Received on : 16-10-2020

Registered on : 16-10-2020

Decided on : 27-02-2026

Duration : _ _ _

IN THE COURT OF 4th ADDL. CIVIL JUDGE, RAJKOT

REGULAR CIVIL SUIT NO.: 578 OF 2020

Exhibit-

UNION BANK OF INDIA(E-CORPORATION BANK)

Through its Manager

Mr.Manojkumar Zha

Age-Adult, Occupation-Service

Panchvati Branch-Rajkot.

… Plaintiff

Versus

(1) Shri. Rajendrabhai Bhanabhai Vank

Age-Adult, Occupation-Business

At : (1) 'Mira'-2 Chotu Nagar,Nr Hanuman Madhi,Rajkot.

(2) Rameshwar Chaowk, Airport Road, Rajkot.

(3) Gatral Krupa, Vidhata nagar Society, Joshipura, Junagadh.

(2) Shri. Manish Ravjibhai Balodra

Age-Adult, Occupation-CA

At : 'Ma', Plot No-12,Nidhi Society, B/H Satya Sai Hospital, Kalawad Raod, Rajkot.

… Defendants

Advocate :-
Learned Advt. : Mr. D.D.ANDHARIYA for the plaintiff-Bank
Learned Advt. : Mr. A.N.CHAUHAN for the defendant No.2

Suit for recovery of Rs.10,10,578-00 together with interest and costs.

:: Judgment : :

1. The plaintiff herein has instituted the present suit for recovery of Rs.10,10,578/-; along with the interest, till realization of payment and costs of this suit from the defendants. The concise statement of the present case is that plaintiff is a body corporate constitute under the provision of the Banking companies (Acquisition and transfer of undertaking) act,1970. It is the case of the plaintiff that The plaintiff is doing banking and the defendant No 1 is the borrower and the vehicle loan granted by the plaintiff bank to the Defendant No. 1 and the Defendant No. 2 is the guarantor, Defendant No. 2 stood as guarantor for repayment all the material times, the Vehicle Loan granted by the Plaintiff Bank to the Defendant No. 1, all the Defendants reside and the defendant No. 1 carry on business and defendant No. 2 in on doing business within the jurisdiction of this Hon'ble Court. It is further say of the plaintiff that At the request of the defendant; the plaintiff Bank sanctioned Vehicle loan vide sanction letter on Dt-8-12-2014 of Rs. 6,35,000/- for the purpose of purchase Hundai i20 car. The said loan repayable in 84 equated monthly installments (EMI) from the next month of disbursement with interest at the rate of 10.65% per annum or at such other rate or rates as

may from time to time fixed by the Bank with monthly rests, on the terms and condition stated in the agreement letter including documents of creating the securities as set on herein above. It is further case of the plaintiff that at the time of availing said loan, defendant No.1 executed banking documents and hypothecation-agreement in favour of the Bank. It averred that the Plaintiff has lent and advanced the said Loan of Rs. 6,35,000 /- (Six Lac Thirty Five Thousand Rupees) to the defendant No. 1 in the manner stated hereinabove and defendants Nos. 1 & 2 as guarantor have become liable to pay the same to the plaintiff. By executing necessary agreement and signed by the defendants and delivered to the plaintiff, They have admitted and acknowledged that He was liable to pay to the plaintiff Bank a sum of Rs. 6,35,000/- (Six Lac Thirty Five Thousand Rupees) respectively in respect of the said Vehicle Loan account and further interest by the said agreement, defendants also acknowledged that the debt due to the plaintiff is secured by the security documents and the securities mentioned hereinabove and that they are in full force and effect and that the defendants is liable there under to the plaintiff Bank. The sanction loan was disbursed by debiting to his loan amount and payment was made directly to the Vehicle dealer at the request of the defendant No-1. The defendant was delivered the Vehicle by the dealer, with Engine No- D4FCEM212745, Chasis No MALBM51RLEM026200, Letter of allotted registration No GJ-03-HA-8187 by RTO. The plaintiff bank hypothecation charge has also been noted with RTO. It is further say by the plaintiff that The defendant No-1 failed and neglected to repay the loan installments and interest thereon on the due date and as agreed in accordance with the terms of the said Declaration. The defendant was called upon by the plaintiff several times to regularize the account and to pay the installments and interest due, but defendant has failed to do so and also failed to keep the account in order. The Plaintiff says that on account of the breach of the terms of the said agreement committed by the defendant the entire balance outstanding in the said loan account with interest, costs, charges and expenses has become due and payable to the plaintiff forthwith. That the plaintiff Bank has made several demands on several times to the defendant to pay the amount outstanding due & payable, but the defendant has neglected to pay the outstanding dues to the plaintiff Bank though Legal Notice has been issued to defendants on dt-25/9/2020 and same to be served to defendants, on receiving the notice Defendant No-1 did not reply of plaintiff notice but Defendant No-2 reply of plaintiff notice with false and fabricated facts. in spite of several oral requests, defendants have not paid their dues. Under such circumstances, plaintiff is compelled to file this suit.

