MHCC010099652022

Presented on	15/09/2022
Registered on	04/10/2022
Decided on	03/09/2025
Duration	02Y: 11M: 18D
Exhibit	**12**

IN THE CITY CIVIL COURT AT MAZGAON, MUMBAI

SUMMARY SUIT NO. 846 of 2022

Nayan Laherchand Mepani]
Age: 48, Occupation : Business]
residing at 401, Shivam Co-Operative]
Housing Society Ltd., Walji Ladha]
Road, Near Kalidas, Mulund (West),]
Mumbai 400080.]**...Plaintiff**

Versus

1. Neeta Tours and Travels]
2. Sunil Savla (Partner)]
Full name and age not known]
Occ: Business, the Defendant No.1]
is a Partnership Firm incorporated]
under the provision of Partnership]
Act 1932 and the Defendant No.2]
is partner of defendant No.1, both]
having address at Shop No. 19,]
Saraswati Niwas, SVP Road,]
Opp. Gokul Hotel, Near Chamunda]
Circle, Borivali (W), Mumbai 400 092]**...Defendants**

Appearance:-

Ld. Advocate Preeti Gada for the plaintiff.

Defendants absent.

CORAM : HHJ SHRI SANGRAM SHRIHARI SHINDE
C. R. NO. : 81
DATE : 03/09/2025.

JUDGMENT

(Dictated and pronounced in open Court)

01] This suit is filed under Rule 2 of Order XXXVII of Code of Civil procedure, 1908 (C.P.C.) for recovery of Rs. 44,31,875/- along with interest and prayed for further interest from defendants.

Brief facts of the plaintiff's case may be summarized as under:

02] As per the plaintiff, defendant No.1 is a Partnership Firm and defendant No. 2 is a partner and responsible for day to day affairs of defendant No.1. Further, plaintiff had given friendly loan of Rs.25,00,000/- on 29/03/2013 vide cheque No.772682 and Rs. 25,00,000/- on 29/03/2017 by RTGS through broker Shri R.H. Associates. Defendants had executed demand promissory notes on 29/03/2013 and 29/03/2017 respectively. Further, defendants had agreed to pay interest at the rate of 1.05 % p.m. on the said loan. Accordingly, defendants had paid interest at the rate of 1.05 % p.m. by cheque and also deducted TDS. Defendants have made part payment of Rs. 8,00,000/- on 21/01/2018 and Rs. 7,00,000/- on 05/02/2018. Therefore, balance of amount of Rs. 35,00,000/- was due against defendants. On 25/11/2019, defendants paid interest amount by cheque till 30/09/2019. Defendants failed to repay interest and loan amount since 01/10/2019 therefore, plaintiff issued legal notice on 22/07/2022 which is returned with remark, "Not known". Therefore, plaintiff issued notice on 02/08/2022 by RPAD which is served on defendants. However, defendants neither replied to the said notice nor repaid the outstanding amount. Therefore, defendants are liable to pay an amount of Rs. 44,31,875/- with interest. Hence, this suit.

03] Defendant appeared in the matter. Thereafter, plaintiff has taken out Summons for Judgment No. 38/2023, which came to be dismissed on 12/03/2025 and defendant was granted conditional leave to defend the suit with direction to deposit 50% of principal amount within 60 days from the date of the order. Defendant has failed to comply the said order. The plaintiff has filed Non Deposit Certificate vide Exh. 11 on record. Therefore, plaintiff is entitled for judgment in view of Order 37, Rule 3(6)(b) of C.P.C.

04] The plaintiff to prove his contention has filed original documents on record vide list Exh. 9.

Sr. No.	Exhibit	Particulars
1	Exh.9/1	Original demand promissory note dated 29/11/2013 for sum of Rs.25,00,000/- issued by the defendant to plaintiff.
2	Exh.9/2	Original demand promissory note dated 29/03/2017 for sum of Rs.25,00,000/- issued by the defendant to plaintiff.
3	Exh.9/3	Printout of original Bank Account Statement of the plaintiff from the period April 2019 to March 2020.
4	Exh.9/4	Original printout TDS Certificate for the year 2016-2017 and 2018-19.
5	Exh.9/5	Original office copy of demand notice dated 22/07/2022 along with postal receipt issued by the plaintiff's advocate to the defendant.

6	Exh.9/6	Original Return Packet from Postal office.
7	Exh.9/7	Original office copy of demand notice dated 02/08/2022 along with postal receipt issued by the plaintiff's advocate to the defendant.
8	Exh.9/8	Original postal acknowledgment card.
9	Exh.9/9	Translation copies of 2 demand Promissory Note.

05] Further, on perusing contentions of the plaintiff and documents on record, following points arose for my consideration, to which my findings are recorded for reasons given below.

