GJRJ250005012024

सत्यमेव जयते

Suit Instituted on	27/03/2024
Registered on	27/03/2024
Disposed on	22/06/2026
Duration	2-Y, 2-M,26-D

IN THE COURT OF JUDGE, SMALL CAUSES COURT,
AT RAJKOT.

Small Civil Suit No. 420/2024
EXH. NO.25

Plaintiff:-
The State Bank of India,
(State Bank of India Act 1955)
A Corporate Body constituted under the
Central office is situated at
MUMBAI-
and having it's branch office at
Dhebar Road Branch, Rajkot.

V/s.

Defendant:-
Sagar Yogeshbhai Pithwa,

Address:-
Panchshil, Flat No.302,
8-Murlidhar, 80 Feet Road,
Poojara Main Road,
Rajkot.

Sub:- Suit for recovery of an amount of Rs.2,60,492/-

Appearance:-

T.S.Kothari Learned Advocate for the plaintiff Bank.
Suit is proceeded against the defendant as right closed.

-:: J U D G E M E N T ::-

The facts of the plaintiff's suit in nut shell are as under:

1. The plaintiff Bank has filed this suit for recovery of an amount of **Rs.2,60,492/-** against the defendant. That the plaintiff-Bank is a Bank constituted under the State Bank of India Act, 1955 and local Head office is situated at Ahmedabad and Branch office is situated at Rajkot. It is stated by the plaintiff Bank that the defendant has applied for sanctioning Pre-Approved Express Credit Loan and after considering the said application, the plaintiff Bank has sanctioned the Pre-Approved Express Credit Loan limit for **Rs.1,80,000/-** to the defendant along with an interest at the rate of **14.15% per annum** and in this regard, the defendant has executed necessary documents in favour of the plaintiff Bank by putting his signature and the monthly installment of loan was fixed and amount of loan is liable to be paid separately. That if the defendant is not paid amount of loan as per agreement, then the defendant is liable to penalty interest at the rate of 2%. The defendant is become found due to the sum of **Rs.2,60,492/-** as per ledger account and the documents. The cause of action has arisen for the plaintiff

Bank to file this suit against the defendant at the time when the defendant have not paid due amount along with an interest and therefore, the plaintiff Bank has constrained to file this suit against the defendant for recovery of due amount as alleged in the plaint. That the amount of loan has been given to the defendant at Rajkot and the documents have been executed at Rajkot and the defendant resides at Rajkot and he is doing the business at Rajkot and therefore, this Court has jurisdiction to try and hear the suit In view of above narration of facts, the plaintiff Bank pas instituted this suit against the defendant for recovery of **Rs.2,60,492/-** along with an interest at the rate of **14.15% P.A.** as claimed in para-7 of relief clause of plaint.

2. The defendant is duly served with summons and in response to the same, the defendant's father remain present before the court vide Exh.5 and declare on the pursis that, the defendant namely Sagar Yogeshbhai Pithwa is his son and he is missing from long time and he is not in the contact of him. Thereafter issues have been framed vide Exh.7. Thereafter, the plaintiff had filed the affidavit of examination in chief vide Exh.16 and the matter was on the stage of cross-examination. But the defendant or his Ld. Advocate did not remain present before the court and therefore, the right of the cross-examination of the plaintiff is closed by the court on 11/03/2026. Thereafter, the right of the defendant to produce evidence is also closed by the court on 04/05/2026.

3. In support of this suit, the plaintiff Bank has produced following oral as well as documentary evidence for proving its case.

ORAL EVIDENCE

Sr.	Details of Documents	Ex. No.
1	Affidavit on behalf of the plaintiff's witness- Mr. Pratikkumar Mashiyava	16

Documentary Evidence

Sr.	Details of Documents	Ex. No.
1	Pre-approved Express Credit Loan Application	13
2	True copy of account ledger of the Pre-Approved Express Credit Loan	14
3	True copy of Closure Inquiry of Pre-Approved Express Credit Loan	15
4	E-Circular of Plaintiff Bank	22

4. In this suit, the following issues are framed at **Exh.7.**

1	Whether the plaintiff Bank proves that the plaintiff is entitled to recover **Rs.2,60,492/-** from defendant and properties of defendant?
2	Whether the plaintiff is entitled to get interest? If yes, at what rate?
3	Whether the suit is within the time limit?
4	What order & decree?

