IN THE COURT OF PRINCIPAL DISTRICT JUDGE UDHAMPUR

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File No. 73 /Recovery Suit/2022
CNR No.JKUD020010332022
Date of Institution: 12.10.2022
Date of Decision : 26.06.2025

The Jammu and Kashmir Bank Ltd. (a company established under the Jammu and Kashmir Companies Act No. XI of 1977 (SAMVAT) (1920 A.D) having its registered Office at Corporate Headquarters, Maulana Azad Road, Srinagar (Kashmir) J & K and one of its Branch Office amongst places at B/U Gordhi represented through authorized attoney Mr. Anil Paba.

(**Plaintiff**)

Through : Mr. P.K.Jandial Advocate

Versus

Madan Kumar alias Madan Lal S/o Sh. Chet Ram
R/o Nalla Ghouran, Tehsil Ramngar District Udhampur

(Defendant)

Through : Defendant in exparte.

In the matter: Suit for recovery of an amount of Rs. 2,23,899.58/- alongwith interest @ 12.30 % per annum pendentlite, future charges / interest chargeable in the account..

Coram: Virinder Singh Bhou
J. O. Code: JK00067

J U D G M E N T

1. This suit for recovery has been filed by the plaintiff –Bank against the defendant for the recovery of Rs. 2,23,899.58 along with interest @ 12.30 % per annum with pendentlite and future interest/ charges against the defendant.

2. The Plaintiff Bank is a Company established under the Jammu & Kashmir Companies Act No XI of 1977 (Svt.) having registered office at Corporate Headquarters, Maulana Azad Road, Srinagar (Kashmir) J&K and Business Unit at Ghordi and has appointed Mr. Anil Paba (Branch head Housing Colony, Udhampur) as its General Power of Attorney Holder who has been duly empowered/authorized by the Bank to institute/file and present the suit in the court of law. Further, Mr. Anil Paba is fully conversant with the facts of the case as such he is in a position to depose about the correctness of the facts stated in the plaint and also he is competent to sign and verify all types of pleadings, vakalatnama, affidavits, execution and various other applications and to do all acts necessary for proper conduct of legal proceedings filed by and on behalf of the Plaintiff bank. A true copy of the General Power of Attorney is enclosed with the plaint. It is further averred that on 21-10-2017, the defendant approached the plaintiff Bank at its Business unit Ghordi and submitted a loan application with the request to sanction and grant loan to the tune of Rs 3.00 lakh (Rupees Four Lakh only) under JK Bank Saral Business Finance Scheme and the Bank sanctioned the said facility in favour of defendant. It is further averred in that plaint that to avail the said loan facility and in compliance to the terms of sanction of advance, the defendant executed the following below mentioned documents in favour of the Bank after understanding the terms and conditions of the same to secure the repayment of loan facility. The details of documents are as under: i) DP Note for Rs 3 Lakh, ii) Term Loan and Security Agreement, iii) Power of Attorney, iv) Letter of Authority, v) Affidavits, which are annexed with the plaints.

3. All the terms and conditions incorporated in the Annexure annexed with the plaint and other documents herewith this plaint are self-explanatory and form part and parcel of the pleadings of the plaintiff which need not to be reproduced herein and the execution thereof by defendants clearly reflects and shows that defendant no. 1 had availed and enjoyed the term loan as revealed from his Loan account No. 0768265650000087. The defendant didn't adhere to the financial discipline of the plaintiff bank and while repaying the loan amount, he was quite irregular in repayment of loan facility but despite the time granted to him by the plaintiff bank, the defendant didn't pay the loan amount to the bank though it was agreed by the defendant that he will repay the loan amount to the bank in the manner prescribed by the bank and would not commit any default in the repayment of the loan facility. It is further averred in the plaint that the plaintiff bank maintains proper entries stored in the disc, in the ordinary course of business of the plaintiff bank as an electromagnetic data storage device which is in power and possession of the plaintiff bank and the account of the defendant has also been maintained in ordinary course of business of the bank. The loan advanced to the defendant with interest and other incidental charges as agreed upon by the defendant as well as the adjustments made by the defendant from time to time have been dully incorporated and mentioned by the plaintiff bank in the statements of account which has been prepared in the ordinary course of the business of the bank and as per statement of accounts, a sum of Rs 2,14,853.58/- as on 31-03-2022 was recoverable, however, afterwards, the defendant deposited sum amount in his loan account and as per the fresh statement of account as on 31-8-2022 a sum of Rs 2,23,899.58/- is recoverable from the defendant no.1 against the cash credit facility availed by him. Statement of account No. 0768265650000087 of the defendant is annexed with the plaint . The liability of the loan amount of the defendant/borrower towards the plaintiff bank was acknowledge and owned by the defendant/borrower from time to time and in this regard the defendant borrower on 25-7-2021 transferred from his saving account no. 076804080006341 lying in the plaintiff bank Rs 13000/- to his loan account and in this regard signed the debit voucher as a part of acknowledgment of his liability. Debit voucher dated 25-7-2021 is annexed with the plaint.

