Received on :	21.01.2013
Registered on :	21.01.2013
Decided on :	29.06/2019.
Duration :	YY.MM.DD. 06 .05. 08

IN THE COURT OF 4th ADDITIONAL Sr. CIVIL JUDGE AHMEDABABD (RURAL) AT MIRZAPUR, AHMEDABAD.

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SPECIAL CIVIL SUIT NO. 33 OF 2013.

Exh.

Plaintiff :- **Oriental Bank of Commerce.**
Vejalpur Branch, Ahmedabad.

Defendants :-
(1) **M/s. Manthan Fashion, a Sole Proprietorship Concern**
At:1179/909, GHB, Kalapinagar, Asarwam Ahmedabad.
(2) **Kuldeepsinh I. Zala**
At : 31, Mevadnagar, Opp. Prakash Hindi School, Saijpur, Bogha, Naroda, Ahmedabad

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Subject :- Money Suit valued at Rs. 8,00,199/-.

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APPEARANCE :-

Learned Advocate for the plaintiff. : Mr. A.R. Gupta
Learned Advocate for the defendants. : Ex-parte.

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

1. The plaintiff - Oriental Bank of Commerce is a corporate body with perpetual succession corresponding Nationalized Bank constituted under the Banking Companies (Acquisiton and transfer of undertaking) Act, 1980 and one of its Branches is in vejalpur Branch, Ahmedabad. Brief facts of the plaintiff's suit are such that :-

i. In pursuance of the CGTMSE Scheme formulated by the plaintiff, the defendant No.1 approached to the plaintiff bank to grant financial assistance in the form of Term Loan (Under CGTSME Scheme) facilitiy of Rs.9,75,000/- for business purpose. Defendant No.1 applied vide loan application dtd.29.09.2010 for purchase of two computerized embroiderty machine. Plaintiff bank considered the request of defendant no.1 and sanctioned the Term Loan of Rs.9,75,000/- vide sanctioned letter dated 12.10.2010 for the purchase of two computerized embroidery machine. The loan amount was bearing interest @ 11.25% with monthly rests or at such other bank charges and the loan was repayable in 60 monthly installments of Rs.22,160/-. Defendant No.1 agreed and accepted all terms and conditions of sanction.

ii. The defendant No. 1 executed following security documents for valuable consideration in favour of the plaintiff bank :-

   a. Common Agreement dtd. 12.10.2010.

   b. Agreement of Term Loan dtd. 12.10.2010.

iii. It is submitted that whereby the said defendants no. 2 as the proprietor of defendent no. 1 created the first charge by way of hypothecation of computerised embroidery machineries as security for repayment of the balance outstanding in the term loan together with interest, cost charges and expenses. If any default in payment or breach of terms and conditions, the plaintiff bank shall be entitled to take possession of the hypothecated machinery and to recover and receive the same and/or to appoint the receivers of the hypothecated goods and sell the same by auction or by private contract or otherwise dispose off deal with all or any part of the hypothecate machineries.

iv. It is further submitted that the loan was sanctioned for purchase of computerized embroidery machinery from seller m/s. sunshine enterprise and the payment of rs. 9.75 lacs was done to vendor. the loan is secured by way of Hypothecation of two computerized embroidery machines which are purchased from loan account.

v. It is further submitted that the plaintiff submits that all the defendants are therefor jointly and severally liable to the plaintiff bank for the repayment of the outstanding in the said term loan loan account. the defendant no. 1 is not operating the said facility accounts satisfactorily as per the terms of the sanction.

vi. It is further submittted that the said defendant failed to repay / regularize term loan as agreed and also failed to pay monthly interest as stipulated in respect of the said facilities

vii. It is further submitted that the plaintiff bank approached the defendants for adjusting the banks dues dues but they have failed to adjust the bank dues or to deposit any further amount in their accounts the plaintiff bank was therefor forced to recall the said advances vide recall notice dated 30/11/11. however the defendants failed and neglected to repay entire outstanding balances.

