Fair order

IN THE DEBTS RECOVERY TRIBUNAL-1 AT ERNAKULAM

DATED THIS 09th DAY OF JULY, 2026

PRESENT: Su. WILLYAHM, B.Sc., M.L.
[DISTRICT JUDGE - Retd]
PRESIDING OFFICER

OA No.460/2012
&
CC 1/2018

Between

Canara Bank*
(Erstwhile Syndicate Bank)
Palakkad Branch,
KP Shopping Complex,
TB Road, Palakkad – 678 014.
(Amendment carried out in OA as per order in IA No.1504/2022 dated 06.03.2024)

---Applicant Bank

And

1. M/s. Green Valley Farms,
Veettikundu Road,
Kottathara P.O. Amsom Desom,
Attappadi, Palakkadu District,
Represented by its Partner
Bobby Austine.

2. Bobby Austine,
S/o. K.A. Austine,
Kapukattil, Chakkittapara P.O.
Calicut District – 673 526.

3. Ajeesh Jose,
S/o. Jose Thomas,
Palamthalackal House,
Chakkittapara P.O.
Calicut District – 673 526.

4. Jose Thomas, S/o. K.J. Thomas,
Palamthalackal House,
Chakkittapara P.O. Perambra,
Calicut– 673 526.

5. Thomas Jose, S/o. Jose Thomas,
Palamthalackal House,
Chakkittapara P.O. Perambra,
Calicut– 673 526.

---Defendants

This Original application coming on 19.05.2025, 18.06.2025 and 19.02.2026 for final hearing before me in the presence of Ms. Keerthi K. Narayan, Advocate for Applicant Bank and Mr. Subash Syriac, Advocate for the defendants 1 to 3 & 5 and the 4th defendant having been set exparte and upon hearing the arguments of Counsel for both sides' and upon perusing the written arguments filed by the parties and upon perusing the materials on record and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This application has been filed on 01.10.2012 under Section 19 of the RDDBFI Act (now amended as the Recovery of Debts and Bankruptcy Act, 1993) by the Applicant Bank to recover from the defendants, a sum of Rs.1,17,37,739.03 with interest @14.75% per annum with half yearly rests for Rs.1,17,37,739.03 from the date of this application till the date of recovery and by sale of OA schedule properties and with costs.

2. The rights of the original applicant bank namely Syndicate Bank were vested with the Canara Bank as per the notification dated 04.03.2020.

3. The brief averments of the Original Application filed by the Applicant are as follows:-

The 1st defendant is a partnership firm and defendants 2 & 3 are its partners. Defendants 4 & 5 are the guarantors to the loan availed by the defendants 1 to 3. The 1st defendant through its partners approached the Syndicate Bank (hereinafter referred to as former bank) seeking agricultural loan of Rs.75,00,000/- for purchasing a running piggery farm and the bank sanctioned a Term Loan of Rs.75,00,000/- to the defendants 1 to 3 on 03.10.2008 upon execution of necessary security documents. The former bank disbursed an amount of Rs.42,00,000/- on 03.10.2008 as first installment of loan and Rs.33,00,000/- was disbursed to the defendants on 20.10.2008 towards the second installment of the loan. The defendants 2 to 4 stood as guarantors and executed deed of guarantee dated 03.10.2008. The defendants 3 & 4 created equitable mortgage over their properties more fully described in the schedules to the OA and executed letter regarding deposit of title deeds dated 21.08.2008 and letter confirming deposit of title deeds dated 23.10.2008. The defendants have hypothecated their entire live stock in favour of the bank. The defendants 1 to 3 agreed to repay the Loan in 10 half yearly installments of Rs.7,50,000/-.

The defendants failed to operate the accounts satisfactorily as agreed and failed to keep the account regular and defaulted payment of the monthly installments and the accounts became NPA on 01.04.2012. The applicant bank initiated SARFAESI proceeding and issued demand notice under Section 13(2) calling upon the defendants to make the amount due. Consequently, the former bank took symbolic possession of the property described in the OA schedules. The 1st defendant filed writ petition as WP(C) No.15765/2012 before the Hon'ble High Court of Kerala challenging the proceeding initiated by the applicant bank under SARFAESI and the same is pending. Since the defendants failed to clear of the loan liability; the bank filed the present Original Application for realisation of the outstanding amounts.

3. The defendants 1 to 3 & 5 entered appearance through their counsel and filed their written statement alongwith a counter claim. The defendants although admitted the availment of loan, have contended as follows :

The OA is not maintainable either in law or on facts and the OA is barred by limitation. It is admitted that the defendant approached the bank for an agricultural loan of Rs.75 Lakhs on 25.08.2008 and the bank after site verification and inspection of stock and valuation, had granted an agricultural loan of Rs.75,00,000/- on 03.10.2008. At the time of availing the loan, the defendants were directed to execute certain mortgage deeds in respect of their agricultural properties. The applicant insisted that the entire farm and the pigs should be insured and that they would make necessary arrangements. On 26.12.2008 the applicant bank had remitted the insurance premium of Rs.4,34,828/- with United India Insurance

Company, Palakkad Branch vide Demand Draft No.238816/26/12/2008 and the payment was accepted by the United Insurance company and thereafter the said amount was debited to the Firm's account on 30.12.2008. Even though the premium was paid and the same was acknowledged by the United Insurance Company, Certificate of Policy was not issued to the defendants for the reason better known to them alone. It was later understood that the policy was not forwarded to the bank, nor did the bank do anything to collect the policy.

