MHSN150030732020

Received on	18/06/2020
Registered on	20/06/2020
Decided on	13/03/2023
Duration: 02 Years 08 Months 23 Days	

IN THE COURT OF JOINT CIVIL JUDGE SENIOR DIVISION, VITA TALUKA: KHANAPUR DISTICT: SANGLI

(Presided over by:- *Sudhir N. Shinde*)

SPECIAL CIVIL SUIT No.:-666/2020

{OLD SPECIAL CIVIL SUIT No.600/2020}

(CNR No.:-MHSN15-003073-2020)

Exhibit No.:-

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. Vitthal Tammanna Godase,
Age:- 47 Years, Occupation:- Contractor,
R/o. A/p. Kole, Taluka: Sangola,
District: Solapur.

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.A.R.Deshmukh/Adv.R.P.Shinde.

J U D G M E N T

(Delivered on 13th March, 2023)

1. This is a money suit with claim of Rs.15,52,289.58 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.8,50,000/- 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.8,50,000/- vide his application dated 22/07/2014 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 dated 08/10/2018. 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.15,49,289.58 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. Despite served with the suit summons defendant No.1 and 2 choose not to appear. Thus, the suit is directed to proceed and heard *ex-parte* against defendant No.1 vide order dated 23/06/2022 & against defendant No.2 vide order dated 05/03/2022.

12. Defendant No.3 Bank filed *written-statement Exhibit 12* and denied the suit claim in *toto*.

13. In view of rival claims, *issues* are framed below *Exhibit 13*. Same are reproduced herein below. I have recorded my findings thereon for the reasons recorded thereunder.

Sr. No.	POINTS	FINDINGS
1.	Whether the suit is maintainable against defendant No.3 for want of notice under Section 164 of *the Maharashtra Co-operative Societies Act* ?	No.
2.	Does plaintiff prove that defendant No.3 consented for the mortgage of the property, which are already mortgaged with defendant No.3 ?	No.
3.	Whether plaintiff is entitled for injunction against defendant No.3 ?	No.
4.	Whether plaintiff is entitled for the decree as sought ?	Against defendant No.1 & 2 *qua* claim of recovery only.
5.	What order and decree ?	As per final order.

R E A S O N S

14. In order to substantiate the suit claim, plaintiff Bank have examined its *Manager* of Branch *Kharsundi Mr. Chetan Shridhar Bhagwat*. His affidavit of *examination-in-chief* is on *Exhibit 17*. The loan documents (Exhibit 18 to 27), mortgage deed and deed of guarantee (Exhibit 28 & 29) and the certified account extract (Exhibit 30 & 31) have been marked in the evidence of the *Branch Manager*.

AS TO ISSUE No.1:-

15. Learned advocate *Mr. Bhosale* for plaintiff Bank relying upon the pleadings vehemently argued that, the subject-matte 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. However, as an abundant precaution, plaintiff Bank had issued such notice. But, he fairly conceded that, the notice is not proved in the evidence. Learned advocate for defendant No.3 Bank did not present for argument and not argued on this point. The cross-examination on the said point is limited to the extent of the fact that whether such notice was issued or not ? The Manager on behalf of plaintiff Bank P.W.1 despite having made proper pleadings about issuance of such notice as argued, failed to depose and claimed no knowledge about the same.

16. Thus, the oral evidence of the Manager P.W.1 is not inconsonance with the pleadings made. Consequently, the notice under Section 164 of *the Maharashtra Co-operative Societies Act, 1960* is not proved.

17. The question, thus, remain whether such notice is essential ?

18. Defendant No.3 Bank specifically pleaded that, it is a registered Society and plaintiff Bank is not its member. Thus, the notice is must before filing the suit. Undisputedly, the facts are that, plaintiff Bank entered into the mortgage of the properties of defendant No.2, which were already mortgaged with defendant No.3 Bank. Thus, such transaction is certainly touching the business of defendant No.3 Society. Thus, the notice is mandatory and essential. The notice seen not waived before the suit.

19. As, already observed said notice is not proved in the evidence, thus, the suit appear not tenable against defendant No.3 Bank for want of such notice. Accordingly, I answer issue under consideration in the negative.

AS TO ISSUE No.2 and 3:-

20. *Issue* No.3 & 4, being interlinked, taken together for discussion to avoid repetition.

21. A perusal of 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 dated 05/07/2013 issued by defendant No.3 it can be seen that, the consent was given on condition of repayment of the loan of one thousand lakh rupees 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 consent accrued by defendant No.3 Bank is not express, but conditional one. The condition in the letter dated 05/07/2013 appears a condition precedent. For want of proper pleadings and evidence about performance of such condition, it can be said that, defendant No.3 Bank has not accrued its consent as claimed by plaintiff. Therefore, the question of charge has to be resolved in other appropriate proceedings, 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. Therefore, no injunction can be granted against defendant No.3 Bank. Thus, I answer *Issue* No.2 and 3 in negative.

AS TO ISSUE No.4 and 5:-

22. A perusal of the loan documents *Exhibit 18 to 27,* it can be seen that, defendant No.1 had executed all the necessary documents pertaining to loan facility and availed the loan of Rs.8,50,000/- 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.

23. A perusal of 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.

24. A perusal of account statement Exhibit 30 it can be seen that, an amount of Rs.15,49,289.58 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.15,52,289.58 is due and recoverable upto 31/12/2019.

25. Plaintiff Bank claimed future interest @12.65% p.a. from 01/01/2020, which is contractual rate of interest, thus, same has to be allowed.

26. 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 and 2. 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. Learned advocate *Mr. Bhosale* 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 *issue* under consideration accordingly and in answer to *issue* No.5, following order is passed.

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.15,52,289.58 (Fifteen lakh fifty two thousand two hundred eighty nine rupees and fifty eight 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.

SUDHIR NARHARIRAO SHINDE

Digitally signed by SUDHIR NARHARIRAO SHINDE
Date: 2023.03.14 14:35:19 +0530

Vita. (***Sudhir N. Shinde***)
Date: 13/03/2023. Jt. Civil Judge Senior Division, Vita.

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	:	S. P. Pethkar.
Court	:	Civil Judge Senior Division, Vita.
Judgment/Order signed by the Presiding Officer on	:	13/03/2023.
Judgment/Order uploaded on	:	15/03/2023.