model Town,
New Delhi – 110043.
Mob:- 9811950121.

.......Defendants

Date of Institution	: 10.10.2022
Date of final arguments	: 13.01.2025
Date of decision	: 25.01.2025

JUDGMENT

1. The plaintiff has filed the present commercial suit for recovery of Rs. 16,56,605/- against the defendants with pendente lite and future interest @ 14% p.a. along with costs of the suit. The plaintiff filed the present suit through Ms. Asha Pruthi, Manager / AR of the plaintiff.

2. The case of the plaintiff in nutshell as mentioned in the plaint is that the plaintiff bank which was erstwhile Syndicate Bank is a banking company constituted under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its head office at 112 JC Road, Bangalore. The plaintiff bank carries the business through its various branches all over

India including its Branch office at DTC, Dichaon Depot, Dichaon Kalan, Near Bani Camp, New Delhi - 110043. Vide amalgamation of Syndicate Bank into Canara Bank scheme, 2020 dated 04.03.2020 all branches of Syndicate Bank will function as branches of Canara Bank from 01.04.2020 and the customers including depositors of Syndicate Bank would be treated as customers of Canara Bank with effect from 01.04.2020.

2.1. Defendant no. 1 is the sole proprietor of Balaji Electronics and maintaining bank account with plaintiff bank since 2014. Defendant no. 1 had availed working capital loan of Rs. 9 lakh vide account no. 90801400000565 on 23.01.2015 after execution of loan documents in favour of the plaintiff and repaid the amount as per the executed documents. On 01.08.2017, defendant no. 1 approached the plaintiff bank for renewal and enhancement of the working capital loan from Rs. 9 lakh to Rs. 15 lakh to enhance business under Micro, Small and Medium Enterprises and the defendant no. 2 introduced himself as a guarantor for repayment of the loan availed by the defendant no. 1. The plaintiff bank after considering the request of the defendant no. 1 and repayment guarantee given by the defendant no. 2 had renewed and enhanced the working capital loan of Rs. 15 lakh on 19.08.2017. As per the sanction letter, the facility was SOD working capital loan, the loan amount limit was Rs. 15 lakh, the margin was 15 %, the rate of interest was MCLR + 2, the primary securities was stock of Rs. 35 lakhs, fixed deposit of Rs. 5 lakh and LIC of Rs. 10 lakh and the post release terms of sanction were that the stock statement was to be submitted quarterly. In order to comply with the said term of the sanction, the defendant on 19.08.2017 executed Composite Hypothecation Agreement, Guarantee Agreement and Acknowledgement of renewal.

2.2. It has been further stated in the plaint that the defendant accepted terms of the plaintiff bank but did not pay the interest and also did not repay the availed loan amount on regular basis despite regular reminders by the plaintiff bank. As per terms and conditions in the Composite Hypothecation Agreement and Guarantee Agreement, defendant no. 1 and defendant no. 2 were bound to give stock statement every quarter as per the schedule of the sanction letter and in the event of default, the defendant was also bound to pay the overdue interest and other penal charges which the bank could impose upon the defaulters as per the discretion of the plaintiff bank. The defendants failed to adhere to the terms and conditions of the loan documents and refused to provide the information of stocks to the plaintiff bank and restricted employees of the plaintiff to inspect stocks and avoided meeting with the employees of the plaintiff bank. It was averred that the defendant no. 1 had deposited part amount of Rs. 575/- on 22.06.2020 towards repayment of loan amount which is reflected in the Statement of account of loan account of the defendant, hence the defendants have admitted their liability towards plaintiff bank and both the defendants are liable to pay the dues of the plaintiff bank erstwhile Syndicate Bank.