The applicant did not show any leniency to the defendants and the applicant had not taken any steps for getting the insurance claim. The bank had remitted the insurance premium and debited the amount in the loan account of the defendants. The defendants suffered a loss of Rs.62,60,300/- in the middle of 2009, due to infectious disease met with in the piggery farm and 494 pigs died in the mishap. Although all these facts were informed to the bank for further actions but bank did not take any action to get the insurance claim from the United Insurance company. It is now known from the United Insurance company that the applicant was asked to furnish certain details from the Bank, but the applicant Bank did not care to furnish those details. Neither the United Insurance Company nor the applicant Bank had requested the defendants to furnish those details. The request of the United Insurance Company was not made known to the defendants by the applicant Bank. The applicant has to make good of the loss sustained to the defendants due to applicant's inaction.

The defendants did approach the Hon'ble High Court and Sub Court, Ernakulam challenging inaction of the applicant bank and for damages and the 3rd defendant filed SA 831/2012 before this Tribunal and the same is pending. The defendants have not agreed to permit the applicant bank to realize the entire loan amount, in event of default of one installment. The defendants are not liable to pay the huge amount and they have not agreed to pay interest @14.75% for the agricultural loan. The applicant bank is claiming exorbitant amounts. The defendants were remitting monthly installments regularly and only after the middle of year 2009 the irregularity occurred. The applicant bank is not entitled to charge penal interest and the rate of interest charged is exorbitant. There is no cause of action for the applicant bank against these defendants. The applicant bank is not entitled to get any reliefs sought for in the OA and the OA is liable to be dismissed in *toto* with costs to these defendants.

At the time of availing loan, the applicant Bank insisted for an insurance coverage for the pigs and guaranteed the defendants that the applicant bank will grant another sum of Rs.4,34,428/- towards insurance premium and the policy will be taken directly by the applicant bank from the United India Insurance Company Ltd. Since the Bank is the authorized agent of the United Insurance Company, the name of the United India Insurance Company Ltd. was suggested by the applicant bank and applicant Bank made the defendants to believe that they have direct control over the United Insurance company and hence the defendants will not suffer any type of loss. Believing the words of applicant, the defendants had agreed for the same. On 26.12.2008, the applicant had remitted the United Insurance premium of Rs.4,34,828/-, with the United India insurance company vide Demand Draft No.238816/26/12/2008 and the payment was accepted by the United Insurance company and thereafter said sum was debited to the account of the 1st defendant on 30.12.2008. Even though the premium was paid and the same was acknowledged by the United Insurance Company, thereby the transaction in fact became complete as far as the defendants are concerned, certificate of policy was not issued to the defendants for the reasons best known to the applicant Bank and United Insurance Company.

An agent is bound to conduct the business of principal with as much skill as is generally possessed by the persons engaged in similar business and he is always bound to act with reasonable diligence, and to use such skill as he possess; and to make good to his principal in respect of the direct consequences of his own negligence or misconduct and it is the duty of agent to use all reasonable diligence in communicating with the principal in cases of any difficulty for which defendants are not at all liable in any manner. The applicant had acted as agent of the defendants while dealing with the United Insurance Company but the performance was not prudent one. When policy was not issued the applicant kept mum and made no attempt to communicate the same to the defendants in black and white. Believing the assurance given by the applicant bank, the defendants had purchased 15 acres of land with a running piggery Farm spending huge amount from the respective owners.

In the middle of 2009, the piggery met with infectious diseases and even though defendants had taken all possible care to protect the Farm, 494 pigs died in the mishap and consequently defendants suffered a loss of Rs.62,60,300/- at the current market price. Immediately the defendants had informed the matter to the applicant for taking necessary steps for Insurance sum, but same found no result. Then on 08.01.2010, the 2nd defendant issued a letter under the Right to information Act to the United Insurance Company for knowing the details of the policy and as per the reply, dated 17.02.2010, the defendants came to know that the policy was taken in the name of the Firm after receiving premium amount from the applicant bank and it was also stated that the policy was not issued due to the negligence of the applicant bank. Defendants also issued letter to the applicant Bank under the Right to Information Act which was replied by the bank as per letter dated 08.03.2010 informing that the bank had performed its duty and the negligence is on the part of the united insurance company and that the bank had issued repeated reminders, but none of them were replied by the united Insurance Company. The applicant bank is duty bound to protect the interest of the customers after remitting the insurance amount from the account of the 1st defendant, who are their account holders.

The defendants on 21.07.2010 after obtaining a medical certificate from the concerned veterinary Doctors preferred a claim before the United insurance company. But the claim was not entertained by the United Insurance Company by saying that the claim is belated. Once there is negligence on the part of the United insurance company in not issuing the policy in time, they cannot take advantage of the same. On 16.08.2010, the United Insurance company issued a letter to the 2nd defendant stating that the United Insurance company had complied with all the formalities.