2. The defendant has been duly served with the process of the Court and it was duly served them. Thereafter defendant No.1 failed to appear this court and therefore the suit procced Ex partee against Def No 1. The Def No 2 has filed his written-objections at Exh.10 contending that this suit is neither true

nor tenable, hence, it is liable to be dismissed. It is further denied that he has signed as a Guarantor in the said loan. The plaintiff's suit is time barred. He has no knowledge about the def no 1 at present or not in contect with him.He is not aware about what kind of agreements the plaintiff has entered in to def no 1. The claim for the loan amount due, it is the responsibility of the def no 1 to pay the said due not for him.it is further say by the def no 2 that it is stated that the defendant no. 1 has failed to pay the installments and interest of the loan and no information about it has been given to us defendant no. 2 by the plaintiff bank, so that para no. 8 is not addressed to us defendant no. 2 and is not applicable to us defendant no. 2. In response to paras no. 9 and 10 of the plaintiff's claim for the amount due, it should be stated that the plaintiff bank has not been repaying the loan given by the defendant no. 1 and that the plaintiff bank has not informed the defendant no. 2 in time about the recovery of the amount due and that the plaintiff has sent a notice to the defendants on 08-12-2014 after 6 years on 09-09-2020 to repay the outstanding installments of the loan given, which was informed outside the time limit and what kind of action has been taken to recover the installment amount from the defendant no. 1. No such information has been disclosed in the notice that despite the agreements and hypothecation made by the plaintiff bank, no attempt has been made to obtain direct possession of the vehicle and dispose of it. This is a fact that the defendant has also informed the plaintiff bank in its reply notice dated 05-10-2020, so that the matters mentioned in para no. 9 are not true. It is clearly denied that the facts are not true. In fact, the plaintiff bank has given a loan to the defendant no. 1 Shri Rajendubhai Bhanabhai Vank on the car Hyundai I20. At the time of giving the said loan, defendant no. 2 have become a guarantor to the plaintiff bank to assist in the bank loan process, but the plaintiff bank has not performed its duty by not taking the necessary action at the right time. When the borrower does not pay two-three installments of the loan, then first the borrower and the guarantor should be informed in writing about this, which has not been done by the plaintiff bank to us defendant no. 2 in the guarantor capacity. At the time of giving the loan to the defendant no. 1 Shri Rajendubhai Bhanabhai Vank, the plaintiff bank has obtained all the documents related to the vehicle, after which hypothecation has been done and the hypothecation has been done in the RTO. As per the records of the office and as per the agreement made with the borrower, if the borrower fails to pay the installments fixed with the bank regularly, then in such a situation, the ownership of the vehicle obtained by the bank against which the loan has been given becomes the property of the bank. The plaintiff bank has to first dispose of the vehicle from the possession of the borrower and complete the recovery process, no such action has been taken by the plaintiff bank. Such action has not been taken in the present modern era, even though it is very easy to trace the vehicle with the help of the RTO office and the police department, nor has any action been taken to trace the vehicle, which also clearly shows that the plaintiff bank has failed to perform its duty. The appointment of a guarantor at the time of granting the loan is just a formality. The guarantor is informed through a written notice that two or three installments have not been paid by the borrower. the main purpose of the appointment of the guarantor is to help the bank. Thus, the plaintiff' suit is reject with heavy cost.

