IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C., AT PUTTUR, D.K.

: PRESENT :

Sri Prakash P.M., M.B.A., LL.B.,
Principal Civil Judge and J.M.F.C.,
Puttur, D.K.

Dated this the 12th day of November 2018.

O.S. No. 01/2018.

Plaintiff : **Syndicate Bank.,**
A body corporate constituted under the Banking companies (Acquisition & Transfer Undertakings) Act, 1980 having its head Office at Manipal an amongst other branches A branch office at Savanoor , Puttur Taluk, Represented by its Manger/GPA holder Sri. Chethan Patil, S/o Manjunath Patil, Aged about 32 years,R/o Samethadka, Puttur.

(Rep. by Sri P.I.B. Advocate)

-AND-

Defendants : 1. **Ibrahim B.K.,**
S/o Sabu Yane Ismail,
Aged about 56 years,
Kumba Moole house,
Palthady Village, Puttur Taluk,

2. **Arabi Beary,**
Aged about 62 years,
S/o Kunhimonu,
Saralimoole House,
Palthadi Village,
Puttur Taluk.

(D1 Rep. by Sri.K.S.P Advocate, D2- Exparte)

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Date of institution of the suit	:	01-01-2018
Nature of the Suit	:	Money suit
Date of the commencement of recording of the evidence	:	26-06-2018
Date on which the Judgment was pronounced	:	12-11-2018

		Year/s	Month/s	Day/s
Total Duration	:	00	10	11

(PRAKASH P.M.)
Prl.Civil Judge and J.M.F.C.,
Puttur, D.K.

JUDGMENT

The plaintiff Bank has filed the present suit against the defendants for recovery of loan amount of Rs.3,31,876/- with interest thereon at the rate of 16.80% p.a. from the date of the suit till its realization.

1) The brief facts of the plaintiff's case are as follows.

The plaintiff is a nationalized Bank, Constituted under the Banking Companies Act and doing Banking Business. Defendant no.1 has approached the plaintiff bank on 09-09-2011 with the request for grant of loan facility for the development of his agricultural property shown in the A schedule by offering a schedule property as security towards the said borrowal. After the mutual discussion the plaintiff bank has agreed to advance the loan amount of Rs. 1,15,000/- to him and on that date of 1st defendant himself has executed declaration in form 3 creating mortgage of 'A' schedule property as security for repayment of said liability and also deposited the original title deed pertaining to 'A' schedule property more fully described in 'B' schedule property with an intent to create security towards the loan advanced by the plaintiff bank. Accordingly, sum of Rs. 1,50,000/- was advanced to the 1st defendant by the plaintiff bank on 12-09-2011 under the loan A/C no: 02128230000244 and evidencing the said borrowal 1st defendant has executed the loan agreement wherein he has agreed to repay the said liability in 5 yearly installment of Rs. 30,000/- each along with interest at 12.75%p.a. Compounded half year rest and also a penal interest at 2% in case of default. As per the said agreement the 1st installment was due on 12-09-2012 and last installment on 12-09-2016. The 2nd defendant stood as Solvent Guarantor for the repayment of said liability by executing a deed of guarantee on the same date. 1st defendant thereafter committed default in repayment of said liability in spite of demands made by the plaintiff bank except executing an acknowledgement of liability on 31-12-2014. Hence, both the defendants are liable to repay the said liability. The rate of interest has been revised thereafter and present rate of interest is 9.75%. As per the account extract a sum of Rs. 3,22,430/- is due and outstanding as on 30-09-217 . Hence this suit.

2) On the service of suit summons, the defendant no.1 appeared through his counsel and filed his written statement. The Defendant no.2 have not appeared the court and placed exparte.

