CNR No. MHSN150035232020

Received on	31.08.2020
Registered on	31.08.2020
Decided on	06.02.2024
Duration: 03 Years 05 Months 06 Days	

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

SPECIAL CIVIL SUIT No. 826/2020

Exhibit No.36

Bank of India,
Body Corporate constituted under
Banking Companies (Acquisition and
Transfer of Undertakings) Act of 1970,
Having its Head Office at Star House,
Bandra Kurla Complex, Bandra (East)
Mumbai- 400 051 and a branch at
Shalgaon, Taluka: Kadegaon, District: Sangli **...Plaintiff.**

VERSUS

1. Mr. Prashant Popat Shitape
Age:- 45 Years, Occupation:-Agricultural
R/o. Ramanandnagar, Tal.- Palus
Dist.- Sangli.

2. M/s Cane Agro Agency (India) Ltd. Raigaon,
Tal.- Kadegaon, Dist.- Sangli.
(A company registered under companies Act 1956)
Formerly knowjn as Dongarai Sagreshwar Shetkari
Sahakari Sakhar Karkhana Ltd., (DSSSSK LTD)

3. Dongari Sahakari Sutgirni Ltd., Kadepur,
Tal.- Kadegaon, Dist.- Sangli
(A co-op. Society duly registered under the provisions
of Maharashtra co.op. Societies Act, 1960)

4. Shri. Prithviraj Sayajirao Deshmukh
Age.- 53 yrs., Occu.- Agriculture/Business
R/o- Kadepur, Tal.- Kadegaon, Dist.- Sangli. **...Defendants.**

Appearance:-
Advocate for Plaintiffs:- Adv. K.A.Mahajan
Ex-parte against defendant No. 1 to 4

JUDGMENT
(Delivered on 6th February 2024)

1. This is a money suit with claim of Rs.11,17,547.25/-with future interest @ 12.40% p.a. from 31.08.2019 till actual realization and sale of mortgaged properties for realization of dues.

2. In brief, facts necessary for the disposal of the suit are as follows;

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 Shalgaon*, Taluka: Kadegaon, District: Sangli.* Defendant No.2 M/s. Cane Agro Energy (India) Limited, Raigaon is registered under the provisions of The Companies Act.

3. Defendant No.2 was a Co-operative Society established in the year 1994 and it was formerly known as Dongarai Sagreshwar Shetkari Sahakari Sakhar Karkhana Limited. During the year 1997 defendant No.2 has converted into a Public Limited company under the name and style of M/s. Cane Agro Energy (India) Limited, Raigaon. Defendant No.2 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 525 H & T contractors/borrower, who availed demand loan of Rs.7,65,000/- from plaintiff Bank, which is secured by corporate guarantee executed by defendant No.2 and 3 for an aggregate amount of Rs.40,00,00,000/- and in the capacity of guarantors, have mortgaged its immovable property described in plaint paragraph No.11 in favour of plaintiff Bank for said loan. Defendant No.3 Soot Girni is operated and managed by the same group headed by defendant No.4. Defendant No.4 is also a guarantor to said loan.

4. As such, it is case of plaintiff Bank that, to arrange an aggregate finance to 525 H & T contractors, defendant No.2 had approached plaintiff Bank to render loan facilities to its H & T contractors, which was sanctioned by plaintiff Bank upon the term and conditions mentioned in the sanction letter dated 24/06/2014 – 27/06/2014.

5. It is, thus, the claim of plaintiff Bank that, defendant No.1 applied and availed demand loan of Rs.7,65,000/- vide his application dated 22.09.2014 and executed all necessary loan documents, as pleaded and described in the plaint paragraph No.9.

6. It is the case of plaintiff that, defendant No.2 to 4 have jointly and severally agreed to pay the dues outstanding in the loan accounts of 525 H & T contractors/borrower, which *inter-alia* includes defendant No.1. It is further case of plaintiff that, for securing said aggregate credit facility, defendant No.2 and 4 have executed the guarantee deed on 22.09.2014 in favour of plaintiff Bank. Further, defendant No.3 has executed registered mortgage deed dated 29/09/2014 in favour of plaintiff Bank. As such, vide the mortgage deed, the properties mentioned in paragraph No.11 of the

plaint have been mortgaged.

7. It is asserted that, as per terms and conditions, defendants have agreed to repay the said Credit Facility on or before 31.10.2015. However, defendants failed to adhere to the repayment schedule. Despite several demands made by plaintiff Bank, defendants failed to repay and clear the dues outstanding.

