Received on	:	07.02.2019
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Decided on	:	20.03.2024
Duration (YY-MM-DD)	:	05 01 13
Exhibit	:	50

IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE, VISNAGAR.

SPECIAL CIVIL SUIT NO.1 OF 2019

PLAINTIFF:-
Bank of India, A Banking company,
Visnagar Branch, Nr. Dipra Darwaja,
Tal. Visnagar, through its authorized
Officer, Rajeshkumar Chauhan,
Aged about 53 years,
Occupation: Service,
R/o. Visnagar, Tal. Visnagar,
Dist. Mahesana.

VERSUS

DEFENDANTS:-

1. Barot Hansalkumar Atulkumar
Adult, Occupation: Agriculture/Cattle Feeding,
R/o. B/13, Jalpari Society, Ilora Park,
Subhanpura, Vadodara.
Permanent R/o. Post: Veda, Tal. Vijapur,
Dist. Mahesana.

2. Barot Varshaben Atulkumar
Adult, Occupation: Agriculture/ Cattle Feeding,
R/o. B/13, Jalpari Society, Ellora Park,
Subhanpura, Vadodara.
Permanent R/o. Post: Veda, Tal. Vijapur,
Dist. Mahesana.

Sub :<u>Suit for recovery of Rs.9,81,402/-.</u>

<u>Appearance:-</u>
Mr. R.K. Chaudhary, Ld. Adv. for plaintiff.
Defendants not appeared.

<u>JUDGMENT</u>

(1) The plaintiff is Bank Corporate body registered under the Banking Company (Acquisition of Undertaking) Act and its head office situated at Mumbai and local zonal office situated at Gandhinagar. Out of different Branches of plaintiff Bank, one of the Branch is situated at Visnagar, Dist. Mahesana.

(2) The brief facts leading to the present Suit are that the defendant No.1 has applied for agriculture loan against mortgage OD to the plaintiff Bank. In view of the said application of the defendant No.1, the plaintiff after due verification, sanctioned agriculture mortgage OD loan of Rs.9,00,000/- to the defendant No.1 and for which the defendant has withdrawn the said loan amount for the first year. In lieu of the said sanctioned loan by the plaintiff, the defendant has executed necessary documents in favour of the plaintiff viz. loan application, sanction letter, D.P. Note, Letter of Authority, Arrangement Letter, Loan Agreement, Hypothecation Agreement etc. on 21/05/2013 and 29/06/2013. As per the loan conditions, the defendants agreed to repay the loan amount regularly and in time period. The defendant No.2 willingly agreed to have guarantor of defendant No.1 and for that Deed of Guarantee has been executed in the plaintiff- Bank. The defendants also agreed to repay the loan amount at agreed rate of interest. The rate of interest was 14% at the time of execution of documents and plaintiff- Bank is also entitled to get 2% penal interest over the same. Against the said loan, the defendants have mortgaged the agriculture land bearing Survey No.547, 548, 549 and 550 (new Survey Nos.730, 743, 744 and 748) of Mouje Umta, Tal. Visnagar, Dist. Mahesana before the plaintiff- Bank. The defendant No.2 has also given property bearing agriculture land of Survey Nos.546/1B, 572, 573, 574, 575/2, 599 and 345 situated at Mouje: Umta, Tal. Visnagar, Dist. Mahesana as guarantor till full repayment of loan amount. After execution of documents, the defendants have withdraw the said loan amount and thereafter on 17/02/2016, the defendants have written to the Bank for restart of loan. After execution of documents, the defendants have not taken care to repay the loan amount despite of repeated demand made by the officers of plaintiff – Bank and hence, present Suit has been filed for recovery of Rs.9,81,402/- from 01/01/2019 with 14% interest p.a. with 2% penal interest from the defendants and/or from the properties of the defendants.

(3) Summons/ Notice duly served upon the defendants. Despite of service of Notice/ summons to the defendants, the defendants not appeared either personally or through their learned Advocate, and therefore, present Suit has been proceeded ex-parte against the defendants.

(4) In support of the present Suit, the plaintiff has produced the following oral as well as documentary evidence:-

ORAL EVIDENCE:-

Examination In Chief on affidavit of Officer of Plaintiff-

Bank produced at Exh.8.

DOCUMENTARY EVIDENCE:-

Sr. No.	Document	Exh.
1	Loan Application.	12
2	Profile Form of defendant No.1.	13
3	Profile Form of defendant No.2.	14
4	Letter to defendant No.1 for Mortgage OD Loan.	15
5	D.P. Note.	16
6	Letter of Authority.	17
7	Letter of Understanding of loan.	18
8	Letter of Declaration.	19
9	Form No.L- 515.	20
10	Term Loan Agreement.	21
11	Form NO. L-516.	22
12	Deed of Guarantee.	23
13	Annexure-3.	24
14	Abstract of Village Form No.8/A.	25
15	Abstract of Village Form No.7/12 of revenue Survey No.547 of Mouje: Umta.	26
16	Abstract of Village Form No.7/12 of revenue Survey No.548 of Mouje: Umta.	27
17	Abstract of Village Form No.7/12 of revenue Survey No.549 of Mouje: Umta.	28
18	Abstract of Village Form No.7/12 of revenue Survey No.550 of Mouje: Umta.	29
19	Consent Form for encumbrances.	30
20	Abstract of entry showing encumbrance of on Land Account No.3116 of Village Umta.	31
21	Consent Form for encumbrances.	32
22	Abstract of entry showing encumbrance of on Land Account No.3116 of Village Umta.	33
23	Abstract of Village Form No.8-A of Account No.3117 of defendant No.2.	34
24	Abstract of Village Form No.7/12 of land of revenue Survey No.546/1B.	35
25	Abstract of Village Form No.7/12 of land of	36

	revenue Survey No.572.	
26	Abstract of Village Form No.7/12 of land of revenue Survey No.573.	37
27	Abstract of Village Form No.7/12 of land of revenue Survey No.574.	38
28	Abstract of Village Form No.7/12 of land of revenue Survey No.575.	39
29	Abstract of Village Form No.8-A of Account No.3118 of defendant No.2.	40
30	Abstract of Village Form No.7/12 of land of revenue Survey No.599.	41
31	Form No.L-444.	42
32	Form No.L-444.	43
33	Copy of Notice issued by the Bank to the defendant.	44
34	Copy of Notice issued by the Bank to the defendant.	45
35	Copy of Notice issued by the Bank to the defendant.	46
36	Notice issued by the Bank through its learned Advocate.	47
37	Abstract of loan account of defendants.	48