4. It is further averred in the plaint that the plaintiff bank besides personally requesting the defendants, also served various notices from time to time but the defendants failed to make any arrangement for the repayment of outstanding loan amount so far, hence the present suit. The copy of notices w.e.f. 3-5-2021 to 15-2-2022 is annexed with the plaint. The cause of action accrued to the plaintiff bank against the defendants to file present suit when the defendants failed to make the payment despite repeated demands and requests made by the plaintiff bank. The cause of action has accrued to the plaintiff bank at Udhampur as the documents were executed at Udhampur which falls within the territorial jurisdiction of the Hon'ble court, therefore the Hon'ble Court has got the jurisdiction to hear and decide the suit and further to grant the relief prayed herein. Lastly, has prayed that a decree against the defendant with costs for the recovery of Rs 2,14, 853.58/- may be passed in favour of the plaintiff bank and against the defendants with pendent-lite and future interest at the agreed rate of interest per annum with monthly rests till realization of the suit amount and further, that the decreetal amount may also be allowed to be recovered from the sale of movable/immovable properties belonging to defendants.

5. Consequent upon the presentation of the suit on 12.10.2022, summons was issued to the defendant. The said summon was returned back un-served, however, after the perusal of the summon report the service of the defendant has been effected through his father and the file was kept for await of defendant on 14.012.2022. Thereafter, defendant appeared in person on 14.12.2022 and sought time to engage counsel and file the written statement. Time was granted. On 03.02.2023 Ld. Counsel for the plaintiff appeared and defendant also appeared in person and on his requested the file was kept before Lok Adalat on 11.02.2023.Thereafter file was taken up in the Lok Adalat, defendant appeared in person and nobody appeared on behalf of the plaintiff bank and due to the absence of the plaintiff compromise could not be effected and file was returned back to the court for further proceedings on 27.03.2023. On 27.03.2023 defendant did not appear in the court. Thereafter, defendant continuously remained absent in the court proceedings and did not file the written statement. Vide order dated 20.03.2024 exparte proceedings were initiated against the defendant and plaintiff was directed to produce exparte evidence in support of case.

6. In support of its case plaintiff J&K Bank through its attorney holder Anil Paba (retired Chief Manager J&K Bank Ltd) S/o Mr. Amar Nath R/o Paba Street, Udhampur has produced his own affidavit as witness PW-1 and one evidence affidavit of witness namely PW-2 Ghan Shyam S/o Late Sh. Hans Raj R/o Colenal Colony, Talab Tillo Jammu and **PW-3 Gourav Modi** employee of the J&K Bank, Branch Ghordi.

