



सत्यमेव जयते

<b>City Civil Court at Ahmedabad.</b>			
<b>Received on:</b>	21/07/2000		
<b>Registered on :</b>	21/07/2000		
<b>Small Cause Court at Ahmedabad.</b>			
<b>Received On :</b>	20/12/2022		
<b>Registered On :</b>	20/12/2022		
<b>Decided on:</b>	20/03/2026		
<b>Duration :</b>	<b>Years</b>	<b>Months</b>	<b>Days</b>
	25	08	00

In the Small Causes Court No.1 At Ahmedabad

Regular Suit No.289/2022.

Exh. 123

<b>Plaintiff/s :-</b>		<b>The Ahmedabad Mercantile Co.Op. Bank Limited.</b> (A Co-operative Bank Registered under the Co-operative Societies Act.) Registered Office at : “AMCO” House, Near Stadium Circle, Navrangpura, Ahmedabad-380 009.
	<b>V/s.</b>	
<b>Defendant/s :-</b>	<b>[1]</b>	<b>Gayatri Printers</b> <b>A Partnership Firm</b> Address at :19, K.B.Commercial Center, Near Dinbai Towers, Khanpur, Ahmedabad.

<p><b>*Amended as per OBE-57.</b></p>	<p><b>[2]</b></p>	<p><b>Tanesh Parmanand Desai</b> Age: Adult, Occ.Business Address at : 88, Giriraj Society, Near Arjun Ashram, Chandlodiya, Ahmedabad.</p>
	<p><b>[3]</b></p>	<p><b>Kalpesh Hasmukhbhai Mehta</b> Age: Adult, Occ.Business Address at : C/1, Nirant Apartment, B/h.Daliya Building, Near Town Hall, Ellisbridge, Ahmedabad.</p>
	<p><b>[4]</b></p>	<p><b>Rakesh Prabhudas Panchal</b> Age: Adult, Occ.Business Address at : 85, Tarangahill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad.</p>
	<p><b>[5]</b></p>	<p><b>Jayaben Prabhudas Panchal</b> Age: Adult, Occ.Business, Address at : 85, Tarangahill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad.</p>
	<p><b>*[6]</b></p>	<p><del><b>Prabhudas Lavjibhai Panchal</b></del> Age: Adult, Occ.Business Address at : 85, Tarangahill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad. 380 061.</p>
	<p><b>*[6/1]</b></p>	<p><b>Jayaben Prabhudas Panchal</b> Age: Adult,</p>

<p>*Amended as per OBE-58.</p>	<p>Residing at : 85, Tarangahill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad 380 061</p> <p><b>*[6/2] Rakesh Prabhudas Panchal.</b> Age: Adult, Occ.Business Address at : 85, Tarangahill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad. 380 061.</p> <p><b>*[6/3] Shailesh Prabhudas Panchal.</b> Age: Adult, Residing at : 85, Taranga Hill Society, Near Arjun Ashram, Chandlodiya, Ahmedabad 380 061.</p> <p><b>*[7] Dr.P.M.Desai</b> Age: Adult, Occ.Medical Practitioner, Address at : Nirant Apartment, B/h.Daliya Building, Near Town Hall, Ellisbridge, Ahmedabad.</p> <p><b>*[7/1] Kailashben Parmanand Desai</b> Age: Adult, Residing at : 88, Giriraj Society, Near Arjun Ashram, Chandlodiya, Ahmedabad 380061.</p> <p><b>*[7/2] Tanesh Parmanand Desai</b> Age: Adult,</p>
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<p><b>*Amended as per OBE-69.</b></p>	<p>Residing at : 88, Giriraj Society, Near Arjun Ashram, Chandlodiya, Ahmedabad 380 061</p> <p><b>*[8] <del>Dr.Hasmukh C. Mehta</del></b> Age: Adult, Occ.Medical Practitioner Address at : 19, K.B.Commercial Center, Near Dinbai Towers, Khanpur, Ahmedabad.</p> <p><b>*[8/1] Kalpesh Hasmukhbhai Mehta</b> Age: Adult, Residing at : F-1, Raturaj Flat, Nr.Kamdhenu Society, P.T.Collage Road, Paldi, Ahmedabad 380 007.</p>
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**Subject :- Suit Claim Rs.9,17,535/-.**

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**Coram:-Mr. B.N. Patel, Chief Judge.**

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**Appearance :-**

For the Plaintiff/s : Ld. Advocate Mr. A. K. Modi

For the Defendant/s No.3 and 8 : Ld. Advocate Mr.A. H. Shah

For the Defendant/s No.4,5, and 6 : Ld. Advocate Ms.Shantiben S. Avasthi.

