**IN THE COURT OF SH. PANKAJ VERMA, P.C.S.,
ADDL. CIVIL JUDGE (SR. DIVISION), BUDHLADA
UNIQUE IDENTIFICATION CODE PB-0314**

Date of institution of suit:79/28.05.2019

CIS No. CS-169-2019

CNR No. PBMNA0-000294-2019

Date of Decision: 01.08.2022

Oriental Bank of Commerce, a body corporate constituted under the Banking Companies (Acquisition and Transfer of undertaking) Act No.40 of 1980 having its Head Office at Plot no. 5, Institutional Area, Sector 32, Gurgaon-122001 and amongst other branches a branch at Boha District Mansa through its Manager Ashu Partap.

……...Plaintiff bank

V E R S U S

Gurjit Singh aged about 47 years son of Jagmail Singh, resident of village Uddat Saidewala, Tehsil Budhlada, District Mansa.

…...Defendant.

SUIT FOR RECOVERY

Present:- Sh. Zanny Kath Singla, Advocate for the plaintiff bank.
Sh. Mehal Singh Sidhu, Advocate for defendant.

J U D G M E N T

1. Plaintiff bank has filed the instant suit for recovery against the defendants averring that plaintiff bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of undertaking) Act No.40 of 1980 having its Head Office at Plot no. 5, Institutional Area, Sector 32, Gurgaon-122001 and amongst other branches, has a branch at

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Boha District Mansa and it can sue and be sued through its Manager and the present suit is filed through Sh. Ashu Partap, Manager.

2. It was further averred that the defendant had approached the plaintiff bank on 03.09.2015 with his application and applied for the **grant of OGC (agriculture limit) to the tune of Rs. 3,00,000/-for purchase of seeds and pesticides etc and the then Branch Manager accordingly sanctioned the loan on 06.09.2012 and loan was advanced to him on 17.09.2012.**

The defendant executed loan documents in favour of plaintiff Bank i.e. loan application dated 03.09.2015, hypothecation agreement dated 17.09.2015 and agreed to repay the loan amount with all charges with interest @ Rs. 16% P.A (Rs.10.50 base rate + 3.50%) + penal rate @ Rs. 2% with half yearly rest as compound interest payable in full along with interest and other charges due thereon every half year plus interest and other charges thereon.

It was further submitted that defendant had also mortgaged his ½ share of agricultural land measuring 16 kanals 09 marlas (as detailed in the head note of the plaint) vide mortgage deed no. 2340 dated 06.09.2015.

It was further submitted that on 13.05.2015, the defendant had executed balance confirmation letter for Rs. 2,99,125/-, which was outstanding against him as on 13.05.2015 & on 06.04.2018 for an amount of Rs. 3,45,147-07, which was outstanding up to 05.04.2018 and now a sum of Rs. 3,80,709-07 is outstanding up to 31.12.2018 against the defendant, as he has defaulted in the payment structure despite being issued with the legal notice by the plaintiff bank, either towards the principal amount or towards the interest. It was further averred that defendant had agreed that he shall be liable to pay any sum that may be due outstanding against defendant in his account. The cause of action arose in favour of the plaintiff bank on 03.09.2012, when he applied for the loan and further on 06.09.2012, when the defendant had mortgaged his land with the plaintiff bank and again on 17.09.2012, when he executed various loan documents and further when he executed balance confirming letter and even otherwise the period of limitation to enforce payment of money secured by mortgage of immovable property is 12 years from the date when the some becomes due as per Article 68 of the Limitation Act and hence the suit is within the period of limitation. It was further submitted that the entire transactions took place at Boha and the land is situated at village Uddat Saidewala,Tehsil Budhlada and as such, this Hon’ble Court has got the jurisdiction qua the suit in hand. The requisite court fee of Rs. 12920/- is affixed on the plaint. The defendant has failed to make the payments, despite repeated demands and notice issued to him. Hence, this suit.

3. Upon notice defendant had appeared through counsel and filed written statement by taking the legal objections that suit of the plaintiff bank is barred by limitation; is not maintainable in the present for and not coming to the court with clean hands. It was submitted that the answering defendant had moved an application to the bank for only preparing the list of documents required for loan. **The defendant had already cleared his loan, which was borrowed by him.** Nothing is due against him. It was further submitted that employees of the plaintiff bank had obtained the signatures of the defendant on blank papers for preparing the list of documents required for loan and have misused the same. He further denied all the remaining averments made in the plaint and prayed for dismissal of the suit.