PLAINTIFF'S EXPARTE EVIDENCE:

7. **PW-1 Anil Paba** deposed in his evidence affidavit that he is the attorney holder for the plaintiff bank by virtue of the General Power of Attorney executed between him and the plaintiff bank. That by virtue of the said power of attorney, he is authorised to file suits including recovery suits for the recovery of loan amount on behalf of the plaintiff bank. That on 21-10-2017 , the defendant approached the plaintiff bank requesting sanction of loan to the tune of Rs. 3,00,00 and the same was sanctioned by the bank. That on the said date, the dependent was the senior executive for the plaintiff bank. That as per the terms and conditions of the loan agreement, the defendant was supposed to pay the loan installments regularly, however, the defendant was in default of payments and as of the date of filing of the suit i.e., on 11-10-2022, an amount of Rs. 2, 14, 853.581-along with interest and costs were recoverable from the defendant. That despite of repeated requests by the bank through different modes, the principal borrower failed to liquidate the loan amount and the bank was left with no other recourse but to file the present suit against the principal borrowers and the guarantors for the recovery of the said loan amount and said bank filed the present suit.

In addition to the statement on affidavit PW Anil Paba retired Chief Manager J&K Bank Ltd has appeared in person in the court on 29.05.2024 stated on oath that he has prepared the evidence affidavit with his own wish. He has admitted the contents of the affidavit as true and correct. He has identified his signatures on it. He stated that photo copy of the power of attorney dated 20.04.2021 annexed with the court file has also seen same in the court and he has identified his signature on it by virture of which he has been authorized by the bank to file the present suit and the same is marked as Mark –AP. Besides that he has seen the loan application form dated 21.10.2017 which has been given the defendant in his bank and bear his signature. Apart from that certificate under banker books evidence Act, D.P note, Term and loan Security Agreement, Affidavit, letter of authority, statement of account(Computer copy) Legal notices dated 3.05.2021, 01.09.20221, Recall notice dated 15.02.2022 has also seen by him today in the court file which are marked as Mark AP-1, Mark AP-2, Mark AP-3, Mark AP-4, Mark AP-5, Mark AP-6, Mark AP-7, Mark AP-8, Mark AP-9, Mark AP-10.

8. **PW-2 Ghan Shyam** deposed in his evidence affidavit that he was the Branch Head at BO Ghordi at the time of sanction of the loan as such is conversant with the facts of the case and is eligible to depose as a witness for the plaintiff. That the Plaintiff Bank is a company established under the Jammu & Kashmir Companies Act No XI of 1977 (Svt.) having registered office at Corporate Headquarters, Maulana Azad Road, Srinagar (Kashmir) J&K and Business Unit at Ghordi. That the Plaintiff Bank has appointed Mr. Anil Paba Branch Head Housing Colony, Udhampur) as its General Power of Attorney Holder who has been duly empowered/authorized by the Bank to institute/file and present the suit in the court of law. Further, Mr. Anil Paba is fully conversant with the facts of the case as such he is in a position to depose about the correctness of the facts stated in the plaint and also, he is competent to sign and verify all types of pleadings, vakalatnama, affidavits, execution and various other applications and to do all acts necessary for proper conduct of legal proceedings filed by and on behalf of the Plaintiff bank. That on 21-10-2017, the defendant approached the plaintiff Bank at its Business unit Ghordi and submitted a loan application with the request to sanction and grant loan to the tune of Rs 3.00 lakh (Rupees Four Lakh only) under J& K Bank Saral Business Finance Scheme and the Bank sanctioned the said facility in favour of defendant. That to avail the said loan facility and in compliance to the terms of sanction of advance, the defendant executed the following below mentioned documents in favour of the Bank after understanding the terms and conditions of the same to secure the repayment of loan facility. The details of documents are as under. i) DP Note for Rs 3 Lakh, ii) Term Loan and Security Agreement, iii) Power of Attorney. iv) Letter of Authority, v) Affidavit. That all the terms and conditions incorporated in the Annexures annexed with the plaint and other documents with the plaint are self-explanatory and form part and parcel of the pleadings of the plaintiff which need not to be reproduced herein and the execution thereof by defendants clearly reflects and shows that defendant no. I had availed and enjoyed the term loan as revealed from his Loan account No. 0768265650000087. That the defendant didn't adhere