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

**[1] Case of the Plaintiff :**

The plaintiff is The Ahmedabad Mercantile Co-operative Bank Ltd, which is registered under the Co-operative Societies Act.

[1.1] The defendant no.1 is a Gayatri Printers, a Partnership Firm and the defendant

no.2 to 5 are it's partners of the defendant no.1 Firm. The defendant No.6,7 and 8 are guarantors of the loan advanced to defendant no.1 to 5. All the defendants are jointly and severally liable to pay the suit amount to the Bank. The defendants were not members of the plaintiff bank on the date when loan was advanced.

[1.2] The defendants no.1 to 5 were required the loan for development of their business and demanded machinery loan from the plaintiff Bank and the plaintiff Bank informed the defendants to secure the said loan by mortgaging the machinery of business and defendants no.5 to 8 as guarantors of the loan. The plaintiff Bank granted a loan of Rs.3,40,000/- to the defendant no.1 for development of business after consent given by defendants no.6 to 8 as guarantors regards the loan advanced to the defendant no.1. The defendants have executed necessary documents on 25/2/1991 viz. Hypothecation Agreement, Book Debt Agreement etc. in favour of the plaintiff Bank. The defendant no.6 to 8 have executed Guarantee Agreement.

[1.3] The defendants agreed to repay the loan in 60 E.M.I each of Rs.8,500/- which was carrying 16.5% interest which quarterly rests. If the defendants commit default in payment of any two installments, the plaintiff Bank is entitled to recover the entire due amount at once.

[1.4] The defendant no.6 has deposited Title Deeds of the following properties in the Bank :

Description of Property of Defendant No.6 :

The property situated in city Ahmedabad, Village – Chandlodiya, Near Arjun Ashram, Tarangahill Co.Op.Hou.Soc.Ltd. Regd.No.5424, tenement no.85 which has following boundaries :

East : Backside Portion of Tenement No.78

West : 12 feet Road.

North : Tenement No.84

South : Common Road.

[1.5] As the defendants have not regularized their loan account by paying due loan amount and interest, the plaintiff Bank issued a letter on 20.6.1991 and 20.2.1992 to inform the defendants to make payment of installments even otherwise, the defendants have neglected to pay the due amount of loan and interest. Thus, the plaintiff Bank has issued notice on 18/9/1992 to the defendants and demanded

Rs.4,01,783/-towards the due loan amount, but the defendants have not paid the due amount of loan to the plaintiff Bank. The plaintiff Bank filed Arbitration Case No.1932/92 before the Hon'ble Board of Nominees Court on 30/9/92 and the defendants were not nominal members of the plaintiff Bank on the date of the suit and on that ground, the Hon'ble Board of Nominee Court dismissed the suit of the plaintiff on 28/6/2000.

[1.6] The plaintiff has following due amounts from the defendants :

Rs.3,90,083/- Due Amount up to 30/6/92 machinery loan account.

Rs. 11,750/- interest from 1/7/92 to 31/8/92.

Rs. 3,075/- interest from 1/9/1992 to 30/9/92 till date of the suit.

Rs. 350/- notice charge.

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**Rs.4,05,148/-**

Rs. 23/-less.

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Rs.4,05,125/-due amount.

Rs.5,12,410/- Interest on Rs.3,90,083/- from 1/10/92 to date of the suit.

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**Rs.9,17,535/-** (Nine Lakhs Seventeen Thousand Five Hundred Thirty Five Only)

[1.7] The defendant no.6 has executed equitable mortgage of his properties towards security of the above loan and deposited original title in the plaintiff Bank. The plaintiff Bank has first charge on the said properties. The defendants have committed breach of the Agreement and they are trying to sell their properties and they have intention to sink the debt of the plaintiff Bank.

[1.8] On the above counts, the plaintiff has filed the present suit and **prayed that** :

[A] to pass a decree for **Rs.9,17,535/-** in favour of the plaintiff and against defendants, with interest at rate of 16.5% per annum till realization of the said amount and said amount be recovered from the properties of the defendants mentioned in the para.5 of the plaint.

