



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE UMESH M ADIGA**

**R.F.A. NO. 100331 OF 2022 (MON)**

**BETWEEN:**

STATE BANK OF INDIA, SIDDAPUR,  
REPRESENTED BY ITS BRANCH MANAGER,  
SIDDAPUR, U.K-581355.

...APPELLANT

(BY SRI. S. L. MATTI, ADVOCATE)

**AND:**

1. SRI. UDAY S/O. RAMA NAIK,  
AGE 40 YEARS,  
R/O. BALIKOPPA. PO. BALIKOPPA,  
TQ. SIDDAPUR, U.K-581355.
2. SRI. MANJUNATH S/O. RAMA NAIK,  
AGE NOT KNOWN TO THE PLAINTIFF BANK,  
R/O. BALIKOPPA, PO: BALIKOPPA,  
TQ. SIDDAPUR, U.K-581355.

...RESPONDENTS

(BY SRI. A. A. PATHAN, ADVOCATE FOR R1 & R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED IN O.S. NO.20/2020 ON 11.02.2022 BY SENIOR CIVIL JUDGE, SIRSI, AT: SIRSI, (ITINERARY COURT SIDDAPUR) BY ALLOWING THIS APPEAL AND TO DECREE THE SUIT OF THE PLAINTIFF, IN THE ENDS OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 17.04.2025 FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:





### **CAV JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE UMESH M ADIGA)

This appeal is filed by the plaintiff, challenging Judgement and decree dated 11.01.2022 on the file of Senior Civil Judge Sirsi in O.S. No. 20 of 2020. Appellant/ plaintiff filed the suit for recovery of money and it was dismissed by the trial court. Same is challenged in this appeal.

The parties are referred to as per their ranking before the trial court.

2. Brief facts of the case are that defendant No.1 obtained a loan of Rs.13 lakhs from plaintiff-bank and he agreed to repay the said loan amount with interest at the rate of 12.40% per annum and additional interest of 2% as and when directed by the Reserve Bank of India. Defendant agreed to repay the said loan amount in 84 monthly instalments of Rs.23,770/- each; first instalment commences from July 2016 and last instalment falls on March 2023. Defendant No.2 stood as surety to the said



loan. Both have executed necessary documents in favour of the bank. The defendants were not punctual in repayment of the loan amount. Inspite repeated demands defendants did not repay loan amount as per the schedule. Therefore plaintiff issued a notice calling upon the defendants to repay the said loan amount with accrued interest. The notice was duly served on the defendants, but they failed to comply with the same. As on the date of the suit an amount of Rs.14,95,999/- was due from the defendants with interest thereon. With these reasons, the plaintiff prayed to decree the suit.

3. Defendant No. 1 filed a written statement which was adopted by defendant No. 2. Defendant No. 1 admitted obtaining of the loan and execution of the necessary documents. According to his contention, the loan amount has to be repaid in 84 monthly instalments. Before completion of the said period of repayment of the loan amount, the suit is filed. Therefore, suit is premature and not maintainable. There was no cause of action to file the



suit. Only to harass the defendants suit was filed.

Therefore, prayed to dismiss the suit.

4. The trial court framed the following issues.

(1) *Whether the plaintiff bank proves that first defendant has taken loan of Rs.13,00,000/- at the interest rated 12.40% on 28.02.2019?*

(2) *Whether the plaintiff bank further proves that the defendants are mutually failed to repay the said loan amount with the interest?*

(3) *Whether the first defendant proves that the plaintiff bank imposed exorbitant interest on the said loan and the plaintiff bank has not maintained proper loan papers pertaining to the loan of the defendants?*

(4) *Whether the plaintiffs are entitled for the relief?*

(5) *What order or decree?*

5. Plaintiff to prove its contentions examined one witness as PW1 and marked 9 documents as exhibit P1 to 9. Defendants have not led evidence.



6. Trial court heard the arguments. On appreciating the pleadings and evidence on record, answered issue number 1 in the affirmative, issue number 2 to 4 in the negative, and dismissed the suit by impugned judgment and decree dated 11.01.2022. Same is challenged in the present appeal.

7. I have heard the arguments of learned counsel for Appellant.

8. The learned counsel for appellant submits that the trial court has not considered the Clause Number 10 of Exhibit P2, executed by defendants on 29.03.2016. The said clause clearly shows that in case of default or otherwise, the plaintiff bank has authority to call upon the defendants to repay the entire outstanding loan amount. Enforcing the said terms and conditions, plaintiff issued a notice calling upon the defendants to repay entire loan amount and defendants failed to do so.



9. He further contends that on the basis of the stray admission of PW1 that defendants were paying the instalment regularly; the trial court held that when the defendants were regularly paying the instalments, there was no reason for the plaintiff to call upon the defendants to pay the amount before expiry of the period of 84 months. In view of the said reasons, the suit was premature and on that basis, suit was dismissed. The said findings of the trial court are erroneous and hence prayed for reversing the same and allow the appeal by decreeing the suit.

10. Looking to the pleadings, most of the issues are not necessary. Defendants have not disputed obtaining of loan, execution of the agreement and documents. It is also not in dispute that they did not pay the instalments as per schedule of payment. According to defendants suit was premature. They were permitted to repay the amount in 84 monthly instalments. Plaintiff has filed the suit within



that period of 84 months and hence suit is premature and not maintainable. Hence other issues are redundant.

