



CNR: KAHC010038072026

NC: 2026:KHC:42375-DB
COMAP No. 48 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 48 OF 2026

BETWEEN:

1. M/S. SURYA COLLECTIONS
HAVING BUSINESS AT DANYAVAD BUILDING
HAMPANAKATTA, MANGALURU - 575 001
REP. BY ITS PROPRIETOR
MR. SURESH KUMAR S/O K.P. NATARAJ
AGED ABOUT 56 YEARS
R/AT D NO. 21-137/3, SHAMBHAVI NILAYA
SARIPALLA ROAD, OPP. SAMAJA BHAVAN
SILVERGATE, KULASHEKARA POST
MANGALURU - 575 008

...APPELLANT

(BY SRI S. RAJASHEKAR, ADVOCATE)

AND:

1. UNION BANK OF INDIA
A BODY CORPORATE CONSTITUTED AND
GOVERNED BY THE PROVISIONS OF
BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKINGS) ACT, 1970
HAVING ITS HEAD OFFICE AT MUMBAI
AND A BRANCH INTERALIA AT PADAVU MAROLI
MANGALURU - 575 005

...RESPONDENT

(BY SRI DIVYA PURANDAR, ADVOCATE)

Digitally
signed by
VEERENDRA
KUMAR K M

Location:
High Court of
Karnataka



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THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 17.11.2025 PASSED IN COMMERCIAL O.S.NO.597/2022 ON THE FILE OF THE IV ADDITIONAL DISTRICT JUDGE AND COMMERCIAL COURT AT MANGALURU BY ALLOWING THIS APPEAL AND GRANT SUCH OTHER AND FURTHER RELIEFS AS THIS HON'BLE COURT DEEMS FIT AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant [**defendant**] has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**C.C.Act**] impugning a judgment and decree dated 17.11.2025 [**impugned judgment**] passed by the learned IV Additional District Judge and Commercial Court, Mangaluru [**Commercial Court**] in Com.O.S.No.597/2022.



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2. The said suit was instituted by the respondent-bank [plaintiff] seeking a decree for recovery of an amount of ₹15,94,501.99 along with future interest at the rate of 11.45% per annum compounded monthly from the date of the suit till realisation as well as costs of the suit.

3. The learned Commercial Court decreed the suit by the impugned judgment and awarded a decree for the sum of ₹15,94,501.99, together with future interest at 10.35% per annum compounded monthly from the date of the suit till payment or realisation, as well as costs.

4. The plaintiff is a nationalised bank. The defendant had approached the plaintiff bank seeking financial assistance for its business, and after mutual discussions, the plaintiff bank had granted a cash credit loan facility of ₹12,00,000/- to the defendant for its business under the Union Trade Plus Scheme [loan account No.364405110000101]. The said facility was secured by hypothecation of stock and the defendant executed a deed of hypothecation dated 07.11.2018.



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5. It was the plaintiff's case that the defendant failed to service the loan and perform its repayment obligations and as on 05.11.2022, a sum of ₹15,94,501.99 was outstanding. The plaintiff bank had issued a legal notice dated 26.10.2020 calling upon the defendant to repay the outstanding amount. However, the defendant did not comply with the said demand.

6. In the aforesaid backdrop, the plaintiff bank instituted the suit for recovery of its dues.

7. After completion of the pleadings, the learned Commercial Court framed the following issues:

"1. Whether the plaintiff bank proves that the defendant has availed cash credit loan facility of Rs.12,00,000/- on 07.11.2018?

2. Whether the plaintiff proves the alleged default on the part of the defendant in repayment of loan?

3. Whether the plaintiff bank is entitled to recover the suit claim of Rs.15,94,501.99/- from the defendant with interest at the rate of 11.45% p.a.?

4. Whether the defendant proves that the suit is barred by law of limitation?

5. What order or decree?"



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8. The first issue was deleted as there was no dispute that the defendant had availed of the cash credit loan facility as claimed by the plaintiff bank.

9. The learned Commercial Court found that the defendant had defaulted in repayment of its loan and accordingly decided the second issue in affirmative.

10. The third issue was also partly allowed. The learned Commercial Court found that the amount of ₹15,94,501.99 was outstanding and payable as on the date of the suit. However, the court found that the applicable rate of interest would be 10.35% per annum.

