KAVP010072472023

Presented on : 08-08-2023
Registered on : 11-08-2023
Decided on : 01-08-2026
Duration : 02 Years 11 Months 20 Days

IN THE COURT OF II ADDL DISTRICT AND SESSIONS JUDGE, VIJAYAPURA

PRESENT: SRI ABDUL-RAHIMAN. A. NANDGADI,
B.Com.,LL.B.,(Spl.,),
II Addl. District & Sessions Judge,
Vijayapura

DATE OF JUDGMENT:- 01.08.2026

<u>COMMERCIAL O.S No.29/2023</u>

<u>Plaintiff:</u>

1. *ICICI Bank Ltd., Registered office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara – 390007, and having its branch office at Plot No.87, Ground Floor, Near Jalanagar Bus Stop, Jalanagar, Vijayapura. Represented by its Attorney Holder Mr Raghukumar Rudra, S/o Panchappa, Age: 37 Years, Occ: Manager at ICICI Bank Ltd.,*

[By Sri.B.M.R., Advocate]

V/S.

Defendants:

1. *Shri Pattu Rathod S/o. Ratnu, Domanal, Bijapur.*

2. *Smt. Shantabai Rathod W/o. Pattu, Domanal, Bijapur.*

3. *Shri Motilal Rathod S/o. Pattu, # 929, Kannur Dargali, Bijapur.*

[D-1 Dead, D-2 & 3 Exparte]

Nature of the Suit	:	*Recovery of money*

[Abdul-Rahiman. A. Nandgadi]
II Addl. District & Sessions and Spl. Judge, Vijayapura.

J U D G M E N T

Plaintiff-Bank has filed the present Suit against the Defendant Nos.1 to 3 for Recovery of Rs.3,93,323/- as on 30.04.2022 alongwith interest @ Rs.11.5% p.a., from the date of filing of the Suit to till its realization.

2. *The brief facts of the Plaintiff's case is as under:*

That the Plaintiff Bank is a Public limited company incorporated under the Companies Act, 1956 and is a Scheduled Bank within the meaning of the Banking Regulation Act, 1949 and also scheduled Bank according to the Reserve Bank of India Act 1934, having its registered office at Vadodara (Gujarat) and branch office at Vijayapura.

02.01. *That Plaintiff Bank engaged in business of rendering Kisan Credit Card facilities to its valued customers who agreed to abide by the terms and conditions and to utilize the amount. On 08.12.2016, Defendants as borrower and co-borrowers approached the Plaintiff Bank for financial assistance of Rs.4,50,000/- under Kisan Credit Card Scheme. As such Plaintiff Bank by considering the application of the Defendants sanctioned the credit limit of Rs.3,01,800/- as being the limit of first year and Rs.4,41,600/- as being the limit of 5th year under Kisan Credit Card account bearing No.650651050171 on 11.01.2017.*

Under the agreed terms of said credit facility Bank permitted to utilize the amount as per the requirement of the borrower to the extent of limit sanctioned. Out of total sanctioned limit Defendants utilized the amount timely to the extent of Rs.3,93,323/- from 30.04.2022. As per the agreed terms of credit facility by interest and other charges would be levied on the total utilization amount of the credit facility. Said facility i.e. Kisan Credit Card shall be utilized for the purpose of crop cultivation by the Defendants. Inturn, the Defendants have agreed to repay the amount by way of agreed terms of the sanction letter dated 11.01.2017 with interest and other allied charges applicable. Repayment facility would be based on utilization of sanctioned amount. Interest also would be charged on the utilization amount only. If the amount utilized with applicable interest is not paid within repayment terms then over due charges and other applicable penal charges would be levied on the due amount of the Defendants. Inorder to secure the amount of Kisan

Credit Facility, the Defendants have executed the documents infavour of Plaintiff Bank shown in the list. Schedule property is also mortgaged to the Plaintiff Bank by way of Registered Mortgage Deed dated 24.01.2017, vide document No.BIJ-I-17556-17, registered before Sr. Sub-Registrar, Vijayapura. Said registration is also reflected in the encumbrance certificate dated 24.01.2017.

