सत्यमेव जयते

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Decided on	:	**19.08.2023**		
Duration	:	**06**	**04**	**20**
		Years	**Months**	**Days**

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE, HIMMATNAGAR

Special Civil Suit No. 12 / 2017

Exh. : 71

Plaintiff : **Dena Bank now its Bank of Baroda**
Through its Branch Manager
Rakeshkumar Doshi, Bamna branch
Bamna, Ta.: Himmatnagar,
Dist.: Sabarkantha.

VERSUS

Defendants :**1. Ranchhodbhai Vaghabhai Pandor (applicant)**
Aged about : adult, religious : Hindu,
occupation : agriculture

02. Legal heirs of deceased Khemabhai Vaghabhai Pandor (Co-applicant)

2.1 Shantaben Khemabhai Pandor

2.2 Jayeshbhai Khemabhai Pandor

2.3 Gopalbhai Khemabhai Pandor

2.4 Akshaykumar Khemabhai Pandor
2.5 Shilpaben Khemabhai Pandor
2.6 Tamiben Khemabhai Pandor
2.7 Rachnaben Khemabhai Pandor
2.1 to 2.7 r/o : Hardaspur, Ta. Bhiloda,
District – Arravalli.

03. Feklinbhai Sigrabhai Varsat (Guarantor)
Aged about : adult, religious : Hindu,
occupation : agriculture
r/o : Hardaspur, Ta. Bhiloda, Dist. Arravalli.

04. Kodarbhai Sardarji Pandor (Guarantor)
Aged about : adult, religious : Hindu,
occupation : agriculture
r/o. : Vaghpur, Ta. Bhiloda, Dist. Arravalli.

:: Suit for recovery of Rs.8,84,000/- ::

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Appearance :

Learned advocate Mr. R. V. Sharma for the plaintiff.

Learned advocate Mr. P. D. Prajapati for the Defendant No. 2.

Ex. Parte – defendant No. 1, 3 and 4.

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

01. The plaintiff has filed this Special Civil Suit against the defendants to recover the due amount of Rs.8,84,000/- (Rupees Eight Lakh Eighty Four Thousand Only).

02. That, the plaintiff is a Corporate Body of Banking, registered under the Banking Companies Acquisition and Transfer of under taking Act, 1970, having its one registered branch situated at Bamna and its Regional office at Gandhinagar and Head office at Mumbai and having its branches in different cities too.

03. In the present case, that the plaintiff-bank provides various types of loans under different schemes. The defendant No.1 and 2 have taken crop loan – D.K.C.C. of Rs.6,00,000/- (Rupees Six Lakh Only) through the plaintiff bank on 29.03.2014. Defendant No. 1 and 2 have accepted all the terms and conditions of the loan agreement. Thereafter, defendant No.1 and 2 were irregular in making payment of the said loan amount though several reminders were given by the plaintiff bank to the defendant No.1 and 2. Thereafter, plaintiff had sent a legal notice to the defendants through its advocate on 01.02.2017. Notices were served to the defendants. Defendants have neither replied to the notices nor had deposited the outstanding amount in the bank. Defendants had signed on hypothecation agreement and other necessary documents in favour of the plaintiff at the time of agreement. Thus, plaintiff is entitled to recover outstanding amount of Rs.8,84,000/-.

04. It is the say of the plaintiff that the loan amount, as per the agreement, was not paid by the defendants. On basis of this, the plaintiff has made following prayer.

(a) To pass a decree in favour of plaintiff and against the defendants for recovery of Rs.8,84,000/- along with costs and interest at the rate of 18% from the defendants or their movable or immovable property either jointly or severally.

(b) Cost of the suit.

(c) Any other relief which Hon'ble Court deems fit.

05. After filing the present suit, summons were issued to the defendants, which were duly served to the defendants. Therefore, the defendant No. 2 was appeared through his learned advocate at Exh. 09, whereas the defendant No. 1, 3 & 4 were remained absent. Thereafter, this court has provide ample opportunity to file written statement against the allegation raised by the plaintiff. But, the defendant No. 2 has failed to file his written statement. In view of the above fact, Court has passed an order below Exh. 1 to proceed Ex-Parte against the defendants on 09.08.2018 & 28.07.2022 respectively.

