

IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY APPLICATION NO. 241-O OF 2001.

Official Liquidator,  
High Court of Bombay at Goa,  
Panaji.

... Applicant.

Versus

1. Tukaram M. Jalvi (since  
deceased by his Legal  
heir:-
- 1(a) Mrs. Saraswati Tukaram  
Jalvi, A/P Kavilkate,  
Tal. Kudal, Dist. Sindhudurg.
2. Sanjay V. Oraskar,  
Ganesh Nagar,  
Kudal, Dist. Sindhudurg.
3. K.B. Bhoje, A/P Kudal,  
Zilla Parishad Kudal,  
Dist, Sindhudurg.

... Respondents.

Miss Amira Razak, Advocate for the Applicant.

Mr. Deepak Shet, Advocate for the Respondent No. 2  
absent.

Coram : P.V. HARDAS, J.

Date : 26th September 2003.

ORAL ORDER.

This is an application filed by the applicant  
against the respondents for a claim of Rs. 1,15,237/-  
together with future interest at the rate of 36% p.a..  
The following issues have been framed:-

"(1) Whether the Official Liquidator  
proves that respondent No. 1(a)  
alongwith respondents 2 and 3 are  
jointly and severally liable to repay  
the claim amount of Rs. 1,15,237/-  
together with interest at the rate of  
36% per annum?

(2) What Order?"

2. After the issues were settled, the applicant had filed documents, which were taken on record, and the case was, thereafter, fixed for evidence. On 8th August 2003, the respondents and their counsel were absent and the applicant sought time for filing affidavit by way of examination-in-chief. Thereafter the case was adjourned to 22nd August 2003; 29th August 2003 and 12th September 2003. On all those dates the respondents were absent. The applicant filed the affidavit by way of examination-in-chief of his witness Shri R.B. Dutt, on 26th September 2003. Even on that date the respondents were absent. Applicant examined Shri R.B. Dutt as P.W.1.

3. P.W.1 Dutt in his evidence states that by Order, dated 13th October 1998, this Court was pleased to wind up M/s. Bharatiya Development Finance Limited and the Official Liquidator attached to this Court was appointed as the Official Liquidator of the Company (in liquidation). After the Order, dated 13th October 1998, passed by this Court, notices were issued to all the debtors of the Company (in liquidation). Notices at Exhibit P.W.1/1, dated 20th October 1999, was issued to respondents 1, 2 and 3 to repay the outstanding loan amount within 15 days. Thereafter, another notice, at Exhibit P.W.1/2, dated 13th October 2000, was also issued. In response to the notice, the respondent no.

2 wrote a letter, dated 2nd November 2000, at Exhibit P.W.1/3, giving a list of the assets of respondent no. 1. The applicant, accordingly, filed a claim in this Court for Rs. 64,684/- with future interest at the rate of 36% p.a. from 1st January 1999 till realization of the said amount from the respondents. Since respondent no. 1 was reported to have expired, his legal heir was brought on record.

4. According to P.W.1 Dutt, respondent no. 1 had applied for a loan of Rs. 40,137/-, by his application, dated 28th November 1997, at Exhibit P.W.1/4. The said loan was applied for purchasing a Bajaj 4 S Champion. Respondent no. 1 had also produced a quotation, dated 27th November 1997, at Exhibit P.W.1/5. Respondents 2 and 3 had produced salary certificates, at Exhibits P.W.1/6 and P.W.1/7 respectively. The Company (in liquidation) had made various requests to banks for obtaining No Dues Clearance Certificates in respect of respondent no. 1, by letter, at Exhibit P.W.1/8.

5. According to P.W.1 Dutt, the loan of Rs. 40,137/- was granted to the respondent no. 1 and an agreement for loan was executed on 2nd December 1997, which is at Exhibit P.W.1/9. As per the terms of the said agreement, respondent no. 1 jointly and severally alongwith respondents 2 and 3 agreed to repay the loan

of Rs. 40,137/- in 24 instalments of Rs. 2,400/- each. The said loan was to be repaid on or before 2nd December 1998 and the said loan was to carry an interest of 21.5% or such rate as may be fixed by the company from time to time. The interest was payable with quarterly rests on the amount outstanding on 31st March, 30th June, 30th September and 31st December every year. Respondent no. 1 also signed a declaration alongwith respondent no. 2 for repayment of the loan amount, which is at Exhibit P.W.1/10. In consideration of the loan received by respondent no. 1, the respondent no. 1 signed, executed and delivered a promissory note, dated 2nd December 1997, alongwith respondent no. 2. The promissory note is at Exhibit P.W.1/11. The respondent no. 1 also tendered a Fixed Deposit Receipt, bearing No. 06/F1/015/97/II, dated 30th September 1997, for an amount of Rs. 4,500/-. The Fixed Deposit Receipt is at Exhibit P.W.1/12. The amount of loan was paid to respondent no. 1 by Demand Draft, No. 077342, dated 2nd December 1997, in favour of M/s. Geeta Automobiles, under letter, dated 2nd December 1997. The receipt of M/s. Geeta Automobiles and the delivery card are at Exhibit P.W.1/13 Colly. The copy of the loan ledger is at Exhibit P.W.1/14 and it shows that respondents had failed and neglected to pay even a single instalment towards the repayment of the loan amount. Vide letter, dated 20th May 1998, at Exhibit P.W.1/15, the Company

(in liquidation) called upon the respondents to pay the outstanding amount of loan. A Registered A/D letter, at Exhibit P.W.1/16 was also sent making a similar demand. By letter, at Exhibit P.W.1/17, dated 12th August 1998, the employer of respondent no. 2 was requested to deduct the loan amount from the salary of respondent no. 2. By letter, at Exhibit P.W.1/18, the employer of respondent no. 3 was made a similar request.

6. Respondents are absent and there is no cross-examination to the evidence of P.W.1 Dutt. Issue No. 1 is, thus, answered in the affirmative.

7. In view of this, the claim of the applicant for Rs. 1,15,237/- is decreed with future interest at the rate of 12% per annum. Respondents also to pay costs of Rs. 3,000/- to the applicant. Decree be drawn, accordingly.

(P.V. HARDAS)  
JUDGE.

ed's.