[B] The Hon'ble Court be pleased to award the costs of the suit.

[C] Any other and further relief as the Court may deem fit and proper.

[2] **Appearance of the Defendant/s :-**

After service of summons to the defendants, the defendants No.3 and 8 have appeared through their learned Advocate. The defendant no.7 died and his legal heirs are served with the notice and they are joined in the cause title of the suit, but they have not filed any reply to the suit. Further, the defendant no.2 and 4 to 6 have also not filed any written statement to the suit.

**Written Statement Exh.23 [Defendant No.3 ]**

[2.1] The defendant no.3 has filed written statement to the suit at Exh.23 and denied the facts of the plaint and inter alia contended that the suit is barred by limitation. The defendant no.8 is wrongly impleaded in the suit. The plaintiff has to prove that it is registered Co-operative Society. The plaintiff has not given information of interest. The documents are not renewed. The defendant no.3 and other partners are not having similar liability and the defendant no.3 is not liable, but the other active partners are responsible. The defendant no.8 is his father and he is handicapped and the plaintiff has pressurized the defendant no.8 and got his signature and hence not binding to the defendant no.3 and his father. If the bank has sold the machinery at proper time then the outstanding amount could be recovered and debt of the Bank could be paid , but the bank has not done so and therefore the amount has been increased. The other partners and the neighbors have taken the signature of the defendant no.8 and it is not binding. The amount of interest at 18% p.a. is not proper. The defendant no.3 is not liable for any collateral security. The suit of the plaintiff is barred by the principle of res-judicata and estoppel. The demand of Rs.9,17,535/- which is quite false

demand and the interest at the rate of 16.50 % p.a is also false and not payable. The suit is time barred and the documents are not admissible. Therefore, the defendant no.3 has prayed to dismiss the suit.

**Written Statement Exh.24 [Defendant No.8 ]**

[2.2] The defendant no.8 has filed written statement to the suit at Exh.24 and denied the facts of the plaint and inter alia contended that he relies on the written statement filed by the defendant no.3 and considered as part of his reply. Further, the defendant has contended that there is undue influence and misrepresentation and got the signature of defendant no.8. Hence, prayed to dismiss the suit with costs. Further, the defendant no.8 died during pending the present suit and the legal heirs of the deceased defendant no.8 have adopted the written statement filed at Exh.24 as their written statement.

[3] **Arguments :-**

The learned Advocate of the plaintiff has submitted his written arguments at Exh.120. The L.A. of the plaintiff has produced following reported judgments :

**(1) 1995 0 Supreme (SC) 722**

Supreme Court of India

Mukri Gopalan V/s. Cheppilat Puthanpurayil Abookbacker.

Civil Appeal No.1305 of 1995 Decided On : 12-7-1995.

**(2) 1964 0 Supreme (SC) 343**

Supreme Court of India

Gulabchand Chhotalal Parikh V/s. State of Gujarat.

Civil Appeal No.670 of 1963.

Decided On : 14<sup>th</sup> December, 1964.

**(3) 1970 0 Supreme (SC) 89**

Mathura Prasad Sarjoo Jaiswal and others V/s.

Dossibai N. B. Jeejeebhoy

Civil Appeals Nos.1061 and 1627-1629 of 1966

D/-26-2-1970, 2356

**(4) 2010 0 Supreme (SC) 914**

Supreme Court of India

Alka Gupta V/s. Narender Kumar Gupta

Civil Appellate Jurisdiction

Civil Appeal No.8321 of 2010

[Arising out of SLP [C] No.11328/2010]

Decided on : September 27, 2010.

**(5) 1998(1) Supreme 484**

Supreme Court of India

(From Delhi High Court)

K.K.Modi V/s. K.N.Modi & Ors.

Civil Appeal No.613 of 1998

(Arising out of SLP (C) No.14905/97)

{With C.A.No.614 of 1998 (Arising out of SLP (C) No.18711 of 1997) and T.C.(C) No.13/97 Decided on : 4/2/1998

**(6) 2008 (8) SCC 92**

State Bank of India & Ors. V/s. S.N.Goyal.

Civil Appeal Nos.4243-4243-4244 OF 2004

Decided On : 02/05/2008.