2.3. It was further averred in the plaint that the defendant no.1 failed to pay the interest and turnover in the account and hence, the loan account of the defendant became irregular and moved in Non- Performing Assets (NPA category) on 24.06.2019. On 20.06.2020, the defendant no. 1 had executed acknowledgment of debt and submitted it with the plaintiff bank. The plaintiff bank had sent a legal notice dated 06.07.2022 through their advocate and requested the defendants to clear the outstanding amount. The notice was duly served upon the defendants, however, they neither replied to it nor repaid the availed loan amount till date. The plaintiff averred that after giving credit of all the sums of money paid by the defendant including part payment, Rs. 16,56,605/- was outstanding against the loan account 90801400000565 as on 15.09.2022. It was averred that out of the said outstanding amount of Rs. 1656605/-, the principal arrear amount was Rs. 9,67,644/-, the interest arrear was Rs. 6,86,191/-, the other amount was Rs. 1,000/- and SC arrear was Rs. 1,770/-. The plaintiff thus prayed for a decree for a sum of Rs. 16,56,605/- in favour of the plaintiff and against the defendants along with pendente lite and future interest @14% p.a. along with costs of the suit.

3. As per record, earlier the defendants could not be served through ordinary process and vide order dated 16.01.2023, the application of the plaintiff under Order V Rule 20 CPC for substituted service upon the defendants by way of publication was disposed *inter alia* with the order that let the defendants be served by publication / advertisement in the newspapers 'Veer Arjun' and 'The Statesman' on depositing publication charges and PF. The order sheet dated 20.03.2023 would show that the copies of the newspapers 'The Statesman' dated 18.02.2023 and 'Veer Arjun' dated 20.02.2023 were received in which the summons

issued to the defendants had been published. The record would show that none for the defendants appeared and hence the right of the defendants to file the written statement was closed vide order dated 24.04.2023 by Ld. Predecessor of this court. As per record, the defendant no.1 was ultimately proceeded against *ex-parte* vide order dated 22.05.2023, however, on the said date the defendant no. 2 & Ld. Counsel for the defendant no. 2 had appeared. As per record, vide order dated 23.11.2023, the Ld. Predecessor of this court allowed the application of the defendant no. 2 under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the written statement subject to payment of Rs. 10,000/- as costs and the written statement filed by the defendant no. 2 was taken on record. Order sheet dated 15.01.2024 would show that the said costs of Rs. 10,000/- was paid by the defendant no. 2 to the plaintiff.

4. The record would thus show that the defendant no. 1 has not filed any written statement, the right of the defendant no. 1 to file the written statement was closed vide order dated 24.04.2023 and he was ultimately proceeded against *ex-parte* vide order dated 22.05.2023.

5. As per record and as discussed above, the defendant no. 2 has filed the written statement.

6. Defendant no. 2 *inter alia* averred in the written statement that the plaintiff bank has no relation with him and the suit has been filed on concocted facts and *mala fide* intentions of extorting money from the pocket of defendant no. 2. It was

