IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE,
(FAST TRACK COURT)
KANNIYAKUMARI AT NAGERCOIL.

Present: **Thiru S.Giri., B.Sc.M.L.,**
Additional District & Sessions Judge,
Nagercoil.

Tuesday, the 25th day of November 2025.

Appeal Suit No.21 of 2024
CNR.No.TNKK01-003720-2022

Indian Overseas Bank,
Government Polytechnic Branch,
Konam rep. by its
Branch Manager ... Appellant/Plaintiff

-Vs-

1) Andrew Nesa Ruban
2) Prem Anand ... Respondents/Defendants

On appeal from the Judgment and Decree dated 26.10.2021 in O.S No. 394 of 2018 of the Special Judge for Forest offence Cases, Nagercoil.

Indian Overseas Bank,
Government Polytechnic Branch,
Konam rep. by its
Branch Manager ... Plaintiff

-Vs-

1) Andrew Nesa Ruban
2) Prem Anand ... Defendants

This Appeal Suit came on 29.10.2025 before this Court, for final hearing in the presence of Thiru. K.Dhanujeyan, Advocate for the appellant and 1st Respondent died not repressed on 24.03.2025. 2nd Respondent called absent set exparte on 04.03.2024, and upon hearing the arguments on Appellant side and on perusal of the grounds of appeal and the materials available on record and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

This appeal has been preferred by the Appellant/Plaintiff against the Decree and Judgment passed by the learned Special Court for forest offences, Nagercoil in O.S.No.394 of 2018 on 26.10.2021.

2. **The averments of the Plaint are briefly set out as follows:-**

The plaintiff is a body corporate constituted under the Banking companies (Acquisition and Transfer of Undertakings) Act 1970 having its Head Office at Anna Salai, Chennai and having a branch at Government Polytechnic College Branch, Konam, Nagercoil amongst other places. Its branch Manager represents the plaintiff. On 21.05.2014, the 1st defendant applied for a loan of

Rs.10,00,000/- from the plaintiff for purchasing a Nissan Sunny car. On 23.05.2014 the plaintiff sanctioned Rs.8,50,000/- to the 1st defendant for purchasing the said vehicle. As security for the loan, on 23.05.2014, the 1st defendant executed a demand promissory note for Rs.8,50,000/- in favour of the plaintiff. The plaintiff issued the D.D in favour of the supplier M/s Win Motors, Nagercoil and the said supplier delivered the vehicle to the 1st defendant. The 1st defendant executed an agreement of hypothecation dated 23.05.2014, in favour of the plaintiff. The 1st defendant agreed to repay the loan in 60 monthly installments of Rs.18,375/- inclusive of interest at the rate of 10.75% with monthly rests or at such rates and rests as may be revised by the bank on its own or as per the instruction or Reserve Bank of India from time to time. The 2nd defendant stood as guarantor for the loan availed by the 1st defendant, who executed a guarantee agreement dated 23.05.2014 in favour of the plaintiff. The defendants did not repay the loan as promised by them and defaulted repayments. So, the plaintiff recalled the loan and requested the defendant to close the account. The plaintiff sent the suit notice to the defendants on 07.07.2017, but the defendants failed to close the loan. The defendants are not entitled for any benefits under any Debt Relief Acts as the plaintiff bank is a nationalized one and the defendants do not fall under any of the category defined in the Act. The revival letters dated 04.08.2016 and 24.03.2017 were executed by the 1st and 2nd defendants respectively in favour of the plaintiff bank. An amount of Rs.7,26,960/- is due to the plaintiff bank from the defendants as per the certified extract of the statement of accounts and hence, the present suit.