The learned Advocate of the defendant has submitted his written arguments at **Exh.121**. The L.A. of the plaintiff has produced the judgment reported in **2010 0 Supreme (Bom)1473** High Court of

Judicature at Bombay M/s.Premlaxmi & Co. V/s. Ingersoll Rand (India) Limited & Another. Appeal No.85 of 2004 In Arbitration Petition No.166 of 2003 Decided On 11/10/2010.

[4] My learned Predecessor has framed following issues at Exh.25:

**Issues**

1.	Whether the plaintiff proves that it had granted loan of Rs.3,40,000/- to defendant Nos.1 to 5 for purchase of machinery and defendant Nos.6 to 8 stood as guarantors for due repayment of the said loan upon execution of necessary documents ?
2.	Whether the plaintiff proves that the defendants have failed and neglected to repay the loan amount as well as interest accrued thereon ?
3	Whether the plaintiff proves that Rs.3,90,083/- was found due and payable by defendants as on 30/6/1992 ?
4	Whether the defendant Nos.3 and 8 prove that the suit is barred by law of limitation ?
5	Whether the defendant Nos.3 and 8 prove that the suit is bad for mis-joinder of parties ?
6	Whether the defendant Nos.3 and 8 prove that the suit is barred by jurisdiction and estoppel ?
7	Whether the plaintiff is entitled to the relief as prayed for ?
8	What order and What decree ?

[5] My findings to the above issues are as under :

1	In the Affirmative.
2	In the Affirmative.
3	In the Affirmative.

4	In the Negative.
5	In the Negative.
6	In the Negative.
7	In the Partly Affirmative.
8	As per the final order.

**[6] Evidence produced at trial :-**

**[6.1] The plaintiff has produced following oral evidence.**

Sr. No.	Particulars	Exh.
1	Affidavit of Chief examination of the plaintiff Bank- Rasheshbhai Jitendrabhai Sutariya.	42

**[6.2] The plaintiff has produced following documentary evidence :**

Sr. No.	Particulars	Exh.
1	Demand Promissory Note executed by defendant no.1 to 5 in favour of the plaintiff Bank.	36
2	Agreement For Hypothecation executed by the defendants no.1 to 5 in favour of the plaintiff Bank.	37
3	Letter of continuity executed by defendants no.1 to 5 in favour of the plaintiff bank.	38
4	Deed of Guarantee executed by the defendant no.6 in favour of the plaintiff Bank.	39
5	Deed of Guarantee executed by the defendant no.8 in favour of the plaintiff Bank.	40
6	A letter of the plaintiff Bank informing the defendants regarding sanction of loan of defendants no.1 to 5.	41
7	Loan Application filed by Defendant No.1 Firm in the plaintiff Bank on 31/1/1991.	96
8	A copy of Partnership Deed given by defendant no.1 firm along with Loan Application.	97
9	Quotation of Avon Engineering Works	98

	Dtd.1/11/1990.	
10	Quotation of Avon Engineering Works Dtd.1/11/1990.	99
11	Receipt No.91 for payment made by Defendant No.1 firm to Avon Engineering Work.	100
12	Receipt No.93 for payment made by Defendant No.1 firm to Avon Engineering Work.	101
13	Receipt no.99 for payment made by Defendant No.1 firm to Avon Engineering Work.	102
14	Receipt no.103 for payment made by Defendant No.1 firm to Avon Engineering Work.	103
15	A letter of consent given by Defendant no.7 Dr.P.M.Desai to the plaintiff Bank to stand as guarantor in respect of the loan application.	104
16	A copy of letter of plaintiff Bank issued on sanction of loan of defendant no.1.	105
17	A letter of consent given by defendant no.8 Dr.Hasmukh C. Mehta to the plaintiff Bank to stand as guarantor regarding loan application.	106
18	A copy of forwarding letter of cheque issued by the plaintiff Bank on sanction of loan amount to the Avon Engineering Work.	107
19	A receipt issued by Avon Engineering Work.	108
20	Office copy of the notice given by the Ld. Advocate of the plaintiff to the defendants.	109
21	A copy of resolution passed by the Board of Directors of the plaintiff Bank in a meeting held on 4/7/2000 to file suit proceedings.	110
22	Closing Pursis.	111
23	A copy of the Arbitration Case No.1932/1992.	117
24	A copy of the Judgment passed in Arbitration Case No.1932/92.	118
25	A copy of abstract of account of the defendant.	119

The Defendants have not filed any oral and documentary evidence. The L.A of the defendant no.3 and 8 have submitted closing pursis at Exh.115.