02.02. *It is the further case of Plaintiff bank that Defendants executed Kisan Credit Card facility, application form and other documents in-favour of Plaintiff bank agreeing the terms and conditions therein for charging the interest and repaying the amount etc. Defendants have signed aforesaid documents in token of having understood the terms and conditions detailed in the said documents. At the time of availing the Kisan Credit Card facility, Defendants were fully aware of rate of interest and other terms of the documents. In terms of the said documents Defendants agreed to make timely* *and regularly payment. At the time of availing Kisan Credit Card facility Defendants were also informed that in case of default to pay the utilized amount, interest and other allied applicable charges on due dates over due charges will be levied by the Bank. After availing the Kisan Credit Card facility defendants have failed to pay the utilized amount, interest and other allied charges applicable, so that to continue with Kisan Credit Card facility on the due dates for the reasons best known to them. As such, applicable penal and overdue charges levied on the facility account of the Defendants. Plaintiff Bank reminded Defendants regarding over dues to the addresses by issuing demand notice. Defendants failed to respond to the notice issued by the Bank. Officials of the Bank requested the Defendants to abide by the terms and conditions and they failed to obey the same.*

02.03. *Therefore, Plaintiff Bank was constrained to recall the aforesaid facility by issuing* *notice dated 13.07.2022 in which the Defendants were informed that the facility has been recalled and terminated with immediate effect. Plaintiff further called upon the Defendants to pay the outstanding amount as per notice within 7 days from the date of receipt of notice, failing which the Plaintiff will be constrained to initiate appropriate action against them. Despite the notice the Defendants did not yield the request of the Plaintiff Bank. As on 30.04.2022 the total overdue is Rs.3,93,323/- to the Plaintiff Bank. That the Act of the Defendants caused wrongful loss and irreparable injury to the Plaintiff Bank. Defendants are misusing the privileges accorded to the Defendants from the Plaintiff Bank.*

Hence the Plaintiff Bank was constrained to file the present Suit, seeking Recovery of Money.

3. *Suit summons was issued to the Defendants by the Process of the Court as well as by RPAD, which has returned with an endorsement as 'Served'. Holding* *service as sufficient, the Defendants were placed 'Exparte' on 29.06.2024. The Defendant No.1 is reported to be dead, hence case against him stands 'Abated'.*

4. *The Plaintiff Bank has led the Evidence of its Manager as PW1 and got marked 8 documents as ExP1 to ExP8; and closed its side.*

Since the Defendant Nos.2 & 3 were placed Exparte, cross examination of PW1 was taken as Nil; and the Defendants Evidence was also taken as Nil. The matter came to be posted for Arguments.

5. *Heard the Arguments put-forth by the Learned Counsel for the Plaintiff-Bank.*

6. *Points that arise for consideration are:*

> ***1. Whether the Plaintiff-Bank proves that, Defendants have utilised Rs 3,93,323/- as on 30.04.2022, towards the sanctioned credit; and agreed to repay the same with interest and other charges, as per the terms of Credit facility, but failed***

to repay the same; and the Defendants are due to the tune of Rs 3,93,323/- as on 30.04.2022 with interest at the rate of Rs 11.05% p.a., as claimed?

2. What order or decree?

7. *After due consideration of the pleadings, evidence both oral as well as documentary on record; and the oral and Written Arguments placed on behalf of the Plaintiff Bank, my findings on the above points are as under:*

Point No.1 : In the Negative;
Point No.2: As per final order for the following:

R E A S O N S

8. Point No.1:-

It is the case of the Plaintiff Bank that,

a) it is has sanctioned the credit limit of Rs 3,01,800/- as being the limit of first year and Rs.4,41,600/- as being the limit of 5th year under Kisan Credit Card account bearing No.650651050171 on 11.01.2017;

b) under the agreed terms of said credit facility Bank permitted to utilize the amount as per the requirement of the borrower to the extent of limit sanctioned.

c) Out of total sanctioned limit Defendants have utilized the amount timely to the extent of Rs.3,93,323/- from 30.04.2022.

d) Agreed to repay as per the terms of credit facility with interest and other charges. Inturn, the Defendants have agreed to repay the amount by way of agreed terms of the sanction letter dated 11.01.2017 with interest and other allied charges applicable. Repayment facility would be based on utilization of sanctioned amount. Interest also would be charged on the utilization amount only. If the amount utilized with applicable interest is not paid within repayment terms then over due charges and other applicable penal charges would be levied on the due amount of the Defendants.

e) The Defendants have executed the documents infavour of Plaintiff Bank shown in the list. Schedule property is also mortgaged to the Plaintiff Bank by way of Registered Mortgage Deed dated 24.01.2017, vide document No.BIJ-I-17556-17, registered before Sr. Sub-Registrar, Vijayapura.

