MHSN150029232020

Received on	17.06.2020
Registered on	18.06.2020
Decided on	06.04.2024
Duration: 03 Years 09 Months 20 Days	

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

SPECIAL CIVIL SUIT No.:-613/2020
{OLD SPECIAL CIVIL SUIT No.531/2020}
(CNR No.:-MHSN15-002923-2020)
Exhibit No.:- 37

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. Arjun Shankar Nangare
Age:- 53 Years, Occupation:- Contractor,
R/o. 29 Yamachi Patlachi Wadi,
Tal.- Atpadi, Dist.- 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 & 2.
Advocate for defendant No.3:- Adv.R.P.Shinde

J U D G M E N T
(Delivered on 06th April 2024)

1. This is a money suit claiming 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. 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 *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 an aggregate amount of Rs.44,75,00,000/-.

3. As such, it is case of 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. By executing a corporate deed of guarantee dated 28.06.2014 vide Board Resolution dated 25/06/2014, defendant No.2 has jointly and severally agreed to pay the dues outstanding in the loan accounts of 439 H & T contractors, which *inter-alia* includes defendant No.1. It is further case of plaintiff that, 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. It is asserted that, defendant No.3 vide its letter dated 05/07/2013 has accorded its consent for the second charge. As such, vide the mortgage deed, the properties mentioned in paragraph No.12 of the plaint have been mortgaged as second charge.

5. It is asserted that, 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, thus, the claim of plaintiff Bank that, defendant No.1 being one of H & T contractors applied and availed demand loan of Rs.9,00,000/- vide his application dated 24/07/2014 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. As such, the loan account of defendant No.1 turned N.P.A. as on 30/06/2017. 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 acknowledgement of debt/ securities on 30/06/2017 and thereby acknowledged balance outstanding on his loan account as on said date.

8. Despite several demands made by plaintiff Bank, defendant No.1 and 2 failed to repayment and clear the dues outstanding. Thus, they have been served with legal notices but failed to comply. 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. It is asserted that, 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.

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. Despite served with the suit summons vide Exh. 7 & 8, defendant No.1 and 2 choose not to appear. Thus, the suit is directed to proceed and heard *ex-parte* against defendant No.1 & 2 vide order dated 01.08.2022.

12. Defendant No.3 Bank filed *written-statement Exhibit 14* and denied the suit claim in *toto*, pressing into service the no-nexus theory. Defendant No.3 Bank flatly denied that, before sanctioning the loan to defendant No.1 and 2, the consent of defendant No.3 is obtained. Plaintiff Bank despite having knowledge got mortgaged the

properties putting its second charge, thus, the act of plaintiff Bank is *ab-inito*, void and illegal. Consequently, the mortgage deed is also void and inoperative. Thus, the suit is unnecessary against defendant No.3 Bank and not tenable for want of notice under Section 164 of *the Maharashtra Co-operative Societies Act*.

13. Defendant No.3 Bank also specifically pleaded that, the properties mortgaged with defendant No.3 Bank have already been sold vide the sale certificate dated 31/03/2020. As such, defendant No.3, itself now have no title or interest in the mortgaged properties. As such, defendant No.2, Factory also lost the nexus with the mortgaged properties. Inspite of the sale of the mortgaged properties, an amount of Rs.46,75,90,064/- is yet to be recovered from defendant No.2. It is also specifically pleaded that, defendant No.3 Bank took action under the provisions of the *Secularization Act*. Therefore, plaintiff Bank had already sought relief before the D.R.T. Court and thus the suit in the present form is not tenable. Thus, defendant No.3 Bank sought to dismiss the suit with compensatory costs.

14. *Issues* were framed below *Exhibit 15*. I have recorded my findings thereon for the reasons recorded thereunder.

Sr. No.	ISSUES	FINDINGS
1.	Does plaintiff prove that Demand loan of Rs. 9,00,000/- alongwith interest @ 10.25% p.a. with half yearly rests, was disbursed to defendant no. 1 ?	Affirmative
2.	Whether plaintiff is entitled to Rs. 16,43,797.83/- alongwith interest @ 12.65% p.a. ?	Affirmative

3.	Whether defendant nos. 1 & 2 are jointly and severally liable to pay Rs. 16,43,797.83/- alongwith interest @ 12.65% p.a. ?	Affirmative
4.	Whether plaintiff is entitled to relief as prayed ?	Affirmative
5.	Whether suit is not maintainable due to non compliance of notice u/s 164 of Maharashtra Co-operative Society Act-1960 to defendant no. 3 ?	Negative.
6.	What order and decree ?	As per final order.

R E A S O N S

15. In order to substantiate the suit claim, plaintiff Bank have examined its *Manager* of Branch *Kharsundi Mr. Chetan (PW-1)*. His affidavit of *examination-in-chief* is on *Exhibit 19*. The loan documents (*Exhibit 22 to 32*), mortgage deed and deed of guarantee (*Exhibit 33 & 34*) and the certified account extract (*Exhibit 35 & 36*) have been marked in the evidence of the *Branch Manager*. Defendant No.3, except the cross-examination of plaintiff did not led separate evidence. The evidence of defendant No.3 was closed vide order dated 06.03.2024.

AS TO ISSUE No.1 to 4:-

16. 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.

17. On perusing the documentary evidence i.e. Exhibits 22 to 32, 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.

18. On perusing mortgage deed and deed of guarantee Exh. 33 & 34 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.

19. 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.

20. The account statement Exh.35 shows that, an amount of Rs.16,40,797.83/- is due and recoverable upto 31.12.2019. 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.

21. 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 issue nos. 1 to 4 in affirmative accordingly.

AS TO ISSUE No.5:-

22. The defendant no. 3 raise the issue of Non compliance of Section 164 of Maharashtra Co-operative Societies Act-1960. Learned advocate for plaintiff vehemently argued that, the subject-matter of the present suit does not touch the business of defendant No.3 Society. Therefore, the notice under Section 164 of *the Maharashtra Co-operative Societies Act, 1960* is not necessary. Learned advocate for defendant No.3 was absent to argue on this point. The burden was

on the defendant no. 3 to prove this issue but the defendant failed to lead evidence in his support. As argued by the advocate for plaintiff, it seems that the present suit does not come under the preview of Section 164 of *the Maharashtra Co-operative Societies Act, 1960* . Thus, I answer issue no. 5 in negative.

AS TO ISSUE NO. 6

23. As the plaintiff proved issue nos. 1 to 4 he is entitled for the relief claimed, hence, I pass the following order in respect of issue no. 6.

O R D E R

1. The suit is partly decreed with costs.

2. Defendant No.1 and 2 are directed to pay an amount of Rs.16,43,797.83/- (Sixteen Lakh Fourty Three Thousand Seven Hundred Ninety 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: 2024.04.08 10:42:16 +0530

Vita.
Date: 06.04.2024

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

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 Stenographer	:	Sou.S.R.Bansode, (Grade-II)
Court	:	Civil Judge Senior Division, Vita.
Judgment/Order signed by the Presiding Officer on	:	06.04.2024
Judgment/Order uploaded on	:	08.04.2024