**[7]** Heard the arguments at length of the Ld. Advocate of the plaintiff

The Ld. Advocate of the plaintiff stated the grounds of the present suit and also made submission on points of the evidence and record of the matter. On the other side, the Defendants no.2, 4 and 5 has not remained present and hence, their right of cross examination is closed vide Exh.55 on 13.8.2024. The plaintiff has submitted his written arguments at Exh.120 and the defendants no.3 and 8 has submitted their written arguments at Exh.121.

**[8] :- Reasons :-**

**[9] Issues No.1 :-**

Here, it is pleaded by the plaintiff in plaint and in deposition at Exh.42 that the plaintiff is Ahmedabad Mercantile Co-operative Bank Ltd. It has granted a loan of Rs.3,40,000/- to the defendants no.1 to 5 and the defendant no.6 to 8 have stood as guarantors in respect of the said loan. In support of the said contention, the plaintiff has produced documentary evidence at exh.96 to 110. On perusing the loan application at Exh.96, it appears that the defendant no.1 Firm M/s.Gayatri Printers has applied for a loan of Rs.3,40,000/- on 31/01/1991 for development of business. The names of Partners i.e. Taneshbhai Parmanand Desai, Kalpesh Hasmukhbhai Mehta, Rakesh Prabhudas Panchal and Jayaben Prabhudas Panchal are mentioned. Further, the Advancing Committee of plaintiff Bank has granted the said loan to the defendants no.1 to 5 with condition to take collateral security by Dr.Hasmukhbhai. On perusal of the Deed of Partnership produced at Exh.97, it appears that the defendant no.2 to 5 i.e. Taneshbhai Parmanand Desai, Kalpesh Hasmukhbhai Mehta, Rakesh Prabhudas Panchal and Jayaben Prabhudas Panchal are the partners of the defendant no.1 Firm Gayatri Printers. The plaintiff has produced at Exh.41 and Exh.105 a copy of the letter issued by the plaintiff Bank after sanctioning the loan amount of Rs.3,40,00/- to the defendant to purchase machinery. Exh.107 is

a copy of forwarding letter issued by the plaintiff Bank to the Avon Engineering Works regarding issuance of cheque of Rs.3,40,000/- in the name of Avon Engineering Work to purchase machinery. Exh.108 is a receipt issued by Avon Engineering Works in the name of Gayatri Printers.

**[9.1]** The plaintiff has produced at exh.97 to 99 quotations of Avon Engineering Work and Exh.100 to 103 are the payment receipts given by Avon Engineering Work i.e. Rs.51,000/- , Rs.50,000/-, Rs.75,000/- and Rs.75,000/- respectively.

**[9.2]** The plaintiff has produced at Exh.36 a demand promissory note which is signed and executed by the defendant no.1 to 5 in favour of the plaintiff Bank. The defendant no.1 to 5 have signed and executed Hypothecation Agreement Exh.37 in favour of the plaintiff Bank. Exh.38 is a Letter of Continuity signed and executed by the defendant no.1 to 5 in favour of the plaintiff Bank and accepted the terms and conditions mentioned therein.

**[9.3]** The plaintiff has produced at exh.39 a letter of Guarantee executed by Prabhudas Lavjibhai Panchal executed in favour of the plaintiff Bank and also given consent to put his residence being tenement no.85, Trangahill Co-op. Hou.Soc.Ltd., Nr.Arjun Ashram, Chandlodiya, Ahmedabad as collateral security. Exh. 40 is a Deed of Guarantee signed and executed by defendant no.8 Hasmukhbhai C. Mehta in respect of the loan Rs.3,40,000/- granted by the plaintiff Bank to the defendants no.1 to 5. Exh.104 a consent letter of defendant no.7 Dr.Parmanand M. Desai to stand as guarantor of the said loan. The plaintiff has produced at Exh.106 is a letter given by defendant no.8 Dr.Hasmukh C. Mehta to the plaintiff bank stating that he has no objection to stand as guarantor in respect of the loan.