It is submitted that between the period of 28.12.2009, the date of expiry of insurance and 17.01.2011, the date of notice from the Revenue Officer, 192 pigs died and out of which 100 were breeding pair and 50 were of 8 months old and 32 were of 3-5 months old and its value will be estimated at Rs.37,21,600/-. Had the expiry of policy been duly informed and the policy was renewed, the defendants would not have suffered the above loss. Due to deliberate negligence and dereliction of duty on the part of the applicant, the defendants had to stop the running of piggery which in fact cannot be compensated in full and defendants claim Rs.40,90,300/- as counter claim from the applicant being value of pigs dead during the insurance coverage period.

4. The applicant bank filed written statement in answer to the counter claim filed by the defendants 1 to 3 & 5, reiterating its case and contending as follows:-

It is submitted that the counter claim is not maintainable under law, facts or evidence. It is filed on an experimental basis. This Tribunal has no jurisdiction to entertain the counter claim. A debtor under the common law of contract and also in terms of loan agreement is having an independent right and therefore the Debtor cannot initiate independent proceedings before DRT as held by the Apex Court in Nahar Industrial Enterprises Ltd. and Others Vs. Hong Kong and Shanghai Banking Corporation and others reported in 2009 (8) SCC 646. The dictum laid down by the Apex Court is squarely applicable to the facts of the present case and in the circumstances, counter claim raised by the 1st defendant is liable to be dismissed.

The 1st defendant has already instituted a suit as OS No.486/2012 before the Second Additional Sub Court, Ernakulam and also filed a Consumer complaint before the Kerala State Consumer Disputes Redressal Commission for the very same relief as sought for in the counter claim. Therefore, counter claim raised by the defendants 1 to 3 & 5 are hit by principles of *resjudicata*. The counter claim raised by the defendants are hopelessly barred by time and raised beyond of the period of limitation prescribed under the statute.

The defendants have executed a term loan agreement with the applicant which set forth the terms and conditions regulating the credit facility sanctioned to the defendants. It has been made clear in the term loan agreement that if there is violation of any of the terms and conditions incorporated in the term loan agreement, the applicant is free to recall the entire amount outstanding under the term loan. As per the clause 8.0 of the said term loan agreement, defendants were required to insure the farm which they purchased making use of the funds provided by the applicant bank. Accordingly, defendants had taken an insurance policy from United India Insurance Company and as instructed by the defendants an amount of Rs.4,34,328/- was paid by the applicant on 26.12.2008 to the United insurance company from the account of the 1st defendant which was accepted and accounted by the United Insurance company and issued a policy in favour of the defendants as policy No.10200/47/08/37/00000039. It has been made clear in the said clause that insurance coverage is insisted only to protect the interest of the applicant bank and that the defendants is not entitled to claim the insurance amount under any circumstances in case of any claim raised under the policy.

The Insurance premium was paid to the insurance company from the account of the 1st defendant and the insurance documents were executed by the defendants being the insured and it is their responsibility to collect the Insurance policy from the insurance company and to hand over the same to the applicant bank. However, defendants did not take any steps to collect the insurance policy and to hand over the same to the applicant bank at any point of time despite repeated requests and reminders on the part of the applicant bank. Defendants cannot blame the bank for not collecting the policy as there was no privity of contract between the applicant bank and the insurance company.

The interest was charged strictly in accordance with the term loan agreement and sanction. Even though the defendants have received demand notice issued under Section 13(2) of the SARFAESI Act, they did not challenge the amount shown to be outstanding in the said notice and as the defendants did not dispute the amount demanded by the applicant bank in the demand notice, the liability of the defendants have been crystalized and they are now *estopped* from contending that the rate of interest applied to loan account is incorrect.

The applicant bank has no responsibility to get the insurance claim to the defendants as the applicant bank is a third party in the insurance agreement between the defendants and the insurance company. The applicant bank is unaware of the death of pigs and the alleged loss of the defendants. The insurance company has not sought any details from the applicant bank at any point of time. It is for the defendants to provide all the details to the insurance company in accordance with the contract of insurance. The applicant bank has no contractual relationship with the insurance company which binds them to provide the details sought for by the insurance company.

The defendants have agreed to pay interest @14.75% for the agriculture loan availed by them as per the term loan agreements executed by the defendants and the rate of interest applied is strictly in accordance with the term loan agreement and the defendants never raised dispute as to the rate of interest applied till this point of time. The applicant bank has cause of action to institute the Original Application and is entitled to get the reliefs as prayed for in the Original Application.

As per the loan agreement, defendants are required to take insurance coverage for the proposed piggery farm. It was made clear in Clause 8.0 of the term loan agreement that the insurance coverage is Insisted only to protect the interest of the applicant bank and that the defendants is not entitled to claim the insurance amount under any circumstances in case of any claim raised under the policy. Policy was not taken directly from the applicant bank and the applicant is not the authorized agent of the insurance company. The defendants were free to approach any insurance company and to obtain Insurance coverage as stipulated in the term loan agreement.