06. In support of his case the plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	An affidavit of plaintiff in form of deposition.	52

DOCUMENTARY EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	Certified copy of application form	59
02.	Certified copy of term and condition for short term Agri. Advance for crop loan	60
03.	Certified copy of letter of continuity	61
04.	Certified copy of letter of general lien and set off for borrowing arrangements from the borrower	62
05.	Certified copy of demand notice	63
06.	Certified copy of acknowledgement of debt and security	64
07.	Certified copy of hypothecation – agreement for agricultural loans	65
08.	Certified copy of letter of guarantee	66
09.	Copy of letter of general lien and set off from guarantor	67
10.	Copy of notice	68

11.	Copy of statement of account for the period of 07.10.2016 to 04.06.2021	69

Thereafter, plaintiff has produced closing pursis at Exh. 70.

07. No any oral or documentary evidence have been produced by the defendants.

08. I have heard the argument of Ld. Advocate Mr. R. V. Sharma on behalf of the plaintiff and have prayed for the grant of relief mentioned in the plaint at Exh. 1. Also have argued that, the defendants did not produced any kind of evidence and indirectly have accepted the claim of the plaintiff. Hence, the suit should be decreed.

09. In view of the pleadings and documentary evidences as above, the following issues have been framed by my learned predecessor in vernacular language at Exh. 48.

:: <u>I S S U E S</u> ::

૦૧. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદી નં. ૧, ૨ નાએ વાદી બેંક પાસેથી દાવા અરજીમાં જણાવ્યા મુજબ રૂ.૬,૦૦,૦૦૦/- ની એસ. કે. સી.સી. લોન લીધેલી અને તે અંગેના જરૂરી દસ્તાવેજો બેંકની તરફેણમાં કરી આપેલ?

૦૨. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીઓ પાસેથી સદર લોન પેટે વાદી બેંકના રૂ.૮,૮૪,૦૦૦/- બાકી લેણા પડે છે?

૦૩. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીઓને સદર રકમ ભરપાઈ કરવા જણાવવા છતાં પ્રતિવાદીઓએ સદર રકમ ચુકવી આપેલ નથી?
૦૪. શું વાદી દાવા રકમ પર કોઈ વ્યાજ મેળવવા હકકદાર છે? જો હા તો કેટલુ અને કયારથી?
૦૫. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
૦૬. શું હુકમ અને હુકમનામુ?

10. My answer to the above issues are as under :

1. In affirmative.
2. In partly affirmative.
3. In affirmative.
4. In affirmative, as per final order
5. In partly affirmative
6. As per final order.

:: **R E A S O N S** ::

Issue Nos. 1 to 5 :

11. The Issue nos. 1 to 5 are inter linked and thus are discussed together in order to avoid repetition and ambiguity.

12. The plaintiff has deposed in form of affidavit vide Exh.52 in support of his suit and he has corroborated the pleadings of suit. The plaintiff has mainly stated that defendant No. 1 and 2 have taken a loan from the Bank and has also executed the loan agreement and relevant papers in favour of the plaintiff bank which is produced by the plaintiff below Exh. 59 to Exh. 69.

Now, taking the aforementioned pleadings as well as the oral and documentary evidences conjointly into consideration, it is apparent that the defendant No. 1 and 2 have taken a loan from the plaintiff bank and executed the documents in favour of plaintiff bank and the defendant No. 3 and 4 have became a guarantors of the defendant No. 1 and 2 and accepted all the responsibility of the defendant No. 1 and 2.

13. On perusal of the above referred documents, it is uncontested that the defendant No.1 and 2 have availed a loan of Rs.6,00,000/- from the plaintiff bank by executing documents at Exh.59 to Exh. 69. It is further uncontested that defendant No. 1 and 2 have failed to repay the loan amount. Moreover defendant No.3 and 4, being guarantors of the said loan, have also failed to pay the outstanding amount. Now, by referring the contentions of the plaint and the documents produced by the plaintiff, plaintiff has claimed the decree for Rs.8,84,000/- and in support of his claim, the documentary evidences produced by the plaintiff are also perused. On perusal of documents, it appears that at Exh.69, plaintiff has submitted statement of account wherein total outstanding amount is shown to Rs.5,99,391/-. The plaintiff has not produced any evidence which shows that Rs.8,84,000/- is due from the defendants. Moreover, on perusal of the agreement of guarantee at Exh.66, it transpires that defendant No.3 and 4 were guarantor therein and hence, he is equally responsible for the outstanding dues.