**[9.4]** Thus, in view of the above documents signed and executed by and between the plaintiff Bank as well as the defendants no.1 to 5, it is proved that the plaintiff Bank has sanctioned a loan of Rs.3,40,000/- in favour of the defendants no.1 to 5 and the defendants no.1 to 5 have availed the said loan to purchase the machinery from Avon Engineering Works. The defendant no.6 to 8 have signed and executed the Deed of Guarantee in respect of the said loan and stood as the guarantors of the defendants no.1 to 5 for due repayment of the said loan. Here, in the present case, the defendants no.1 to 8 have not produced any oral and the documentary evidence and not challenged the evidence adduced by the plaintiff and hence, I have no reason to accept the oral and the documentary evidence of the plaintiff. **Hence, I answer the issue no.1 in the Affirmative.**

**[10] Issues No.2 and 3 :**

The plaintiff has granted a loan of Rs.3,40,000/- to the defendants no.1 to 5 and defendants no.6 to 8 have stood as guarantors of the said loan. The plaintiff has produced documentary evidence vide exh.96 to 110 viz. Loan application form, a letter informing the defendants regarding sanction of the loan, letter of continuity etc. which are signed and executed by and between the plaintiff Bank and the defendants no.1 to 5 which clearly proves that the plaintiff Bank has sanctioned the loan amount to the defendants no.1 to 5 and the defendants no.6 to 8 have stood as guarantors of the said loan. The plaintiff has produced at Exh.109 an office copy of the notice given by the plaintiff's learned Advocate to the defendants no.1 to 8 by Registered A.D post on date 17/9/1992 wherein the plaintiff has demanded Rs.3,90,000/-principal amount, Rs.11,700/- interest and total Rs.4,01,700/- has been demanded by the plaintiff from

the defendants.

**[10.1]** It appears that in the present suit, the defendant no.3 has taken the defense in their written statement at exh.23 and denied his liability for payment, but looking to the documentary evidence, the defendant no.3 being partners of the Gayatri Printers is liable to make payment of outstanding amount to the plaintiff. Further, the defendant no.3 and any of the defendants have not adduced any evidence to show that they have made payment of outstanding amount of loan to the plaintiff Bank. The plaintiff has produced at Exh.119 a copy of abstract of account of the defendant Gayatri Printers and it appears that Rs.3,90,083/- has remained due and payable by the Gayatri Printers. Hence, the plaintiff proves that Rs.3,90,083/- was found due and payable by the defendants as on 30/06/1992 and the defendants have failed and neglected to repay the loan amount as well as interest accrued thereon. Hence, **I answer issue no.2 and 3 in the Affirmative.**

**[11] Issue No.4 :-**

The defendant Nos.3 and 8 have contended in their written statements filed at Exh.23 and 24 respectively that the suit is barred by law of limitation. As per the abstract of account produced by the plaintiff at Exh.119, loan amount of Rs.3,40,000/- has been shown debited on 25.02.1991 in the account of the Gayatri Printers. The defendants have made some payment up to 31/3/1991. Further, the plaintiff has produced at Exh.117 a copy of the plaint of suit filed by the plaintiff in the Board of Nominees, Ahmedabad against the defendants no.1 to 8 which bears Arbitration Case No.1932 of 1992 and its Judgment at Exh.118 which shows that the suit was filed on 30/9/1992 and its Judgment was delivered on 28/6/2000. The suit of the plaintiff Bank was dismissed on the ground of jurisdiction. Being

aggrieved with the said judgment, the plaintiff Bank has filed the present suit on 21/7/2000 before the Competent Authority i.e. Hon'ble City Civil Court at Ahmedabad. Hence, from the last payment made by the defendant on 31/3/1991, the first Arbitration Case No.1993 of 1992 was filed on 30/9/1992 which was within the period of limitation as well as after delivery of the judgment of the said suit on 28/6/2000, the plaintiff filed the suit on 21/7/2000 before the Hon'ble City Civil Court at Ahmedabad the said suit was also filed within the period of limitation. Hence, the defence taken by the defendants in their written statement is not tenable at law. Further, as per the Section 14 of The Limitation Act, 1963 which provides for exclusion of time spent in prosecuting proceedings in a Court without jurisdiction or in a defective manner in good faith.