3. The plaintiff has following oral as well as documentary evidence in support of its case.

Plaintiff's oral evidence :

Sr. No.	Particulars	Exh.
1	Deposition of G.Abhijith, Asstt. Manager of the Bank.	22

Plaintiff's documentary evidence :

Sr. No.	Particulars	Exh.
1	Original Application form.	25
2	Original Arrangement/sanction letter, Dt-8-12-2014.	26
3	Original Term Loan Agreement, Dt-8-12-2014	27
4	Original Letter of Undertaking, Dt-8-12-2014	28
5	Original Loan cum Hypothecation Agreement, Dt-8-12-2014.	29
6	Original Guarantee Agreement, Dt-8-12-2014.	30
7	Original Acknowledgment of Debt, Dt-30-11-2017	31
8	Original Invoice of The Vehicle submitted by the Defendant.Dt-9-12-2014	32
9	Copy of Insurance policy.	33
10	Copy of Vehicle Registration Certificate.	34
11	Office Copy of Legal Notice Issued by Advocate Prashant Lathigra issued to defendant, dt-25-9-2020.	35
12	Original Postal receipt, Total item-4, Dt-25-9-2020	36

13	Original Acknowledgment Receipt of defendant No-1.Dt-28-9-2020	37
14	Cop Copy of Postal Acknowledgment of defendant No-1.Dt-28-9-2020	38
15	Original Acknowledgment Receipt of defendant No-2.Dt-26-9-2020	39
16	Copy of Postal Acknowledgment of defendant No-2. Dt-26-9-2020	40
17	Original Reply issued by Defendant No-2 to plaintiff. Dt-5-10-2020	41
18	Copy of Ledger Account of Defendant for the year 1/12/2014 to 21/9/2020	42
19	Copy of Ledger Account of Defendant for the year 21/10/2017 to 03/09/2024	43
20	Closing Pursis.	45

4. The Defendant No 2 has produced following oral as well as documentary evidence in support of its case

Def No 2's oral evidence :

Sr. No.	Particulars	Exh.
1	Deposition of Manish Ravjibhai balondra.	46

Defendant No 2 has not produced any documentary evidence in support of his case.

Then after the Defendant No 2 has produced closing Pursis as wide Exh no 49.

5. The following issues are framed at Exh.17 on 22/02/2024.

1) Whether the plaintiff Bank proves that the defendant No 1. Has obtained loan facility of Rs.6,35,000/- for the purpose of purchase Hundai i20 car with 10.65% p.a. interest?

2) Whether the plaintiff Bank proves that the defendant No.2 is the guarantor of defendant No.1 and he has also executed the documents in favour of the plaintiff bank?

3) Whether the plaintiff Bank proves that they are entitle to recover Rs.10,10,578/- jointly and severally from person and properties of the defendants?

4) Whether the Defendant no 2 proves that the suit is time barred?

5) Whether the defendant no 2 proves that the plaintiff bank has not follow the proper legal procedure before the filling this suit ?

6) What order and decree ?

6. My findings for the above issues are as under :

1. Issue No.1 in affirmative

2. Issue No.2 in affirmative

3. Issue No.3 in affirmative

4. Issue No.4 in Negative

5. Issue No.5 in Negative

6. As per final order

7. Gone through the record. Heard learned Advocates for the respective parties. They have argued as per their pleadings.

Reasons for the decision

Issue Nos. 1 to 3 together :-

(7.1) Onus lies on the plaintiff to prove aforesaid issues, and since all the issues are inter-connected with each other, same are discussed together to avoid repetition of the discussed facts. To prove its say, Mr. G. Abhijith has filed his affidavit of examination-in-chief at Exh.22 wherein he has supported the averments of the facts of their case. As I have discussed the same in para-1 of this judgment, same are not reproduced herein to avoid repetition. The above oral evidence is supported by documentary evidence which are produced at Exhs. 25 to 43. On perusing the same, it appears that Exh 25 is a Original Application form, Exh 26 is a Original Arrangement/sanction letter, Dt-8-12-2014. Exh 27 is a