8. It is the case of plaintiff that, defendants have failed and neglected to comply with the terms and conditions and defaulted the loan. As such, the loan account of defendant No.1 turned N.P.A. on 30th April 2017.

9. Despite several demands made by plaintiff Bank, defendant No.1 to 4 failed to repayment and clear the dues outstanding. Therefore, plaintiff Bank constrained to file this suit. As an abundant precaution, though the loan transaction does not touch the business of defendant No.3 Soot Girni, plaintiff Bank issued notice under Section 164 of *the Maharashtra Co-operative Societies Act* dated 03/10/2019.

10. It is asserted that, plaintiff Bank is entitled to claim interest at the contractual rate of interest from 31.08.2019 till realization of entire dues along-with future interest. Thus, claiming defendant No.1 to 4 are jointly and severally liable, plaintiff Bank sought the recovery of amount of Rs.11,17,547.25/- 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. 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 4, but they failed to appear. Hence, suit was proceeded Ex-parte against defendant nos. 1 to 4 vide order dated 21.07.2023 & 21.09.2023 respectively.

12. In view of suit claim, pleadings, documents filed on record, so also, submissions made by plaintiff Bank, 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 under dispute and defendant No.2 to 4 are the guarantors for said loan ?	Yes.
2.	Does plaintiff Bank further prove that an amount of Rs.11,17,547.25/- 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 *Shalgaon Mr. Anil Janardan Jadhav (PW-1)*. His affidavit of *examination-in-chief* is on *Exhibit 16.* The loan documents (*Exhibit 17 to 26*), deeds of guarantee and mortgage deed (*Exhibit 27 to 29 respectively*), verified copy of notice under Section 164 of M.C.S. Act (*Exhibit 32*), the certified account extract and certificate (*Exhibit 35*).

AS TO POINT Nos.1 to 4:-

14. Needless to say that, the suit claim has not been opposed by either of defendants, nor they appeared. As such, defendants seen admitted the suit claim. Thus, no reason appearing to disbelieve the suit claim.

15. A perusal of the loan documents *Exhibit 17 to 26*, it can be seen that, defendant No.1 had executed all the necessary documents pertaining to loan facility and availed the loan of Rs.7,65,000/- on terms and conditions mentioned in the loan agreement. Defendant No.1 had executed various declaration and authority in favour of defendant Nos. 2 to 4 consenting repayment of loan etc. The documents shows recommendation at the instance of defendant No.2 to 4 with execution of the deeds of guarantee and indemnity.

16. A perusal of documentary evidence along-with oral evidence on oath, it is evident that, defendant No.2 to 4 are stood guarantors for the loan of defendant No.1.

17. A perusal of corporate guarantee would show that, defendant No.2 to 4 are guarantors to all the 525 H & T contractors, who have availed the loan facility from plaintiff Bank and thus defendant No.2 to 4 are jointly and severally liable with defendant No.1.

18. A perusal of account statement *Exhibit 32* it can be seen that, an amount of Rs.11,15,297.25/- is due and recoverable upto 08.11.2019. As per the claim, details in plaint and affidavit an amount of Rs.3,000/- has been included as miscellaneous expenses and as such Rs.11,17,547.25/- is due and recoverable upto 31.08.2019.

19. Plaintiff Bank claimed future interest @12.40% p.a. from 31.08.2019, which is contractual rate of interest, thus, same has to be allowed.

20. Having considered above, there appears no impediment to allow the suit claim as plaintiff Bank established the suit claim on the basis of documentary evidence and the account statement against defendant No.1 to 4. 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, if any. Learned advocate for plaintiff Bank fairly submitted that, simple money claim along-with interest can be decreed. Accordingly, the suit is to decree partly with costs. Thus, I answer the *points* under consideration accordingly and in answer to *point* No.4, following order is passed.

O R D E R

1. The suit is partly decreed with costs.

2. Defendant No.1 to 4 are directed to pay an amount of Rs.11,17,547.25/-(Eleven Lakh Seventeen Thousand Five Hundred Fourty Seven Rupees Twenty Five Paise only) jointly and severally to the plaintiff Bank within two months from the date of this order, with interest @ 12.40% per annum from 31.08.2019 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.

sd/xxx
(***I. R. Shaikh***)
Civil Judge Senior Division, Vita.

Vita.
Date: 06.02.2024

C E R T I F I C A T E

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 Steno.	:	Sou.S.R.Bansode, Grade-II
Court	:	Civil Judge Senior Division, Vita.
Judgment/Order signed by the Presiding Officer on	:	06.02.2024
Judgment/Order uploaded on	:	07.02.2024