The Insurance premium was debited from the account of the defendants in view of the specific instruction given by the defendants. There was no authority, either expressed or implied conferred upon the applicant bank to act as collection or paying agent of the defendants. Applicant bank is only bound by the term loan agreement executed by the defendants and apart from that there is no agreement to act as collection or paying agent of the defendants at any point of time. There is an insurance agreement between the defendants as insured and the insurance company as insurer and the applicant bank is not a party to the said insurance agreement and therefore, in the absence of any agreement, the applicant bank cannot be called upon to perform any obligations.

When the defendants have remitted the premium and pursuant to that the insurance company has issued a policy, then it is the bounden duty of the defendants to collect the policy issued by the insurance company and deposit the same before the applicant bank as agreed upon by them in the term loan agreement but the defendants failed to insure the farm and deposit the original policy before the applicant amounts to breach of the terms of the agreement and in such event applicant is at liberty to recall the entire amount outstanding under the term loan agreement. The defendants did not care to procure the policy from the insurance company and deposit the same before the applicant bank in accordance with the terms of the term loan agreement and now their attempt was to find fault with others for not collecting the policy. The defendants have raised this issue only when the proceedings have initiated by the applicant bank under the SARFAESI which itself shows the lack of bona fides on the part of the defendants.

The applicant bank is not the agent of the insurance company and there is no principal agent agreement existed between them at any point of time and therefore, no obligation can be cast upon the applicant bank to get the piggery farm of the defendants insured. The applicant bank is unaware of any diseases which led to the death of the pigs. The death of 494 pigs in a mishap and suffering a loss of Rs.62,60,300/- is incorrect. The defendants have not informed the applicant bank regarding the death of the pigs in the farm. The facts stated in the letter dated 17.02.2012 issued by the insurance company is false and incorrect. Having issued a policy after satisfying all the conditions, the insurance company is not entitled to retain the same. Though the insurance premium was remitted on 26.12.2008 by the applicant, defendants were making enquiries only after the lapse of 1½ years. It is due to the negligence on the part of the defendants, the policy was not collected by them and deposited with the applicant.

The applicant is unaware of the claim raised before the Insurance company on 21.07.2010. The Revenue Divisional Officer had not directed the defendants to stop the functioning of the piggery. The applicant bank had received reliable information that the defendants have removed the pigs to an unknown place to make it appear that all the pigs died due to infectious diseases. It is incorrect to state that 192 pigs were died during the period from 28.12.2009 to 17.01.2011 and that their estimate value is Rs.37,21,600/-. No loss was sustained to the defendants due to the death of the pigs in the piggery. In fact, the death of the pigs was a fabricated story concocted by the defendants for the purpose of evading the liability due to the applicant bank. Defendants are not entitled to raise any counter claim in the present proceedings. No amount is due to the defendants from the applicant bank.

The loss if any sustained to the defendants cannot be quantified in these proceedings. The amount of loss estimated by the defendants is also incorrect and highly exorbitant. There is no provision in the statute to adjust the so called loss sustained to the defendants in the claim amount raised by the applicant bank. The counter claim filed by the defendants 1 to 3 & 5 is an abuse of process of law and none of the reliefs sought for by way of counter claim is maintainable. There is no cause of action for the counter claim. Therefore, the counter claim of the defendants may be dismissed with costs to the applicant.

5. In spite of granting sufficient time, Vakalath and written statement for the 4th Defendant was not filed. Subsequently, the 4th defendant was set exparte on 23.02.2015.

6. Mr. Vatti Venketeswara Rao, the then Chief Manager and one of the Principal Officer of the applicant bank, as AW-1 filed proof affidavit and got the documents marked as Exhs.A1 to A25 in support of its case. Mr. R. Ashok, Senior Manager and one of the Principal Officer of the applicant bank, as AW-2 filed proof affidavit in view of the counter claim filed by the defendants and got the document marked as Exh.A26.

7. The 2nd defendant for and on behalf of the 1st defendant, in order to prove their claim, has filed counter proof affidavit in support of their written statement and proof affidavit in support of their counter claim and got the documents marked as Exhs.B1(a) to B1(l).

8. During the pendency of the OA, the defendants 3 & 4 filed a petition being IA No.2629/2015 seeking release of documents pertaining to OA Schedules 'F & G' properties submitting therein that they have remitted a sum of Rs.26,95,000/- with the applicant bank. Accordingly, the documents were released vide order dated 12.10.2015.

9. The applicant bank also filed a petition IA No.2589/2018 to record part satisfaction of the OA claim submitting therein that the OA Schedules 'A to E' properties were sold under SARFAESI measures for a sum of Rs.80,20,000/- and the same was recorded vide order dated 16.03.2019.

