SMST NO.13/2024

Received on	:	11/09/2024
Registered on	:	11/09/2024
Decided on	:	11/08/2026
Duration	:	YY MM DD
		1 11 00

IN THE COURT OF Principal Civil Judge & JMFC, ANKLAV

SUMMARY SUIT NO.13 OF 2024

EXHIBIT :- ....

STATE BANK OF INDIA

Anklav, Ta. Anklav, Dist. Anand through its authorized signatory

MR. MOHIT NAUTIYAL BRANCH HEAD, STATE BANK OF INDIA,

Age : Adult, Occupation : Service, ... Plaintiff

Versus

MOTIBHAI BABARBHAI GOHIL

Age about : Adult, Occupation : Farming,

Resi. at : 22, AT.PO.KAHANWADI - 388 307,

TA. ANKLAV, DIST : ANAND ..... Defendant

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SUIT : SUMMARY SUIT TO RECOVER RS.6,13,131/- (RS.SIX LAKHS THIRTEEN THAOUSAND ONE HUNDRED THIRTY ONE ONLY)

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APPEARANCE: Ld. Advocate Mr.M.R.Dawlwadi for plaintiff.

Defendant not appeared.

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J U D G M E N T

1. This suit is filled in Summary Procedure and there is no such relief which does not fall within the ambit of Order 37 of Civil Procedure Code has been claimed in the plaint. That the plaintiff is a body corporate, constituted under the provisions of Banking Companies (Acquisition and transfer of undertaking) Act 1970 having its head office at State Bank Bhawan, M. C. Road, Nariman Point, Mumbai (Maharashtra) and one of its branches is amongst others at Anklav, Ta. Anklav. Dist. Anand. That the defendant/s are the borrower/s who have availed financial assistance from the plaintiff for the Cash Credit Limit covered under KCC and guarantors for securing the payment due on advances made by the plaintiff's Anklav branch to defendant/s. At the request of defendant/s, the plaintiff had granted a KCC Loan of Rs.4,42,663/- (Rs.Four Lakhs Forty Two Thousand Six Hundred Sixty Three Only) to defendant/s MOTIBHAI BABARBHAI GOHIL in consideration and the defendant/s thereof entered into and executed several loan and security documents particulars of which are mentioned hereunder :-

I. Loan Application Form dated 30/07/2018

II. Statement of Account dated 04/05/2024

1.1 That, as per the Hypothecation cum Loan Agreement of KCC dated

30/07/2018 the defendant/s have agreed to repay the loan amount of Rs.4,42,663/- (Rs. Four Lakhs Forty-Two Thousand Six Hundred Sixty-Three Only) with variable rate of interest @12.50% within a period of 24 months. That, as per the last approved rate of interest applicable as on date of the suit the outstanding amount i. e. money suit to recover RS.6,13,131/- (RS.SIX LAKHS THIRTEEN THOUSAND ONE HUNDRED THIRTY ONE ONLY) and that the due to non-regularization of the instalments the defendants are further liable for an addition overdue interest @2% P. A. and photocopy of the loan statement is attached herewith the suit. That, the defendant/s was bound to pay the amounts but the defendants have not made any payments till date and have breached the terms. and conditions of loan and security agreement executed by defendant/s.

1.2 It is further averred that course of action arose when the legal notice for recovery of the amount was issued by the plaintiff through Advocate on dated 08/07/2024 was received by the defendant/s and copy of which acknowledgement is annexed hereto. But, the defendant/s have failed to repay any amount and no response was received from the defendant/s side regarding said notice. Hence, the defendant/s have accepted are legally bound to pay according to the loan and security documents. It is further averred that the present suit is filled within 3 years period of limitation as per the Limitation Act and the plaintiff has prayed to recover RS.6,13,131/- (RS.SIX LAKHS THIRTEEN THOUSAND ONE HUNDRED THIRTY ONE 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 defendants and interest at 10.25% P. A. from the date of filling the suit till payment received along with the overdue interest of 2% as per the agreement and 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 Partly 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	Plaintiff Aadhaar Card Copy

3/2	Loan application
3/3	Legal Notice
3/4	RPAD Receipt
3/5	RPAD Received Acknowledgment
3/6	Statement of account
3/7	Authority letter

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 3/7, 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.4,42,663/- (Rs. Four Lakhs Forty-Two Thousand Six Hundred Sixty-Three 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 10.25% 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.

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. @10.25% 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 10.25% interest on the amount due but there is no contract to pay 10.25% interest between plaintiff and defendant so that the plaintiff is not entitled to 10.25% 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 partly 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.4,42,663/- (Rs. Four Lakhs Forty-Two Thousand Six Hundred Sixty-Three Only) from the defendants together with cost and interest at the rate of 6% per annum from date of the suit till its realization.

- 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 11th day of August month of year 2026.

Place : Anklav

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

(M.M.Pathan)
Stenographer