4. Replication to the written statement of the defendant was not filed by the plaintiff bank. From the pleadings of them parties, the following issues were framed by my learned Predecessor of this court on 16.01.2020:-

1. Whether the plaintiff is entitled for the relief of recovery along with interest as prayed for?OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiff has not come to the court with clean hands?OPD
4. Relief.

5. In order to prove its case, plaintiff bank had examined **Ashu Partap Manager, OBC Bank, Branch Boha, now PNB Bank as PW-1,** who tendered into evidence his duly sworn affidavit Ex.PW1/A, wherein he deposed as per the averments made in the plaint which are not repeated over here for the sake of brevity and to avoid undue repetition of facts.

He further proved copy of power of attorney as Ex P-1, original loan application dated 03.09.2012 as Ex P-2, letter of sanction dated 06.09.2012 as Ex P-3, hypothecation agreement dated 17.09.2012 as Ex P-4, mortgage deed as Ex P-5, copy of statement of account as Ex P-6, copy of legal notice and postal receipt as Ex P-7 and Ex P-8, balance confirmation letters as Ex P-9 and Ex P-10, copy of jamabandi as Ex P-11 and he identified the signatures of the then Manager/Loan Officer on the documents.

6. No other witness was examined by the plaintiff bank and thereafter, learned counsel for the plaintiff bank had closed evidence on behalf of the plaintiff bank in affirmative vide suffering his separately recorded statement in this regard on **12.05.2022**.

7. In order to rebut the case of the plaintiff bank and prove his case, the **defendant Gurjit Singh himself stepped into witness box as DW-1** tendered into evidence his duly sworn affidavit Ex. DW-1/A as part

of his examination in chief, wherein he deposed as per the averments made in the written statement.

8. No other witness was examined by the defendant, despite availing more than four effective opportunities and hence the evidence of defendant was closed by order of this court on **21.07.2022**.

9. The learned counsel for the plaintiff bank and learned counsel for the defendant had advanced their contentions in line to that of their respective pleadings and after hearing their respective submissions and having gone through the statements of witnesses and documents placed on record, my issue wise findings is as under:-

ISSUE NO.1

1.Whether the plaintiff is entitled for the relief of recovery along with interest as prayed for?OPP

10. The onus to discharge the burden of this issue were upon the plaintiff bank and for the said fact plaintiff bank had examined PW-1 Ashu Partap, Branch Manager as already discussed above and he verbatim deposed in line to that of the version as put forth in the plaint and despite being subjected to lengthy cross-examination by the counsel for defendant no.1, nothing effecting the case of the plaintiff bank could ooze out from his mouth and from the oral and documentary evidence on record, this court finds that he had duly proved that defendant had approached the

plaintiff bank **on 03.09.2012** with his loan application as Ex P-2 and applied for the grant of OGC (agriculture limit) to the tune of Rs. 3,00,000/-for purchase of seeds and pesticides etc and the then Branch Manager after being satisfied and as per rules accordingly **sanctioned the loan on 06.09.2012 and the sanction letter is proved on record as Ex P-3,** after being satisfied with the records pertaining to the ownership of the defendant, his needs and after following the due process and the loan was to be disbursed to him.

This court further finds that the defendant had withdrawn the sanctioned amount from his loan account firstly on 17.09.2012 as clear from statement of his loan account, proved on record as Ex P-6 and thereafter. This witness has also proved that the defendant had executed hypothecation agreement dated 17.09.2012, which was proved on record as Ex P-4, on which the photograph of the defendant/borrower/mortgagor was duly affixed and the said defendant had signed across his photograph, wherein he agreed to repay the loan amount with interest @ Rs. 16 % P.A mortgage deed no. 2340 dated 06.09.2012 executed and registered in the office of Sub-Registrar, Budhlada in favour of the plaintiff bank as Ex P-5. The statement of the account pertaining to the account of defendant, wherein as on 31.12.2018, an amount of Rs.3,80,709-07 was standing due against the defendant and this statement of the account has been proved on record as Ex P-6. This court also finds that since the defendant had defaulted in the loan payment structure, hence the plaintiff bank through their Advocate served a legal notice dated 22.11.2018 proved on file as Ex P-7 and the postal receipt in this regard has been proved on file as Ex P-8. It has also been proved on record that the defendant had **executed balance confirming letters dated 13.05.2015, dated 06.04.2018 proved on file as Ex P-9 and Ex P-10**, wherein he affirmed that an amount of Rs. 3,45,147-07 is standing as due against him as on 05.04.2018 and the copy of the jamabandi pertaining to the land of the defendants has been proved on record as Ex P-11, wherein rapat no. 06 dated 06.09.2012 has been entered and sanctioned by the revenue authorities in favour of the plaintiff bank.