5. My findings on the above issues are as under:

1	In the affirmative.
2	In the partly affirmative.
3	In the affirmative.
4	As per final order.

R E A S O N S

6. I have heard the arguments of learned advocate T.S.Kothari for the plaintiff Bank and he has vehemently argued on the pleading as well as documentary evidence produced by the plaintiff Bank. Ld. Advocate for the plaintiff Bank has argued that the defendant has applied for Pre-Approved Express Credit Loan from the plaintiff Bank and after considering request of the defendant, the plaintiff Bank has sanctioned Pre-Approved Express Credit Loan of **Rs.1,80,000/-** to the defendant and in this regard, the defendant has executed necessary documents in favour of plaintiff Bank. Further he has argued that the defendant has failed to make repayment of due amount of plaintiff Bank and after issuing notice to the defendant, the defendant has neither replied the notice nor paid outstanding amount of plaintiff Bank as alleged in the plaint and therefore, he has requested to allow the plaintiff's suit.

:: Issues No. 1 to 4 ::

7. For proving the facts of suit, on behalf of the plaintiff-Bank, Mr.Pratikkumar Mashiyava has filed his affidavit in form of affidavit at **Ex.16** wherein he has reiterated the same facts, which is narrated in the plaint. Mainly he has stated that the defendant has applied for sanctioning loan under and after considering the said application, the plaintiff Bank has sanctioned the Pre-Approved Express Credit Loan for **Rs.1,80,000/-** to the defendant along with an interest at the rate of **14.15% per annum** and in this regard, the defendant has executed necessary documents in favour of the plaintiff Bank. Further he has stated that, the defendant is become found due to the sum of **Rs.2,57,385/-** Further he has stated that the defendant was not paid amount of loan regularly and therefore, the plaintiff Bank has given notice to the defendant and prayed to grant the relief in favour of the plaintiff Bank as claimed in para 7 of relief clause in the plaint. In his affidavit, the witness of the plaintiff Bank has referred the documents.

8. In absence of any kind of evidence from the defendant's side, there is no reason to disbelieve the sworn testimony of plaintiff Bank's witness, who has filed his affidavit at **Ex.16** and thereby he supported the documentary evidence pertaining to loan taken by the defendant from the plaintiff Bank and in the defendant has executed the documents in favour of the plaintiff Bank. So far loan amount taken by the defendant from the plaintiff Bank is concerned, the plaintiff has produced an Loan Application at **Ex. 13** respectively. The evidence of the plaintiff Bank has gone unchallenged as the defendant has neither filed written statement nor produced any kind of evidence in this suit. Hence, the plaintiff Bank has proved the facts of suit by producing oral as well as documentary evidence as discussed above. In view of above, the plaintiff Bank has proved that the defendant has taken loan from the Bank and the defendant has also executed the document in favour of the Bank as alleged in the plaint. Further, looking to evidence adduced by the plaintiff Bank, it is also proved that the defendant has not regularly repaid installment of the loan amount to the plaintiff Bank as per Terms and conditions of the loan agreement. When the defendant has obtained an amount Pre-Approved Express Credit Loan of **Rs.1,80,000/-**, then it is bounden duty of the defendant to make repayment of said amount of loan regularly as agreed between the plaintiff Bank and the defendant, but the defendant has failed to make payment of installment and the defendant is become found due as alleged in the plaint. So far due amount of the plaintiff Bank against the defendant is concerned, the plaintiff Bank has produced statement of account of the defendant vide **Ex.14**. The plaintiff Bank has given legal notice to the defendant, wherein the plaintiff Bank has demanded due amount against the defendant and in response to the same, the defendant has neither paid due amount of the plaintiff Bank nor replied the said notice. Meaning thereby, it can be said that the defendant has neglected to pay due amount of plaintiff Bank as alleged in the plaint. So, evidence of the plaintiff remains unchallenged and accordingly, the plaintiff Bank is entitled to recover sum of **Rs.2,57,385/-** as claimed in the plaint. Therefore, the plaintiff Bank has proved the facts of issue No. 1 by producing oral as well as documentary evidence. Hence, finding of issue No. 1 is given in the ***''Affirmative''***. Issue

