सत्यमेव जयते

Registration No.: Sp.C.S 11/2019
Filing No.: Sp.C.S. 11/2019
Filed On: 04-06-2019
Registered On : 04-06-2019
Decided on : 16-02-2023
Duration : YY MM DD
03 08 12

IN THE COURT OF PRINCIPAL SR. CIVIL JUDGE (C. N. DESAI)
AT : KAPADWANJ.

SPECIAL CIVIL SUIT NO. 11 OF 2019

Exh.-

Plaintiff:

Bank of India,

Bhadresh Jayendra Bhatt (Branch Manager)

Age: 58, Occu.: Salaried

Residing at : Ta. Kathlal, District- Kheda.

:: V E R S U S ::

Defendants:

1. **Mayurkumar Punamchand Shah**

   Age : 49, Occu. Business

Residing At Nava ghara,

Ta.Kathlal, District- Kheda.

Heirs of Late Indiraben W/o Punamchand Manilal Shah

2. **Nilamben Rajeshbhai Shah,**

   Age : 46, Occu. Housewife.

   Residing At - Mukhi ni Khadki

   Ta. Kathlal, District- Kheda

3. **Anjuben Arvindbhai Shah**

   Age : 44, Occu. Housewife.

   Residing At - Khadal

   Ta. Kathlal, District- Kheda

4. **Linaben Dilipbhai Shah**

   Age : 42, Occu. Housewife.

   Residing At - Junior Journalist, Krishna Colony

   Idgah road, Baran, Rajashthan

Subject: Suit for Recovery of Money of Rs. 6,84,114.74 paisa/-

Appearance:

Ld. ADVOCATE **Mr. A. D. SEVAK** FOR THE PLAINTIFF

EXPARTE FOR THE DEFENDANTS

J U D G E M E N T

Brief facts of the plaintiff:-

1. According to the plaintiff, plaintiff bank is a corporate body and

Nationalized Bank. Moreover, having their branch in different city head office is in Mumbai, and main office is located at Ahmedabad and out of that, plaintiff bank having its sub-branch at Ta- Kathlal , Dist.-Kheda.

2. Defendants of the suit has applied for Mortgage Loan which application was approved by the bank on 12/06/2013 and sanctioned mortgage loan of Rs. 4,00,000/-. The amount of the mortgage loan sanctioned was received by defendant no.1 on 12/06/2013 in loan account no-280362610000005. Defendant no.1 and deceased Indiraben W/o Punamchand Manilal shah (mother of defendant no.1) has signed all the documents as per the norms of the bank. Moreover, defendants were agreed to pay loan at the rate of interest fixed by the bank. Defendants have signed all the documents as per the norms of the bank. Moreover, defendants were agreed to pay monthly installment of loan of Rs 5,134/- with total of 144 installments have been determined. Defendants having agriculture land bearing **Survey No 3306 having area 43.79 Sq. mt.** situated at Ta- Kathlal, Dist- Kheda. Defendants have created charge for obtaining mortgage loan on above revenue survey no and

registered a mortgage deed by registered no. 423/2013 based on which Plaintiff bank has created charge vide entry no 2337 in C.T Survey Record Office. Plaintiff bank has given several reminders to the defendants for the repayment of loan but, defendants did not repay the loan amount within stipulated time. Therefore, plaintiff bank is entitled to recover total outstanding amount of Rs **6,84,114.74 paisa/-** Therefore, plaintiff bank has given notice through their advocate on **21/05/2019** which was served to the defendants, then also defendants did not repay the outstanding loan amount. Therefore, plaintiff bank has to file this suit.

3. After filing this suit, summons was issued to defendants, that summons was duly served to the defendants. But, defendant did not remain present before the Hon'ble Court either in person or through there advocate. Therefore, right of the defendants to produced written statement has been closed and looking to the record of the case and Ld advocate of the plaintiff has given the application for exparte order against the defendants and court has passed the order exparte proceeding against defendants.

4. From the above pleadings of the parties following issues was framed at **Exh. 14 dated 16/09/2022.**

I S S U E S

1. Whether the plaintiff proves the suit claim?
2. Whether the suit is maintainable in eye of law?
3. Whether the plaintiff is entitled for the interest as prayed for? If yes? at what rate?
4. Whether the plaintiff is entitled for relief as prayed for ?
5. What Order and what Decree ?

5. My findings to the above issues are as under with the reasons to follow.

   1. In the Affirmative.

   2. In the Affirmative.

   3. In the Affirmative @ of 6% per annum

   4. In the Partly Affirmative

   5. As per final order.

6. The plaintiff has furnished following oral as well as documentary

evidence in support of his case.

