GJSR120021182025

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Decided on :: 08-05-2026
Duration :: 01 years, 00 months, 17 days

सत्यमेव जयते

IN THE COURT OF HON'BLE PRINCIPAL SENIOR CIVIL JUDGE, KATHOR, DIST. SURAT

Comm.C.S.No.139 of 2025
EXH.24

Plaintiff ::- BANK OF BARODA,
A body corporate constituted under the provision of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its Head Office at Alkapuri, R.C.Dutt Road, Baroda, and its corporate office at Bandra-Kurla Complex, Bandra, Mumbai and among many branches, a branch is at Kadodara Branch, Surat on behalf of its Manager, Mr. Shio Kumar Ram, Aged about adult, Occupation: Service, address: Bank of Baroda, Kadodara, Surat

Versus

Defendant::- Mrs. Krupaben Jitendrabhai Thummar,

Age-Adult, Occupation-Business, Add-H.No.639, Gadhpur Tower, Khatodara Gam, Pasodara, Surat-394326

Subject ::- Suit for recovery of Rs.5,68,323.38 Paisa

Appearance ::- Ld.Adv.Mr.Darshil J. Shah for the Plaintiff
Ex-parte for the Defendant

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

1. Brief facts of the Petition ::-

The Plaintiff has filed the suit against the defendant for the recovery of Rs.5,68,323.38 Paisa along with the interest. The brief facts of the Plaintiff's suit is that the plaintiff bank is a body corporate consitituted under the provision of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its head office at Alkapuri, R.C. Dutt Road, Baroda, Surat and Mr. Shio Kumar Ram, has signed the Plaint in capacity of Authorized Officer of plaintiff-bank. The Plaintiff Bank has filed this suit after obtaining Form No.3 Non Starter Report in Pre-litigation mediation under section 12-A of the Commercial Court Act. It is the say of the Plaintiff Bank that the Defendant has availed personal loan facility of Rs.5,00,000/-. The defendant has also agreed to pay the interest at the rate of 15.85% per annum with monthly rest on the same day and at the prevailing rate from time to time as per the terms and conditions of the contract. Thereafter, the defendant was failed to maintain financial discipline and also failed to repay the due interest thereon. In spite of several demands and reminders done by the plaintiff, the defendant was failed to pay the outstanding dues and not complied with the terms and conditions of the loan and did not pay the dues till date. Hence the plaintiff has filed the present suit for recovery of Rs.5,68,323.38 Paisa from the defendant with interest at the rate i.e.15.85% per annum from the date of suit till its realization.

2. Defendant Reply/Written Statement ::-

Upon presentation of the suit, summons was ordered to be issued to the defendant but the summons in the usual mode is not served as such public summons was issued. Thereafter defendant has neither appeared personally nor through his advocate. Hence the suit against defendant is ordered to be proceeded ex-parte vide order below Exh.1

3. The Plaintiff has relied upon following Evidence.

A. Oral Evidence ::-

Sr. No.	Particulars	Exh.
1.	Affidavit-in-lieu of Examination in Chief of plaintiff's bank officer Mr. Shio Kumar Ram	16

B. Documentary Evidence :: -

Sr. No.	Particulars	Exh.
1.	Certified Statement of Account	18
2.	Demand Promissory Note	19
3.	Letter Of Installment with acceleration clause	20
4.	Declaration cum Undertaking cum Authority	21
5.	Non-Starter Report	22

4. The plaintiff gave Closing Pursis vide Exh.23.

5. Ld. Adv. Mr. Darshil J. Shah has argued for the Plaintiff where he has reiterated facts of the plaint and drawn the attention of this court towards oral as well as documentary evidence adduced by the Plaintiff. At the end of his argument he has prayed to allow the suit in favour of the Plaintiff-Bank.

6. For determination of the suit, following issues framed vide Exh.15

:: ISSUE ::

1. Whether the Plaintiff Proves that defendant has obtained loan from it ?

2. Whether the Plaintiff proves that the defendant has failed to repay the loan ?

3. Whether the Plaintiff proves that it is entitled to get relief claimed in the plaint ?

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

5. What order and decree ?

7. My findings to the above issues are as under with the reasons to follow.

1. In Affirmative
2. In Affirmative
3. In Affirmative
4. In Affirmative, At 15.85% p.a.
5. As per final order

-:: R E A S O N S ::-

8. In this matter, defendants have not appeared before this Court and as such there is no any written statement, there is no contest from the defendant side. Therefore, it would be appropriate to refer some of provisions relating to non filing of Written Statement/Evasive denial by the defendants.