averred that the plaintiff and defendant no. 2 have no relations of any kind. It was averred that the dispute regarding payment of the loan taken by defendant no. 1 was never communicated by the plaintiff bank to the defendant no. 2. It was stated that the plaintiff bank has not apprised the court that there was never a successful service of documents of loan and other documents including statement of loan and NPA declaration notice, legal demand notice dated 06.07.2022, pre litigation mediation etc upon the defendant. It was averred that the plaintiff bank has failed to show the court the proof of service of legal notice dated 06.07.2022 of this plaint upon the defendant and hence, defendant no. 2 had no knowledge of the legal proceedings. It was *inter alia* stated that the plaintiff bank had extended the loan facility to the defendant no. 1 only on the basis of the bank repayments made by defendant no. 1 and primary securities of stock worth Rs. 35 lakh, fixed deposit of Rs. 5 lakh and LIC of Rs. 1 lakh which already covered the amount which was to be recovered by the bank from defendant no. 1. It was stated that the guarantee agreement submitted in the court was an unregistered agreement and the plaintiff has failed to produce any KYC of the defendant no. 2. It was further stated that the address of the defendant no. 2 as furnished by the plaintiff bank on record was not correct. It was stated that defendant no. 1 is not related to defendant no. 2 other than trade relations since 2016 and further the defendant no. 1 had been a defaulter in payment of goods supplied by the defendant no. 2 to him. The defendant no. 2 stated that he has possession of 19 cheques all returned by the bank and there are further some cheques unpresented to the bank as defendant no. 1 turned rogue towards defendant no. 2 and also used to threaten defendant no. 2 on presentation of cheques when returned and also on occasions when the defendant no. 2 used to ask for payment of his legitimate amount from the defendant no. 1. It was stated that when the liability of defendant no. 1 crossed the sum of Rs. 10 lakh, the defendant no. 2 again asked for his payment, defendant no. 1 all of a sudden agreed to pay and ask defendant no. 2 to visit his premises and take the money. It was submitted that on reaching, defendant no. 2 was bound to sign the papers of guarantee placed on record and it was told that once money for this loan was credited, the defendant no. 2 could deposit the cheques for the payment. It was submitted that there were around 7-8 tall and muscular bouncers / goons in his premises who threatened the defendant no. 2 to sign the documents on order of defendant no. 1. It was averred that left with no choice, defendant no. 2 signed the unfilled & blank papers, however, still no payment was made to defendant no. 2. The plaintiff bank never got copy of KYC of the guarantor and the unregistered and unwitnessed agreement signed in coercive manner clearly implicates the plaintiff bank officials in the fraudulent disbursement of the loan. It was stated that the signatures depicted on the papers as filed in the court are also far from original and different at different places in the agreements which would show that there was some fraudulent practice in the working of plaintiff bank. It was averred that the defendant no. 2 had always dealt with the case in a true and diligent manner and had cooperated with the plaintiff bank. It was submitted that the plaintiff bank has *mala fide* intention as its official were was trying to extort money from defendant no. 2 in collusion with defendant no. 1. It was stated that guarantee of defendant no. 2 was coercive, unwitnessed and even unregistered.

7. The plaintiff filed the replication to the written statement of the defendant no. 2 and reiterated the facts as mentioned in the plaint and controverted the facts as mentioned in the written statement.

8. From the pleadings of the parties following issue were framed on 15.01.2024:-

(1). Whether the plaintiff is entitled to recover from the defendants a sum of Rs. 16,56,605/- (Rupees sixteen lakh fifty six thousand six hundred five only), as prayed in the plaint? OPP

(2). If answer to issue no. 1 is in affirmative, whether the plaintiff is entitled to interest? If so, at what rate and for which period? OPP

(3). Relief.

No other issue arose or was pressed by the parties.

9. The plaintiff bank has examined Ms. Asha Pruthi, Authorized Representative of the plaintiff bank as PW1 who has tendered her evidence by way of affidavit as Ex. PW1/A. PW1 in the said evidence by way of affidavit has primarily reiterated the facts as mentioned in the plaint. She has also relied upon the following documents:-

(1). RBI circular with respect to merger of Banks as Ex. PW1/1.

(2). Authority Letter as Ex. PW1/2.

(3). Loan application form as Ex. PW 1/3 (colly).

(4). Loan sanction letter as Ex. PW1/4 (colly).

(5). Composite Hypothecation Agreement as Ex. PW1/5 (colly).

(6). Guarantee Agreement as Ex. PW1/6 (colly).

(7). Acknowledgment of renewal as Ex. PW1/7.

(8). Acknowledgment of debts dated 20.06.2020 as Ex. PW1/8.

(9). Legal notice dated 06.07.2022 along with postal receipts as Ex. PW1/9 (colly).

(10). Loan Account Statement of the defendant as Ex. PW1/10 (colly).

(11). Non Starter Certificate issued by DLSA and certificate file no. 405/2022/Pre.Insti/ Medn.Dwk dated 30.08.2022 as Ex. PW1/11 (colly).

(12). Affidavit under Section 2A (b) of the Banker's Book Evidence Act as Ex. PW1/12.

(13). Affidavit under Section 65B of Indian Evidence Act, 1872 as Ex. PW1/13.