In the written statement the defendant no.1 stated that, he availed the loan for the development of agricultural property to dig the bore-well to advance the loan of Rs. 1,50,000/- from the plaintiff bank. 1st defendant has not executed declaration in form no.3 creating mortgage in favour of plaintiff bank at the rate of 12.75%p.a. Further he denied that, on 12-09-2011 the 1st defendant has executed declaration in form no.3 creating mortgage in favour of the plaintiff bank and thus agreed to repay the loan amount in 5 yearly installments of Rs.30,000/- each installments and the last installments is false due on or before 12-09-2016. 1st defendant has made repayment in time and cleared the loan entirely long back in the year of 2016 September itself. Final installments of the loan has been paid by the defendant and thereafter there is no occasion to visit the plaintiff bank after clearing the loan and defendant has been demanding for the clearance certificate, but the bank officials have been postponing the issuance of clearance certificate. However believing the words of the manager defendant did not press much for issuance of loan clearance certificate. he denied that execution of alleged acknowledgement of liability letter in favour of the plaintiff bank. When the loan was already paid long back, visiting the plaintiff bank again and again and executing the acknowledgement of liability is unbelievable story created by the plaintiff bank. The signature found in the alleged documents do not belongs to the 1st defendant. Hence the suit is clearly barred by time and there is no question of claiming any money, which was already cleared and further when it is time barred. Further denied that, plaintiff made repeated demands and the bank had maintained accounts which allegedly shows outstanding money payable from the defendants etc., He denied the alleged accounts claimed in the plaint. Therefore, on all these grounds it is prayed for dismissal of suit with cost.

3) On the basis of the pleadings of both side parties, the following issues were framed:

:: **ISSUES** ::

1) Whether the plaintiff Bank proves that the defendant no.1 has taken loan for development of his agriculture property of Rs. 1,50,000/- from its on interest at the rate of 12.75%P.A and the defendant no.2 has stood as solvent guarantor to the defendant no.1 for the said loan?

2) Whether the defendant no.1 proves that he has cleared the entire loan in the year 2016 September and he has not obtained loan clearance certificate from the plaintiff bank?

3) Whether the defendant no.1 proves that the signature found in the acknowledgement of liability are not belongs to him?

4) Whether the defendant no.1 proves that the suit is barred by law of limitation?

5) Whether the plaintiff bank proves that the defendants were due for Rs. 3,31,876/- to it as on the date of the suit?

6) Whether the plaintiff bank is entitled for recovery of the loan amount as claimed for?

7) What order or decree ?

4) The plaintiff bank in order to substantiate its case has got examined it's Branch Manager as P.W.1 and got marked the documents as EX.P.1 to 12 and got closed its side. The defendant has submitted that they have no evidence on his behalf. Hence, case was posted for arguments.

5) I have heard arguments from both side counsels and perused entire case file.

6) On the basis of available evidence on the record, and arguments advanced from both sides, I have answered the above said issues as follows;

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Negative.
Issue No.3	:	In the Negative.
Issue No.4	:	In the Negative.

Issue No.5	:	In the Affirmative.
Issue No.6	:	In the Affirmative
Issue No.7	:	As per the final order, for the following reasons.

:: **R E A S O N S** ::

7) **ISSUE NO.1 to 3**:- The plaintiff bank in order to substantiate its case has got examined it's branch Manager Chethan Patil ., as P.W.1, and got marked the documents as Ex.P.1 to 12.

8) The P.W.1 who is the branch manager has deposed in his evidence that the defendants have availed loan of Rs.1, 50,000/- from the plaintiff bank for development of 1st defendant's agricultural property. 1st defendant himself executed declaration in form no.3 creating mortgage of 'A' schedule property as security for repayment of the said liability. Accordingly, the sum of Rs. 1,50,000/- was advanced to the 1st defendant and executed the loan agreement wherein he has agreed to repay the said liability in 5 yearly installments of Rs. 30,000/- each along with interest of 12.75% p.a compounded half year rest and also penal interest at 2% in case of default. As per the said agreement 1st installments was due on 12-09-2012 and last installments on 12-09-2016. 2nd defendant stood as solvent guarantor for the said liability by executing the deed of guarantor on the same date. 1st defendant thereafter committed default in

repayment of said liability inspite of demands made by the plaintiff bank except executing an acknowledgement of liability on 31-12-2014. Hence both the defendants are liable to repay the said liability.