"Order 8 Rule 3A Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4)and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put

forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so and if he is able, give his own statement of the value of the suit."

Order 8 Rule 5 "Specific denial"

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in it discretion require any fact so admitted to be proved otherwise than by such admission. "Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall betaken to be admitted except as against a person under disability."

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability,but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decrees shall bear the date on which the judgment was pronounced.

Therefore, when the defendant has not filed the written statement, the Court has ample powers to pass the decree on the basis of the evidence produced by the plaintiff. The Court is also empowered to call for the plaintiff to produce his evidences and prove his case.

Issue No.1 to 5 :: -

9. All the Issues are inter connected with each other and with a view to avoid repetition of the same and similar facts and evidences, these issues are decided together.

The Plaintiff has filed the suit for recovery of debt under provisions of Commercial Courts Act.

First of all, it is to be noted here that as discussed earlier, defendant has not remain present before the court and not submitted any written-objection during the course of proceedings of this matter. However, it is well settled that the plaintiff must stand on his own legs and cannot take the advantages of the defect of the defense of defendant unless the circumstances justifies such thing.

As per S.103 of Indian Evidence Act, the burden lies upon Plaintiff to present his case with evidence which let the Court believe his averments. The Plaintiff has to produce his best evidence to show preponderance of probabilities in his favour. Considering this settled principles, the whole case is hereby evaluated.

In such circumstances, in the present case, the plaintiff's Bank Manager Mr. Shio Kumar Ram, who has filed his affidavit-in-lieu of examination-in-chief at Ex.16 wherein he has reiterated contents of the Plaint and referred all the documents produced by him during the course of evidence and therefore, to avoid repetition of facts, complete reproduction of examination-in-chief is avoided.

wherein he has reiterated the facts stated in the plaint and relied upon the documents from Exh.18 to 22 in support of his claim. The authority to file the present suit has not been challenged by the defendants and hence, it cannot be said that the suit has not been filed by the authorized person. Moreover, from the record of the case, it transpires that the plaintiff has filed affidavit and it is corroborate by documentary evidence. the defendant and his advocate have remained absent and as such defendant's right to cross-examine to plaintiff's witness is closed. Hence, Plaintiff's evidence remain unchallenged.

10. Considering the facts of the case, it appears that the oral as well as documentary evidences produced by the plaintiff bank has remained unchallenged from the defendant's side. As per the provisions of Order 8 Rule 10 of the Code of Civil Procedure, where the defendant has not filed the Written Statement, Court may pass the decree. In this case, no such order is passed earlier. From the documents produced by the plaintiff side, it transpires that the defendant has applied for the personal loan facility under his signature and he has accepted that the interest would be payable at the rate of 15.85% per annum. He has also executed various undertaking and agreement for the said loan facility and from all these documents, it is very much clear that he has applied personal loan facilities of Rs.5,00,000/- at the rate of 15.85% per annum. As regards the outstanding amount, the plaintiff side has produced a statement of account of defendant vide Exh.18, wherein the principal outstanding amount as on 07.11.2024 is of Rs.4,35,910/-. Hence, the plaintiff is entitled to recover a sum of Rs.5,68,323.38 Paisa along with interest from the date of the suit till its actual realization.

11. Plaintiff has filed the suit against defendant borrower of the said personal loan facility and as such, defendant is liable for the payment of outstanding with interest.

12. In view of the foregoing discussions, it is proved on record that the suit is instituted by the authorized person and the defendant is the applicant of the loan. Moreover, it is also proved that an amount of Rs.4,35,910/- is outstanding as per bank statement, The plaintiff Bank has also proved that there was contract for the interest at the rate of 15.85% per annum for amount of Rs.5,68,323.38 Paisa per annum. Hence, he is entitled for the same. Therefore, I answer the issue Nos. 1 to 5 affirmative, and in respect of issues no. 6, I hereby pass the following final order, in the interest of justice.

:: O R D E R ::

(i)	The suit of the plaintiff is hereby allowed.
(ii)	The plaintiff is entitled to recover Rs.5,68,323.38 Paisa (Rupees Five Lakh Sixty Eight Thousand Three Hundred Twenty Three and Thirty Eight Paisa only) from the defendant with interest of 15.85% per annum from the date of filing of suit to till its actual realization..
(iii)	The plaintiff is entitled for cost of the suit including mediation fees.
(iv)	Decree be drawn accordingly.

Pronounce in the open court today on 08th day of May in the year of 2026.

Date :: 08-05-2026 Place :: Kathor	(V.L. Pardeshi) Principal Sr. Civil Judge, Kathor Judge Code :: GJ01013