No other witness has been examined on behalf of the plaintiff bank.

10. As mentioned above, the defendant no. 1 has not filed any written statement, its right to file the written statement was closed vide order dated 24.04.2023 and was ultimately proceeded against *ex-parte* vide order dated 22.05.2023.

10.1. The defendant no. 2 has himself stepped into the witness box as DW1 and has tendered his evidence by way of affidavit as Ex. DW1/A. DW1 in the said evidence by way of affidavit has primarily reiterated the facts as mentioned in the written statement.

10.2. As per record, the plaintiff has not examined any other witness except PW1 whereas the defendant no. 2 has also not examined any other witness except DW1.

11. I have heard the final arguments and perused the record.

12. Ld. Counsel for the plaintiff has argued that the defendant no. 1 has not filed any written statement, his right to file the written statement was closed vide order dated 24.04.2023 and he has been proceeded against *ex-parte* vide order dated 22.05.2023. He has submitted that in the said circumstances, defendant no. 1 has not rebutted the testimony of PW-1 and documents proved by PW-1 and hence, the suit be decreed against the defendant no. 1. He further argued that PW-1 has proved all the loan documents to show that the defendant no. 1 had taken the loan from the plaintiff bank wherein the defendant no. 2 stood as a guarantor. As far as defendant no. 2 is concerned, Ld. Counsel for the plaintiff has argued that the Guarantee Agreement has been proved by the plaintiff bank as Ex. PW1/6 (colly) having the signatures of defendant no. 2 and nothing has appeared in the cross examination of PW-1 to discredit her testimony. He also submitted that PW-1 during her cross examination has given only her opinion to the effect that the signatures of the defendant no. 2 on Ex. PW1/6 (colly) did not

match with his signatures on the PAN Card and she was not having any requisite qualification or hand writing expertise to give any such opinion. He further submitted that as per the case of the defendant no. 2, he was forced by the defendant no. 1 to sign the guarantee document, however, DW-1 (defendant no. 2) during cross examination has deposed to the effect that he had not made or lodged any complaint with any police station or any authority regarding the threats extended by defendant no. 1 and his bouncers / goons. He further submitted that DW-1 also admitted that while signing the guarantee documents of this case loan amount, he was aware that he was signing the said guarantee documents. He also submitted that DW-1 has deposed during his cross examination that B-4, Mahendru Enclave, Model Town, Delhi was his billing address i.e. his official address. Further, he also submitted that it is the case of the defendant no. 2 that he had to take some money from defendant no. 1 and defendant no. 1 on that score had also given some cheques to defendant no. 2. He submitted that in the said circumstances, defendant no. 2 stood as a guarantor for the loan taken by the defendant no. 1 from the plaintiff bank. He thus, submitted that the plaintiff has proved its case beyond preponderance of probabilities against defendant no. 1 and defendant no. 2 and it should be decreed against both of them.

13. Ld. Counsel for the defendant no. 2 referred to the facts mentioned in the written statement of defendant no. 2 and also the cross examination of PW-1. He submitted that PW-1 did not have any personal knowledge qua the fact if the defendant no. 2 had signed the loan application form Ex. PW1/3 (colly). He