(5) Learned Advocate for the plaintiff has produced his Closing of evidence Pursis vide Exh.49.

(6) Despite of reasonable opportunities given to the defendants to produce their evidence, the defendants failed to produce their oral as well as documentary evidence in their defence, and therefore, right to produce evidence by the defendants is closed by this Court.

(7) Heard oral arguments canvassed by the learned Advocate for the plaintiff.

(8) The following Issues have been framed by my learned predecessor for determination of present Suit.

-:: <u>I S S U E S</u> ::-

1) શું વાદી સાબિત કરે છે કે, પ્રતિવાદીઓ પાસે બાકી લેણા રૂ.9,81,402/- નીકળે છે?
2) શું વાદી સાબીત કરે છે કે, લેણી રકમ ચૂકવવા પ્રતિવાદીઓ સંયુક્ત તેમજ વિભક્ત રીતે જવાબદાર છે?
3) શું વાદી વ્યાજ મેળવવા હક્કદાર છે જો હા, તો કેટલાનાં દરે?
4) શું વાદી દાવામાં માંગેલી દાદ મેળવવા હક્કદાર છે?
5) શું હુકમ? શું હુકમનામું?

(9) Reply of the above Issues are as under:-

1) In affirmative.
2) In affirmative.
3) In affirmative.
4) As per final order.
5) As per final order.

-:: <u>R E A S O N S</u> ::-

<u>ISSUE NOS.1 to 4:-</u>

That, Issue Nos.1 to 4 are interconnected with each other and reply of both the Issues are given in affirmative, both the Issues are discussed and decided conjointly.

In order to prove the suit claim, the plaintiff has produced oral evidence of its authorized officer of the Bank on oath and supported the version of plaint. Moreover, the defendants, though reasonable opportunities of being heard, neither cross-examined the said witness nor produced any document in their defence, and therefore, there is no reason to discard the oral evidence of plaintiff. Moreover, the defendants neither denied the execution of documents nor denied signatures over the said documents, which are produced on record by the plaintiffs. As such, defendants failed to appear before this Court, this Court has passed the order to proceed the Suit ex-parte against the present defendants. Moreover, perusing the documentary evidence produced on record by the plaintiff, it clearly shows that defendants have approached the plaintiff- Bank for financial assistance and for which the plaintiff- Bank has sanctioned

Rs.9,00,000/- Agriculture Mortgage O/D loan at the rate of 3.75% above the Bank of India Rate (BOI Base Rate) rising or falling therewith with a minimum of 14% per annum. The plaintiffs have produced documentary evidence vide Exh.12 to 48, which clearly shows that defendant No.1 has obtained mortgage OD loan from the plaintiff bank and defendant No.2 stood as Guarantor for the said loan and in respect thereof, they have executed required documents in favour of the plaintiff- Bank. The defendants have not denied their dues. As the defendants failed to repay the due amount of the plaintiff – Bank, the plaintiff has issued demand Notices to the defendant No.1 informing him to repay the dues of the plaintiff, but defendant failed to do so. Thus, on 01/08/2018, the plaintiff- Bank through its learned Advocate issued legal Notice to the defendants informing them to repay the dues of the plaintiff- Bank. However, defendants neither replied to the said notices nor paid the dues of the plaintiff- Bank. The plaintiff has also produced Statement of Accounts of defendant No.1 at Exh.48, which clearly shows that Rs.9,81,402.59ps. has been shown as outstanding loan amount as on

03/01/2019. Thus, the plaintiff- Bank has proved that plaintiff- Bank is entitled to recover its due amount of Rs.9,81,402/- from the defendants. That, plaintiff has prayed for interest @ 14% p.a. + 2% penal interest from the defendants. However, perusing the Sanctioned Letter produced vide Exh.15, it shows that plaintiff- Bank has sanctioned Agri. Mortgage O/D. loan of Rs.9.00 Lacs with rate of interest @ 3.75% O.B.R. minimum of 14% p.a. with quarterly rests. Thus, plaintiff- Bank is entitled to recover total amount of Rs.9,81,402/- with interest @ 3.75% above the Bank of India Rate (BOI Base Rate).

Thus, in view of the above discussions, plaintiff- Bank is entitled to recover its dues from the defendants, and therefore, this Court answers Issue No.4 in affirmative accordingly and to decide Issue No.5, this Court pass the following final order in the interest of justice.

-:: O R D E R ::-

- The Suit of plaintiff is hereby allowed.
- The plaintiff- Bank is entitled to entitled to recover its due amount of Rs.9,81,402/- from the

defendants with interest @ 3.75% O.B.R. minimum of 14% p.a. with quarterly rests from the date of filing of the Suit till its realization.

- The defendants shall bear their own cost as well bear cost of the Suit.
- Decree be drawn accordingly.

Declared and pronounced in the open Court today on this 20 day of March, 2024 at Visnagar.

[A.K. Mavlankar]
Additional Senior Civil Judge, Visnagar.
UID Code No.GJ00677