viii. It is further submitted that On 08.01.2013 the sum of Rs.7,97,681/- outstanding in Term Loan Account was transferred to the protested bill account on 08.01.2013. This amount Rs.7,97,681/- was inclusive of interest charged into account upto 08.01.2013 and further Rs.2,518/- was the interest amount due from 09.01.2013 to 16.01.2013. Thus total amount of Rs. 8,00,199/-was due and payable. Thus suit is filed for

Rs.8,00,199/-. it is further certified that the penal interest have not been capitalized and the interest has been charged as per the terms of sanction and various loaning documents.which do not runs counter to the directives issued by the RBI and Government of india.

ix. It is further submitted that , the rate of interest is to vary from time to time as per the Reserve Bank of India directive and the presant rate of interest is 14.40% p.a. with monthly rest in respect of the said facility and at this rate the defendants are liable to pay the aforesaid amount shown as due to the plaintiff bank in the above para along with interest. the defendants are also liable to pay the service charges and penl charges as allowed by reserve bank of india as they failed to repay the loan as per the terms of sanction.

x. It is further submitted that, The cause of action arose on 30.11.2011 when the plaintiff bank served recall notice to the defendants for payment of its dues and they failed to pay within stipulated time. the cause of action also arose on all those dates when the defendants have deposited various amount in their account towards the part payment of dues of plaintiff bank. the present suit is being filed well within limitation under the above circumstance.

xi. It is further submitted that the term loan facility was sanctioned to the defendant at Vejalpur Branch, Ahmedabad and the said term loan was availed at the said same branch which is situated within territorial jurisdiction to entertain and decide the case. Further for the purpose of court fee stamp and jurisdiction, the suit is valued at Rs.8,00,199/- and the court fee stamp of Rs.20,150/- is affixed.

(2) On serving of summons on the defendants, defendant appeared through advocate but then since long not appeared and not filed written statement or anything of report , defendants right to file written statement is closed.

Further, Opportunity to the defendants to cross examine plaitiff was closed. And opportunity to the defendants to give evidence is also closed.

2. Plaintiff Bank has filed following oral as well as documentary evidence.

Sr. No.	PARTICULARS	Exh.
	Oral Evidence.	
1.	Deposition of Ranjit Rai, Chief Manager.	20
2	Original Copy of Sanction Letter	13
3	Original Copy of Sole Proprietorship	14
4	Original Copy of Common Agreement	15
5	Original Copy of Term Loan Agreement	16
6.	Original Copy of Balance and Security Confirmation.	17
7.	Copy of Statement of Account	27
8.	Copy of recall notice issued by Bank to defendant	28

3. From the above pleadings of the parties the following issues have been framed vide Exh. 9 for determination of the present suit.

ISSUES

1. Whether the plaintiff proves that suit claim of Rs.8,00,199/- is due from defendants?

2. Whether the plaintiff proves that he is entitled to get interest at the rate of 14.4 p.a. from the defendant?

3. Whether the plaintiff is entitled to get relief as prayed for ?

4. What order and decree ?

4. The findings of the aforesaid issues are as under.

1. In Affirmative.
2. In Affirmative, @14.4%
3. As per final order.
4. As per final order.

: R E A S O N S :

ISSUE NOS.1, 2 & 3 :

5. All the issues are interconnected with each other and therefore, to avoid the repetition of facts and for the sake of brevity and convenience discussed all together.

6. Ld. Advocate appeared on behalf of the plaintiff bank has advanced his oral arguments and reiterated the facts of the suit and further submitted that the defendant No.1 applied vide loan application dtd.29.09.2010 for purchase of two computerized embroidery machine. Plaintiff bank considered the request of defendant no.1 and sanctioned the Term Loan of Rs.9,75,000/- vide sanctioned letter dated 12.10.2010 for the purchase of two computerized embroidery machine. But failed to reapay the due installments. Therefore, the plaintiff Bank has filed the present suit for recovering total due amount of Rs. 8,00,199/- from the defendants with interest. He has further argued that it is an admitted fact that the defendant No.1 has taken a loan from the plaintiff Bank and plaintiff Bank has sanctioned the said loan and disbursed the amount of loan to the defendant No.1, and this fact is not challenged by the defendants before the Hon'ble Court. He has also argued that from the deposition of the bank employee and from the documents submitted by the plaintiff Bank, it reveals that the defendant No.1 has failed to make full repayment of the said loan, hence, the plaintiff's suit deserves to be allowed with interest and cost.