argued that as per the cross examination of PW-1, copy of PAN card was must for verification of identity and for address verification, copy of any valid recognized document was required as per the directions of Government of India, however, PW-1 admitted that no other document except copy of PAN card of defendant no. 2 was on record. He submitted that the plaintiff bank has neither placed nor proved on record any document to show that the officials of the plaintiff bank had visited the address of the defendant no. 2 for verification. He submitted that PW-1 in her cross examination admitted that the signatures on the Guarantee Agreement Ex. PW1/6 (colly) at points A, B, C, D, E, F and G do not match with the signatures of defendant no. 2 at point 'H' on the copy of PAN Card which was part of Ex. PW1/3 (colly). He submitted that it is thus evident from the testimony of PW-1 itself that the said Guarantee Agreement is a forged and fabricated document and cannot be relied upon to hold that the defendant no. 2 had stood as a guarantor for the loan taken by the borrower / defendant no. 1. He argued that PW-1 further admitted that there was no self attestation signature of defendant no. 2 on the said copy of PAN card. He submitted that PW1 also admitted that in Clause - 16 of Ex. PW1/3 (colly), photograph had not been pasted and even the signatures in Clause - 16 of Ex. PW1/3 (colly) had also not been verified by the plaintiff bank. He referred to the said Clause- 16 of Ex. PW1/3 (colly) wherein the photograph of defendant no. 2 in the space for photo has not been pasted. He submitted that PW-1 also deposed to the effect in her cross examination that signatures of defendant no. 2 at point 'X' (on page no. 24), at point 'Y' (on page no. 29) and at point 'Z' (on page no. 33) of Ex. PW1/3 (colly) did not match with the signatures of defendant no. 2 at point ‘H’ on copy of his PAN Card which is the part of Ex. PW1/3 (colly). He submitted that the signatures on copy of PAN card of defendant no. 2 were entirely different from the signatures at point ‘X’, ‘Y’ & ‘Z’ on Ex. PW1/3 (colly) and also signatures on Ex. PW1/6 (colly). He submitted that PW-1 admitted that no KYC document i.e either Aadhaar card or PAN card of any party to the Guarantee Agreement Ex. PW1/6 (colly) had been appended with Ex. PW1/6 (colly) and copy of Aadhaar card of defendant no. 2 was not taken by the plaintiff bank during entire course of loan proceedings. He further submitted that there are no signatures of borrower / defendant no. 1 on the last page of Composite Hypothecation Agreement Ex.PW1/5 (colly). He referred to page no. 30 [part of Ex. PW1/3 (colly)] wherein name of the defendant no. 2 has been mentioned, however, submitted that his address has been mentioned wrong as PIN Code of Model Town is 110009 and not 110043. He also submitted on the said page the name of the firm of defendant no. 2 has also been mentioned wrong as M/s Hiltech Enterprises whereas its correct name is Hilltake Enterprises i.e. name mentioned in the cheques on record and the cheque returning memo of the bank. He thus submitted that no credibility can be attached with the Guarantee Agreement Ex. PW1/6 (colly) and the loan agreement Ex. PW1/3 (colly) with respect to defendant no. 2. He thus prayed that the suit of the plaintiff be dismissed against defendant no. 2 as the defendant no. 2 never stood as a guarantor for the alleged loan taken by the defendant no. 1 from the plaintiff bank.

14. **Issue no. 1**

Whether the plaintiff is entitled to recover from the defendants a sum of Rs. 16,56,605/- (Rupees sixteen lakh fifty six thousand six hundred five only), as prayed in the plaint? OPP

