IN THE COURT OF THE ADDITIONAL SUB JUDGE II, THRISSUR.
PRESENT: SREEDEVI K.M., ADDITIONAL SUB JUDGE II.
Monday, the 30th day of June, 2025/ 9th Ashada, 1947 SE.

O.S 468/2023

Plaintiff:

Canara Bank, Kariparamba Branch, Thrissur, Carmel Shopping Complex, Opposite of Our lady of Mount Carmel Church, Mundur – 680 541, Rep. by Senior Manager Arya, W/o Rengith.

By Adv. Biju K.P and Adv. Dhanya K Raj

Defendants:

1. Gayatri P.S., Aged 28 years, D/o Jiothirmayi K.J., Kunathully House, Kecheri P.O., Chiranellur, Thrissur – 680 501.
2. Jiothirmayi K.J, Aged 54 years, W/o Soni, Kunathully House, Kecheri P.O., Chiranellur, Thrissur – 680 501.

By Advs. K. Arunkumar Kaimal, Shani K Krishnan, Anju P.P., Arunima K.V and Sona P Chacko

The suit is filed under Order 7 and Rule 1 of the Code of Civil Procedure coming on for hearing today, the court delivered the following.

J U D G M E N T

The suit is for the realisation of money.

2. **The averments in the plaint are as follows:-** The defendants availed an educational loan of a sum of ₹ 9,95,000/- from the bank for the education of the 1st defendant for studying PG in Rural management at the Institute of Rural Management Anand for a period of two years.

The plaintiff sanctioned an education loan of ₹9,95,000/- in the name of the defendants on 26.03.2017. The defendant had executed and delivered an educational loan agreement dated June 23, 2017, in favour of the plaintiff bank, agreeing to abide by the terms and conditions incorporated in the agreement. As per the stipulation in the agreement dated 23.06.2017the defendants had agreed to repay the loan amount within 180 monthly instalments with accumulated interest by way of instalments commencing from one year after completion of the course or 6 months after getting employment or job whichever is earlier. The prescribed course period of two years of the 1st defendant was already over and hence the defendants were bound to remit the instalments due to the bank in terms of the provisions contained in the educational loan agreement. The defendant failed to remit the amount due to the bank as agreed. Though the plaintiff bank repeatedly requested the defendants to discharge the liability to the bank, the defendants failed to do so. The defendants had acknowledged the liability as per acknowledgment of debt and security dated 27.12.2021 executed in favour of the plaintiff bank. Apart from the above contentions, defendants were paid an amount of ₹2,00,000/- on 24.09.2020 through NEFT-2081353096, ₹1,83,000/- on 01.02.2022 payment from the account 0838101047655 and ₹5,400/- on 13.07.2023 through NEFT-CR-HS92319409274121-ICIC0SF00022 towards the part payment of the loan amount. Hence, there is no limitation for filing the above suit. The plaintiff bank issued a registered lawyer's notice on 30 November 2023 to the defendants, calling upon them to pay the amount due to the bank. Though the defendants received the notice, they did not pay the amount. The above loan was advanced for educational purposes, and the plaintiff is entitled to get a contract rate of interest @10.8% per annum. This interest includes 2% penal interest also. Since the defendants defaulted in making payments, they are liable to pay the penal interest to the plaintiff bank. According to the account statement of the defendants, which the plaintiff bank maintains in the ordinary course of business, a sum of ₹10,34,996 is due from the defendants as of December 7, 2023. Hence the suit,

3. **<u>The averments in the written statement are as follows:-</u>** The defendants had never borrowed an education loan from the plaintiff as alleged. The defendants had never executed any agreement with the plaintiff bank. The plaintiff bank obtained a few blank signed white papers and blank signed printed forms from the defendants. Manipulating these documents, the plaintiff filed the suit against these defendants. There has never been an acknowledgement of debt as on

27.12.2021 as alleged. Hence, the suit is barred by law of limitation. The plaintiff bank is not entitled to seek the refund of the loan amount, as it is an educational loan. This court lacks jurisdiction to entertain this suit, as it is barred by limitation. The rate of interest is exorbitant, and the plaintiff bank has no right to ask for penal interest. There is no cause of action against these defendants. Hence, the suit may be dismissed with costs.

4. Based on the above-mentioned rival contentions and the documents produced by the parties, the following issues were raised for consideration:-

1. What is the amount, if any, plaintiff is entitled to realise from the defendants?
2. What is the order as to interest?
3. What is the order as to costs?