3. **Written statement filed by the 1st defendant is as follows:-**

The written statement filed by the 1st defendant, is adopted by the 2nd defendant. It is submitted that there was some delay in repaying the monthly installments by the defendant, but without issuing proper demand notice and without adhering the judicial guidelines, the plaintiff forcibly took possession of the vehicle bearing number TN74AH-2299 purchased by this defendant with the financial assistance rendered by the plaintiff. Even though the plaintiff has taken possession of the vehicle, it has suppressed the details of seizure of the vehicle. The defendant is unaware of the act of recall of the loan and the suit notice referred in the plaint. The plaintiff is ineligible to claim any amount from this defendant. The suit is not at all maintainable as the plaintiff has unlawfully repossessed the vehicle with the help of hired hooligans for which the loan was granted. Proper statement of accounts is also not furnished by the plaintiff along with the suit, regarding the repossessed vehicle. There is no cause of action to file the suit. Suppression of material facts regarding the repossession of the vehicle and the follow-up acts cast suspicion about the genuineness of the claim by the plaintiff and hence the suit is liable to be dismissed with costs.

4. The trial Court framed the following issues:-

1) Whether the plaintiff repossessed the vehicle?

2) Whether the plaintiff furnished correct statement of account?

3) Whether the plaintiff is entitled for the suit claimed amount?

4) To what other reliefs the plaintiff is entitled for?

As per Order XIV Rule 5 of C.P.C., additional issues are framed as follows:

5) Whether the revival letters were executed by the 1st defendant and the 2nd defendant on 04.08.2016 and 24.03.2017 as pleaded by the plaintiff ?

6) Whether the suit is time-barred?

5. On 24.03.2025 Appellant counsel filed memo stating that Appeal against 1st Respondent is not repressed. Memo Recorded. 2nd Respondent called absent set exparte on 04.03.2024.

6. Before the trial court, on the side of the plaintiff, one Mr. Inigo Julian, Branch Manager, Indian Overseas Bank, G.P.T. Branch, Konam was examined as P.W.1 and Exts. A.1 to A.10 were marked. Though sufficient time and opportunities were given, no witnesses were examined and no documents were marked on the side of the defendants.

7. The learned Special Judge, for forest offence Nagercoil, on consideration of oral and documentary evidence has chosen to dismiss the suit. Aggrieved against the same, the appellant/defendant has filed this appeal with following grounds:-

The judgment and decree of the lower court are against law, facts, evidence and merit of the case. The lower court has overlooked statutory provisions and has substituted its own reasoning to dismiss the suit filed by the appellant/plaintiff. The lower court ought not to have framed additional issue no.5 when there was no pleading by the respondents/defendants regarding the revival letters.

The finding given by the lower court with respect to the revival letters is repugnant to statutory provisions. The defendants have not questioned the execution of revival letters marked as exhibits A7 and A8. Under the Bankers' Books Evidence Act, these documents are conclusive proof of execution by the respondents/defendants. As a matter of practice, the signature of the borrowers are obtained in printed forms. Such printed forms have dots to be filled up with necessary particulars. The lower court has found fault with the practice of obtaining signature on dotted lines and taken as a ground for dismissing the suit.

The lower court ought not to have dismissed the suit for non-examination of the then Branch Manager who obtained the signature in exhibits A7 and A8. There is no rule of law that mandates the examination of Branch Manager in similar contexts. The conclusion arrived at by the lower court relating to the issue of “limitation” is erroneous. As a matter of fact, the date of loan was on 23.05.2014. It was repayable in sixty monthly installments from the month on June 2014. However, the suit was filed before the expiry of repayment period. Therefore, the suit was filed within time. The lower court could not have undue importance to exhibits A7 and A8 when the suit was filed before the expiry of the repayment period. To be specific, exhibits A7 and A8 were not filed by the plaintiff to save the period of limitation. The lower court has failed to relate the irresponsible attitude of the defendants. Even though the defendants filed their written statement, they never turned up before the lower court to substantiate the plea raised by them. The judgment and decree passed by lower court is against the principles of equity and good conscience. For these and other reasons to be submitted at the time of hearing, it is most humbly prayed that this Court be pleased to set aside the judgment and decree of the lower court dated 26.10.2021 in O.S.No.394/2018 and to allow and there by render justice.