14.1 The case of the plaintiff bank is to the effect that the defendant no. 1 who was the Sole Proprietor of Balaji Electronics was maintaining bank account with the plaintiff bank since the year 2014 and had availed the working capital loan of Rs. 9,00,000/- vide account no. 90801400000565 on 23.01.2015, however, repaid the said amount as per the agreement. As per the case of the plaintiff, the defendant no. 1 again approached the plaintiff bank on 01.08.2017 for renewal and enhancement of the working capital loan from Rs. 9,00,000/- to Rs. 15,00,000/- to enhance business under Micro Small & Medium Enterprises wherein the defendant no. 2 introduced himself as a guarantor for the repayment of loan availed by defendant no. 1. It is the case of the plaintiff that the above said loan documents were executed, however, defendant no. 1 failed to repay the loan and loan account of the defendant no. 1 was declared as NPA on 24.06.2019. It is also the case of the plaintiff that the defendant no. 1 also executed the Acknowledgment of Debt dated 20.06.2020 which is Ex. PW1/8. As far as the defendant no. 1 is concerned, as mentioned above, the right of the defendant no. 1 to file the written statement was closed vide order dated 24.04.2023 and he was also proceeded against *ex-parte* vide order dated 22.05.2023. The testimony of PW-1 has thus gone un-rebutted as far the defendant no. 1 is concerned. The plaintiff thus by way of un-rebutted testimony of PW-1 has proved the requisite loan document i.e. Loan Application Form, Loan Sanction Letter, Composite Hypothecation Agreement, Acknowledgment of Renewal and Acknowledgment of Debt dated 20.06.2020 as Ex. PW1/3 (colly), Ex. PW1/4 (colly), Ex. PW1/5 (colly), Ex. PW1/7 and Ex. PW1/8 respectively. The loan account statement of the defendant no. 1 with account no. 90801400000565 has also been proved as Ex. PW1/10 (colly). The document Ex. PW1/3 (colly) would show that the defendant no. 1 had applied for a loan of Rs. 15,00,000/- under Cash Credit Limit which was sanctioned by the plaintiff bank vide Sanction Letter dated 19.08.2017 which has been proved as Ex. PW1/4 (colly). The Acknowledgment of Debt and security by defendant no. 1 dated 20.06.2020 has been proved as Ex. PW1/8 wherein the defendant no. 1 has admitted the correctness, confirmed and acknowledged that a sum of Rs. 11,99,586/- exclusive of interest was outstanding against him. The Statement of Account of loan account of defendant no. 1 with account no. 90801400000565 has also been proved as Ex. PW1/10 (colly) which shows an outstanding amount of Rs. 16,56,604.96/- as on 31.08.2022. As mentioned above, defendant no. 1 did not file any written statement and was proceeded against *ex-parte* and hence, in terms of un-rebutted testimony of PW-1 and documents proved by her, plaintiff has proved that the plaintiff is entitled to recover from the defendant no. 1 a sum of Rs. 16,56,604.96/- (Rs. 16,56,605/- after rounding off), as prayed in the plaint.

15. As far as the defendant no. 2 is concerned, it is the case of the plaintiff that the defendant no. 2 stood as a guarantor for the said loan of defendant no. 1. In that regard, the relevant