**Section- 14(1) of The Limitation Act reads as under :**

*"14. Exclusion of time of proceeding bona fide in Court without jurisdiction.- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

**[11.1]** Here, in present case on hand, the plaintiff has spent time in prosecuting another civil proceeding before the court of first instance, against the defendant and hence, the time during which the plaintiff has been prosecuted shall be excluded because the proceeding relates to the same matter in issue and is prosecuted in good faith in The Board of Nominees having defect of jurisdiction unable to entertain it. Therefore, as per Section-14(1) of The Limitation Act, 1963, the entire time spent by the plaintiff during the prosecution against the defendants before the Board of Nominees in the

Arbitration Case No.1993 of 1992, which was filed on 30/9/1992 and dismissed on 28/6/2000, and hence the period from 30/9/1992 to 28/6/2000 should be excluded for computation of the period of limitation. Further, the L.A of the defendant has argued that the present suit is barred by the provision of Order 23 Rule 2 of C.P.C. The Order 23 Rule 2 of C.P.C. reads as under :

**Order 23 Rule-2 of C.P.C. :**

**2. Limitation law not affected by first suit.** - *In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.*

**[11.2]** Looking to the above provision, here, the Court has granted permission to institute the present suit, which was earlier dismissed by The Board of Nominees due to lack of jurisdiction. In the said suit was instituted bona fide and The Board of Nominees did not discuss merits of the said case. Here, this Court has discussed the merits of the case on the issues framed. Hence, the suit filed earlier was only dismissed on technicalities and therefore, the said suit is filed here in the present Court having jurisdiction. Therefore, the provision of O.23 R.2 of C.P.C is not applicable to the present suit and this suit is not barred by law of limitation. Thus, the defendant no.3 and 8 have failed to prove that the suit is barred by law of limitation. Hence, **I answer issue no.4 in the Negative.**

**[12] Issue No.5 :-**

It is the defense of the defendant no.3 and 8 that the suit is bad for mis-joinder of parties, but looking to the evidence on record, the plaintiff has filed the suit against the Partnership Firm i.e. Gayatri Printers and it's partners. The defendants no.2 to 5 are the partners of the said Firm. The defendants no.6 to 8 are the

guarantors of the said loan advanced to the defendants Gayatri Printers and it's partners.

**[12.1]** Further, looking to the copy of the partnership deed produced by the plaintiff at Exh.97, it is proved that the names of Shri Taneshbhai Parmanand Desai, Shri Kalpesh Hasmukhbhai Mehta, Rakeshbhai Prabhudas Panchal, Jayaben Prabhudas Panchal are mentioned as partners of Gayatri Printers. The defendants no.1 to 5 have executed a demand promissory note Exh.36, Agreement for Hypothecation Exh.37, letter of continuity in favour of the plaintiff Bank at Exh.38. The defendant no.6 Prabhudas Lavjibhai Panchal has signed and executed deed of guarantee Exh.39 in favour of the plaintiff Bank. The defendant no.8 Hasmukhbhai C. Mehta has signed and executed deed of guarantee Exh.40 in favour of the plaintiff Bank. Further, the defendant no.3 Kalpesh H. Mehta who is one of the partners in the defendant no.1 Gayatri Printers, his father Dr.Hasmukh C. Mehta has signed and given consent on his letterpad Exh.106 to the plaintiff Bank that he has no objection if his son Kapesh H. Mehta stands as Guarantor regarding the loan application. The plaintiff has produced a letter of consent Exh.104 which is given by Defendant no.7 Dr.P.M.Desai to the plaintiff Bank to stand as guarantor in respect of the loan application. Thus, looking to the above documents, it is proved that the defendants no.1 to 5 have signed various security documents as partners of Gayatri Printers as principal borrowers and as guarantors in favour of the plaintiff Bank and the defendants no.6 to 8 have signed and executed various security documents as Guarantors in respect of the loan advance to the defendants no.1 to 5 by the plaintiff bank. Therefore, the defendants no.1 to 8 are jointly and severally liable to make the payment to the plaintiff Bank. Therefore, the plaintiff Bank

has rightly joined the defendant no.1 to 8 in the present suit to recover it's dues from them.

