SMST NO.6/2024

सत्य मेव जयते

Received on : 03 - 07 - 2024

Registered on : 03 - 07 - 2024

Decided on : 08 - 08 - 2026

Duration : DD MM YY

02 01 05

IN THE COURT OF Principal Civil Judge & JMFC, ANKLAV

SUMMARY SUIT NO.6 OF 2024

EXHIBIT :- ....

UNION BANK OF INDIA

At ASODAR BRANCH, DISTRICT: ANAND, Through its Authorized Signatory

MR. NITESH KUMAR ..... Plaintiff

Versus

MR. SURESHBHAI BHAGWANSINH PARMAR

Age about : 55, Occupation : Farmer,

Resi. at: Somanu Faliyu,

Village : Haldari,

Taluka : Anklav,

District : Anand-388307. ..... Defendant

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SUIT : SUMMARY SUIT TO RECOVER RS.2,57,696.00/- (RUPEES TWO LAKH FIFTY SEVEN THOUSAND SIX HUNDRED AND NINTY SIX ONLY)

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APPEARANCE: Ld. Advocate Mr.S.N.Acharya for plaintiff.

Defendant not appeared.

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J U D G M E N T

1. Plaintiff is a body corporate, constituted under the provisions Banking Companies (Acquisition and transfer of undertaking) Act 1970 having its HEAD OFFICE AT MUMBAI and one of its branches is amongst others at ASODAR BRANCH, DISTRICT: ANAND. That the Defendant is the Borrower who has borrowed money from the Plaintiff FOR KISAN CREDIT CARD LOAN for the purpose OF CROP CULTIVATION for securing the payment due on advances made by the Plaintiffs ASODAR BRANCH, DISTRICT: ANAND. 3. At the request of defendant, the Plaintiff bank had granted the KISAN CREDIT CARD LOAN for the purpose OF CROP CULTIVATION on 26.03.2021 of RS. 2,00,000/- (RUPEES TWO LAKH ONLY) and in consideration the defendant executed substantiate the suit claim plaintiff had filed Mark 3/1 to 3/10 documentary evidence.

1.1 That as per the Hypothecation Agreement dated 26.03.2021, the defendant has agreed to repay the KISAN CREDIT CARD LOAN for the purpose OF CROP CULTIVATION of RS. 2,00,000/- (RUPEES TWO LAKH ONLY) with variable rate of interest @ 8.85% P.A.. That as per the last approved rate of interest applicable as on date of the suit the outstanding amount i.e. RS. 2,57,696.00/- (RUPEES TWO LAKH FIFTY SEVEN THOUSAND SIX HUNDRED

AND NINTY SIX ONLY) that due to non-regularization of the installments the defendant is further liable for an addition overdue interest @ 2% P.A. Original of the Loan Statement is attached with the Suit. That the Defendants were bound to pay the amounts of KISAN CREDIT CARD LOAN from 26.03.2022 but the defendants have not paid the installments or any part of the installments which the Defendant was supposed to pay after 1 year of the renewal of the respective disbursement amount due as per the terms and condition of the Loan in plaintiffs Bank till date as a consequence have breached the Agreement executed by the Defendant. That the plaintiff has given many reminders but the defendant has not even bothered to pay back any amount of their respective loan.

1.2 The Outstanding debt of the Defendant for the sum RS. 2,57,696.00/-(RUPEES TWO LAKH FIFTY SEVEN THOUSAND SIX HUNDRED AND NINTY SIX ONLY) along with the amount outstanding till the date of realization of the amount as per the loan agreement to be recovered from the movable and immovable assets of the defendant. Further interest at @ 8.85% P.A. from the date of filing the suit till payment along with the Overdue Interest of 2% as per the Agreement. All cost incidental to the suit.

2. Thereafter Summons for judgement was issued to the Defendants and sent through R.P.A.D. on the address mentioned in the plaint. It is transpired from the record that Defendants were duly served with the Summons for judgement as per the report filed by baillif. Defendants did not marked their presence within 10 days. Hence, proceed against defendants as per Order 37 Rule 2(3).

3. From the pleadings of the plaintiff, to adjudicate the present matter following points for determination may arise:

1. Whether the plaintiff proves his suit claim?
2. Whether the plaintiff is entitled for the relief as prayed for?
3. What order and decree?

