

Received on : 13-10-2023
Registered on : 13-10-2023
Decided on : 31-08-2024
Duration
Years-00 Months-10 Days-18



IN THE COURT OF HON'BLE ADDL. CIVIL JUDGE,
JAMBUSAR

REG. SUM. SUIT No. – 43/2023.

Exb. -

Plaintiff/s : BARODA GUJARAT GRAMIN
BANK – Having its Head Office At,
VADODARA and Branch Office At,
JAMBUSAR, DI. - BHARUCH
Gujarat. Through its Authorized
Signatory Mr. DEVYANI WAGHELA

::Versus::

Defendant/s : (1) Mr. BASIRBHAI HABIBBHAI
SINDHA
(2) Mr. BASIR RASUL BAVAL
BOTH RESIDING AT:- VILLAGE:
MADAFAR, PO.OFFICE: TANKARI,
TALUKA: JAMBUSAR, DISTRICT
BHARUCH- 3932040

Lrd. Adv. : Sapan Teredesai, , Kalpesh Helaiya, Deepawali Nath,

Pushpendra Tiwari on behalf of plaintiff/s.
Lrd. Adv. : No one appear on behalf of defendant/s.

Subject : <u>Suit Under Order XXXVII of Code of Civil Procedure – 1908, for recovery of sum of ₹. 1,51,648.30/-</u>
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::JUDGMENT::

1. The brief facts of the plaintiff suit are summarized just as below.
2. The plaintiff has brought the present suit by virtue of Order – 37 of “The Code of Civil Procedure – 1908”. Alleging the facts that, as per the agreement Dt. 16-09-2017 defendant of the case has obtained Tatkal loan under the Term Loan Facility of Rs. 1,00,000 (Under Agricultural Loan) from the plaintiff of the case, that on the basis of the necessary details, papers, and declarations made by the defendant, the plaintiff sanctioned finance of Rs. 1,00,000/- for the side term to the defendant as per the terms and conditions agreed between the parties and with variable rate of interest @ 11.15 % p.a. Upon non regularization of instalments the defendant was liable for an addition overdue interest @ 2.00% p.a. Thus, the plaintiff has made payment of the aforesaid amount.
3. As, per the agreement between the parties, defendant was required to repay the amount financed as per the terms of the said loan agreement.
4. The defendant was required to repay the plaintiff but he has neglected to do so. Thereafter, despite of repeated demands by the

plaintiff, defendant has failed and neglected to make the payment of the aforesaid amount.

5. Thus, the plaintiff has pleaded within his suit that, in this manner defendant is liable to repay the said amount with interest due thereon as determined by the Court. Apart from this the defendant is also liable to pay the cost and expenses of the suit.
6. The plaintiff within his plaint has made a declaration that, as the present suit is for the liquidated demand of ₹. 1,51,648.30/- the present suit has been brought under O – 37 of “The Code of Civil Procedure – 1908”, and no relief which doesn’t fall within the scope of the O-37 of “The Code of Civil Procedure – 1908”, has been sought for.
7. Consequently within his prayer clause, within the plaint, plaintiff has made below said prayer -
 - a) To order the defendant to repay the sum of ₹. 1,51,648.30/- with an interest @ 11.15% p.a. to the plaintiff from filing of the suit, till the final realization of the suit amount with Overdue Interest of 2 % as per the agreement.
 - b) All cost incidental to the suit.
 - c) Any other relief in favour of the plaintiff which the court may deem fit to grant in this suit.
8. This Court has issued summons for appearance in prescribed format (Form – 4) upon defendant of the case. Having a reference to public notice record produced in the record of the case vide Ex.5A , it appears that, the said summons for appearance has come to be duly served upon defendant of the case on dt.08/12/2023. Upon service of such summons defendant no. 1 & 2 present before the court but not filled any

vakalatnama and his adress pursis. Court has given enough and reasonable time to the defendant to appeared with lawyer but after the date 08/12/2023 defendant no. 1 & 2 never present before court with or without the lawyer.

