

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CIVIL JURISDICTION**

Civil Action No. **HBC 2** of **2022**  
D/S No. **8** of **2022**

**BETWEEN:**           **HOME FINANCE COMPANY PTE LIMITED** trading as HFC BANK a duly incorporated company having its registered office at 371 Victoria Parade Suva, Fiji.

**PLAINTIFF**

**AND:**               **JADURAM INVESTMENTS PTE LIMITED** a limited liability Company having its registered office at Jaduram Industries Limited Building, Rosawa Street, Labasa.

**1<sup>ST</sup> DEFENDANT**

**AND:**               **NILESH RICHARD JADURAM** of Yaka Street, Labasa.

**2<sup>ND</sup> DEFENDANT**

**AND:**               **ALANIETA COLASAUKILEPANONI SERUVAKI NIUSORIA** of Yaka Street, Labasa.

**3<sup>RD</sup> DEFENDANT**

**BEFORE**           **:**           **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**           **Mr. Lajendra N. for the Plaintiff**  
**Mr. Robinson for the 1<sup>st</sup> Defendant**  
**Mr. Nilesh Richard Jaduram - In Person**  
**No appearance of 3<sup>rd</sup> Defendant.**

**DATE OF DECISION:** 10<sup>th</sup> July, 2025

**DECISION**

*[Bank Loan for Business Overdraft Limit]*

## **Introduction**

- 1) The Plaintiff [Home Finance Company Pte Limited trading as HFC Bank] filed and commenced a Writ Action coupled with the Statement of Claim and sought for the following orders:
  - i. Judgment against the Defendants jointly and severally for the sum of \$372,159.68. [Three hundred Seventy-Two thousand, One hundred and Fifty-Nine Dollars and Sixty-Eight Cents].
  - ii. Interest on the Judgment sum computed from 18 March 2021 until full payment at the rate of 7% per annum.
  - iii. Cost of this Action; and
  - iv. such further and/or other relief as this Honourable Court may deem just and expedient.
  
- 2) The defendants filed its Amended Statement of Defence on 15<sup>th</sup> June 2023 and in nutshell essentially the Amended Statement of Defence raised five [05] matters as follows:
  - (a) HFC Bank had made representations to the second and third Defendants that it will go after Jaduram's Industries Pte Limited's and Jaduram Investments Pte Limited's assets rather than against the second and third Defendants.
  - (b) HFC Bank had made representations that it will first go after Jaduram Industries to seek payment as Jaduram Industries had sufficient funds to clear the loan amount.
  - (c) HFC Bank has changed a higher interest rate than what was agreed on or permitted.
  - (d) HFC Bank sold the assets at an undervalued price; and
  - (e) HFC Bank to date has not accounted for all the assets seized.

## **Plaintiffs' Contention**

- 3) The Plaintiff lent and advanced loan facility to the First Defendant in the sum of \$600,000. Letter of offer dated 22 December 2015 was signed by the First Defendant. On page 7, under facilities - Schedule 1 - the essential terms and conditions of the loan is set out. On page 8, it has the securities whilst at page 10, the First Defendant had accepted the terms and conditions.
  
- 4) On page 13 and 14, the second and third Defendants accepted the Guarantee by executing the same on the letter of offer from the HFC Bank. The second and third Defendants also executed a guarantee and indemnity.

- 5) All these documents illustrated the contractual obligation that the First Defendant had under the letter of offer and the second and third Defendants had under the personal guarantees for the total loan outstanding.
- 6) The list of securities that were taken was Debenture over the Company Assets as well as the Bill of Sale over certain vehicles and trucks and included an Excavator. In addition, the second and third Defendants gave their personal guarantee, hence, these items formed the securities.
- 7) HFC Bank acceded to the request of the First Defendant to discharge Vehicle Registration Numbers HX 910 and IC 664 from the security.
- 8) This loan account with HFC fall due and certain reminder letters were issued to the First Defendant who failed to regularize the account. The bank was left with option but to issue formal demand notice under the securities held.
- 9) The First Defendant's failure to adhere to the demand notices made the First Defendants entire loan account due and payable.
- 10) However, when the bank's mortgagee powers became due and exercisable HFC Bank then proceeded to seize the securities that it could and exercised its powers for the sale over these units by tender process with advertisements for interested parties to bid. Hereafter, the bank proceeded to sell the seized units and the sale proceeds were credited to the Defendant's loan account.
- 11) Even after crediting the sale proceeds to the loan account, it was not sufficient to clear the loan account of the First Defendant.
- 12) The current claim filed by HFC bank is for the residual debts and against the second and third Defendants. It is for residual debt except it is pursuant to the guarantee.
- 13) The liability of the first, second and third Defendants are joint and several and not otherwise.

