**MHSN150031672020**

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| Received on | 25.06.2020 |
| Registered on | 25.06.2020 |
| Decided on | 17.07.2023 |
| **Duration: 03 Years 06 Months 23 Days** | |

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, VITA TAL. KHANAPUR DIST.SANGLI**
**(Presided over by:- I R Shaikh)**

**SPECIAL CIVIL SUIT No.709/2020**
{OLD SPECIAL CIVIL SUIT No.652/2020}
**Exhibit No.33**

**Bank of India,**
Body Corporate constituted under
Banking Companies (Acquisition and
Transfer of Undertakings) Act V of 1970,
Having its Head Office at Star House,
Bandra Kurla Complex, Bandra (East)
Mumbai- 400 051 and a branch at
Kharsundi, Taluka: Atpadi District: Sangli,
Through its Power of Attorney Holder,
Rajendra Pandharinath Kulkarni,
Age:- 55 Years, Occupation:- Service,
(Branch: Jaysingpur, (Kolhapur)),
R/o. Sangli, Taluka: Miraj, District: Sangli..... **Plaintiff.**

***VERSUS***

1. **Yashwant Dadu Pukale**
Age:- 62 Years, Occupation:- Contractor,
R/o. Masalwadi, Taluka : Atpadi,
District: Sangli.

2. **Manganga Sahakari Sakhar Karkhana Limited, Sonarsiddhanagar,**
Taluka: Atpadi District: Sangli.
3. **The Sangli District Central Co-operative Bank Limited, Sangli.**

Registered under The Maharashtra
Co-operative Societies Act, 1960,
Having its Registered Office At Sangli-
Miraj Road, Sangli Taluka: Miraj,
District: Sangli. 416 416. ..... **Defendants.**

**Appearance:-**
Advocate for Plaintiffs:- Adv. S. M. Terwadkar/Adv. P. D. Bhosale.
Ex-parte against defendant No. 1 to 3 .

## J U D G M E N T
**(Delivered on 17th July 2023)**

1. This is a money suit with claim of Rs.16.43,797.83 with future interest @ 12.65% p.a. from 01.01.2020 till actual realization and sale of mortgaged properties for realization of dues.

2. Brief facts are as under;

Plaintiff Bank is a Body Corporate constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970, having its Head Office Bandra (East), Mumbai and one of its branch offices at Kharsundi, Taluka: Atpadi District: Sangli. Defendant No.2 is a Co-operative Society carrying on business of manufacturing of sugar and its by products, etc., who avails services of Harvesting and Transportation Contractors ('H & T contractors' in short) for its crushing season. Defendant No.1 is one amongst 439 H & T contractors/borrower, who availed demand loan of Rs.9,00,000/- from plaintiff Bank, which is secured by corporate guarantee executed by defendant No.2 for total amount of Rs.44,75,00,000/-.

3. It is the case of the plaintiff Bank that, to arrange an

aggregate finance to 439 H & T contractors, defendant No.2 had applied for sanctioning an aggregate credit limit of Rs.44,75,00,000/-, which was sanctioned by plaintiff Bank and disbursed to the individual H & T contractors independently upon their making applications as per their eligibility and defendant No.2 became common guarantor. The terms and conditions on which an aggregate facility was sanctioned were communicated vide sanction letter dated 24.06.2014 and accepted by defendant No.2, through its Managing Directors, Chairman and Vice Chairman.

4. A corporate deed of guarantee dated 02.12.2014 vide Board Resolution dated 25.06.2014 was signed, defendant No.2 has jointly and severally agreed to pay the dues outstanding in the loan accounts of 439 H & T contractors, which includes defendant No.1. For securing said aggregate credit facility, defendant No.2 has executed mortgage deed dated 16.07.2014, thereby, creating second charge on the immovable properties, which were already mortgaged with defendant No.3 Bank. Defendant No.3 vide its letter dated 05/07/2013 has given its consent for the second charge. Thus, the properties mentioned in paragraph No.12 of the plaint have been mortgaged as second charge.

5. It is further case of the plaintiff vide separate Board Resolution dated 25/06/2014, defendant No.2 has undertaken the responsibility of repayment of loan availed by individual H & T contractors from and out of the bills payable to the respective H & T contractors along-with undertaking of entire outstanding amount against respective H & T contractors.

6. It is submitted that defendant No.1 being one of H & T

contractors applied and availed demand loan of Rs.9,00,000/- vide his application dated 21/07/2014 and executed all necessary loan documents as pleaded and described in the plaint paragraph No.17. It is the case of plaintiff that, defendant No.1, as well as, remaining 438 H & T contractors have failed and neglected to comply with the terms and conditions and defaulted the loan. Thus, the loan account of defendant No.1 turned N.P.A.. Accordingly, plaintiff Bank decided to file separate suit for recovery against all the defaulting borrowers by inducting defendant No.2 in every suit in the capacity of guarantor.

7. It is further case of plaintiff Bank that, defendant No.1 had signed and executed a letter of acknowledgment of debt/ securities on 30.06.2017 and thereby acknowledged balance outstanding on his loan account as on said date.

8. It is the case of plaintiff that several demands were made by plaintiff Bank, but defendant No.1 and 2 failed to repay and clear the dues outstanding. Thus, they have been served with legal notices dated 30.06.2017. Therefore, plaintiff Bank constrained to file this suit. An abundant precaution though the loan transaction does not touch the business of defendant No.2 Society, plaintiff Bank issued notice under Section 164 of the Maharashtra Co-operative Societies Act dated 16/12/2019.

