IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, ORATHANADU.

Presence: **Thiru. K.CHELLIAH., B.A.,B.L., L.L.M.,Dip.,J.J.J.P.,**

District Munsif cum Judicial Magistrate, Orathanadu.

Dated this Monday, the 31st day of July 2023

ORIGINAL SUIT No.129/2021

(C.N.R. No.TNTJ0B-000484-2021)

Indian Overseas Bank, Melaulur Branch
Represented by its Branch Manager
Mr.Muthukrishnan ...Plaintiff

/Vs/

1.N.Ponnammal,(80/2021)
W/o.Natchatiram,
Ammaiyanpatti,Karukkadipatti,
Orathanadu Taluka,
Thanjavur District. ... 1st Defendant

2. A.Natchatiram,(85/2021)
Father name not unknown,
Ammaiyanpatti,Karukkadipatti,
Orathanadu Taluka,
Thanjavur District. ... 2nd Defendant

This suit has came up before me for final hearing on this Monday the 31^{1st} day of July 2023 in the presence of the learned counsel for the plaintiff, Advocate **Thiru.R.Ganesan., B.A., B.L.,** and the defendants, *albeit* service of summons, had failed to appear and thus, was set *exparte* and stood *exparte* till date, and upon perusing the case records, this Court today delivers the following,

JUDGMENT

1. This suit is filed by the plaintiff bank seeking recovery of money of Rs. 87,087/- with interest at the rate of 9.5% per annum from the date of institution of suit till the date of realization of the suit claim and costs of the suit.

THE GRAVAMEN OF THE PLAINTIFF:

2. The 1st defendant principal debtor borrowed on application dated 10.08.2010 from the plaintiff bank, a dairy based agricultural short term credit loan of Rs.50,000/- agreeing to repay the same with interest at rate of 9.5% p.a or rates in force as and then as per R.B.I Guidelines; and therefor, the 1st defendant principal debtor executed with the plaintiff bank, a Demand Promissory Note dated 10.08.2010 and also an Agreement of Hypothecation dated 10.08.2010; and the second defendant surety executed a Guarantee Agreement dated 10.08.2010 with the plaintiff bank towards payment by the 1st defendant principal debtor to the plaintiff bank, the said loan. The 1st defendant revived vide Revival Letters dated 06.08.2013, 04.08.2016 and 31.07.2019, the said loan, time and again and thus, the loan stood alive. But later, the defendants *albeit* periodical demands, defaulted in payment of dues and made only mere evasive replies that he would close the loan very shortly and thus, as on 25.01.2021, the due outstands Rs.87,086.60/- but the defendants, *albeit* reminders, have failed to repay with the plaintiff bank, the same and thus, the plantiff bank has come up before this Court with the instant suit seeking recovery jointly and severally from both the defendants, the said Rs.87,087/- (as Rs.87,086.60/-- rounded off) with subsequent interest at rate of 9.5% p.a from date of institution of suit till date of judgment and with that at rate of 9.5% p.a from the date of decree till date of realisation of the suit claim alongwith the costs of the suit.

3. On the side of the plaintiff, PW1 was examined and through him Exhibits A1 to A9 were exhibited. After due service of summons on the defendants, despite calling, they have failed to appear before this Court and thus, they were set exparte on 20.09.2022 and they remained as such throughout the proceedings till date.

POINT FOR DETERMINATION:

4. The point for determination transpiring herein is that ***whether the plaintiff is entitled to the suit claim and costs as prayed for?***

DISCUSSION, DECISION AND REASONING THEREOF:

5. The gravamen of the plaintiff bank is that the 1st defendant principal debtor borrowed on ExA2 application dated 10.08.2010 from the plaintiff bank, a dairy based

agricultural short term credit loan of Rs.50,000/- agreeing to repay the same with interest at rate of 9.5% p.a or rates in force as and then as per R.B.I Guidelines; and therefor, the 1st defendant principal debtor executed with the plaintiff bank, ExA3 Demand Promissory Note dated 10.08.2010 and also ExA4 Agreement of Hypothecation dated 10.08.2010; and the second defendant surety executed on 10.08.2010, ExA5 Guarantee Agreement with the plaintiff bank towards payment by the 1st defendant principal debtor to the plaintiff bank, the said loan. The 1st defendant revived vide ExA6,7 and 8 Revival Letters dated 06.08.2013, 04.08.2016 and 31.07.2019 respectively, the said loan, time and again and thus, the loan stood alive. But later, the defendants *albeit* periodical demands, defaulted in payment of dues and made only mere evasive replies that he would close the loan very shortly and thus, as on 29.01.2021, the due outstands Rs.87,086.60/- as reflected by ExA9 Statement of Accounts but the defendants, *albeit* reminders, have failed to repay with the plaintiff bank, the same and thus, the both the defendants are jointly and severally liable to repay with the plaintiff bank, the suit claim of Rs.87,087/- (as Rs.87,086.60/- rounded off) with subsequent interest at rate of 9.5% p.a from date of institution of suit till date of judgment and with that at rate of 9.5% p.a from the date of decree till date of realisation of the suit claim alongwith the costs of the suit.