#### **Defendant's position**

- 14) Lal Patel Bale Lawyers initially represented the Defendants. However, when trial date was fixed, they withdrew as solicitors acting for the Defendants. Subsequently, Lawyers Sadiq Esquire came on record representing the Defendants. Again, second Defendant consented to his withdrawal.
- 15) The second Defendant, Mr. Nilesh Richard Jaduram essentially ran the case during trial for all the Defendants. He did so for the First Defendant in his capacity as Director and for the third Defendant as her husband and for himself in his personal capacity.

- 16) The second defendant also took the witness stand and gave evidence in court.
- 17) The second defendant essentially during the course of the trial especially under cross-examination had admitted to the debt with the exception reiterating that the loan statement shows that the debt was written off reflecting a zero balance on the statement, which meant that there was nothing outstanding with HFC bank by him.
- 18) However, in cross-examination, the second defendant admitted that he did not pay the amount that was recorded before the debt was written off. The amount record was \$372,159.68 and this was then prohibited to achieve a write-off. There was express admission by the second defendant that the sum \$372,159.68 that was written off was not paid by him and remained as a bank debt balance prior to bank's internal write-off.
- 19) It seemed that the second defendant failed to understand how the bank operated when writing off the debt. The write-off of the debt was an internal administrative affair of the bank and it is within the preview of bank's internal record keeping.
- 20) The second defendant's position was that since the loan has been written off by the bank, now precludes the HFC banks from claiming the outstanding debt against the Defendants which in fact is illegally incorrect and this argument has no merit.
- 21) The second defendant had eventually during the course of the trial especially under cross-examination had admitted to the bank debt and blamed his solicitors Lal Patel Bale Lawyers for putting up a defence which the second defendant could not substantiate at trial proper.
- 22) The second defendant's contention was that he did not believe in any of his defences but nonetheless went along with the whatever Mr. Bale had advised him.
- 23) There are five (05) defences of the second Defendant and is reflected and enumerated at paragraphs 2(a) to (e) of my judgment hereinabove for reference.

#### **Analysis and determination**

- 24) The Plaintiff HFC bank is seeking judgment against the Defendants jointly and severally in the sum of \$372,159.68 together with an interest rate of 7% per annum, computed from 18<sup>th</sup> March 2021 until full payment and the costs of this action.
- 25) The first Defendant's loan account with HFC bank continues to remain in arrears and as at 17<sup>th</sup> March 2021, the total sum outstanding was \$372,159.68 with interest accumulating at the rate of 7% per annum.

26) I will now consider and deliberate on the five (5) defences of the Defendant's within the Defendant's Statement of Defence filed herein.

**First and second defences.**

27) These defences are reflected at paragraph 2 of my judgment hereinabove.

28) I note from the Plaintiff's Bundle of Documents that Jaduram Industries Ltd was wound up by the Court on 18<sup>th</sup> May 2018. This was the very company, Jaduram Industries Ltd., which the Defendants say was supposed to cover the debt of the Defendants with HFC Bank by executing the deed of undertaking by Directors dated 31<sup>st</sup> March 2020. Since the company was wound up, it was incapable of providing any legitimate undertaking to cover the debts of the Defendants.

29) Further, Tab 12 of the Plaintiff's Bundle of Documents has a deed of undertaking by Directors entered into on 31<sup>st</sup> March 2020 that Jaduram Industries will cover the debts of the Defendants. By this time, the company had undergone into receivership and therefore was unable in law to provide any such undertaking. Even the Directors of Jaduram Industries did not have any legal basis to execute the said deed of undertaking by the Directors.

30) The company underwent winding up and subsequently into receivership and therefore the company, Jaduram Industries and its Directors were not capable in law to provide any legitimate undertaking by the deed to cover the debts owed by the Defendant's to the HFC Bank.

31) The deed of undertaking by the Directors dated 31<sup>st</sup> March 2020 was prepared by solicitors Lal Patel Bale Lawyers who represented the Defendants initially in the proceedings and filed the amended Statement of Defence on behalf of Defendants therein.

32) The deed of undertaking by Directors therefore was an illegal document and incapable in law in providing any such undertaking for their bank loan taken from the HFC Bank.

33) For the above reasons, the first and second Defendants raised by the Defendants in this Action are rather illegal and hence have no legal merit.

- 34) The First and second defences are therefore dismissed in its entirety since the undertaking on which their defences were founded on has no basis and is rather illegal per se.