9. Plaintiff Bank is entitled to claim interest at the contractual rate of interest from 01.01.2020 till realization of entire dues along-with future interest. Thus, claiming defendant No.1 and 2 are jointly and severally liable, plaintiff Bank sought the recovery of amount of

Rs.16,43,797.83/- along-with future interest as indicated above. The certified statement of demand loan account is filed along-with the plaint, as per details in plaint paragraph No.31.

10. Plaintiff Bank alleged that, defendant No.3 despite repeated request made, failed to inform the status of loan accounts of defendant No.2 with them, as well as, present outstanding, alleging collusion of defendant No.2 and 3 sought to restrain defendant No.2 and 3 from transferring the mortgaged properties. Thus, plaintiff Bank sought to decree the suit with consequential relief of injunction against defendant No.2 and 3.

11. Suit summons were served on Defendant Nos.1 to 3 but failed to appear, hence suit was proceeded ex-parte against them vide order dated 22.06.2022.

12. Following points arises for my determination. I have recorded my findings thereon for the reasons recorded thereunder.

| Sr. No. | POINTS | FINDINGS |
|---|---|---|
| 1. | Does plaintiff Bank prove that defendant No.1 availed the loan as prayed and defendant No.2 is the guarantor for said loan ? | Yes. |
| 2. | Does plaintiff Bank further prove that an amount of Rs.16,43,797.83/- is due and outstanding ? | Yes. |
| 3. | Whether plaintiff Bank is entitled for the recovery of the claim amount with interest as sought ? | Yes. As per final order. |
| 4. | What order and decree ? | As per final order. |

# R E A S O N S

13. In order to substantiate the suit claim, plaintiff Bank have examined its Manager of Branch Kharsundi Mr. Chetan (PW-1) at Exh.14. The loan documents (Exhibit 15 to 27), mortgage deed and deed of guarantee (Exhibit 28 & 29) and bank accounts statement (Exh. 31) have been marked in the evidence of the above witness.

**AS TO POINT No.1 to 4**:-

14. I am discussing all points together to avoid repetition. The evidence of Mr.Chetan (PW-1) is as per averment of this plaint. The defendants failed to appear and cross examine this witness. Therefore his evidence remain unchallenged. Therefore, I have no reason to disbelieve his evidence.

15. On perusing the documentary evidence i.e. Exhibits 15 to 31, it can be seen that, defendant No.1 had executed all the necessary documents pertaining to loan facility and availed the loan of Rs.9,00,000/- on terms and conditions mentioned in the loan agreement. Defendant No.1 had executed various declaration and authority in favour of defendant No.2 consenting repayment of loan etc. The documents shows recommendation at the instance of defendant No.2 with execution of the deed of guarantee and indemnity.

16. On perusing mortgage deed and deed of guarantee Exhibit 28 and 29 shows that, defendant No.2, mortgaged its properties, which were already mortgaged with defendant No.3, in security of the aggregate loan facility to the tune of Rs.44,75,00,000/-. A perusal of mortgage deed

specifically the nature of the consent letter issued by defendant No.3, it can be seen that, the consent was given on condition of repayment of the above loan and to mortgage the properties as a second charge. Plaintiff Bank seen failed to plead about the performance of said condition by defendant No.2. Therefore, the question of charge has to be resoled in other appropriate proceedings of recovery of an amount under decree, if any. The provisions of the Transfer of property Act pertaining to mortgage would apply accordingly. As such, the prayer of sale of the mortgaged properties in the present suit is not tenable and cannot be granted.

17. Going through the corporate guarantee would show that, defendant No.2 is a guarantor to all the 439 H & T contractors, who have availed the loan facility from plaintiff Bank and thus defendant No.2 is jointly and severally liable with defendant No.1.

18. The account statement Exh. 31 it is seen that, an amount of Rs.13,55,098.00/- is due and recoverable upto 31/03/2018. As per the claim, details in plaint and affidavit paragraph No.32 an amount of Rs.3,000/- has been included as miscellaneous expenses and as such Rs.16,43,797.83/- is due and recoverable upto 31/12/2019. Plaintiff Bank also claimed future interest @12.65% p.a. from 01/01/2020, which is contractual rate of interest, hence can be allowed as prayed.

19. On appreciating the above oral and documentary evidence it is seen that plaintiff is entitled to recover the loan amount due and outstanding as prayed. The prayers of injunction and sale of the mortgaged properties cannot be directed, as the plaintiff Bank is entitled to recover the dues on the basis of mortgage deed, as per law in

appropriate execution proceedings. Accordingly, the suit is to decree partly with costs. Thus, I answer the *points* 1 to 3 in affirmative accordingly and in respect of point No.4, following order is passed.

# ORDER

1. The suit is partly decreed with costs.

2. Defendant No.1 and 2 are directed to pay an amount of Rs.16,43,727.83 (Sixteen Lakh Forty Three Thousand Seven Hundred Twenty Seven Rupees and Eighty Three paise only) jointly and severally to the plaintiff Bank within two months from the date of this order, with interest @ 12.65% per annum from 01/01/2020 till the date of decree and with interest @ 6% per annum from the date of decree till its actual realization.

3. Decree be drawn up accordingly.

IRFAN RHEMAN SHAIKH
Digitally signed by IRFAN RHEMAN SHAIKH
Date: 2023.08.02 01:36:16 +0530

Vita. (*I R Shaikh*)
Date: 17.07.2023. Civil Judge Senior Division, Vita.

**C E R T I F I C A TE**

I affirm that, the contents of this P.D.F. file Judgment/ Order are same, word to word, as per the original Judgment/Order.

| | | |
|---|---|---|
| Name of the Typist | : | Rahul Shetti |
| Name of Court | : | Civil Judge Senior Division, Vita. |
| Judgment/Order signed by the Presiding Officer on | : | 17.07.2023 |
| Judgment/Order uploaded on | : | 02.08.2023. |