14. Further, plaintiff has served legal notice to the defendants. Notices were served to the defendants. The said legal notices were neither replied by the defendants nor the defendants has bothered to remain present in the Court after service of the summons. Therefore, an *ex-parte* order was passed against the defendants. Hence, perusing the oral evidence led by the plaintiff, there is nothing to disbelieve the contentions that the defendant No.1 and 2 have received Crop loan D.K.C.C. of Rs.6,00,000/- (Rupees Six Lakh only) through the plaintiff bank on 29.03.2014 and amount of Rs.8,84,000/- was due on defendants on 31.01.2017. The say of the plaintiff in the suit as well as in written affidavit of examination-in-chief at exhibit 52 is not challenged by the defendants. The defendants have not produced any documentary and oral evidence in support of their case. But as discussed hereinabove, there is no any document which shows Rs.8,84,000/- is due. Plaintiff has produce Statement of Account for the period of 03.02.2011 to 22.03.2017 which shows only Rs.5,99,391/- along with interest and penalty is verified in the A/c by plaintiff. Furthermore, plaintiff has not shown any justification of the interest amount and therefore in absence of any such justification if it is allow then that would be grant of interest over interest. Hence, in my view, plaintiff is entitled to have decree of Rs.5,99,391/- with interest. Therefore, my answer to the issue Nos. 1 & 3 are in the affirmative and answer issue Nos. 2 and 5 are in partly affirmative.

15. So far as interest rate is concern, the plaintiff has prayed for interest at the rate of 18% in his relief. Looking to the present transaction and documents produced vide Exh.65, the fluctuating interest rate of interest at the rate of 10.25% p.a. has been counted on the loan. The plaintiff advocate argued that the rate of interest is decided by the Reserve Bank of India. This

Court is agree with the submission with the Ld. Advocate that as per the document, the defendants were bound to pay the interest as per the prevalent conditions made by R.B.I. Also as per the S.34 of Civil Procedure Code, when there is specific contract between the parties regarding the payment of interest, the court is in discretion to grant the contractual interest. As per judgment passed in the case of "***Anshumansinh Vs. State of UP & others* reported in 2004(3) CCC 19 Allahabad**", Wherein it is held that the interest if not allowed on payment due, then even a losing party actually wins the case. Therefore, the plaintiff-bank is entitled to get the dues with interest @ 10.25% as per the Hypothecation Agreement from the date of the suit. Therefore, the plaintiff bank is liable to recover an amount of Rs.5,99,391/- at the rate of 10.25% from the date of institution of the suit from defendants against the said loan. Therefore, my answer to issue No.4 is in partly affirmative.

16. Hence, in view of above legal and factual aspect, the suit is required to be decreed and for issue No. 6, the final order is required to be passed with the following order:

:: FINAL ORDER ::

01. The suit of plaintiff is hereby partly allowed.

02. It is ordered that the defendants shall pay Rs.5,99,391/- (Rupees Five Lakh Ninety Nine Thousand Three Hundred Ninety One only) jointly and severally with simple interest at the rate of 10.25% p.a. from the date of institution of the suit i.e. 30.03.2017 till the date of realization of money.

03. If defendants fail to pay the outstanding amount, the said amount may be recovered jointly and severally from the properties of the defendants.

04. The defendants are directed to bear the costs of the plaintiff's suit.

05. Decree be drawn accordingly.

Signed and pronounced in the open Court today on 19th day of August 2023.

Place : Himmatnagar
Date : 19.08.2023

(M.I.N. Shaikh)
Principal Senior Civil Judge,
S. K. @ Himmatnagar
Judge Code No. GJ01327

*PARIJITSINH