IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2026

CORAM

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

A.S.No.330 of 2000

Indian Bank
Harbour Branch
No.31, Rajaji Salai
Madras – 600 001 ... Appellant

vs

Habib Bank Business
at Bergstrasse
21, P.O.Box, 4931, 8022
Zurich, Switzerland ... Respondent

Prayer: Appeal filed under Section 96 of Code of Civil Procedure to set aside the judgment and decree dated 29.01.1998 passed by II Additional City Civil Court Judge in O.S.No.4405 of 1996.

For Appellants : Ms.Rita Chandrasekar
for M/s.Aiyar and Dolia

For Respondent : No Appearance

JUDGMENT

[Judgment of the Court was delivered by **C.V. KARTHIKEYAN, J**]

The plaintiff in O.S.No.4405 of 1996 on the file of II Additional City Civil Court, Chennai, aggrieved by the judgment and decree dated 29.01.1998 by which judgment the suit was decreed against the first to third defendants, but dismissed against the fourth defendant has filed the present appeal questioning the dismissal of suit against the fourth defendant.

2. It is the case of the plaintiff / Indian Bank, Harbour Branch that they had advanced a sum of Rs.3,00,000/- as loan to the first defendant Cytozome Agro (Hyderabad) Pvt. Ltd., by sanction ticket dated 15.09.1983. Consequent to advancement of loan, the first to third defendants executed a joint promissory notice agreeing to repay the amount together with interest at the rate of 8% per annum over the official rate of Reserve Bank of India with a minimum of 18% per annum. There was also an undertaking given by the first defendant to repay the loan on or before 01.12.1985. It was also stated that 7% of the invoice amount drawn by the first defendant would be adjusted towards the loan amount.

3. It is the case of the plaintiff that the first to third defendants did not repay the loan in accordance with the schedule. The fourth defendant stood guarantee for the loan, but however they had revoked their guarantee insofar as the undisbursed loan amount was concerned and according to fourth defendant, they are liable only for the amount already disbursed. They had further contended that for every invoice raised by the first defendant, 7% should have been deducted and applied towards the loan amount. The plaintiff, however, proceeded to invoke the guarantee. It was the case of the plaintiff that the fourth defendant had guaranteed repayment of the loan upto $1,80,000. It is under those circumstances since the loan had not been repaid, the suit had been filed as against the four defendants. The suit had been decreed as against the first to third defendants. The said defendants had not filed any appeal. They have abided by the said judgment. However, the suit had been dismissed against the fourth defendant, against which the present appeal has been filed.

4. The main contention of the fourth defendant in their written statement was that they stood guarantee only for the amount already disbursed and more over, even for the amount so disbursed, the plaintiff necessarily had to maintain accounts by deducting 7% for every invoice raised by the first defendant.

Admittedly, no such statement had been presented by the plaintiff. Therefore, the fourth defendant claimed that they stood absolved of their guarantee.

5. The learned trial Judge had framed the following issues:

(i) Whether there is no cause of action against the 4th defendant?

(ii) Whether the suit is barred by limitation against the 4th defendant?

(iii) Whether the suit cannot be filed against the 4th defendant?

(iv) Whether the suit is liable to be dismissed against the 4th defendant?

(v) To what relief the plaintiff is entitled?

6. It should also be noted that though the counsel had entered appearance for the first to third defendants, they did not appear and the said defendants remained *ex parte* during the trial proceedings.

7. During the trial, one witness was examined on behalf of the plaintiff and Exs.A1 to A16 were marked. There was no oral or documentary evidence adduced on behalf of the defendants including the fourth defendant.