No. 2 is pertaining to the question of an interest. Looking to relief clause of plaint para 7 the plaintiff Bank has demanded interest at the rate of **14.15% P.A.**

In the case of ***Central Bank of India Vs. P.R.Garments Industries Private Limited; 2 GLR 919 (1985) 0*** Hon'ble Gujarat High Court stated in para-8 and 10 as below:

> *"8. Proviso to S. 34, Civil Procedure Code inserted by Amendment in 1976 provides that where the liability in relation to the sum so adjudged, had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by Nationalised Banks in relation to commercial transactions; a commercial transaction is defined to be connected with industry, trade or business of the party incurring the liability. Undoubtedly, this was a commercial transaction And, therefore, ordinarily the rate of interest shall be contractual rate or such rate at which moneys shall be lent by the Nationalised Banks in relation to commercial transactions; otherwise it will amount to the Court granting credit facility of somebody else's money, at a lower rate of interest. The Bank would not have advanced a counter seal loan at a lesser rate of interest. Because the party has committed default in payment and the Bank is required to file a suit against such party, such a defaulting party cannot have the benefit of lesser rate of interest. Therefore, ordinarily in such transactions, the contractual rate of interest should be the rule and*

departure a rare exception. In such transactions by the Public Financial Institutions where money is advanced on security including personal guarantees, the granting of installment is ruled out because that would frustrate the very purpose of taking security and granting of lesser rate of interest is also ordinarily ruled out.

10. In the result, the appeal is allowed and the judgment and decree of the Trial Court is modified and the direction in respect of interest is substituted by 16 1/2% per annum instead of 6% and the direction for installment is quashed set aside. Rest of the decree will stand as modified as herein above. The appeal is accordingly allowed with costs."

As per the above ratio laid down by the Hon'ble High Court, it is clear that, the bank is giving advance commercial loan than the interest rate as per the contractual rate not as per the Sec.34 of the C.P.C. In the present case, looking to documentary evidences produced by the plaintiff Loan Application vide **Exh.13,** there is clearly mentioned the interest **@14.15% P.A.** and the mentioned rate of interest is agreed between the plaintiff-defendant. In view of above, the plaintiff Bank is entitled to get demanded interest at the rate of **14.15% P.A.** on outstanding due amount and accordingly, finding of issue No. 2 is given in the ***"Affirmative"***. Issue No. 3 relates to the question as to whether the suit is within the period of limitation. Now looking at the defendant found due on 09/01/2024 and when the defendant has not paid due amount of the plaintiff Bank as alleged in the plaint, the plaintiff Bank has filed this on 27/03/2024 and in absence of any evidence from the defendant's side, it can be said that the suit is within period of limitation. Hence, finding of issue No. 3 is given in the ***''Affirmative''***. In view of above discussion of issue No. 1 to 3 and considering the arguments advanced by learned advocate for the plaintiff Bank, the suit of the plaintiff Bank deserves to be allowed with cost and in the interest of justice, I pass the following final order for issue No. 4.

-:: O R D E R ::-

- The plaintiff Bank's suit is hereby allowed.
- The defendant is hereby ordered to pay **Rs.2,57,385/-** (Rupees Two Lakh Fifty Seven Thousand Three Hundred Eighty Five only) along with an interest at the rate of **14.15% per annum** from the date of institution of suit till payment of decreetal amount.
- The defendant do bear his own costs and to bear the cost of the plaintiff Bank.
- Decree to be drawn accordingly.

Signed and Pronounced in the open court today on this **22nd day in the month of June-2025.**

Date : 22/06/2026
Place : Rajkot

(Rachit Kamleshbhai Trivedi)
Judge,Small Cause Court,
Rajkot.
UID - GJ01216