8. Having regard to the pleadings, evidence and the submissions made by the Appellant counsel appearing for Appellant side the following points arise for consideration in this Appeal. Whether the appeal has to be allowed?

9. In this appeal the parties neither let in oral evidence nor marked any additional documents. For the sake convenience the parties are referred to as per their array in the suit as defendants and plaintiff.

Heard the Appellant counsel. Documents perused.

10. **Point:-** The learned counsel for the appellant argued that branch Manager represents the plaintiff. On 21.05.2014, the 1st defendant applied for a loan of Rs.10,00,000/- from the plaintiff for purchasing a Nissan Sunny car. On 23.05.2014 the plaintiff sanctioned Rs.8,50,000/- to the 1st defendant for purchasing the said vehicle. As security for the loan, on 23.05.2014, the 1st defendant executed a demand promissory note for Rs.8,50,000/- in favour of the plaintiff. The plaintiff issued the D.D in favour of the supplier M/s Win Motors,

Nagercoil and the said supplier delivered the vehicle to the 1st defendant. The 1st defendant executed an agreement of hypothecation dated 23.05.2014, in favour of the plaintiff. The 1st defendant agreed to repay the loan in 60 monthly installments of Rs.18,375/- inclusive of interest at the rate of 10.75% with monthly rests or at such rates and rests as may be revised by the bank on its own or as per the instruction or Reserve Bank of India from time to time.

So, the plaintiff recalled the loan and requested the defendant to close the account. The plaintiff sent the suit notice to the defendants on 07.07.2017, but the defendants failed to close the loan. The revival letters dated 04.08.2016 and 24.03.2017 were executed by the 1st and 2nd defendants respectively in favour of the plaintiff bank. An amount of Rs.7,26,960/- is due to the plaintiff bank from the defendants as per the certified extract of the statement of accounts.

11. On the side of the plaintiff, Ext.A1 is the Loan Application, dated 21.05.2014. Ext.A2 is the Sanction letter, dated 23.05.2014. Ext.A3 is the Demand Promissory Note, dated 23.05.2014. Ext.A4 is the Deed of Hypothecation, dated 23.05.2014. Ext.A5 is the Repayment schedule, dated 23.05.2014. Ext.A6 is the Guarantee agreement dated 23.05.2014. Ext.A7 is the Revival letter dated 04.08.2016. Ext.A8 is the Revival letter dated 24.03.2017.

Ext.A9 is the Advocate notice dated 07.07.2017. Ext.A10 is the Bank statement. On the side of the defendants, no witnesses and no documents were marked.

12. The Appellant has to win his case on his own strength. He has to stand or fall on his own merits, who cannot try to thrive upon the lacunae of the defendants to get a decree in his favour. The case of the plaintiff is that the loan was taken on 23.5.2014 and hence the period of limitation ends on 23.05.2017. But the plaintiff bank relied upon the revival letters dated 04.08.2016 and 24.03.2017 executed by the 1st and 2nd defendants respectively, to claim that the suit is filed within time, that was, on 11.10.2018.

13. Such revival of limitation cannot be a matter of assumption and presumption as it is the money matter, it must be expressed in clear cut terms. The revival letters which were marked by the Appellant bank as exhibits A7 dated 04.08.2016 and Ex.A8 dated 24.3.2017 are vague, which are not expressing the clear cut willingness of the 1st or the 2nd respondent to revive the outstanding amount payable by them on 04.08.2016 and 24.03.2017 respectively, for the purpose of limitation. If they were actually executed on

04.08.2016 and 24.03.2017, why the loan amount due as on those particular days were not mentioned by the banker in the said letters? Exhibits A7 and A8 appeared to be signed on dotted line.