6. The Branch Manager of the Plaintiff bank, one Selvakumar entered into box as PW1 and establishing his identity vide exhibition of his **ExA1 plaintiff Bank Branch Manager Identity Card,** deposed on Proof Affidavit in consonance with the plaint averments and exhibited 9 Exhibits. The **ExA2 Loan Application, dated 10.08.2010, the ExA3 Demand Promissory Note dated 10.08.2010 and the ExA4 Agreement of Hypothecation dated 10.08.2010** vividly reflects the ***averred factum of borrowal*** by the 1st defendant from the plaintiff bank, a dairy based agricultural short term credit loan of Rs.50,000/- repayable by him with interest at rate of 9.5% p.a or rates in force as and then as per R.B.I Guidelines. **ExA6, 7 and 8 Revival Letters dated 06.08.2013, 04.08.2016 and 31.07.2019** respectively vividly reflects ***life of loan as on date of instituton of suit***. The **ExA5 Guarantee Agreement,** by expressing a continuing guarantee of the instant loan, which stood alive throughout the period since date of availing it and till date of institution of

the instant suit, and by standing undisputed by defendant by entering into box, it's nexus testified to be with loan of the instant suit, vividly reflects a ***continuing guarantee by the 2nd defendant surety to repayment by the 1st defendant principal debtor to the plaintiff bank, the said loan arising from ExA2 Loan Application and ExA3 Promissory Note.*** **ExA 9 Statement of Accounts** supported by the oral testimony of PW1 Branch Manager vivdly reflects that ***as on 25.01.2021, the due outstands Rs.87,087/- and non-repayment***, despite reminders, ***thatof, till date of institution of suit.***

7. Thus, this Court finds, that ***both the 1st defendant principal debtor and the 2nd defendant surety are jointly and severally liable to repay the plaintiff bank, the suit claim of Rs.87,087/-*** and in consideration of the nature and purpose of laon, vocation of the 1st defendant principal debtor and other facts and circumstances of the case, that ***both the defendants are jointly and severally liable to pay the plaintiff subsequent interest on the original principal sum of Rs.50,000/-, at same rate of 6% from the date of institution of suit till date of judgment and from date of decree till realisation of same.*** Considering the nature and purpose of loan, vocation of the 1st defendant principal debtor, other facts and circumstances of the case and nature of disposal of suit, this Court finds that costs need not follow the suit or otherwise and the plaintiff bank shall bear it's own costs of the suit.

8. In fine, this suit is partially decreed as follows., viz., both the defendents are directed to pay jointly and severally to the plaintiff bank, the suit claim of Rs.87,087/- alongwith subsequent interest on the original principal sum of Rs.50,000/- at same rate of 6% from the date of institution of suit till date of judgment and from date of decree till realisation of same. The plaintiff bank shall bear it's own costs of the suit.

Pronounced by me Open Court this Monday, the 31st day of July 2023.

K CHELLIAH
Digitally signed by K CHELLIAH
Date: 2023.07.31 17:33:01 +0530

District Munsif cum Judicial Magistrate,

Orathanadu.

ANNEXURE:

I. List of witnesses examined by the Plaintiff's Side:

S.No	Rank of Witness	Name of Witness	Nature of Witnesses
1	PW1	K.Selvakumar	Branch Manager, Indian Overseas Bank, Melaulur Branch.

II . List of Documents filed by Plaintiff's Side

S. No	Exhibit No.	Date of Document	Name of Document	Nature of Document
1.	Ex.A1	-	Identity card of PW1 Selvakumar	Photostat compared and verified with original
2.	Ex.A2	10.08.2010	Loan application	Original
3.	Ex.A3	10.08.2010	Demand Promissory Note	Original
4.	Ex.A4	10.08.2010	Hypothecation Agreement	Original
5.	Ex.A5	-	Guarantee agreement	Original
6.	Ex.A6	06.08.2013	Revival Letter executed by 1st defendant	Original
7.	Ex.A7	04.08.2016	2nd Revival Letter executed by 1st defendant	Original
8.	Ex.A8	31.07.2019	3rd Revival Letter executed by 1st defendant	Original
9.	Ex.A9	25.01.2021	Statement of Accounts	Computerised True Copy

III. List of witnesses examined by the Defendants Side -

Nil

IV. List of Documents filed by the Defendants side -

Nil.

K CHELLIAH Digitally signed by K CHELLIAH Date: 2023.07.31 17:33:11 +0530

District Munsif cum Judicial Magistrate,

Orathanadu.

<u>Fair/Draft Judgment</u>
O.S.129/2021
(C.N.R. No.TNTJ0B-000484-2021)

Dated:31.07.2023