11. We may note at this stage that there is ample evidence on record to establish that the defendant defaulted in repayment of the loan. In fact, there is no real dispute in this regard.

12. It was the defendant's case that it was entitled to a moratorium on account of the outbreak of the COVID-19 pandemic. It is thus implicit that the defendant does not dispute that it did owe the plaintiff bank the amount as claimed. The plaintiff bank had also



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produced a letter of confirmation (Ex.P.7), demand promissory note dated 07.11.2018 (Ex.P8) and the loan account statement (Ex.P10) to establish the amount as owed.

13. The learned counsel appearing for the defendant assailed the impugned judgment on two grounds. First, he submitted that the suit was not maintainable and was liable to be dismissed, as the plaintiff bank had not complied with the requirement of pre-institution mediation under Section 12A of the C.C.Act, prior to institution of the suit. It referred to the decision of the Supreme Court in the case of **Patil Automation Private Limited and others v. Rekheja Engineers Private Limited**¹ in support of its contention that pre-institution mediation under Section 12A of the C.C.Act was mandatory and failure to do so would require the plaint to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 [**CPC**].

14. Second, he referred to a Circular dated 27.03.2020 issued by the Reserve Bank of India, and on the strength of the said Circular he submitted that the plaintiff bank was required to grant a

¹ (2022)10 SCC 1



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moratorium of three months on payment of all instalments due between 01.03.2020 and 31.05.2020. Thus, he submitted that the defendant's account could not have been classified as a Non-Performing Asset [**NPA**] on 22.04.2020.

15. So far as the contention that the suit is liable to be rejected as barred by law under Order VII Rule 11 of CPC is concerned, the same is without merit. There is no cavil that Section 12A of the C.C.Act is mandatory and it is necessary for the plaintiff to initiate pre-institution mediation under Section 12A of the C.C.Act prior to institution of the suit involving a commercial dispute. However, in terms of sub-section (1) of Section 12A, the said provision is applicable only in a suit which does not contemplate any urgent relief. In the present case, the plaintiff bank alleged that the defendant was alienating its assets and sought urgent orders under Order XXXVIII Rule 5 of CPC for attachment before judgment. Although an *ex-parte* interim order was not passed, the learned Commercial Court issued an emergent notice on the application filed under Order XXXVIII Rule 5 of CPC (I.A.No.2).



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16. As held by the Supreme Court in **Yamini Manohar v. T.K.D.Keerthi**², the question whether a suit involves urgent relief is to be viewed from the standpoint of the plaintiff and unless it is found that the plea of an urgent relief is a subterfuge, the provisions of Section 12A of C.C.Act would be inapplicable.

17. As noted above, there is no dispute that the appellant had executed a deed of hypothecation dated 07.11.2018 (Ex.P2) under which the plaintiff bank has the right to seize and sell the stocks for recovery of its dues.

18. The plaintiff bank apprehended that the stocks would be sold and therefore, its application to seek urgent orders for attachment before judgment cannot be held to be a subterfuge or a device to overcome the provisions of Section 12A of the C.C.Act.

19. The contention that it was obligatory on the plaintiff bank to grant the moratorium and therefore the defendant was not in default, is also erroneous. The RBI circular dated 27.03.2020, which is referred to by the learned counsel for the defendant, permitted the banks to grant a moratorium of three months in

² (2024) 5 SCC 815



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respect of instalments that fell due between 01.03.2020 and 31.05.2020. The repayment schedule for such loans could be shifted by the period of three months.

20. A further circular was also issued by the RBI dated 23.05.2020, enabling the banks to defer the recovery and consider rescheduling of loans.

21. In the present case, the suit was instituted on 24.11.2022, and there is no material on record to indicate that the defendant had made any request for rescheduling of the loan or that it had tendered the amount.

22. We are also unable to accept that the said RBI circular as referred to by the defendant made it obligatory or entitled the defendant to reschedule the payment. The plain language of the said Circular dated 27.03.2020 indicates that the RBI permitted all the banks to grant a moratorium, but did not make it obligatory for the banks to do so irrespective of the facts of the case.

23. Considering that there is no dispute that the defendant had never sought rescheduling of the loan amount, we are unable to



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accept that the plaintiff bank was precluded from initiating the suit for recovery of the amounts due.

24. The appeal is unmerited and the same is, accordingly, dismissed.

25. All pending applications stand disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

KMV
List No.: 1 Sl No.: 8