7. To prove the case, and to discharge the burden of proof of issues, Mr. Ranjit Rai, Chief Manager of the Plaintiff Bank has deposed in his affidavit vide Exh.20, wherein he has corroborate all the facts of the suit and narrated each and every particular of plaint in verbatim, hence to avoid the repetition of facts and for the sake of brevity it is not desirable to rewrite its full version here again. This witness has not been cross-examined from the side of the defendant, as defendant did not chose to resist and contest the present suit. He has clearly deposed on oath that the plaintiff bank had sanctioned the term loan of Rs.9,75,000/- to the defendant No.1 and the defendant No.1 also agreed to pay interest @ 11.25% with monthly rests or at such other rate / rates of interest and as may be fixed by the plaintiff bank from time to time. That the loan was payable by 60 monthly installments of Rs.22,160/-. The said fact is also proved from the documents produced by the plaintiff Bank. Therefore, the plaintiff Bank clearly proves that the defendant had taken term loan from the plaintiff bank for the purpose of purchasing two computerized embroidery machineries. Moreover, looking to the documents produced at Exh.13 to 17, it reveals that the said documents bears the signatures of present defendants, therefore from the oral evidences and documentary evidences it is proved that the defendant has executed and signed the various documents in respect to the said loan at the time of granting of loan by the plaintiff Bank. Moreover, the said witness has deposed on oath that the total amount of Rs. 8,00,199/- is due from the defendant. Having perused the entire record on hand, it proves that the defendant No.1 has taken term loan from the plaintiff bank and also executed relevant documents for the said loan. However, the defendant No.1 failed to repay regular installments of the loan amount, therefore it is proved from the record that the defendant No.1 has not repaid the loan amount. The plaintiff Bank is a body corporate with perpetual succession corresponding Nationalized Bank doing banking transaction in the commercial sector under the Banking Companies Act running on the capital of public money. Therefore, the total outstanding due from the defendants is a public money of common people of our country and due to failure of the defendant in repaying the amount of Term Loan the plaintiff Bank has suffered and incurred valuable loss of interest and therefore the plaintiff Bank is certainly entitled to recover the due amount with interest. Thus, as per Statement of Loan Account of defendant No.1 produced vide Exh.27, total due amount with interest is Rs. 8,00,199 as on 16/01/2013, for which the plaintiff Bank is entitle for a decree.

8. In view of the foregoing discussions, this court is satisfied that the plaintiff Bank is entitled to recover the amount of Rs.8,00,199 from the defendants @ 14.4% p.a. Hence, I answer the issues accordingly and following final order is passed in the interest of justice. Hence, the issues are decided accordingly and in the interest of justice following final order is passed.

: : **O R D E R** ::

(1)	The present Special Civil Suit No. 33 of 2013 of the plaintiff

	Bank is hereby **allowed**.
(2)	The plaintiff – Oriental Bank of Commerce, do recover the amount of **Rs.8,00,199(Rupees Eight Lakh One Hundred and Ninety Nine Only**) with interest **at the rate of 14.4% per annum** from the date of filing of the suit till its realization from the defendants either personally or from their property.
(3)	The defendants shall bear their own costs as well as cost of the plaintiff - Bank.
(4)	Decree to be drawn accordingly.

Pronounced and signed in the Open Court on this 29th , june 2019.

Date : 29 /06/2019.
Place : Ahmedabad.

[Miss Jyotiben Madhavlal Chauhan]
4th Additional Sr. Civil Judge,
Ahmedabad [Rural] at Mirzapur.
[GJ-00728]

P.S. Kirti Lodha