ORAL EVIDENCE :-

Sr. No.	Exhibit	Description of Documents
1	18	Affidavit of evidence of plaintiff's officer Yogendra Rupsinh Solanki
2	36	Closing pursis

DOCUMENTARY EVIDENCE :-

Sr. No.	Exhibit	Description of Documents
1	19	Loan application form.
2	20	Term Loan Agreement
3	21	Annexure -2 Form No. L-515
4	22	Form No. L-516
5	23	Deed of Gurantee
6	24	Affidavit - Cum Undertaking
7	25	Property Card of City Survey No. 3306
8	26	Tax assessment sheet for property no 1077
9	27	Loan Sanctioned letter
10	28	Property Mortgage Deed
11	29	Vernacular letter
12	30	Death certificate of mother defendant no.1.
13	31	Legal notice
14	32	Rpad slip
15	33	Acknowledgement slip
16	34	Form No. L-444 C
17	35	Loan account statement

7. Defendants have not furnished any oral as well as documentary

evidence.

8. Learned Advocate for the plaintiff has stated in affidavit of evidence at Exh- 18 that, defendants applied for mortgage loan in our bank against that, plaintiff bank has sanctioned Loan of Rs. 4,00,000/- as per the norms of the plaintiff bank. However, defendants failed to repay the loan amount regularly. Therefore, plaintiff bank is entitled to recover the loan amount, as well as, penalty charges in total of Rs. **6,84.114.74 paisa/-** from the defendants.

R E A S O N S

9. ***Issue No. 1, 2 & 4:-***

Heard the Ld. Advocate for the plaintiff at length. Now, on perusing oral and documentary evidence produced by plaintiff, to prove his case plaintiff has filed affidavit of evidence at **Exh. 18** in which plaintiff has stated facts as per the plaint. Which is also a written chief examination as per the Provisions of *Order-18 Rule-4* of the C.P.C. The facts stated in written chief examination it is in line of Exh.1 and furnished documentary evidence vide **Exh. 19 to 35.** However, no cross-examination has been done by the other sides.

10. Now, looking to the facts stated in written chief examination and on perusing documentary evidence it transpires that the defendant no.1 has obtained mortgage loan from plaintiff of Rs.**4,00,000**/- from the plaintiff institution and executed loan documents in favour of plaintiff institution. And it transpires from **Exh.19** which is a loan application preferred by defendant to the plaintiff institution. Further, looking to **Exh.20 to 34** which are the loan documents executed in favour of plaintiff by the defendant. Further, on perusing **Exh. 35** which is a statement of account, it transpires that the defendant no.1 was failed to repay the Loan amount of Rs. **4,00,000/-** .

11. The **outstanding amount** as on date **31/12/2013 was Rs 4,06,349 paisa/-as a principal amount and interest from date 30/12/2013 to 22/05/2019 was Rs 2,33,850/- and Rs 43,915.53 paisa/- as a penal interest amount.** So the total outstanding was of **Rs 6,84,114.74/-** paisa in the plaintiff institution. For that plaintiff institution has repeatedly demanded for the same and at last issued legal notice at **Exh. 31** though defendant have not comply with it. Further, the defendant neither remains present nor challenged the above facts by adducing oral and documentary evidence. In the

circumstances, whatever stated in Exh-18 is unchallenged till date and there is no reason to disbelieve it. Thus, I reply ***issue No.1, 2 & 4*** in the "***Affirmative***".

12. ***Issue No. 3:***- The plaintiff institution has claimed the interest at the rate of 10.65 % per annum, but on perusal of documentary evidence that there is no evidence on record to show that there is clear stipulated terms and conditions for the interest between plaintiff and defendant. The plaintiff is claiming 10.65 % interest p.a. which is in my opinion excessive. Further, as per the Provision of **Section-34** of the Civil Procedure Code, the discretion always lies with the court, for awarding the interest. Looking to the present situation and circumstances 6% p.a. interest would be awarded, then it is just and proper in the interest of justice and it will meet the end of justice. Therefore, in view of the above discussion, I answer ***issue No. 3*** in the "***Partly Affirmative***" and held that plaintiff institution is entitled to recover the decreetal amount @ 6% p.a. from the defendant.

13. ***Issue No. 5 ::-*** In view of the above discussion of Issue No. 1 to 4, I pass the following final order in the interest of justice.

: : O R D E R : :

1. The present suit preferred by the plaintiff is hereby partly allowed.
2. Plaintiff is entitled to get the outstanding amount of **Rs 6,84,114.74 paisa/-** (Six Lakhs Eighty-four thousand One hundred fourteen & Seventy-four paisa only) with the simple interest @ 6% p.a from the date of filing of this Suit.
3. The defendants shall pay the cost of the plaintiff and bear their own cost.
4. Decree be drawn accordingly.

Pronounced and signed in open Court on 16th day, month of February in the year, 2023.

Place : Kapadwanj
Date :-16/02/2023
rkm

(Chandrakant Nathubhai Desai)
Principal Senior Civil Judge,
Kapadwanj
Judge Code No. GJ00995