documents are the Loan Application form Ex. PW1/3 (colly), Loan Sanction Letter Ex. PW1/4 (colly) and Guarantee Agreement Ex. PW1/6 (colly). PW-1 is the Authorized Representative / Sr. Manager of the plaintiff bank. PW-1 in her cross examination by Ld. Counsel for the defendant no. 2 has *inter- alia* deposed to the effect that she did not have any personal knowledge qua the facts if the defendant no. 2 Sh. Rajender Kumar Surana had signed the documents Ex. PW1/3 (colly). PW-1 also deposed in her cross examination to the effect that as per the Government of India directions for the purpose of KYC, a copy of PAN card is must for verification of identity and for address verification, copy of valid recognized document was required, however, admitted that no other document except copy of PAN card of the defendant no. 2 is on record. She also deposed to the effect that no KYC document i.e. either Aadhaar card or PAN card of any party to the Guarantee Agreement Ex. PW1/6 (colly) has been appended with Ex. PW1/6 (colly) and the copy of Aadhaar card of defendant no. 2 was not taken by the plaintiff bank during the entire course of loan proceedings. It is the case of the defendant no. 2 that his signatures on the guarantee documents were obtained by force by the defendant no. 1 and his muscleman, however, deposed in his cross examination that he had not made or lodged any complaint with any police station or any authority regarding the threat extended by defendant no. 1 and his muscular bouncers / goons and forcible signing the documents as mentioned in paragraph no. 14 and 15 of his evidence by way of affidavit Ex. DW1/A. It is also the case of the defendant no. 2 to the effect that he supplied some goods to the defendant no. 1, defendant no. 1 became defaulter in payment of goods, the 19 cheques issued by the defendant no. 1 were returned by the bank, defendant no. 1 threatened him and when he visited the premises of defendant no. 1 to take the money, he was forced to sign the papers of the loan guarantee by 7-8 tall and muscular bouncers / goons in his premises. In that regard, it is relevant to note that there are various discrepancies in the loan documents and guarantee documents *vis-a-vis* allegedly standing of defendant no. 2 as the guarantor for the loan of defendant no. 1 which raises a strong doubt if defendant no. 2 stood as a guarantor for defendant no. 1 regarding the said loan. PW-1 deposed to the effect that for address verification, copy of any valid recognized document was required, however, no other document except copy of PAN card of defendant no. 2 is on record. PW-1 further deposed that the plaintiff bank neither placed nor proved any document on record to show that the officials of the plaintiff bank had visited the address of defendant no. 2 for verification. The plaintiff bank has thus failed to show or prove that even though the address verification of the defendant no. 2 was required but as to why the said address verification of the defendant no. 2 was not done. Further, PW-1 in her cross examination admitted that the signatures on the guarantee document Ex. PW1/6 (colly) at points 'A to G' do not match with the signatures of defendant no. 2 at point 'H' on the copy of PAN card which is part of Ex. PW1/3 (colly). The only admitted document of defendant no. 2 is the copy of PAN card on record and PW-1 has specifically admitted that the signatures on the Guarantee Agreement Ex. PW1/6 (colly) at various places at points 'A to G' did not match with the signatures of defendant no. 2 on copy of PAN Card. It would also show that a strong doubt is raised on the execution and authenticity of the said guarantee document Ex. PW1/6 (colly) by the defendant no. 2. Further, PW-1 admitted during her cross examination that there was no self attestation signature of defendant no. 2 on the said copy of PAN card. She has also admitted in her cross examination that in the entire bank record there were no thumb impressions of defendant no. 2 taken by the plaintiff bank. She denied the suggestion that the loan document Ex. PW1/3 (colly) alleging the signature of defendant no. 2 and the guarantee agreement Ex. PW1/6 (colly) were fabricated by the plaintiff bank's official in collusion with the borrower / defendant no. 1. PW-1 further admitted that in Clause-16 of Ex. PW1/3 (colly), the photographs have not been pasted and the signatures in the said Clause - 16 of Ex. PW1/3 (colly) have also not been verified by the plaintiff bank. In this regard, the said Clause - 16 of Ex. PW1/3 (colly) would show that on the above side of alleged signatures of the defendant no. 2 at point 'X' there is space for photo, however, no photo has been affixed therein. It would further show that there is also mentioned in Clause - 16 that each photo will be attested by the branch with branch stamp, name and signature of Branch Officer / Manager, however, as there is no photograph affixed, hence, there is no attestation of it by branch with branch stamp, name and signature of the Branch Officer / Manager. It also creates a doubt if the defendant no. 2 stood as a guarantor for the loan taken by the defendant no. 1. Further, PW-1 has deposed in her cross examination that the signatures of defendant no. 2 at above said point 'X' (on page no. 24), at point 'Y' (on page no. 29) and at point 'Z' (on page no. 33) of Ex. PW1/3 (colly) do not match with the signatures of the defendant no. 2 at point 'H' on copy of his PAN card which is part of Ex. PW1/3 (colly). It also raises a strong doubt that the defendant no. 2 did not actually sign these documents and did not stood as a security for the defendant no. 1 regarding the above said loan. PW-1 admitted that there was no witness to Ex. PW1/6 (colly) and volunteered that it was not required as it is a legal document which can only be executed in the branch premises. She denied the suggestions that the defendant no. 2 had never visited the plaintiff bank or that the defendant no. 2 had never signed the loan documents including Ex. PW1/3 (colly) and Ex. PW1/6 (colly) or that the signatures of defendant no. 2 were obtained on some documents by defendant no. 1 at the office of defendant no. 1 which was situated at Najafgarh area or that the plaintiff bank has wrongly made the defendant no. 2 a guarantor to the loan of defendant no. 1. The above said circumstances, discrepancies, admitted different signatures of defendant no. 2 and deficiencies in the loan documents Ex.PW1/3 (colly) and guarantee documents Ex. PW1/6 (colly) would show that the plaintiff bank has failed to prove beyond preponderance of probabilities that the defendant no. 2 stood as a guarantor for the above said loan taken by defendant no. 1 from the plaintiff bank. In the said circumstances, the cross examination of DW-1 wherein he deposed that there was a dispute going on between him and the defendant no. 1 as the defendant no. 1 has substantial outstanding amount to pay to him against goods supplied by him to defendant no. 1, defendant no. 1 had given some cheques to him out of which some cheques were honoured and some cheques were dishonoured upon presentation and that he had not made or lodged any complaint with any police station or any authority regarding the threats extended by the defendant no. 1 and his muscular bouncers / goons for forcible signing the documents as mentioned in paragraph no. 14 and 15 of his evidence by way of affidavit Ex. DW1/A would not help the case of the plaintiff as the plaintiff has to stand on its own legs and has to prove the issue no. 1 wherein the onus of prove is on the plaintiff to prove that the defendant no. 2 actually stood as a guarantor for the loan taken by the defendant no. 1 from the plaintiff bank which the plaintiff has failed to prove beyond preponderance of probabilities. A strong doubt is thus raised on the credibility of the guarantee document Ex. PW1/6 (colly) and also to the loan agreement Ex. PW1/3 (colly) with respect to the standing of defendant no. 2 as a guarantor for the loan taken by the defendant no. 1. In the said circumstances and above said discussion, the plaintiff has failed to prove that the defendant no. 2 stood as a guarantor for the loan taken by the defendant no. 1 from the plaintiff bank and thus the plaintiff is not entitled to recover from the defendant no. 2 a sum of Rs. 16,56,605/- as prayed in the plaint as a guarantor of defendant no. 1