10. Sh. Vatti Venketeswara Rao, the then Chief Manager of the *erstwhile* applicant bank has averred in his proof affidavit with regard to availment of agricultural loan of Rs.75 Lakhs by the 1st defendant partnership firm in which defendants 2 & 3 are partners and that defendants 4 & 5 stood as

guarantors to the aforesaid availment of credit facility and that defendants 3 & 4 have created equitable mortgage over their properties as described in the schedules to the OA and the defendants have also hypothecated their entire life stock in favour of the applicant bank. The applicant witness has also produced term loan agreement, deed of guarantee and receipts for payment of Rs.42 Lakhs and another receipt for payment of Rs.33 Lakhs to the defendants 2 & 3 as Exhs.A1 to A4. In order to prove the creation of equitable mortgage over the properties of defendants 3 & 4, the applicant witness has produced sale deeds as Exhs.A5 to A12. He has also produced letters executed by defendants 2 & 4 with regard to deposit of the title deeds as Exhs.A13 to A16. Exh.A17 is the memorandum of deposit of title deeds in respect of an extent of 15 Acres of land comprised in Sy. No.634 of Kottathara Village executed by defendants 1 to 3. The applicant witness has also produced Exhs.A18 to A21 letters of confirmation of deposit of title deeds executed by the defendants 2 & 4 in respect of their properties. He has also averred in his proof affidavit that apart from creation of equitable mortgage over the OA scheduled properties, the entire livestock has also been hypothecated by the defendants 1 to 3 in favour of the applicant bank.

11. The defendants 1 to 3 & 5 have fairly conceded in their written statement with regard to availment of the agricultural loan of Rs.75 Lakhs from the applicant bank upon creation of equitable mortgage over the immovable properties which have been described in the schedules to the OA. It is not in dispute that the aforesaid credit facilities were availed by the defendants to purchase pigs and run piggery farm.

12. It is the averment of the applicant witness that the defendants failed to operate their account satisfactorily as agreed and that they defaulted in repayment of the instalment amounts and that therefore, the loan account of the defendants was classified as Non-Performing Asset on 01.04.2012 as per RBI guidelines. The defendants 1 to 3 and 5 have not specifically refuted the averment of the applicant bank with regard to their default in repayment of the outstanding loan due. Instead, they have contended that at the time of availing the loan, the applicant bank insisted that the entire farm and the pigs should be insured and that they would make necessary arrangements and that on 26.12.2008 the applicant bank remitted the insurance premium of Rs.4,34,828/- to the United India Insurance Company, Palakkad Branch vide Demand Draft No.238816/26/12/2008 and that the payment was accepted by the Insurance company and that thereafter the said amount was debited to the Farm's account on 30.12.2008 and that even though the premium was paid and the same was acknowledged by the Insurance Company, Certificate of Policy was not issued to the defendants and that it was later understood that the policy

was not forwarded to the bank, nor did the bank do anything to collect the policy.

13. The counsel appearing for the defendants 1 to 3 & 5 submitted that since premium was paid to the insurance company which acknowledged the same, the transaction of insurance, according to the defendants, has been completed and that non-collection of policy papers by the applicant bank amounted to deletion of duty on the part of the applicant bank and that based on the assurance given by the applicant bank, the defendants purchased the running piggery and that in the middle of 2009, 494 pigs died due to infectious disease and that the defendants suffered a loss of Rs.62,60,000/- and that though the above mishap was informed to the applicant bank requesting to take steps for getting insurance claim by sending Exh.D1(c) letter, no step was taken by the applicant bank and that the insurance company sent reply letter Exh.D1(d) to the 2nd defendant stating that the insurance policy was not issued due to the negligence of the bank and that for the letter send by the 2nd defendant to the applicant bank, the applicant bank sent letter Exh.D1(e) stating that the negligence is on the part of the insurance company and that defendants were forced to close the piggery farm and that if the applicant bank had furnished the necessary details and renewed the policy, the defendants would have received the compensation which could have been adjusted towards their loan liability and that the loss sustained by the defendants due to the negligence and dereliction on the part of the applicant bank runs to a sum of Rs.40,90,300/- and that therefore, the counter claim made by the defendants may be allowed and that OA may be dismissed.

14. *Per contra,* the counsel appearing for the applicant bank submitted that the counter claim is not at all maintainable and that this Tribunal has no jurisdiction to entertain the counter claim, since under the common law of contract and also in terms of the loan agreement, the debtor cannot initiate independent proceedings before the Debts Recovery Tribunal as held by the Hon'ble Supreme Court in ***Nahar Industrial Enterprises Ltd. & Others Vs. Hong Kong and Shanghai Banking Corporation & Others*** reported in 2009 (8) SCC 646 and that the 1st defendant has already instituted a suit in OS No.486/2012 before the 2nd additional Sub Court Ernakulam for the very same relief as sought for in the counter claim and that subsequently the above suit was withdrawn and that defendants 1 to 3 have filed a consumer complaint before the Kerala State Consumer Disputes Redressal Commission for the very same relief as sought for in the plaint as well as in the counter claim and that the counter claim raised by the defendants is barred by limitation.

15. The counsel for the applicant bank submitted further that at the time of taking insurance policy, the defendants were informed that the insurance coverage was intended only to protect the interest of the applicant bank and that the defendants were not entitled to claim the insurance amount under any circumstances, in case of any claim raised under the policy and that it is the responsibility of the defendants to collect the insurance policy from the insurance company and to handover the same to the applicant bank and that the defendants did not take any steps to collect the insurance policy and handover the same to the applicant bank and that there was no privity of contract between the applicant bank and the insurance company and that since the defendants violated the terms and conditions of the loan agreement, they are liable to pay the outstanding loan due alongwith the accrued interest and other charges and that therefore, OA may be allowed and that counter claim may be dismissed.

