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IN THE COURT OF ADDITIONAL CIVIL JUDGE, AT JHAGADIA

R. C. S. No.:- 42/2024
Exhibit :-

Plaintiff : State Bank of India,
Jhagadia Branch,
Tal.-Jhagadia, Dist.-Bharuch.

v/s.

Defendants :
1. Mansukhbhai Khusalbhai Vasava,
2. Trikambhai Ganpatbhai Vasava,
3. Chandaliben Mithiyabhai Vasava,
4. Kailashben Ashokbhai Vasava,

Occ. Farming,
Residing at: Gundecha,
Tal-Jhagadia, District-Bharuch.

Appearance :-

Learned Advocate for the plaintiff	A. H. Pandya
Learned Advocate for the defendant	-

Subject : -Suit for recovery of Rs. 11,73,145/-.

- : : JUDGEMENT : : -

1. The facts of the plaintiff's case are that the plaintiff is a authorized branch of State Bank of India, it's main function is banking activities. The plaintiff bank works under State Bank of India Act, 1955 and deals in different types of loans. It's branches are situated in all over India include this branch.

2. The defendants reside at the above mentioned address and are engaged in farming. The defendants had applied to the plaintiff bank for a KCC loan for agricultural purposes. The plaintiff bank approved a loan of Rs. 8,73,100/- on 02/12/2020, whose account no. 39107888951. The defendants submitted the necessary documents including a hypothecation deed, guarantee letter, and other writings. The defendants also mortgaged their land to the bank as security for the loan amount..

   As mentioned in above, the defendants had borrowed a loan of Rs. 8,73,100/- from the plaintiff bank and agreed to repay the loan amount with regular interest, principal, and expenses as per the terms agreed upon. Although they made some intermittent payments, as of 26/04/2024, they still owe Rs. 11,73,145/-. Despite repeated requests and notices, they have failed to repay the outstanding amount, making false promises and delaying the repayment.

3. As per the above, The plaintiff bank's efforts to recover the amount have been unsuccessful. The defendants owe Rs. 11,73,145/- as of 26/04/2024, including interest on the KCC loan. The plaintiff seeks to recover this amount along with interest from 26/04/2024 until realization. The plaintiff also seeks to recover the amount by selling the mortgaged agricultural land. The cause of action arose when the defendant availed the loan on 02/12/2020 and subsequently made partial payments, and later defaulted on repayment. The defendants failed to repay the loan amount regularly and breached the terms and conditions agreed upon with the bank. Therefore, this suit is filed within the period of limitation and is not barred by the law of limitation.

4. The defendant is duly served with the summons / notice of the suit but then after the defendant did not appeared before this court nor filed his written statement, hence, this court has closed the right of the defendant to file reply and proceed exparte.

5. The plaintiff bank produced following oral as well as documentary evidence in support of the case.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Affidavit of examination-in-chief of the plaintiff's bank.	7

DOCUMENTARY EVIDENCE : -

Sr. No.	Particulars	Exhibit
1.	Account Statement.	9
2.	Loan Application form.	10
3.	Hypothecation Agreement.	11
4.	Letter of arrangement.	12
5.	Annexure A.	13
6.	135D Notice.	14
7.	Annexure A.	15
8.	Copy of Aadhar Card.	16
9.	Copy of Aadhar Card.	17
10.	Copy of Aadhar Card.	18
11.	Copy of Aadhar Card.	19
12.	Revival Letter.	20
13.	Revival Letter.	21
14.	Village form of 8A, Khata no. 81.	22
15.	Village form of 7, Khata no. 81, Block No. 10.	23
16.	Village form of 7, Khata no. 81, Block No. 11.	24

17.	Village form of 7, Khata no. 81, Block No. 58.	25
18.	Village form of 7, Khata no. 81, Block No. 59.	26
19.	Village form of 7, Khata no. 81, Block No. 61/5.	27
20.	Village form of 7, Khata no. 81, Block No. 62/2A.	28
21.	Village form of 7, Khata no. 81, Block No. 62/2B.	29
22.	Village form of 7, Khata no. 81, Block No. 67.	30
23.	Notice.	31
24.	Notice.	32
25.	Notice.	33
26.	Copy of Mortgage Deed.	34

6. The plaintiff side has filed closing pursis vide Exh- **35** stating that the plaintiff side does not wish to lead further any oral or documentary evidence.

7. There is no oral or documentary evidence is presented on behalf of defendant.

8. For determination of this suit, following issues were framed vide Exh.- **6**.

   i. Whether the plaintiff bank proves that the defendant has taken a loan of Rs. 8,73,100/- from the Plaintiff bank ?

   ii. Whether the plaintiff bank proves that the amount of Rs. 11,73,145/- is due from the defendants ?

iii. Whether the plaintiff bank is entitled to get interest? If yes, at what rate ?

iv. Whether plaintiff bank is entitled to get relief as sought in the suit ?

v. What order and decree ?