9) In support of plaintiff case the documents Ex.P.1 to 12 are produced. Ex.P.1 is Agreement for agriculture advances executed by the defendant No.1 in favour of the plaintiff bank agreeing to repay the loan amount of Rs.1,50,00/- with interest at the rate of 12.75% and also offering the suit schedule property as security to the loan borrowed, Ex.P2 is the Deed of Guarantee for Agriculture Advances dated 12-09-2011 executed by the defendant No.2 in favour of the plaintiff bank as guarantor to the loan borrowed by the defendant No.1, Ex.P3 is the Form of Declaration executed by the defendant No.1 in favour of plaintiff bank offering schedule property as security towards the repayment of loan , Ex.P4 is the Letter of Acknowledgement dated 31-12-2014 executed by the defendant No.1 in favour of the plaintiff bank acknowledging the outstanding liability of loan, Ex.P5 is the Loan Application submitted by the defendant No.1, Ex.P.6 is the loan application submitted by the defendant No.2 seeking availment of loan, Ex.P.7 is the Letter written by plaintiff bank to the Tahashildar, Puttur requesting them to make entries in the in the revenue documents towards the availement of the loan from the Bank, Ex.P8 is the Acknowledgement given by the Tahashildar office, Ex.P.9 is

the RTC Extract of suit schedule property bearing S.No.133/1(P2) measuring 2.49 acres which is in the name of the 1st defendant. Ex.P.10 is the Account Extract, Ex.P.11 is the GPA, Ex.P.12 is the Saguvali Chit dated 26-07-1996 which discloses that suit schedule property was granted by the Tahasilder Puttur as per SDS.NCR/SR.63/91-92.

10) It is pertinent to note that the defendant no.1, who is the borrower of the loan from the plaintiff Bank appeared before the court, in his written statement, he admitted the availement of loan Rs. 1,50,000/- for the purpose of development of his agricultural property to the borewell from the plaintiff bank. But he denied the execution of declaration in form no.3 creating the mortgage in favour of the plaintiff bank with interest at 12.75%p.a. also denied the repayment of loan under installments of Rs. 30,000/-, further denied that, each installment and the last installment is fall due on or before 12-09-2016. It is the contention of the defendant No.1 that, after availing the loans he has been making repayment in time and cleared the due amounts in 2016 September itself and final installments of the loan has been paid by the him and thereafter he has been demanding for clearance certificate, but bank officials have been postponing the issuance of clearance certificate.

11) During the cross examination Pw.1 denied the suggestion that, the defendant No.1 has repaid the loan in the month of September 2016.

Further, Pw.1 also denied the suggestions that the defendant No.1 not executed Acknowledgment of liability and other documents to the plaintiff bank, Further, he deposed that, he came to know from the media that, the Government has waived the agriculture loans and Government has not waived the agricultural development loans and till they have not received any information in that regard. The learned counsel for the defendant No.1 cross examined Pw.1 in length but nothing worth is elicited from the Pw.1 to prove that the defendant No.1 has repaid the loan amount in the moth of September, 2016 itself and the documents produced by the plaintiff bank does not belongs to defendants.

12) From the above evidence of Pw.1 it is evident that the defendant No.1 admitted the borrowing of loan from the plaintiff bank. But in order to prove his contention that he has repaid the loan amount and plaintiff bank has not issued the Clarence certificate, is not supported with any documentary evidence. In the absence of any material the contention of the defendant No.1 cannot be accepted. Furthermore, though the defendant No.1 denied the execution documents and contended that he has cleared the entire loan amount. But, in order prove the same the defendant No.1 has not stepped into the witness box. Hence, in the absence of contra evidence and documents the contentions of the defendant no.1 remains contention only without any proof. Furthermore,

the entries in the Ex.P10 account extract helpful to the case of the plaintiff and not the case of the defendants. Further, on the careful perusal of evidence of P.W.1, it is clear that his evidence is natural, probable and reliable as regard to Ex.P.1 to 10. Therefore, there is no reason to disbelieve the evidence of P.W.1 in this regard.

13) In view of above said facts and circumstance of the case, it is clear that, the evidence of P.W.1 and the documents i.e., Ex.P.1 to 10 are proved sufficiently. On the other hand defendant no.1 has utterly failed to prove that the plaintiff bank has created the documents. Hence, there is no reason to disbelieve the evidence of the P.W.1 and documents. By the evidence of P.W.1 and documents of Ex.P.1 to 10, it would be clearly proved that the defendants have taken loan of Rs. 1,50,000/- from the plaintiff bank on 12-09-2011 on interest at the rate of 12.75% p.a. Hence, I hold that the plaintiff Bank has proved that it has given a loan of Rs. 1,50,000/- to the defendants on interest at the rate of 12.75% p.a. on 12-09-2011.