***Third defence***

- 35) This defences raises the issue that the bank has charged an incorrect interest rate which was not agreed and/or permitted.
- 36) References made to document Tab 1 within the Plaintiff's Bundle of Documents at page 7 which deals with facilities schedule?
- 37) Under such heading of interest rate, it records a 7% interest per annum variable.
- 38) Upon the perusal of the Plaintiff's Statement of Claim at paragraph 7 and 12 and in prayers, the bank clearly claims on interest at the rate of 7% per annum.
- 39) The 7% per annum interest charge to the Defendant's loan account is on the basis of the HFC Bank's contractual right to do so under the loan agreement documents that were executed and now tendered into evidence as an exhibit.
- 40) At the time of the execution of the loan documents, the Defendants were fully aware of what they were signing for and in particular that HFC Bank will charge 7% per annum interest rate thereof.
- 41) Therefore, I find there is no merit at all in the assertion by the Defendants that the HFC Bank has charged the higher interest rate than what was permitted or agreed to between the Defendants as customers and the Bank.
- 42) The defence obviously fails and is accordingly dismissed.

***Fourth Defence***

- 43) This defence raises the issue that the HFC Bank had proceeded to sell the securities and all an undervalued price.

- 44) The Defendants filed a Discovery Application on 5<sup>th</sup> April 2022 and sought for various orders therein and a ruling was delivered on 7<sup>th</sup> December 2022 where the application for Specific Discovery was refused with cost.
- 45) The HFC Bank has provided for all the documents through its solicitors to the Defendant pertaining to show the HFC Bank sold its securities and gave a detailed background to the same.
- 46) The Second Defendant admitted in his evidence that this Fourth Defence was made up by solicitor Mr. Bale.
- 47) The tabs and/or annexed series of exchange of correspondences between the HFC Bank's, solicitors and the Defendant's former solicitors, Lal Patel Bale Lawyers, is referred to as Tabs 15 to 21. However, tab 21 shows each security that the bank sold at the highest bid, the price of the highest bid and the total number of tenders received by the bank.
- 48) Further, from the loan statement it is evident that the proceed of sale of each security was then credited to the loan account of the First Defendant - refer to Tab 19.
- 49) Once the sale proceeds were credited, it shows the debt balance of \$372,159.68.
- 50) During the cross-examination, the Second Defendant even admitted that none of these vehicles were brand new. When given as security to the bank, it had been pre-owned for almost four (04) years by Jaduram Industries and then transferred to Jaduram Investments.
- 51) It can be ascertained from the documentary evidence that the HFC bank acted with all certain and took necessary care and then disposed of the securities to the highest bidders in terms of the tender process.
- 52) I do not find any merit in this defence and fail to find any basis (if any) for the Defendants to assert that the properties were sold at an undervalued price. It has not been proved otherwise by the Defendants.
- 53) Accordingly, I dismiss this defence.

***Fifth Defence***

- 54) The complaint is that the HFC bank has not accounted for all the assets seized.
- 55) The Defendant's Specific Discovery was filed on 5<sup>th</sup> April 2022 and a Ruling was delivered on 7<sup>th</sup> December 2022. This application was refused with cost.
- 56) In his Ruling, the Learned Master in his finding concluded that 'he found that the plaintiff has disclosed all the documents that are relevant to the issues raised in the claim. He added that the Plaintiff bears the evidentiary burden of proving this claim on the balance of probabilities at the trial of this matter. The documents that have been discovered are sufficient for the Defendant to prepare an appropriate defence and proceed to trial.' Negating the Defendant's Defence, the Learned Master refused the Defendant's application for discovery accordingly.
- 57) Further, I find no merit in Defendant's fifth defence and accordingly dismiss the same.
- 58) The Second Defendant's position was 'that the loan was paid off when the bank proceeded to write off the debts. His further contention is that after the write-off, the outstanding sum had recorded zero balance and therefore the loan written off now precludes the HFC Bank from claiming against the Defendant.
- 59) Reference is made to the Case Authority of **Fiji Development Bank v. Malaka Niulevu and Eremasi Niulevu**, Magistrate Court No. 109 of 2009, Civil Appeal No. HBA 16 of 2010.
- 60) In summary, the Magistrate's Court after noting that the Bank (Plaintiff) had written off the loan, proceeded to dismiss the Plaintiff's claim.
- 61) The Plaintiff bank, being dissatisfied, appealed against the Judgment to the High Court. The High Court Set Aside the Judgment of the Magistrate's Court and awarded the claim of the Bank (Plaintiff).
- 62) The relevant paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the judgment is reproduced hereunder:

"7. In her Order the learned Magistrate concluded that the First Defendant was liable to pay the loan. However, she concluded that since the bank had written-

off the debt on 01.03.2006, the Plaintiff Bank could not bring this action against the Defendant. On that ground alone the Learned Magistrate had dismissed the Plaintiff's claim on 10.8.2010.