to the financial discipline of the plaintiff bank and while repaying the loan amount, he was quite irregular in repayment of loan facility but despite the time granted to him by the plaintiff bank, the defendant didn't pay the loan amount to the bank though it was agreed by the defendant that he will repay the loan amount to the bank in the manner prescribed by the bank and would not commit any default in the repayment of the loan facility. That the plaintiff bank maintains proper entries stored in the disc, in the ordinary course of business of the plaintiff bank as an electromagnetic data storage device which is in power and possession of the plaintiff bank and the account of the defendant has also been maintained in ordinary course of business of the bank. The loan advanced to the defendant with interest and other incidental charges as agreed upon by the defendant as well as the adjustments made by the defendant from time to time have been dully incorporated and mentioned by the plaintiff bank in the statements of account which has been prepared in the ordinary course of the business of the bank and as per statement of accounts, a sum of Rs 214853.58/- as on 31-3-2022 was recoverable, however, afterwards, the defendant deposited sum amount in his loan account and as per the fresh statement of account as on 31-8-2022 a sum of Rs 223899.58/- is recoverable from the defendant no.1 against the cash credit facility availed by him. That the liability of the loan amount of the defendant/borrower towards the plaintiff bank was acknowledged and owned by the defendant /borrower from time to time and in this regard the defendant/borrower on 25-7-2021 transferred from his saving account no. 076804080006341 lying in the plaintiff bank Rs 13000/- to his loan account and in this regard signed the debit voucher as a part of acknowledgment of his liability. That the plaintiff bank besides personally requesting the defendants, also served various notices from time to time but the defendants failed to make any arrangement for the repayment of outstanding loan amount so far.

In addition to the statement on affidavit PW Ghyan Sham, the then Manager J&K Bank Branch Office Ghordi appeared in person in the court on 29.05.2024 and on oath stated that he has prepared the evidence affidavit with his own wish. He has admitted the contents of the affidavit as true and correct. He has identified his signatures on it. He stated that on 21.10.2017 the defendant submitted a loan application to the bank and on the basis of which loan has been sanction in favour of the defendant to the tune of Rs. 3 lacs under Saral Business Finance Scheme and he disbursed the loan amount in favour of the defendant in the capacity of branch manager of the Bank and the defendant executed the following documents in favour of the bank i.e i) DP Note for Rs 3 Lakh, ii) Term Loan and Security Agreement, iii) Power of Attorney. iv) Letter of Authority, v) Affidavit. Defendants has also signed the said documents in his presence and he read over and explain the contents of all the documents to the defendant and he agree with the terms and condition of the loan and thereafter defendants signed all the documents on it. Besides the above said statement he has also submitted an affidavit to the court which has annexed with the court file, the contents of the said affidavit are true and correct and he identified his signature in all the pages. DP Note for Rs 3 Lakh, Term Loan and Security Agreement, Power of Attorney, Letter of Authority, Affidavits annexed with the court file today which are already exhibited as

Mark AP-1, Mark AP-3, Mark AP-4, Mark AP-5 and the said documents have been signed by the defendant in his presence. Mark Ap5 has been issued by him bearing his signature at three places and he identify his signature on the same. The Power of Attorney dated 21.10.2017 attached with the court file bearing his signature and signature of defendant on it which are true and correct. Letter of authority Mark PB-11, Statement of the account Mark AP-7 today has also seen by him in the court. The defendant did not pay the loan instalment with the bank as result of which the present suit has been filed against the defendant.

9. **PW-3 Gourav Modi employee of J&K Bank Branch Office Ghordi** appeared in the court on 21.08.2024 in examination in chief by the counsel for the plaintiff bank deposed that in the year 2022 he was posted in J&K Bank Branch Ghordi as branch Manager and he produced the certificate under banker evidence Act by virtue of which the statement of account of the defendant in electronic form in the court and the statement of the account has been stored in the computer disc and he issued the copy of the same . He identified the said copy today in the court file which is already marked as Mark AP-7 and it is the same copy which has been issued by him. As per the statement of the account dated 21.08.2022 the outstanding liability against the defendant account was shown as Rs. 2,23,899.58/-. The certificate under Banker books evidence Act attached with the court file was seen today in the court which bears his signature and the contents whereof are true and correct. It is already exhibited as mark AP-2.