Sr. No.	Points	Findings
1.	Whether the plaintiff is entitled to recover amount of Rs. 44,31,875/- from defendants? If yes, at what rate of interest ?	Yes, the plaintiff is entitled to simple interest on the amount of Rs. 35,00,000/- at the rate of 7% p.a. from 15/09/2022 i.e. the date of filing the suit till its full realization.
2.	What order and decree?	As per final order.

R E A S O N S

<u>As to points No. 1 and 2</u> :-

06] Perused plaint, documents and record. Heard Ld counsel for the plaintiff. As per the plaintiff, he has advanced friendly loan of Rs. 25,00,000/- on 29/03/2013 vide cheque No.772682 and Rs. 25,00,000/- on 29/03/2017 by RTGS through broker Shri R.H. Associates. Plaintiff further, contended that on receipt of money from the plaintiff, defendants had executed demand promissory notes on 29/03/2013 and 29/03/2017 respectively. Further, defendants had agreed to pay interest at the rate of 1.05 % per month on the said loan. The plaintiff has filed said promissory notes on record vide list Exh. 9/1 and 9/2. On perusing said promissory notes, it appears that it substantiate the contentions of the plaintiff. Further, it bears seal of defendant No. 1 and signature of defendant No. 2. Thus, plaintiff has proved that he had advanced an amount as contended to the defendants.

07] Further, it is the contention of the plaintiff that accordingly, defendants had paid interest at the rate of 1.05 % per month by cheque and also deducted TDS. Defendants have made part payment of Rs. 8,00,000/- on 21/01/2018 and Rs. 7,00,000/- on 05/02/2018. Therefore, balance of amount of Rs. 35,00,000/- was due against defendants. On 25/11/2019, defendants paid interest amount by cheque till 30/09/2019. The plaintiff has filed printout of bank statements and TDS certificate vide list Exh. 9/3 and 9/4. The said statement supports the contention of the plaintiff.

08] However, defendants failed to repay interest and loan amount since 01/10/2019 therefore, plaintiff issued legal notice on 22/07/2022 which is returned with remark, "Not known". Therefore, plaintiff issued notice on 02/08/2022 by RPAD which is served on defendants. However, defendants neither replied to the said notice nor repaid the outstanding amount. The plaintiff has filed office copy of said notices along with postal receipt and AD cards vide list Exh. 9/5 to 9/8. The said notices supports the contention of the defendants. Further, defendants failed to comply order dated 12/03/2022 nor replied to the notices. The evidence of plaintiff has remained unchallenged. Moreover, as discussed above, the plaintiff has not complied order dated 12/03/2022 passed in Summons for Judgment No. 38/2023. Therefore, I am of the view that plaintiff is entitled for an amount of Rs. 35,00,000/- towards principal and Rs. 9,31,875/- towards interest, total amounting to Rs. 44,31,875/-.

09] So far as further rate of interest is concerned plaintiff has claimed interest at the rate of 1.05% per month from the date of filing of the suit till its realization. However, it appears that the rate of interest claimed by the plaintiff is excessive in nature as compared to the rate of interest of Nationalized Bank. Therefore, as per Section 34 of the C.P.C., I am of the view that it would be just and proper to grant interest at the rate of 7% p.a. on the principal amount from the date of filing of the suit till its realization. Defendant No. 1 is partnership firm and defendant No. 2 is partner of it. Therefore, they are jointly and severally liable for outstanding amount with interest. Hence, I answer **point No. 1** in the affirmative. In the result, answer to **point No. 2**, I proceed to pass the following order.

O R D E R

1] The Summary Suit No. 846 of 2022 is decreed with costs.

2] The defendants shall jointly and severally pay to the plaintiff an amount of Rs. 44,31,875/- (Rupees Forty Four Lakhs Thirty one Thousand Eight Hundred Seventy Five only).

3] The plaintiff is entitled to simple interest on the amount of Rs. 35,00,000/- at the rate of 7% p.a. from 15/09/2022 i.e. the date of filing the suit till its full realization.

4] The plaintiff may be entitled to get refund of the court-fees paid, if any, provided for in rules.

5] The decree shall be drawn up accordingly.

(Sangram S. Shinde)
Adhoc Judge,
City Civil Court Mazgaon, Mumbai
Court Room No.81.

Date: 03/09/2025

Dictated on: 03/09/2025
Corrected & signed on: 08/09/2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER” UPLOAD DATE NAME OF STENOGRAPHER 11/09/2025 Mrs. V. V. Malgaonkar

Name of the Judge (with Court Room No.)	Shri S. S. Shinde C.R. No.81
Date of Pronouncement of JUDGMENT/ ORDER	03/09/2025
JUDGMENT/ORDER signed by P. O. on6 pt	08/09/2025
JUDGMENT/ORDER uploaded on	11/09/2025