5. PW1 and PW2 were examined in chief and Ext.A1 to A6 were marked on the side of the plaintiffs. No evidence was adduced from the side of the defendants.

6. Heard both sides

7. **Issue No. 1 to 3:-** The case of the plaintiff is that the defendants

availed an education loan from the plaintiff bank on 23.06.2017. They defaulted on repayment of the loan amount. Although the plaintiff bank issued a registered notice demanding repayment of the loan amount, the defendants did not pay it. Thus, the suit is filed to recover money from the defendants. On the contrary, the defendants in their written statement denied the execution of any agreement with the plaintiff bank. According to the defendants, they were asked to sign blank stamp papers, white papers, and printed forms, which were then manipulated by the plaintiff bank, leading to the filing of this false case against the defendants. They also contended that the suit is barred by limitation, and there has never been an acknowledgement of debt as of December 27, 2021.

8. To prove their case, the plaintiff bank examined the branch manager as PW1. He filed a proof affidavit reiterating the contents of the plaint. The Exhibit A1 loan application, Exhibit A2 education loan agreement, and Exhibit A3 acknowledgement of debt and security executed by the defendants were proved through the testimony of PW1.

He also produced Exhibit A4 copies of the notices sent to the defendants, Exhibit A5 acknowledgement cards, and Exhibit A6 statement of account to prove their Case. The plaintiff produced Exhibits A1, the loan application, and A2, the loan agreement, to demonstrate that the defendants had applied for an educational loan of ₹ 9,90,000/- from the plaintiff and availed of the same. During the cross-examination of PW1, the defendant challenged the execution of the Exhibit A1 and Exhibit A2 documents. The defendants, in their written statement, contended that they never signed any agreement with the plaintiff bank. Instead, they claimed that the bank obtained their signatures on a few blank stamp papers, white papers and printed forms. However, PW1 categorically deposed that the defendants executed the Ext.A2 agreement. The learned counsel for the defendants argued that the cross-examination of PW1 revealed that he was not the Branch Manager at the time of the execution of the Exhibit A2 agreement; therefore, the defendants' contention that they did not sign the Exhibit A2 agreement should be taken into consideration. It is to be noted that, as a bank, its officials will change periodically. From the document, it is clear that the loan was taken in 2017 itself. Since the loan was taken in 2017, it cannot be insisted that the plaintiff examine the then officials of the bank to prove their case.

9. In the written statement, the defendants argued that, as the loan is educational, the plaintiff is not entitled to the claimed refund. Moreover, in the written statement, they did not specifically deny availing themselves of a loan from the plaintiff bank or the execution of the Ext.A2 loan agreement dated 23 June 2017. O.8 R.3 of the Code of Civil Procedure provides that it shall not be sufficient for a defendant in his written statement to deny the grounds alleged by the plaintiff generally, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages. As per the provisions of the Code of Civil Procedure, the written statement must deal specifically with each allegation of fact in the plaint, and when a defendant denies any such fact, he must not do so evasively, but specifically answer each allegation. In this case, the defendants did not specifically deny the execution of the Ext.A2 agreement dated June

23, 2017, in their written statement. If the defendants claim that they have not executed the documents, they ought to have specifically pleaded this in their written statement and adduced evidence to support it.

10. It is unlikely that the bank will disburse the loan amount to the defendant without obtaining the necessary documents. It is also to be noted that a doubtful fact may also be inferred from specific proved facts. When inferring the existence of a fact from another set of proved facts, the court exercises a precise form of reasoning and reaches a logical conclusion on the most probable position. The court shall have regard to the ordinary course of natural events, human conduct, etc, in addition to the facts of the case. Since no bank will advance a loan without having the documents executed, I believe that the defendants cannot be permitted to contend that they have not executed any documents for repayment of the loan amount. The case of the defendants to the effect that they were asked to subscribe their signature in certain printed unfilled papers cannot be accepted for the reason that

the defendants have not entered into the box to depose about their case and offer themselves to be cross examined by the other side with regard to the contention taken in the same. The Honourable Supreme Court in ***Vidhyadhar v. Manikrao and Another, 1999 KHC 1091*** held that "*Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh (AIR 1927 PC 230 : 32 CWN 119). This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh (AIR 1930 Lah. 1 : ILR 11 Lah. 142) and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh (AIR 1931 Bom 97 : 32 Bom LR 924). The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat (AIR 1970 MP 225 : 1970 MPLI 586) also followed the Privy Council decision in Sardar Gurbakhsh Singh case (AIR 1927 PC 230 : 32 CWN 119). The Allahabad High Court in Arjun Singh v. Virendra Nath (AIR 1971 All 29)* *held that if a party abstains from entering the witness box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand (AIR 1974 P&H 7) drew a presumption under S.114 of the Evidence Act, 1872 against a party who did not enter the witness box".*

11. PW1, who had deposed on behalf of the bank, had denied the suggestion to the effect that the defendants did not sign the Ext.A1 and A2 documents. Therefore, this court could receive the loan documents without any hesitation. The evidence of the plaintiff and the records will be sufficient to prove the due execution of loan documents. In the absence of any contra evidence from the side of defendant, I feel that the evidence of plaintiff can be accepted without any hesitation.