16. It is not in dispute that the applicant bank remitted a sum of Rs.4,34,828/- towards insurance premium to the United India Insurance Company, Palakkad branch and that the payment was accepted by the said insurance company and that the amount so remitted was debited from the loan account of the 1st defendant as evidenced from perusal of Exh.A23 statement of account.

17. The 2nd defendant sent Exh.D1(c) to the former applicant bank informing that 494 pigs died in his farm and that he sustained a loss of Rs.62,60,000/- and that the insurance company did not inform him regarding the insurance. Exh.D1(d) is the letter sent by the Insurance company to the 2nd defendant informing him that though insurance policy was issued, it was not given to the bank since policy was not updated with the identification/tattooing mark of the pigs based on health-cum-identification certificate issued by a qualified veterinary doctor and that though they had repeatedly reminded the bank, it was not given by the bank. It has also been stated in the above letter that the farm was inspected by the insurance official at Mannarkad and that in spite of their request, veterinary certificate was not submitted.

18. The defendants 1 to 3 & 5 have not produced any proof to show that the insurance company repeatedly sent reminders to the applicant bank to update the policy with the identification/tattooing mark of the pigs based on health-cum-identification certificate issued by a qualified veterinary doctor. It cannot be disputed that the defendants are the policy holders whose duty and responsibility is to obtain the insurance policy from the insurance company and submit the same to the applicant bank after submitting the particulars as sought for by the insurance company. This Tribunal finds considerable force in the submission of the applicant bank, that there is no

privity of contract between the applicant bank and insurance company with regard to insurance policy taken for the defendants. If at all, it could be said that the applicant bank disbursed the insurance amount by way of loan to the insurance company on behalf of the defendants in order to insure the live stock.

19. The defendants 1 to 3 & 5 have produced true copy of letter Exh.D1(j) sent by the United Insurance Company. In the above reply, letter dated 18.01.2010 sent by the 2nd defendant to the United Insurance Company has been referred to. It is also stated that a detailed reply was given by the United Insurance Company by registered post replying to various queries raised by the 2nd defendant in the above letter. But the above letter sent by the 2nd defendant has not been produced before this Tribunal for the best reasons known to the defendants 1 to 3 & 5. However in Exh.D1(j) it is stated as follows :

> ***"The sustaining loss of Rs.62,60,000/- due to death of pigs had not been mentioned by the 2nd defendant in his earlier letter nor did the United Insurance Company received any claim intimation from him directly or through the bank and that making this claim against the United Insurance Company after a gap of several months is purely arbitrary and fictitious with an intention to make a profit out of the situation."***

20. It is discernible from the aforesaid content of the letter that the 2nd defendant failed to intimate the death of pigs and sustaining of loss to the United Insurance Company in earlier letter sent by him to the United Insurance Company and that therefore, the claim made by the 2nd defendant was found to be fictitious by the United Insurance Company. It is also revealed from the perusal of the contention of the above letter that the 2nd defendant failed to make claim of loss and death of pigs immediately to the United Insurance Company alongwith details such as identification details/post-mortem reports. Since the defendants have not stated any convincing reason in their written statement as well as CPA as to why they failed to inform the United Insurance Company immediately about the loss sustained by the defendants due to death of the pigs and also failed to furnish the aforesaid details.

21. The defendants 1 to 3 & 5 have produced Exh.D1(h) true copy of certificate in order to prove their contention that a Senior Veterinary Surgeon attached to Government Goat Farm, Attappady, Kottathara visited the 1st defendant firm and conducted post-mortem on the deceased pigs. The surgeon has stated in the certificate that on post-mortem examination it was revealed that animals exhibited severe anaemic condition and also

pneumonic changes. He has also advised to get expert opinion from a team of Animal Husbandry Department. It is pertinent to mention that the post-mortem conducted on the deceased pigs has not been obtained and produced before this Tribunal and that expert opinion from the team of Animal Husbandry Department as advised by the aforesaid Senior Veterinary Surgeon has not been obtained and produced before this Tribunal. Exh.D1(h) certificate is not the conclusive proof to accept the contention of defendants 1 to 3 & 5 that 494 pigs died due to infectious disease.

22. Exh.D1(i) true copy of the certificate produced by the defendants 1 to 3 & 5 reads as follows :

> *"Conducted post-mortem examination of two pigs belonging to Sh. Boby Austine, Green Valley Farm, Kottathara on 17.06.2009 at 4p.m."*

The details of the post-mortem report has not been produced by defendants 1 to 3 & 5. It cannot be ascertained from the aforesaid certificate with regard to the cause of death of the two pigs.