14) It is the case of the plaintiff bank that as on the date of the suit the defendants were due for Rs.3,22,430/- to the plaintiff bank. In support of this contention the plaintiff bank has produced the account extract of the defendant no.1 having in the plaintiff bank. The said account extract has been marked as Ex.P.10. In said document, it reveals that the

defendants are in due of Rs. 3,22,430/- as on 30-09-2017 and interest on the above sum at 12.75%p.a. Therefore the defendants were due of Rs.3,22,430/- as on the date of the suit. The P.W.1 has also stated in his evidence with regard to this fact. Therefore, by the evidence of the P.W.1, and by the documents of Ex.P.1 to 10 it is clearly proved that the defendants are due for Rs. 3,22,430/- as on the date of the suit to the plaintiff bank. The defendant No.1 utterly failed to prove that, he has been making repayment in time and cleared the loan entirely long back in the year about 2016 September. Hence, I have answered **Issue No.1 in the affirmative, and Issue 2 & 3 in the Negative.**

15) **Issue No.4:** The defendant no.1 in his written statement contended that the suit is barred by law of limitation. It is significant to note that the loan was borrowed by defendants from the plaintiff bank on 12-09-2011. The Ex.P.4 is the acknowledgement of debt dated 31-12-2014, executed by the defendant no.1 acknowledging his liability of his outstanding loan. This suit is filed by the plaintiff bank on 01-01-2018. Though the defendant No.1 denied the execution of acknowledgment of liability i.e., Ex.P.4. But, the same was not proved by adducing his side evidence. Therefore suit is well within time and it cannot be said that suit is barred by limitations as the suit is filed within 3 years from the date of

borrowing loan and date of executing acknowledgment of debt. Hence **Issue No.4 is answered in the Negative.**

16) ISSUE No.5 and 6 : The PW-1 has stated in his evidence that the defendant has availed loan for the purpose of development of agricultural property. As regard to the current and future rate of interest are concerned, admittedly the present suit loan is availed for development of agricultural property of defendant no.1. In other words, the liability of the defendant not arises out of their trade, profession or business. Therefore, plaintiff Bank is entitled to the agreed rate of interest @ 6% per annum from the date of suit till realization of the loan. In this case plaintiff bank has proved that it has advanced a loan of Rs.1,50,000/- to the defendants on 12-09-2011. Likewise, plaintiff bank has proved that the defendants are due for Rs.3,22,430/- to the plaintiff bank as on the date of the suit. The plaintiff bank contended that after 30-09-017 if interest is added it becomes Rs.3,31,876/-. Therefore, there is no impediment to the plaintiff Bank to recover the said due amount from the defendants. Hence I have held that the plaintiff bank is entitled for recovery of the said due loan amount from the defendants. Hence I have answered **Issue No.5 and 6 in the affirmative.**

17) **ISSUE NO.7**:- For the reasons assigned on Issue No.1 to 6 , and findings given thereon, I proceed to pass following order.

:: ORDER ::

The suit of the plaintiff bank is decreed with costs.

In the result, it is held that the defendants are jointly and severally liable to pay Rs.3,31,876/- along with interest at the rate of 6% p.a. from the date of the suit till its realization, to the plaintiff bank. If defendants are fail to comply the decree then the plaintiff is at liberty to recover the same through process of court.

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer, typed by her and corrected by me and pronounced in the open Court this the 12th day of November 2018.)

(PRAKASH P.M.)
Prl. Civil Judge and J.M.F.C.,
Puttur, D.K.

:: A N N E X U R E ::

01. The list of witnesses examined on behalf of the plaintiff : -

P.W.1: Chethan Patil

02. The list of witnesses examined on behalf of the defendants: -

- NIL -

03. The list of documents exhibited on behalf of the plaintiff: -

Ex.P.1	:	Agreement for agriculture advances
Ex.P.2	:	Deed of Guarantee for Agriculture Advances
Ex.P.3	:	Form of Declaration

Ex.P.4	:	Letter of Acknowledgement
Ex.P.5	:	Loan Application
Ex.P.6	:	The loan application of the defendant No.2
Ex.P.7	:	Letter written to Tahashildar by Bank.
Ex.P.8	:	Acknowledgement of Tahashildar
Ex.P.9	:	RTC Extract of 1st defendant.
Ex.P.10	:	Account Extract.
Ex.P.11	:	GPA
Ex.P.12	:	Saguvali Chit

04. The list of documents exhibited on behalf of the defendants: -

\- NIL –

(Prakash P.M)
Prl. Civil Judge and J.M.F.C.,
Puttur, D.K.