14. Though the suit was filed during the year 2018, the concerned bank Manager who got the revival letters during the year 2016 and 2017 was not examined before the Court to bring out the due execution of the revival letters on the said dates as pleaded by the plaintiff. When the Appellant bank took no attempts to clarify on this fact, it appears that the said letters were probably sprouted from the several blank forms in which the respondents 1 and 2 might have asked to sign at the time of sanctioning the loan itself, that was on 23.05.2014 which are now used to create revival letters as if they were executed on 04.08.2016 and 24.03.2017 by the respondents. The respondents did not deny the availing of the car loan from the Appellant bank.

15. The respondents have pleaded that without issuing proper demand notice the Appellant forcibly took possession of the vehicle purchased by the 1st defendant with the financial assistance of the Appellant bank and they are

unaware of the act of recall of loan and the suit notice issued by the Appellant bank. The oral evidence of the Appellant bank Manager/P.W.1 there is no denial of such seizure of vehicle by the bank. The advocate notice dated 07.07.2017 which is marked as Ex.A9 relied upon by the Appellant is not accompanied by any postal receipts or the postal acknowledgment cards. Hence, service of suit notice is not proved by the Appellant bank.

16. The respondents suppression of material facts regarding repossession of the vehicle raises suspicion about the genuineness of the Appellant's claim who have not denied such re-possession throughout the trial and even during the final arguments. It is very much possible for the Appellant bank to prove no seizure was done by them, their inaction leads to adverse inference only. The court has framed an issue as to whether the Appellant re-possessed the vehicle, the Appellant's silence on this fact-in-issue has to be decided against the bank only. The Appellant bank manager failed to explain about their re-possession, he being not cross-examined by the respondent side, will not save the stand taken by the Appellant.

17. Revival letters of 1st and 2nd defendants on 04.08.2016 and on 24.03.2017 are to be proved clearly. The revival letters which were marked by the plaintiff bank as Exhibits A7 dated 04.08.2016 and Ex.A8 dated 24.03.2017 are vague, which are not expressing the clear cut willingness of the 1st or the 2nd defendant to revive the outstanding amount payable by them on 04.08.2016 and 24.03.2017 respectively. For the purpose of Limitation if they were actually executed on 04.08.2016 and 24.03.2017, why the loan amount due as on those particular days were not mentioned by the banker in the said letters? Exhibits A7 and A8 appeared to be signed on dotted line.

18. Ex.A7 and Ex.A8 execution are not proved by the Appellant in a proper manner. The Appellant bank has not proved that the suit is filed within the period of limitation. Without issuing proper demand notice, the Appellant forcibly took possession of the vehicle purchased by the 1st respondent with the financial assistance of the Appellant bank. The Respondents are unaware of the act of recall of loan and the suit notice issued by the Appellant bank.

19. Similarly notice was issued to the respondents. But it was not supported by the receipts of Acknowledgments. The trial court has given reasonable findings. Therefore no need to interfere with the reasoned findings of the trial court judgment. The Appellant is not proved this case to the satisfaction of the court. Therefore the appeal suit is dismissed.

20. In the result, the judgment and decree passed by the Principal Sub-ordinate Judge at Nagercoil O.S.No.257 of 2017 dated 12.04.2018 is confirmed and the appeal is dismissed with costs.

Dictated to the Steno-typist and taken down by her in shorthand, transcribed and typed and edited by her in computer, corrected and pronounced by me in open court on this 25th day of November, 2025.

S GIRI

Digitally signed by S GIRI
Date: 2025.11.25 21:18:16 +0530

Additional District & Sessions Judge,
Nagercoil.

1. Witnesses examined by the Appellant side: Nil

2. Witnesses examined by the respondents side: Nil

3. Exhibits marked by the appellant side: Nil

4. Exhibits marked by the respondents side: NIL

S GIRI

Digitally signed by S GIRI
Date: 2025.11.25 21:18:23 +0530

A.D.J.