11. Not only this the defendant Gurjit Singh, while appearing in the witness box as DW-1 had admitted in his cross examination that he had applied for a loan of Rs. 3,00,000/-with the plaintiff bank and admitted and identified his signature on original loan application dated 03.09.2012, proved on file as Ex P-2, sanction letter as Ex P-3. He further identified his signatures on mortgage deed as Ex P-5, hypothecation agreement dated 17.09.2012 as Ex P-4, balance confirmation letter dated 13.05.2015 as Ex P-9 and dated 06.04.2018 as Ex P-10. He further admitted that though he had alleged that he had cleared and repaid the loan, but he had not produced any receipt on record nor he can tell the date, month and year, when he had deposited the said amount in his loan account. He further

admitted that he used to withdraw time and again from his loan account as and when the amount was disbursed and further admitted that he had mortgage his land measuring 16 kanals 09 marlas vide mortgage deed as Ex P-5.

12. Thus, from the evidence led on the file this court finds that the plaintiff bank has duly proved the facts as mentioned in their plaint and on the other hand the defendant has miserably failed to prove the facts as alleged in his written statement, rather he had admitted the entire version of the plaintiff bank. This court finds that the present suit was filed on 28.05.2019 and period of limitation for filing a suit for recovery on the basis of mortgaged property is 12 years when the last installment is payable and hence the present suit is also within the period of limitation from the said acknowledgment. This court also finds that the entire transactions between the parties took place within the territorial jurisdiction of this court and hence this court has got the jurisdiction qua the territorial, pecuniary and subject matter aspect of the suit is concerned.

13. This court further finds that there is nothing on the record, by virtue of which this Court can come to the conclusion that the present case of the plaintiff bank is not legally or factually maintainable. Both oral and documentary evidence have duly supported the case of the plaintiff bank in toto. Accordingly, for the aforesaid reason and discussion, issue No.1 is decided in favour of the plaintiff bank and against the defendant.

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ISSUES NO. 2 & 3

2. Whether the suit is not maintainable?OPD

3. Whether the plaintiff has not come to the court with clean hands?OPD

14. The onus to discharge the burden of these issues was upon the defendant. In view of my detail findings returned on issue No.1, I find that the present suit of the plaintiff bank is very much maintainable and the plaintiff bank has every locus standi and cause of action to file the present suit. As reported by the reader, proper court fee has been affixed on the plaint and there is no bar to its maintainability. The suit is well within the period of limitation as per Article 68 of the Limitation Act, 1963 and accordingly, these issues are decided against the defendant and in favour of the plaintiff bank.

RELIEF:-

15. In view of my above said findings returned on all the issues, this court finds that **the present suit of the plaintiff bank succeeds and is hereby decreed for the relief of recovery of Rs. 3,80,709.07/-with interest and costs, and a preliminary decree is passed in favor of the plaintiff bank** that the plaintiff bank is entitled to recover the said amount with interest pendent-elite and future interest of Rs. 11.5% (present rate of interest 9.5% +2% penal rate of interest p.a.) with half yearly rests, by sale of the mortgaged property as claimed by the plaintiff bank in their plaint

and agreed by the defendant as per document Ex P-5 from the date of filing of the suit till realization of entire decreetal amount, from the defendant.

16. **The defendant is given three month's time to comply with this judgment and decree, failing which this preliminary decree shall be treated as a final decree** and the plaintiff bank shall be at liberty to recover the said amount from **by sale of the mortgaged property (as mentioned in the head note of the plaint and this judgment) and in case the same is not sufficient to realize the decreetal amount, then by sale of other movable and immovable property of the defendant liable for the repayment, by adopting due process as per law.** Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.

Pronounced in open Court

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Addl. Civil Judge(Sr.Div.),
Budhlada. UID PB-0314
(Direct Dictation)

Date of order: 01.08.2022
Judgment writer: Kanchan

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