Original Term Loan Agreement, Dt-8-12-2014, Exh 28 is a Original Letter of Undertaking, Dt-8-12-2014, Exh 29 is a Original Loan cum Hypothecation Agreement, Dt-8-12-2014. Exh 30 is a Original Guarantee Agreement, Dt-8-12-2014. Exh 31 is a Original Acknowledgment of Debt, Dt-30-11-2017, Exh 32 is a Original Invoice of The Vehicle submitted by the Defendant.Dt-9-12-2014, Exh 33 is a Copy of Insurance policy, Exh 34 is a Copy of Vehicle Registration Certificate, Exh 35 is a Office Copy of Legal Notice Issued by Advocate Prashant Lathigra issued to defendant, dt-25-9-2020, Exh 36 is a Original Postal receipt, Total item-4, Dt-25-9-2020, Exh 37 is a Original Acknowledgment Receipt of defendant No-1.Dt-28-9-2020, Exh 38 is a Copy of Postal Acknowledgment of defendant No-1.Dt-28-9-2020, Exh 39 is a Original Acknowledgment Receipt of defendant No-2.Dt-26-9-2020, Exh 40 is Original Reply issued by Defendant No-2 to plaintiff. Dt-5-10-2020, Exh 41 is a Copy of Postal Acknowledgment of defendant No-2. Dt-26-9-2020, Exh 42 is a Copy of Ledger Account of Defendant for the year 1/12/2014 to 21/9/2020, Exh 43 is a Copy of Ledger Account of Defendant for the year 21/10/2017 to 03/09/2024.Looking to all these documents, it clearly appears the defendant No.1 availed loan from the plaintiff, and being his Guarantor, defendant No.2 also signed in the banking documents. Not only that signatures of both the defendants are clearly seen at the relevant pages in the documents. It is to be noted here that plaintiff is Bank Constituted under the law owns by Government and records which are being maintained by them is in regular course of business, hence, there is no reason to discard the above documentary evidence unless it is shown that same are prepared with malafide intention. Moreover, the defendant No.1 have not present at the trail and not file his W.S. and denied the case of the plaintiff in his written-objections, but he has not deposed on oath nor the learned Advocate for the defendant no 1 has cross-examined the plaintiff's witness. Thus, version of the plaintiff has become unchallenged in absence of rebuttal evidence. Moreover, the defendant no 2 has cross-examined the plaintiff's witness and in his cross examination nothing comes out from it to rebuttal the evidence of the plaintiff.

8. In view of the foregoing discussion, it is proved by the

plaintiff that defendant No.1 obtained loan from the plaintiff for purchasing i20 car, defendant No.2 has stood a Guarantor of defendant No.1, and, thereafter, defendant No.1 was not regular in repayment of loan installment and defendants are still to pay Rs.10,10,578/-, hence, my findings on issue Nos.1,2,3 are in **Affirmative**.

9. **Issue Nos. 4 to 5 together** :-

In the cross examination of the plaintiff, the def. no 2 has challenged the procedure and the issue of the limitation. The plaintiff has given affirmative answer i.e. the bank give a notice who is not pay the instalment regularly. Bank gave a notice who continually not pay 3 instalment of the loan. The def no 1 stopped paying the instalments from 29/03/2016 and his 3 instalments become overdue on 29/06/2016. I do not remember when the bank immediately served notice to the def no 1 after 29/06/2016.the recovery agent or authorized officer of our bank gone to the resident and business address of defendant no 1.thus, looking to the whole cross examination the defendant no 2 has not rebuttal the procedure and the issue of the limitation. Because looking to the documents produced by the plaintiff in his case it is crystal clear that the bank has follow the true legal procedure for recover the loan amount. looking to the exh 35 to exh 40 it is clear that the bank gave a legal notice to the defendant no 1 and defendant no 2 in the stipulated time. the recovery agent or authorized officer of the plaintiff bank gone to the resident and business address of defendant no 1.so, the bank has follow the proper procedure to recover the loan amount.

Now, the def no 2 challenge the issue of the limitation of the present suit. The Ld. Advocate for the def. no 2 vehemently submitted in his written arguments that Creditor must file a suit against the guarantor within three years from the date of default / invocation of guarantee. "Within three out of three year" the creditor has three years from that date to file a suit to recover the money from the guarantor. If a suit is filed within those three years, it's within limitation. The Hon. Supreme Court has been crystal-clear that the limitation period for filing a suit to recover money from a guarantor is three years from the date a demand is raised on the guarantor. A recent judgement confirming this is Gourishankar Poddar v.