16. In view of above said discussion, the issue no. 1 is decided to the effect that the plaintiff is entitled to recover from the defendant no. 1 only a sum of Rs. 16,56,605/- as prayed in the plaint, however, the plaintiff bank is not entitled to recover the said amount from the defendant no. 2 as the plaintiff bank has failed to prove beyond preponderance of probabilities that the defendant no. 2 stood as a guarantor for the said loan taken by the defendant no. 1. Issue no. 1 is thus decided accordingly.

17. **Issue no. 2.**

If answer to issue no. 1 is in affirmative, whether the plaintiff is entitled to interest? If so, at what rate and for which period? OPP

17.1 The plaintiff has also claimed *pendente lite* and future interest @ 14.00%, per annum, till its realization. The said rate of interest @ 14.00% per annum is on higher side. In the facts and circumstances of the case, a justifiable *pendente lite* and future rate of interest @ 6.00%, per annum, would be just and reasonable. Thus, it is held that the plaintiff is entitled to recover from the defendant no. 1, a sum of Rs. 16,56,605/- (Rupees sixteen lakh fifty six thousand six hundred five only), along with *pendente lite* and future interest @ 6.00%, per annum, till realization of the entire amount.

18. **Relief.**

Accordingly, the suit is decreed in favour of the plaintiff and against the defendant no. 1 only, for Rs. 16,56,605/- (Rupees sixteen lakh fifty six thousand six hundred five only) along with *pendente* lite and future interest @ 6.00%, per annum, till realization of the entire amount. The suit of the plaintiff against defendant no. 2 is dismissed.

19. The plaintiff is also awarded costs of the suit.

20. Decree sheet be drawn accordingly.

21. A copy of this judgment be issued to all the parties to the dispute through electronic mail, if the particulars of the same have been furnished, or otherwise, in terms of Order XX Rule 1 of the Code of Civil Procedure, 1908 (as amended by the Commercial Courts Act, 2015).

22. File be consigned to Record Room.

Announced in the open court
on 25.01.2025

AMIT BANSAL

Digitally signed by AMIT BANSAL
Date: 2025.01.25 15:22:07 +0530

(Amit Bansal)
District Judge (Commercial Court)-03,
South-West, Dwarka Courts, New Delhi
25.01.2025