8. On appreciation of the documentary evidence, the learned trial Judge had examined the evidence of PW1, who admitted that under Ex.A6 dated 22.10.1984, the fourth defendant had sought complete statement of the debits in the account

along with a certificate from the appellant that 7% of the gross value of all the bills and invoices raised by the first defendant till the date of the claim had been deducted and applied towards the repayment of the advances made to the first defendant. It had been contended that this certificate was required, but the appellant had however not issued any such certificate. Even in Ex.A4 dated 14.06.1984, the fourth defendant had revoked their guarantee with respect to the unpaid principal amount, but had admitted their liability to the principal amount already paid. They, however, stated that with respect to every invoice raised by the first defendant, the plaintiff should have deducted 7% and applied that 7% amount towards the loan account and they wanted a certificate from the appellant that they had so applied that 7% of the deducted amount from each invoice towards the loan account. Since the appellant had not issued any such certificate, the learned trial Judge was of the opinion that there were latches by the appellant also.

9. The appellant had filed a statement of accounts, which was marked as Ex.A16, but Ex.A16 had been rejected by the trial Court holding that it was not in accordance with the Banking rules and it was mere a statement, which had no evidentiary value. There was also no proof that 7% had been deducted from every invoice raised by the first defendant.

10. We have perused the records. We have also heard the learned counsel for the appellant.

11. The only issue is about enforcement of the guarantee against the fourth defendant, who is the respondent herein with respect to the amount already disbursed towards the principal. The appellant however had a duty to deduct 7% of the amounts raised as invoice by the first defendant and apply that particular amount towards the loan account. It is only a reconciliation of the statements, but the appellant had not done so. They had not produced evidence to show that they actually deducted 7% and applied the same to the loan account. They had also not produced statement of accounts certified in accordance with the banking rules. They had only produced a statement which did not reflect deduction of 7% as agreed between the parties.

12. It is not known as to why the appellant had not produced the necessary and proper accounts. Having failed to discharge their duty to show that they had deducted 7% from each and every invoice raised by the first defendant and had applied that amount towards the loan account, it has to be held that the appellant had not come to Court with clean hands. They should have filed the statement of

accounts in accordance with the agreement under which they had advanced loan to the first defendant.

13. As a matter of fact, the terms under which the loan had been advanced had also not been produced as a document with the plaint. In Ex.A2 under which the loan had been sanctioned for the first defendant, the appellant had categorically stated as follows:

> "*(5) CAP should pass a resolution authorizing payment of 7% as commission to CAHPL and a copy thereof produced to us.*
>
> *(6)….*
>
> *(7) The loan is repayable by recovery from each bill to be submitted by Cytozyme (Andhra Pradesh) Ltd. to our Begumpet Branch at 7% of which 6% shall be credited to the loan account and 1% towards recovery of interest.*
>
> *(8) The entire loan should be adjusted on or before 1.12.1985. An undertaking letter is to be obtained from CAP to allow 18% of the invoice value as commission and 7% as service charges to CAHPL and sent to us. If the advance is pending for more than 2 ½ years from the date of availment, the entire commission/service charges payable by CAP viz.,25% of the invoice value will become due for adjustment for the liquidation of the loan due.*"

14. In their correspondences, the respondent herein / 4th defendant, had only called upon the appellant to comply with the aforementioned undertaking given by the appellant at the time of sanctioning the loan, but the appellant had not produced any document to show that they had complied with the said conditions. The learned trial Judge, in our opinion, has rightly dismissed the suit as against the respondent herein/fourth defendant and had decreed the suit as against the first to third defendants. We do not find any ground to interfere with the said judgment and decree of the trial Court.

Accordingly, the appeal stands dismissed. The judgment and decree of II Additional City Civil Court Judge, Chennai dated 29.01.1998 in O.S.No.4405 of 1996 is confirmed. There shall be no order as to costs.

[C.V.K., J] **[K.R.S., J]**
30.03.2026

Index: Yes/No
Neutral citation: Yes/No
gpa

To

1. II Additional City Civil Court Judge
Chennai

2. The Section Officer
ER Section
Madras High Court

C.V. KARTHIKEYAN, J
and
K.RAJASEKAR, J

gpa

A.S.No.330 of 2000

30.03.2026