State Bank of India and Anr. (2025) ibelaw.in 103 SC. There the apex court concurred that limitation against a guarantor commences only after a demand notice is issued to the guarantor and re-affirmed that an acknowledgment of debt by the principal debtor can extend the limitation period for the guarantor as well under Section 18 of the Limitation Act, 1963.So, if recovery suit by the bank (creditor) is "out of three year" / "not within the limitation period", it implies the suit is time-barred under the Limitation Act. The Supreme Court in Gourishankar Poddar (2025) affirms the three-year limitation period for a suit against the guarantor A recent judgement confirming this is Gourishankar Poddar v. State Bank of India and Anr. (2025) ibclaw.in 103 SC. There the apex court concurred that limitation against a guarantor commences only after and re-affirmed that an acknowledgment of debt by the principal debtor can extend the limitation period for the guarantor as well under Section 18 of the Limitation Act, 1963.

This court not satisfied with the above arguments because looking to the Exh 31, it is crystal clear that the

Defendant no 1 has given acknowledgement of debt on dated 30/11/2017 about the loan. This present suit is filed on dated 16/10/2020. So, looking to the time of the filling suit, this present suit is within limitation. Therefore, plea of the def no 2 about this present suit is time barred is not maintainable at this juncture and thus my findings on issue Nos.4 & 5 are in **Negative**.

So, finally looking to the whole evidence, it is transpired that the defendant No.1 availed loan from the plaintiff, and being his Guarantor, defendant No.2 also signed in the banking documents. looking to the Exh 30, it is transpired that this document is a Guarantee Agreement. On the last page there is a sign of Defendant No 1 and Defendant no 2. In the last para of this document it is transpired that, *"he Guarantor/s agrees/agree as a pre-condition of the loan/advances/credit facilities given on the guarantee of Guarantor/s to Borrower/s by the Bank that in case the Guarantor/s were to commit default in repayment of the general balance as may be demanded of the Guarantor/s by the Bank, the Bank and/or the RBI will have an unqualified* *right to disclose or publish the name of Guarantor/s or Directors/Partners/Proprietors of the Guarantor/s as defaulter/s in such manner and through such medium as the Bank or the Reserve Bank of India in their absolute discretion may think fit."*

So, it is clearly shown that the def no 2 is agree of the said condition and at this stage section 127 of the Indian contract act is also take in to considered which reflects that,

127. Consideration for guarantee.—

"Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."

So, Not only that signatures of both the defendants are clearly seen at the relevant pages in the documents. It is to be noted here that plaintiff is Bank Constituted under the law owns by Government and records which are being maintained by them is in regular course of business, hence, there is no reason to discard the above documentary evidence unless it is shown that same are prepared with malafide intention. Moreover, the defendant No.1 have not present at the trail and not file his W.S. and denied the case of the plaintiff in his written-objections, but he has not deposed on oath nor the learned Advocate for the defendant no 1 has cross-examined the plaintiff's witness. Thus, version of the plaintiff has become unchallenged in absence of rebuttal evidence. Moreover, the defendant no 2 has cross-examined the plaintiff's witness and in his cross examination nothing comes out from it to rebuttal the evidence of the plaintiff. It is also transpired that the present suit is within limitation. So, looking to this whole evidence the plaintiff bank is entitle to recover Rs.10,10,578/- jointly and severally from person and the properties of the defendants. In these circumstances, the plaintiff bank has succeeded in proving his case. Therefore, I answer the issue no. 1 to 3 in affirmative, issue no. 4 & 5 in negative and in respect of issue no.1 to 3, I pass the following final order in the interest of justice:

Final Oder

(i) The present suit of the plaintiff is hereby allowed.

(ii) The defendants are hereby jointly and severally directed to pay sum of Rs.10,10,578/- along with the interest @ 10.65 %

per annum to the plaintiff.

(iii) The defendants are further jointly and severally directed to pay the costs of this suit to the plaintiff and shall bear their own costs.

(iv) Decree be drawn accordingly.

Pronounced in the open court on February 27, 2026.

Date :- 27-02-2026
Place: Rajkot.

(B.P.Thakar)
4^{th} Additional Civil Judge, Rajkot.

Judge Code No : GJ01618