23. In any event, even assuming for argument's sake without admitting that 494 pigs died due to infectious disease, it is the bounden duty of the defendants who are the insured to bring to the knowledge of the United Insurance Company about the loss sustained due to the death of pigs without delay alongwith the details of the post-mortem report and the other details sought for by the above said insurance company. It is clearly established from the pleadings put forth by both the parties that the defendants failed to furnish the above details alongwith intimation to the United Insurance Company. Instead, the defendants 1 to 3 & 5 have contended that the applicant bank failed to obtain the insurance policy from the United Insurance Company. Therefore, it is established that the negligence is only on the part of the defendants and not on the applicant bank which has no role to play with regard to the insurance policy taken by the defendants from the United Insurance Company.

24. The defendants 1 to 3 & 5 have filed the counter claim alongwith their written statement contending that if the expiry of the policy had been duly informed and that policy was renewed, the defendants would not have suffered the loss of Rs.37,21,600/- due to the death of the pigs and that due to the negligence and dereliction of duty on the part of the applicant bank, the defendants had to stop the running of piggery farm and that therefore, the applicant bank is liable to pay a sum of Rs.40,90,300/- as compensation to the defendants. As already observed by this Tribunal, the negligence and dereliction of duty cannot be attributed to the applicant bank since it does

not have any direct role to play in the insurance policy transaction which was effected between the United Insurance Company and the defendants. No authenticated medical records, has been produced by the defendants 1 to 3 & 5 to prove their contention that 494 pigs died due to infectious disease. No steps have been taken by the defendants to obtain the insurance policy on furnishing the necessary details sought for by the United Insurance Company. Therefore, the claim made by the defendants 1 to 3 & 5 in the counter claim cannot be granted.

25. Availment of credit facility by the defendants from the applicant bank is admitted by the defendants 1 to 3 & 5 in their written statement as well as CPA. It is also not in dispute that the loan account of the defendants came to be classified as Non-Performing Asset due to their default in repayment of the outstanding loan due. Therefore, the applicant bank is entitled to get the relief sought for in the OA.

26. In view of the forgoing reasons and discussions, this Tribunal holds that the applicant bank has proved its case through its witness and the documents marked through him and that the defendants 1 to 3 & 5 have failed to prove their case so as to get the relief sought for in the counter claim CC 1/2018.

27. The applicant bank has charged Rs.61,116/- as penal interest on the agricultural loan account availed by defendants in terms of the agreement. It is well settled that penal interest cannot be capitalised and no interest can be charged on penal interest. The applicant bank, therefore, is not entitled to get any further interest on the aforesaid amount of penal interest, as laid down by the Hon'ble Supreme Court of India in *Central Bank of India v. Ravindra [reported in AIR 2001 SC 3095]*.

28. In the above circumstances, the case of the applicant bank regarding recovery of the sum of Rs.1,17,37,739.03 claimed as due relating to the agricultural loan account with interest pendentelite and post final order interest on the sum of Rs.1,16,76,623.03 from defendants, jointly and severally claimed as due under the loan account Exh.A23 from the defendants is proved by the uncontroverted averments in the proof affidavit of AW1 along with Exhs.A1 to A26.

29. Thus, this Tribunal holds that since the applicant bank has proved its case through its proof affidavit and the documents marked, the Original Application is allowed with costs. The counter claim raised by the defendants is dismissed. No costs.

30. In the result, the Original Application is allowed as per the following lines :

> "The defendants are directed to pay to the applicant bank, jointly and severally, a sum of Rs.1,17,37,739.03 (Rupees One Crore Seventeen Lakhs Thirty Seven Thousand Seven Hundred Thirty Nine and Paise Three only) due under the agricultural loan account with interest pendentelite and post final order interest on the sum of Rs.1,16,76,623.03 (Rupees One Crore Sixteen Lakhs Seventy Six Thousand Six Hundred Twenty Three and Paise Three only) @ 14.75% per annum from 01.10.2012 till the date of realisation less the sum of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand only) credited on 13.07.2015; a sum of Rs.26,95,000/- (Rupees Twenty Six Lakhs Ninety Five Thousand only) credited on 10.09.2015 and also the net sale proceeds of Rs.80,20,000/- (Rupees Eighty Lakhs Twenty Thousand only) credited on 06.07.2018."

31. On failure to pay the above said debts to the Applicant Bank, the Applicant Bank is directed to bring the OA Schedule 'H' property for sale to realize its dues and its proportionate costs.

32. The Registry is directed to prepare DRC in terms of this final order. The Applicant Bank shall file memo of costs within 10 days from the date of this order. Registry is directed to communicate the copy of this order to both parties as provided in Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993, as amended in 2003.

Typed by PS, transcribed, corrected and pronounced by me in the open court on this the 09th day of July, 2026.

(Su. WILLYAHM)
PRESIDING OFFICER

SCHEDULES – A to E

(Sold by the applicant bank)

SCHEDULE - H

District	: Kozhikode
Sub District	: Perambra
Taluk	: Koyilandi
Village	: Chakkittapara
Sy. No.	: Unsurveyed
Extent	: 200 cents

Description of property

200 cents of unsurveyed land in Chakkittapara Village, Koilandi Taluk in Kozhikode District owned by second defendant together with all improvements therein, more particularly described in the Schedule to Sale Deed No.2535/1986 of Perambra SRO.