12. Another contention raised by the defendants is that they had not executed Exhibit A3 acknowledgement of debt and security towards the loan as alleged by the plaintiff. To counter this contention, the plaintiff examined PW2, who was the Manager from May 5, 2019, to

May 22, 2022. He filed a proof affidavit stating that the defendants executed the Exhibit A3 document in his presence on December 27, 2021. Though he was cross-examined at length, nothing has been brought out to discredit the evidence of PW2. The suggestion by the defendants' counsel that Ext.A3 was not signed by the defendants was denied by PW2. The PW2 categorically deposed that Ext.A3 was signed in his presence. Hence, I am of the view that the evidence of PW2 can be taken into account. The evidence given by PW2 shows that the suit is filed within the period of limitation.

13. During the cross-examination of PW1, the defendants' counsel posed a question regarding whether the plaintiff bank had issued a notice to the defendants recalling the facility granted to them, which was answered in the negative. However, in Clause 6 of the Exhibit A2 agreement, it is specifically stated that repayment shall start one year after completion of the course or after six months of employment, whichever is earlier. Clause 8 of Exhibit A2 agreement states that the bank shall have the liberty to claim repayment of all amounts payable

under or by virtue of this agreement in one lump sum, without reference to the instalments, if the borrower has discontinued his studies, or is in a position to repay the entire amount without availing himself of the benefit of the payment of installments or for any other reason. Due to the Exhibit A2 agreement, I do not feel that the defendants' contention that the plaintiff bank should require them to recall the facility granted to them is sustainable.

14. It is to be noted that when a party to a lis does not enter into the witness box and is not cross-examined by the other side, a presumption would arise u/s.114(g) of the Indian Evidence Act that the case set up by him is not correct. In this case, the defendants have not entered the box. The plaintiff had given sufficient evidence regarding the transaction in question. Going by the principles laid down in ***Vidhyadhar's Case*** cited supra, I am of the view that, as the defendants did not adduce any evidence regarding their contentions in the written statement, their contentions in the written statement cannot be taken into account. In view of the oral and documentary evidence of the

plaintiff, I am satisfied that the defendant had availed of a loan from the plaintiff bank after executing necessary loan documents. The plaintiff has produced Ext.A6, the statement of accounts, duly certified. On going through the same, it can be seen that the defendants defaulted the loan amount as alleged by the plaintiff. The evidence adduced by the defendant is not sufficient to show that the said amount is not due from them. Hence, I am of the view that the plaintiff is entitled to get a decree as prayed for, Since the loan is not for a commercial purpose, I am of the view that the plaintiff is only entitled to get 6% as future interest.

In view of the aforesaid aspects, I am of the view that the suit is liable to be decreed on the following terms.

In the result,

1. The suit is decreed directing the defendants jointly and severally to pay an amount of ₹10,34,996/-(Rupees Ten Lakhs thirty four thousand nine hundred and ninety-six only) to the plaintiff with interest @ 6% per annum from the date of institution of the suit (14.12.2023)till realisation.

2. The plaintiff is entitled to the costs of the suit.

(Dictated to the Confidential Assistant and typed by her, corrected by me and pronounced in open court on this the 30th day of June, 2025).

Sd/-
SREEDEVI K.M.
ADDITIONAL SUB JUDGE II.

APPENDIX:

Plaintiff Exhibits:-

A1	23.06.2017	Loan application
A2	23.06.2017	Educational loan agreement
A3	27.12.2021	Acknowledgement of debt and security
A4(a)	30.11.2023	Copy of notice
A4(b)	30.11.2023	Copy of notice
A5(a)		Acknowledgement card
A5(b)		Acknowledgement card
A6		Pass sheet of account

Plaintiff Witness:-

PW1	09.06.2025	Shinod C.P
Pw2	10.06.2025	Shemindas C.M.

Id/-
ADDITIONAL SUB JUDGE II.