9. As, despite of due service of summons for appearance, defendant hasn't appeared before the Court, thus, as per settled principles of civil procedure code dealing with summary suit the matter has come to be directly posted upon judgment.
10. The plaintiff of the case has produced following documentary evidence in support of his case.

Sr. No.	Mark	Particulars.
01.	9	Application form for Agriculture Loan
02.	10	Sanction letter
03.	11	Demand Promissory Note
04.	12	Instrument of Hypothication of Standing Crops
05.	13	Loan Agreement Letter
06.	14	Letter of Cintinuing Decurity
07.	15	Guarantee Letter
08.	16	Letter of Acknowledgement of Debt & Security
09.	17	The Account of Bank Statement
10.	18	Copy Of Authority letter of Mrs. DEVYANI WAGHELA Branch Manager of Baroda Gujarat Gramin Bak Jambusar Bank

11. As, the defendant failed to cause his appearance before the Court despite of due service of summon upon him, considering the O – 37, Rule

– 3(2)(3), the matter has come to be proceeded further. Thus, heard the Lrd. Adv. appearing on behalf of the plaintiff of the case.

::Reasoning::

12. It is undoubtedly clear that the present suit has been instituted by the plaintiff for recovery of liquidated sum of ₹. **1,51,648.30/-**. Moreover in the present case plaintiff along with his suit has produced loan agreement vide **Mark 13** executed between plaintiff and defendant for Tatkal loan under term loan on Dt. 16-09-17, Apart from this having a reference to document produced in the record vide **Mark 16** Acknowledgement of Debt and security & **Mark 17** Bank Statement of defendant no.1. Thus, so far validity of suit under O – 37 of “The Code of Civil Procedure – 1908”, is concerned, having a reference to the Rule – 1(2),(a), the present suit becomes tenable under the said procedural law. Further scrutinizing the record of the case it appears that, the defendant of the case has not appeared before the Court, upon execution of summons for appearance, he has failed to appear before the Court to contest the matter or otherwise. Thus, as per the settled procedural law the matter shall proceed to O – 37, R – 2 (3) of “The Code of Civil Procedure – 1908”, and consequently entitles the plaintiff for the judgment forthwith.
13. The plaintiff in the present suit has claimed an amount of ₹. **1,51,648.30/-** along with the interest as may be determined by the Court. As the defendant of the case has failed to cause his appearance hence, considering the provision of O – 37, R – 2 (3) of “The Code of Civil Procedure – 1908”, the allegation made within the plaint in relation to same shall be admitted by the defendant, and consequently plaintiff is entitled to get judgment. In the instant suit, plaintiffs claims for interest

11.15 % p.a., having a reference to the contract between the parties, it appears to be a contractual rate. Thus, considering Sec. 34 of “The Code of Civil Procedure – 1908”, the rate of interest claimed appears to be proper. So, far the question relating to commencement of period of interest upon principal amount is concerned, having a reference to the facts of the case and transaction between the parties this Court is of the opinion to allow the interest to the plaintiff commencing from the date of institution of the present suit .

14. Thus, taking into consideration all the aforesaid facts, this Court is of the opinion to pass below said final order in the present suit.

::Order::

- The suit of the plaintiff is hereby partly allowed.
- The defendants of the case is hereby order to pay sum of ₹. **1,51,648.30/-** at a fixed rate of interest @ 11.15 % p. a., to the plaintiff jointly or separately, accumulating from the date of institution of the present suit.
- The defendants is hereby ordered to bear the cost of the suit.
- Decree to be drawn accordingly.

Order pronounced in the open Court today as on 31th of August 2024.

Dt. : 31/08/2024

Place : Jambusar

(Mrs Jinal Vishal Adhiya)

(Judge Code – GJ01408)

Addl. Civil Judge,

Jambusar