4. Findings to the points for determination are as under:

1. In Affirmative
2. In Partly Affirmative
3. As per final order

REASONS & FINDINGS:-

5. To substantiate the suit claim plaintiff had filed following documentary evidence.

Mark	Particulars
3/1	Application Form for Agricultural Credit
3/2	Application form for Renewal
3/3	Demand Promissory Note
3/4	Hypothecation Agreement
3/5	Letter of Continuity
3/6	Dual Name Certificate
3/7	Power of Attorney
3/8	Simple Debit Balance Confirmation Letter
3/9	Statement of Account
3/10	Authority Letter of MR. NITESH KUMAR, Branch Manager of UNION BANK OF INDIA ASODAR BRANCH

6. All points for determination are interconnected with the each other, therefore for the sake of avoiding repetition of the facts and the evidence, it seems justified to this court to deal with all issues together.

7. The Plaintiff has filed the suit under order 37 of CPC. In the present case, the defendants did not marked his presence within 10 days. Hence,it is necessary to go through the Order 37 rule 2(3), which is reproduced hereunder.

Order 37 Rule 2 (3) : The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.This rule provide that, if defendant failed to appeared than presumption arose that the defendant had admitted the allegations averred in the plaint.

8. In the present matter, it is evident that the defendant did not appeared before this court.It is the say of the plaintiff that during the business transactions, the defendants used to purchase the product on credit. Perusing the Mark 3/1 to 3/10, it transpires that the plaintiff had established the fact that the said transactions were done on credit basis.

9. Therefore, this fact becomes a relevant fact to the issue of legal dues and thus this court is of the view that the legal debt of RS.2,57,696.00/- (RUPEES TWO LAKH FIFTY SEVEN THOUSAND SIX HUNDRED AND NINTY SIX ONLY) is due on defendants and they are liable to pay the same. Now, when the legal debt is established by the plaintiff through documentary proof, let us peruse about interest prayed by the plaintiff. The plaintiff had submitted before this Court that he is entitled for 10.85% interest upon the suit claim. It is well settled law that where interest is decided by the parties, then in such case, the interest is payable as per contractual terms. therefore, the plaintiff is entitled for interest @ 6% p.a.

10. At this stage it is appropriate to refer Code of Civil Procedure (CPC) Section-34 :-

Section 34 :- Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum, as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

Provided 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 nationalized banks in relation to commercial transactions.

Explanation I: In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the, industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit there for shall not lie.

[Emphasis Supplied]

11. Furthermore the plaintiff has claimed the interest on outstanding amount at a very high rate i.e. @10.85% interest. After carefully perusing the provision of Section-34 of The Code of Civil Procedure, 1908, it appears that the interest may conveniently be divided in to three categories, first interest prior to institution of suit, second, interest from the date of institution of suit to the decision of the suit and third, interest from the date of the decree till it's realization. So far as to first category is concerned, Section-34 does not apply to interest prior to the institution of the suit and it can be awarded only when there is an agreement between the parties or mercantile usage having force of law or statutory right to interest. The matter of granting interest before institution of suit is a matter of substantive law and Section-34 shall have no application to such interest. In this case, the plaintiff has calculated 10.85% interest on the amount due but there is no contract to pay 10.85% interest between plaintiff and defendant so that the plaintiff is not entitled to 10.85% interest. However the plaintiff is entitled to interest under Section-3 of The Interest Act, 1978 and the rate of interest would be current rate of interest (now a days 6% interest on deposit in scheduled bank) per annum from the date of the institution of this suit to the date of the payment thereof.

12. So in view of the aforesaid reasons and discussion, my finding on issue no-1 is in affirmative and for issue no-2 is partly in affirmative. Hence I hereby pass following final order on issue no-3 in the interest of justice.

-:: O R D E R ::-

- The suit of the plaintiff is hereby Partly allowed with cost.
- The plaintiff is entitled for recovery of amount of RS.2,57,696.00/- (RUPEES TWO LAKH FIFTY SEVEN THOUSAND SIX HUNDRED AND NINTY SIX ONLY) from the defendants together with cost and interest at the rate of 6% per annum from the date of suit till the date of decree.
- The defendants are hereby ordered to pay aforesaid decretal amount to the plaintiff together with cost and interest as

ordered and failing which the plaintiff will be entitled to recover the decretal amount from the movable and immovable Properties of the defendants according to law.

- Decree be drawn accordingly.

Signed and Pronounced in this open court on this 08th day of August month of year 2026.

Place : Anklav

(Mr. A. B. Singhvi)
GJ 01586
Principal Civil Judge & JMFC
Anklav

(M.M.Pathan)
Stenographer