11. The only question arises for determination in this appeal is;

*"whether the plaintiff has right to call upon the defendants to pay the entire outstanding amount if there is default in payment of instalments, even prior to completion of the period of 84 months ?"*

12. The above question is answered in the affirmative for the following reasons.

13. In the evidence of PW1, plaintiff averments are reiterated. In the pleading as well as in the evidence of PW1, it is stated that defendants were not punctual in repayment of instalments and violated the terms and conditions of loan agreement dated 29.03.2016. The officials of the plaintiff bank repeatedly requested the defendants to repay the said loan amount as per the schedule, but they did not heed to the request. In all they



had paid a negligible amount. Therefore, plaintiff through its advocate issued notice to defendants dated 18.02.2019 calling upon the defendants to repay the entire outstanding debt. The said notice was served on the defendants, but they failed to do so. Therefore, the suit was filed.

14. During evidence of PW 1, he marked the documents at Exhibit P1 to P9; Ex.P1 is the letter of agreement, Ex.P2 is the certified copy of the agreement of loan-cum-hypothecation, Ex.P3 is the copy of supplementary agreement of loan-cum-hypothecation, Ex.P4 is the certified copy of the guarantee agreement, Ex.P5 is a copy of revival letter, Ex.P6 is the notice and Ex.P8 is Account Statement. In his cross-examination taking of loan and execution of these documents are not seriously disputed. Clause No. 10 of Ex.P2 is narrated in the appeal memo. Said clause gives the right to the plaintiff to call upon the defendant to repay entire loan amount on violating of any





of the conditions stated in Ex.P2. The said clause is not challenged or disputed by the defendants.

15. The defendants admitted obtaining of loan and execution of agreement and other necessary documents. They also admitted that they agreed to repay loan amount in 84 monthly instalments. The said documents are placed on records by the plaintiff.

16. The defendants have not disputed that they were defaulters in repayment of the loan amount in accordance with the terms of the loan agreement. The monthly instalment amount was Rs.23,770/- plus interest. They have contended that due loss suffered and closure of business during pandemic Covid-19 and thereafter closure of their guarage they could not pay the instalments. However in the cross examination, PW1 has irresponsibly or negligently stated that defendants were regularly paying loan instalments. The said statement led to dismissal of the suit.



17. It is nobody's case defendants have been regularly paying the instalments. If that was the case then why plaintiff shall file the suit? In the pleadings, defendants admitted that they were unable to repay the loan amount as per the schedule for various reasons. Ex.P.8 shows that instalments were not regularly paid, in accordance with the schedule of payment. Ex.P6 states that defendants are defaulters. Defendants did not enter witness box to prove they have been paying instalments as per schedule. Evidence of PW1 that defendants have been regularly paying instalments is incorrect on the face of the records. The evidence has to be read as whole and not piece meal. PW1 in his further cross examination denied the contentions of defendants. The trial court without considering other materials on record and only on the basis of erroneous statement of PW1, held that although defendants have been regularly paying the instalments, but plaintiff has filed the suit before completion of 84 months and hence suit was premature and hence dismissed the suit. The said finding is erroneous and



contrary to the terms and conditions contained in Exhibit P2.

18. The terms and conditions of the Ex.P2-agreement the plaintiff bank has every right to call upon the defendants to repay the entire outstanding loan amount if there is breach of any of the conditions of loan agreement. As per the contention of plaintiff and Ex.P8, defendants committed default in repayment of monthly instalments. It is not disputed by the defendants. Hence suit is not premature and maintainable.

19. Defendants did not enter the witness box and gave an opportunity to the plaintiff to show that their contentions are incorrect. No justifiable reasons were given by the defendants for not entering witness box. Hence adverse inference has to be drawn. As already stated above defendants failed to prove that they were regular in repayment of loan. Therefore the said findings of the trial court are erroneous and needs interference by this court.



20. Pleading and evidence produced by the plaintiff prove the amount outstanding as on the date of suit as well as rate of interest for which plaintiff is entitled. The suit claim is secured by hypothecation of stock available in the guarage. Hence plaintiff can sell the hypothecated goods for recovery of the amount in the event of default of defendants in repayment of decreetal amount.

For above said discussions, above point is answered in favour of the appellant and proceed to pass following order.

### ORDER

Appeal is allowed with costs.

Judgment and decree dated 11.01.2022 passed in O.S. No.20/2020 by the Senior Civil Judge, Sirsi is set aside.

Suit is decreed with costs. Defendants are directed to pay a sum of Rs.14,95,999/- with the interest at the rate



of 14.40% per annum from the date of suit till its realization.

In case of failure of the defendant to pay amount of the decree, then plaintiff is at liberty to sell the hypothecated machineries of Motor Service Centre belonging to defendant No. 1, in public auction and sale proceeds shall be appropriated towards outstanding loan amount. Balance amount shall be recovered from defendants in accordance with law.

Send back the T C R., along with a copy of the judgment to the trial court.

**Sd/-**  
**(UMESH M ADIGA)**  
**JUDGE**

bvv /ct-an  
List No.: 2 SI No.: 5