10. My findings on the above issues are as under ;

Issues	Findings
Issue No.1	In Affirmative
Issue No.2	In Affirmative
Issue No.3	In Partly Affirmative
Issue No.4	In Partly Affirmative
Issue No.5	As per Final Order

REASONS & ANALYSIS : -

11. Before discussing the issues it is very important to consider the provisions of Sections 101 to 103 of the Indian Evidence Act, the primary burden of proof to prove the issues lay upon the plaintiff itself i.e. *factum probandum*. Further, it is to be borne in mind that the suit of the plaintiff need not necessarily be decreed merely because the defendant has not filed or submitted their written statement or the matter has proceeded ex-parte. To clarify this proposition, it would be necessary to refer one

of the decision of the Hon'ble Supreme Court, namely, ***Ramesh Chand Ardawatiya v. Anil Panjwani reported in AIR 2003 SUPREME COURT 2508*** wherein it has been held by the Apex court of the country in para-33 that "*even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of O. 8, R. 10 of the CPC is attracted and the Court acts there under, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under O. 14 and deliver the judgment on every issue as required by O. 20 R. 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'points for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent, the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence*".

So as per this pronouncement of the Apex court, the necessity of the plaintiff to prove his case is not lost even if the matter has been proceeded ex parte.

ISSUE NOS. 1 & 2:-

11.1 The facts of the above issues are similar and hence, decided the same together for the sake of convenience and to avoid repetition of facts.

11.2 In the present case on behalf of plaintiff bank has filed his chief examination as per O. 18 R. 4 of Civil Procedure Code in the form of affidavit at Exh. **7** and the facts stated in chief examination is in line of Exh. 01. In support of the affidavit plaintiff has also produced documentary evidence below Exh. **9 to 34**.

11.3 Against above Evidences, the defendant has not produced any oral or documentary evidence in support of his case.

11.4 Looking to the facts of the case and say of the plaintiff in chief examination at Exh. **7**, it is established that the aforementioned amount is debited in account of defendant and it also transpires that the defendant is failed to pay the said amount of Rs. **11,73,145**/- of the transaction carried out between him and plaintiff bank. The say of the plaintiff in its suit as well as in the written affidavit of chief examination at Exh. **7** is not challenged by the defendant by furnishing oral and documentary evidence. Further, the defendant has also not cross examined the witness of the plaintiff. On the contrary plaintiff has proved its case by producing oral evidence at Exh. **7** and documentary evidence produced at Exh. **9 to 34**, from this it transires that the present plaintiff has given a loan of Rs. **8,73,100**/- and as per the statement of account Produced at Exh.**9**, it transpires that total amount of Rs. **11,73,145**/- is outstanding in the account of defendant. Further, on perusing the documents produced at Ex. **9 to 34**, it transpires that the defendant has executed the documents in favour of plaintiff bank for loan. Therefore, he is liable to pay the outstanding loan amount to the plaintiff bank. Hence, from the above discussion this court believes, that the plaintiff bank has given a loan to the defendant and Rs. **11,73,145**/- is still outstanding in the account of the Defendant. Therefore, issue No. 1 & 2 decided in the affirmative.

ISSUE NOS. 3 :-

Further, the plaintiff bank has claimed interest @ **18**% p.a from the defendants and as discussed above the defendant has failed to repay the loan amount. However, as per the provision of Sec. 34 of the Civil Procedure Code, the discretion always lies with the court for awarding interest. Looking to the present situation and circumstances if 7% interest p.a. would be awarded then it is just and proper and it will meet the end of justice. Therefore, the plaintiff bank is entitled to recover the decretal amount from the defendant alongwith the interest @ 7% p.a. from the date of the suit till its realization. Therefore, issue No. 3 has been answered accordingly.

ISSUE NOS. 4 :-

Plaintiff has desposed in his examination in chief on affidavit that defendant was failed to repayment and acknowledge the debt in revival letter dt. 26/09/2022 and 10/01/2024 which are produced below Exh. 20 and 21. Plaintiff has filed the present suit on dt. 25/06/2024 which is within the limitation of three year period fromthe date of acknowledgement of the legal debt. Defendant has been failed to bring any adverse fact on record. As per the discussion of issue no. 1 to 3 plaintiff bank is entitle to recover Rs. 11,73,145/- at rate of 7% from the date of filing of present suit till it's realization. Accordingly, **issue no. 4** is decided in partly affirmative and for **issue no. 5** following final order is passed.

- : : FINAL ORDER : : -

1. The present suit of the plaintiff against the defendants are hereby partly allowed.

2. The plaintiff is entitled to recover the amount of Rs. 11,73,145/- (Rupees Eleven Lakhs Seventy Three Thousand One Hundred Forty Five Only) from the defendant along with interest at the rate of 7% on the

said amount, thereon from the date of filing of the suit till its realization.

3. The defendant shall pay the cost of the suit of the plaintiff and shall bear their own.

4. Decree to be drawn accordingly.

Pronounced and signed today in open court on 25th of March, 2026.

Date :- 25/03/2026 **(Jaiveer Singh Rathore)**
Place :- Jhagadia. **Additional Civil Judge, Jhagadia,**
GJ01695