8. The only issue that this court has to now determine is whether the writing-off the loan would preclude the Plaintiff Appellant initiating action against the Defendant and obtaining order as it wrote off the debt in the bank accounts. In other words whether the contract between the appellant bank and the Defendants is negated by the write-off of the debt.

9. ....

10. In my mind, the writing-off of the debt was an internal administrative affair of the bank. Writing-off could be done for so many reasons and such matters falls strictly within the bank's preview of internal record keeping. The contract between the Defendant and the Plaintiff was independent of any internal arrangements made by the bank for their administrative purposes.

11. At the time of entering into the agreement with the bank, the Defendant undertook to repay the loan. Hence, it is the duty of the Defendant to repay the loan in terms of the agreement, because the Plaintiff's internal administrative actions will not absolve the Defendant's liability towards the bank.

12. In **Bristow (H.M. Inspector of taxes) v. William Dickinson & Company, Ltd. [1946] K.B. 321**, it was held that merely because a debt is declared as a bad debt, for that reason alone it does not become unrecoverable. It was also held that, bad debts if received subsequently ought to be treated as trade profits for purpose of taxation to income tax.

13. Therefore, it is my view that the right to recover the loan survives despite the bank's writing -off the loan. I therefore conclude that write-off will not be an impediment for the Plaintiff to sue the Defendant in order to recover its debt.

14. I therefore conclude that the Learned Magistrate had erred in law in dismissing the Plaintiff's action. Therefore, I allow the appeal.

63) Bearing above in mind the second defendant's position that the loan has been written off now precludes the HFC Bank from claiming the said sum against the Defendants is legally incorrect, and thus has no merits, fails and this defence is accordingly dismissed.

**D. In Conclusion**

- 64) The Plaintiff, HFC Bank is claiming Judgment for the loan sum against the First Defendant as the borrower and the Second and Third Defendants as Guarantors to the loan to the tune of \$372,159.58.
- 65) The Plaintiff bears the evidentiary burden of proving his claim on the balance of probabilities.
- 66) Further, all documents were discovered to allow the Defendants to prepare an appropriate Statement of Defence and proceed to trial.
- 67) The Defendant's Statement of Defence filed raising five [05] matters were dismissed in its entirety for the reasons explained in my Judgment hereinabove.
- 68) The Second Defendant's afterthought position that the said loan was written off when the HFC Bank proceeded to write off the debt and that after the write off the outstanding sum had recorded zero balance was negated by the Plaintiff, HFC Bank.
- 69) The writing off the debts was an internal administrative affair of the bank and does not preclude the Plaintiff HFC Bank from initiating an action against the Defendants in obtaining an order as it is procedurally and administratively written-off the debts in the bank records only.
- 70) The contract between the Home Finance Bank and the Defendant's is very much in existence and not negated by the fact that the writing off of the bank loan of the Defendant's would preclude the Bank from recovering its loan debt.
- 71) The Plaintiff, HFC Bank has sufficiently proved its case and its claim with documentary evidence as the basis for claiming the sum of \$372,159.68.
- 72) Therefore, it prompts me to grant the following orders as hereunder which the Plaintiff, HFC Bank is entitled to.

**E. Costs**

- 73) The matter proceeded to trial with the Plaintiff calling one (1) witness who had traveled from Suva headquarters to Labasa Court.
- 74) The Second Defendant gave evidence for the Defendants.
- 75) The Court's time was unnecessarily wasted and the matter being duly delayed unnecessarily.
- 76) Both parties furnished court with their respective written submissions.
- 77) It is only just and fair that the Defendants to pay the Plaintiff, HFC Bank summarily assessed costs of \$2,500 within 21 days' timeframe.

**F. Orders**

- i. Judgment against the Defendants jointly and severally for the sum of \$372,159.68 [Three hundred Seventy-Two thousand, One hundred and Fifty-Nine Dollars and Sixty-Eight Cents]
- ii. Interest on this Judgment sum of \$372,159.68 [Three hundred Seventy-Two thousand, One hundred and Fifty-Nine Dollars and Sixty-Eight Cents] computed from 18<sup>th</sup> March 2021 until full payment at the rate of 7% per annum, and
- iii. The Defendants to pay a summarily ordered sum of \$2,500 to the Plaintiff, HFC Bank within 21 days' timeframe.

Dated at **Suva** this **10<sup>th</sup>** day of **July** , **2025**.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

**CC: LAJENDRA LAWYERS, SUVA  
JADURAM INVESTMENT, PTE LTD  
NILESH RICHARD JADURAM  
ALANEITA NIUSORIA**