10. This is all about the ex-parte evidence led in support of the suit. Defendant after having got the knowledge of pendency of suit did not choose to contest the suit of the plaintiff. Since the evidence led by the plaintiff's in ex-parte remained un-rebutted, this court has left with no other option but to believe the evidence led by the plaintiffs in ex-parte.

11. Vide order dated 19.03.2025 plaintiff exparte evidence was closed and the file was fixed for exparte arguments.

12. Heard Ld. Counsel for the plaintiff, perused the record and gone through exparte evidence brought on record by the plaintiff bank.

13. It is evident from the record and exparte evidence brought on record by the plaintiff that defendant had obtained loan to the tune of Rs. 3 lacs to establish Business unit Ghordi and submitted a loan application with the request to sanction and grant loan to the tune of Rs 3.00 lakh (Rupees Four Lakh only) under J & K Bank Saral Business Finance Scheme and the Bank sanctioned the said facility in favour of defendant. The defendant executed these documents i) DP Note for Rs 3 Lakh, ii) Term Loan and Security Agreement, iii) Power of Attorney, iv) Letter of Authority, Affidavits, statements of the accounts and the execution thereof by defendant clearly reflects and shows that defendant no.1 had availed and enjoyed the term loan as revealed from his Loan account No. 0768265650000087. The plaintiff bank in the statements of account which has been prepared in the ordinary course of the business of the bank and as per statement of accounts a sum of Rs 2,14,853.58/- as on 31.03.2022 was recoverable, however, afterwards, the defendant deposited sum amount in his loan account and as per the fresh statement of account as on 31-8-2022 a sum of Rs 2,23,899.58/- is recoverable from the defendant no. l against the cash credit facility availed by him. Statement of account No. **0768265650000087** of

the defendant is annexed with plaint. The liability of the loan amount of the defendant/borrower towards the plaintiff bank was acknowledged and owned by the defendant/ borrower from time to time and in this regard the defendant / borrower on 25.07.2021 transferred from his saving account no.076804080006341 lying in the plaintiff bank Rs 13,000/- to his loan account and in this regard signed the debit voucher as a part of acknowledgment of his liability. Debit voucher dated 25.07.2021 is annexed with the plaint. Plaintiff Bank in the statements of accounts which has been prepared in the ordinary course of the business of the Bank as per the statements of accounts a sum of Rs. 2,23,899.58 as on 31.08.2022 is recoverable from the defendant. The plaintiff bank on the basis of evidence own witness as PW-1 Anil Paba and evidence brought on record by the plaintiff of PW-2 Ghan Shyam and PW-3 Gourav Modi have proved all the documents marked and exhibited with the plaint.

14. The testimonies of the witnesses examined by the plaintiff bank has remained unchallenged, un-rebutted and hence duly proved the suit of the plaintiff bank. There is no reason to disbelieve the un-rebutted and uncontroverted statements of the witnesses and the pleading are proved by ocular and documentary evidence and preponderance of probability shift in favour of the plaintiff bank and as such, there is no legal embargo to pass the judgment and decree. The suit has been filed within time frame and is not hit by any law.

15. Accordingly in view of the evidence of the plaintiff bank and the documents proved on the record as discussed hereinabove, the suit of plaintiff is decreed in ex-parte as :-

i) Money decree in the sum of Rs. 2,23,899.58 (Rupees two Lakh twenty three thousand eight hundred ninety nine and point fifty eight only) in favour of the plaintiff bank and against the defendant .

ii) Plaintiff is also entitled to the pendent-lite and future interest @ 12.30 % p.a. on the aforesaid decreed amount from the date of filing of the suit till its realization whereof.

iii) Costs of the suit.

16. The decree sheet shall be prepared accordingly. The suit is disposed of. File shall be consigned to records after its due compilation.

Announced:
26.06.2025

VIRINDER SINGH BHOU
Digitally signed by VIRINDER SINGH BHOU

(Virinder Singh Bhou)
Principal District Judge
Udhampur

P.A.
Jagdevraj