Boundaries

South	: Property of Jose and Augusthy
East	: Laksham veedu property
West	: Panchayat stadium subisha road
North	: Property of Joshy and Augusthy

(Su. WILLYAHM)
PRESIDING OFFICER

LIST OF DOCUMENTS FILED BY THE APPLICANT BANK

Sl. No.	Date	Description of document	Exhibits
1	03.10.2008	Term loan agreement executed by the defendants 1 to 3 in favour of applicant bank.	Ex.A-1
2	03.10.2008	Deed of guarantee executed by defendants 2 to 4 in favour of the applicant bank.	Ex.A-2
3	03.10.2008	Receipt regarding the receipt of Rs.42,00,000/- by defendants 2 and 3 in favour of the applicant bank.	Ex.A-3
4	20.10.2008	Receipt regarding the receipt of Rs.33,00,000/- by defendants 2 and 3 in favour of the applicant bank.	Ex.A-4
5	14.10.2008	Sale Deed No.1339/2008 of Agali SRO	Ex.A-5
6	14.10.2008	Sale Deed No.1338/2008 of Agali SRO	Ex.A-6
7	16.11.2007	Sale Deed No.1412/2007 of Agali SRO	Ex.A-7
8	16.11.2007	Sale Deed No.1411/2007 of Agali SRO	Ex.A-8
9	16.11.2007	Sale Deed No.1413/2007 of Agali SRO	Ex.A-9
10	25.02.2006	Sale Deed No.429/2006 of Koorachundu SRO	Ex.A-10
11	26.09.2006	Sale Deed No.1997/2006 of Koorachundu SRO	Ex.A-11
12	19.11.1986	Sale Deed No.2535/1986 of Perambra SRO	Ex.A-12
13	21.08.2008	Letter issued by defendants 2 and 4 regarding deposit of title deed Nos.1412/2007, 1411/2007 and 1413/2007.	Ex.A-13
14	21.08.2008	Letter issued by defendants 2 and 4 regarding deposit of title deed No.1338/2008	Ex.A-14
15	21.08.2008	Letter issued by defendants 2 and 4 regarding deposit of title deed Nos.1997/2006 and 429/2006.	Ex.A-15
16	21.08.2008	Letter issued by the second defendant regarding deposit of title deed No.2535/1986.	Ex.A-16
17	03.10.2008	Memorandum of deposit of title deeds in respect of 15 Acres of land in Sy. No.634	Ex.A-17

		of Kottathara village executed by defendants 1 to 3.	
18	23.10.2008	Letter of confirmation of deposit of title deeds executed by defendants 2 and 3 in favour of applicant bank.	Ex.A-18
19	03.10.2008	Letter of confirmation of deposit of title deeds in respect of 71.500 cents executed by defendants 3 and 4 in favour of the applicant bank.	Ex.A-19
20	03.10.2008	Letter of confirmation of deposit of title deeds in respect of 16.40 Acres executed by defendants 2 and 4 in favour of the applicant bank.	Ex.A-20
21	03.10.2008	Letter of confirmation of deposit of title deeds in respect of 200 cents executed by the first defendant in favour of the applicant bank.	Ex.A-21
22	05.03.2008	Power of attorney executed by the fifth defendant in favour of the 2nd defendant	Ex.A-22
23	25.09.2012	Relevant pages of the books of account maintained by the applicant pertaining to the Agricultural term loan provided to the defendants.	Ex.A-23
24	25.09.2012	Interest application statement showing the rates of interest applied in the account of the defendants.	Ex.A-24
25	20.01.2004	General power of attorney executed by the applicant in favour of A. Jayaprakash.	Ex.A-25
26	01.06.2012	True copy of the plaint submitted by defendants 1 to 3 on the file of Second Additional Sub Court, Ernakulam	Ex.A-26

List of documents filed by the defendants 1 & 2

along with the written statement

Sl. No.	Date	Particulars	Exhibits
1.	----	True copy of the stock valuation	Ex.B1(a)
2.	----	True copy of statement of day today affairs of the firm.	Ex.B1(b)

3.	08.03.2010	True copy of the letter of the 2nd defendant	Ex.B1(c)
4.	17.02.2010	True copy of the letter sent by the insurance company to D2	Ex.B1(d)
5.	08.03.2010	True copy of the letter sent by the applicant bank to D2	Ex.B1(e)
6.	21.07.2010	True copy of the letter for claim of insurance sent by D2 to Insurance company	Ex.B1(f)
7.	12.03.2010	True copy of the certificate for visit to the Green Valley Farm by the Senior Veterinary Surgeon	Ex.B1(h)
8.	----	True copy of the certificate issued by Dr.V.R. Rajesh, Veterinary Surgeon	Ex.B1(i)
9.	----	True copy of the certificate issued by Veterinary Surgeon Dr.R.S.Ramaswamy	Ex.B1(j)
10.	16.08.2010	True copy of the legal notice sent by the 2nd defendant to the applicant bank	Ex.B1(k)
11.	14.02.2012	True copy of the reply notice sent by applicant bank to D2	Ex.B1(l)
12.	02.03.2012	True copy of the reply sent by the applicant bank to the D2's Advocate	Ex.B1(a)

(Su. WILLYAHM)
PRESIDING OFFICER