**[12.2]** Further, looking to the record of the suit, the defendants have not filed any oral and documentary evidence to prove that they have made payment of the outstanding amount of loan advanced to the defendants and they have also not supported their pleadings. Only the defendant no.3 and 8 have oral statements in their written statements which are not accepted without supporting any cogent evidence. Hence, the defendants no.3 and 8 have failed to prove that the suit is bad for mis-joinder of parties. Hence, **I answer issue no.5 in the Negative.**

**[13] Issue No.6 :-**

The suit of the plaintiff was filed before the Board of Nominees i.e Arbitration Case No.1932 of 1992 for recovery of Rs.3,90,083/- towards principal due amount and interest up to 30/06/1992, Rs.11,700/-interest from 1/7/1992 to 31/8/1992, Rs.3,075/-interest from 1/9/1992 till filing of the suit, Rs.350/- notice charge, total Rs.4,05,125/-. The said suit was dismissed on merits on 28.6.2000 due to lack of jurisdiction. Being aggrieved with the said judgment and order, the plaintiff Bank preferred another suit before the Hon'ble City Civil Court at Ahmedabad i.e. Civil Suit No.3800 of 2000 on 21/07/2000, later on the said suit was transferred to this Small Cause Court, Ahmedabad. In the present suit also, the amount of Rs.5,12,410/- towards interest from the date of Arbitration case i.e. from 1/10/1992 till filing of the suit. Thus, Rs.5,12,410/-is added towards the interest. This Court is having jurisdiction to try and entertain the present suit. Further, the learned Advocate of the defendant has argued that this suit is barred by principle of estoppel. I have perused the plaint and record of the suit. On perusal of the record, it appears that the present suit was earlier dismissed by the Board of

Nominees on the point of jurisdiction and in that suit, the merits of the case were not discussed. This Court is Competent Court having jurisdiction to try and entertain the present suit and therefore because earlier this suit was dismissed on technical issue of jurisdiction, the principle of estoppel is not applicable to this suit. Hence, the suit of the plaintiff is not barred by the jurisdiction and estoppel. Therefore, **I answer issue no.6 in the Negative.**

**[14] Issues No.7 and 8 :**

As discussed by me in foregoing issues, the plaintiff Bank has filed oral and the documentary evidence and the plaintiff has successfully proved that it had advanced a loan of Rs.3,40,000/- to the defendant partnership firm Gayatri Printers and the defendants no.2 to 5 are its partners and they are jointly and severally liable to make the payment of the outstanding amount to the plaintiff Bank. Further, the plaintiff Bank has produced the Guarantee Documents of the defendant no.6 to 8 and therefore, these defendants being guarantors are liable to make the payment of the dues of the plaintiff bank. The defendant no.6 and 8 have died during pending this suit and hence, their legal heirs are liable to pay the outstanding amount of loan. The plaintiff has produced a statement of account at Exh.119 which shows that Rs.3,90,083/- has remained due and payable in the account of the defendant no.1 Firm Gayatri Printers. Hence, here in the present case, the principal outstanding amount for which the plaintiff Bank is entitled to get is Rs.3,90,083/-. So far as claim of interest is concerned, the plaintiff has claimed a decree of Rs.9,17,535/- with interest at the rate of 16.5% p.a. till realization of the said amount, but looking to the provision of Section-34 of C.P.C., it is appropriate to grant interest at the rate of 9% p.a. on outstanding amount on Rs.3,90,083/- from date 1-7-1992 till realization of the said amount as per statement of

account exh.119. Further, I have perused the citations relied on by the L.A of the plaintiff and on perusal of the ratio laid down by the Hon'ble High Court and Hon'ble Apex Court, the citations relied on by the plaintiff are squarely applicable to the present case. I have also perused the citation relied on by the defendant and the ratio laid down in it. Looking to the facts and circumstances of the present case on hand, in my opinion the said citation produced by the L.A of the defendant is not applicable to the facts and circumstances of the present case and hence, not helpful to the defendant. Hence, as per my above detailed discussion, **I answer issue no.7 in Partly Affirmative and I pass the following final order for issue no.8.**

**- : O R D E R :-**

- 1 The suit of the plaintiff is partly allowed.
- 2 The defendants No.1 to 8 are ordered to pay jointly and severally to the plaintiff an amount of Rs.3,90,083/- p.s (Rupees Three Lakh Ninety Thousand Eighty Three Only) with 9% p.a interest thereon from the date 1-7-1992 till its realization.
- 3 The defendants shall pay the costs of the suit to the plaintiff and bear their own.
- 4 Decree be drawn accordingly.

Pronounced and signed in the open Court today i.e, **20<sup>th</sup> Day of March, 2026.**

**(Bipinkumar Narsinhbhai Patel)**  
Chief Judge, Code-GJ00853  
Small Cause Court  
Ahmedabad.