8.01. *The Plaintiff Bank has produced the below mentioned documents viz.,*

a) Power of Attorney executed infavour of PW1 at ExP1. This document speaks about the authority delivered to PW1 to represent the Plaintiff Bank.

b) Credit Facility Application Form with Key fact Statement at ExP2. This is a document which is shown to have executed by the Defendants. This document speaks that the Defendants have applied for grant/sanction of Credit facility loan to them. Even this document contained Hypothecation Deed. Relevant Columns of this document are blank. This Hypothecation Deed is silent withregard to Repayment

Schedule and agreed rate of interest to be paid by the Defendants towards/for repayment of the loan dues. More Importantly this document also do not evidences that the Defendants have agreed to repay the said loan dues.

c) Registered Mortgage Deed dated 24.01.2017 at ExP3. Though this document speaks about execution of Mortgage by the Defendants infavour of the Paintiff Bank, inrespect of their land, but this document also do not speak about repayment schedule as well as rate of interest agreed by the Defendants to repay the loan dues.

d) Registered Correction Deed dated 28.01.2017 at ExP4 and Registered Correction Deed dated 06.02.2017 at ExP5. Even these documents are silent about repayment schedule and agreed interest.

e) Sanction Letter dated 11.01.2017 at ExP6. Basically this document is a communication inbetween the superior officials of the Plaintiff Bank to the Branch Manager. Merely on obtaining the thumb impression of *the Defendants, the said document will not part take the character of Agreement.*

Even this document doesnot speak about Repayment Schedule, but it speaks about the rate of Interest.

8.02. *Though it is contended by the Plaintiff Bank in Para No 4 of the Suit Plaint that, the Defendants have agreed to repay the amount by way of agreed terms of the sanction letter dated 11.01.2017 with interest and other allied charges applicable. But no such terms of agreement are forthcoming in the Sanction letter.*

8.03. *When the Plaintiff Bank has failed to show that the Defendants have agreed to repay the loan dues with interest, by showing that the Repayment Schedule and agreed rate of interest for repayment of the loan dues, then such agreement will not lead to a binding contract, thus renders such Agreements unenforceable in law.*

9. *Thus the Plaintiff Bank has utterly failed to prove that the Defendants have agreed to repay the loan dues with interest and other charges, as per the terms of Credit facility; and have failed to repay the said loan dues with interest. In the consequencies, the Plaintiff Bank will not be entitle to recover the loan dues from the Defendants, in the absence of any specific terms of repayment; and repayment with agreed rate of interest.*

Hence, I answer Point No.1 in the ***NEGATIVE.***

10. Point No.2:

In view of my findings on Point No 1 in the Negative, I proceed to pass the following:

O R D E R

The Suit of the Plaintiff Bank is hereby dismissed with cost.

Draw Decree accordingly.

[Dictated to the Stenographer directly on computer, typed by him, script corrected and then order pronounced by me in the Open Court on this ***01st*** *day of* ***July, 2026.****]*

[Abdul-Rahiman. A. Nandgadi]
II Addl. District & Sessions and Spl. Judge, Vijayapura.

ANNEXURE

List of witnesses examined for the Plaintiff:

PW1 : Vishwadeep S/o Suresh Bahosale.

Documents exhibited for the Plaintiff:

Ex.P1 : C.C. of Power of Attorney

Ex.P2 : Credit Facility Application Form Form wit Key fact statement.

Ex.P3 : Registered Mortgage Deed

Ex.P4 & 5 : Registered correction Deed

Ex.P6 : Sanction Letter

Ex.P7 : Office Copy of Legal Notice

Ex.P8 : Loan Account Statement

Ex.P8(a) : Certificate U/Sec.2(A) of Banker's Book

Witnesses examined for the Defendants:

- Nil -

Documents Exhibited for the Defendants:

- Nil -

[Abdul-Rahiman. A. Nandgadi]
II Addl. District & Sessions and Spl. Judge, Vijayapura