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**IN THE COURT OF THE HON'BLE
PRINCIPAL SENIOR CIVIL JUDGE
AT ANAND.**



सत्यमेव जयते

SPECIAL CIVIL SUIT NO. 191 OF 2007

EXHIBIT: - 36

PLAINTIFF:

1. State Bank of India
Authorized Officer of Vidhyanagar Branch,
R/o V Square Building, Second Floor, Nr.
Bhaikaka Statue, At. Po. Vallabh Vidhyanagar,
Ta. Dist. Anand

versus

DEFENDANT(S):

1. Tushar Pranjeevandas Kotecha,
Age : 58, Occupation : Sevice
R/o 18, Radhika Park, Behind Ganesh Dugdhalay,
At. Po. Anand, Ta. Dist. Anand
2. Kanaklata Tusharbhai Kotecha
Age : 43, Occupation : Service
R/o.18, Radhika Park, Behind Ganesh Dugdhalay,
At. Po. Anand, Ta. Dist. Anand
3. Dakshaben Jayantibhai Dalvadi
Age : Adult, Occupation : Household
R/o. 12/A+B, Jalavatika, Behind Purohit Dining
Hall, At. Po. Vallabhvidhyanagar,
Ta. Dist. Anand

4. Ramaben Pravinbhai Thakkar
 Age : Adult, Occupation : Household
 R/o. 423, Hariom Nagar, Nr. Nana Bazar,
 vallabhvidhyanagar, Ta. Dist. Anand

APPEARANCE:

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 Ld. Advocate **Mr. G.M. Brahmbhatt** for plaintiff.

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**Re:- SUIT FOR RECOVERY OF RS.8,10,185/- (EIGHTLAKHS
 TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE ONLY).**

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

1. The plaintiff had filed the present suit for recovery of **RS.8,10,185/- (EIGHTLAKHS TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE ONLY)** with **13.5%** interest per annum against the defendants.

2. The brief facts leading to the plaintiff(s) suit are as under: The gist of facts are that the defendant number 1 and 2 took house loan from the plaintiff bank with yearly ineterst @ **11.5%** with the penalty cause of @ **2%**. The said amount was transacted to the defendant number 1 and 2 account. Defendant no.3 and 4 became guarantors. Defendant number 1 and 2 did not paid back the amount. **Rs. 8,10,185/- (EIGHT LAKHS TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE**

ONLY) became due with interest as on 31/05/2007 and thus the present suit is filed against the defendants for recovery of suit claim with **13.5%** interest per annum.

3. Defendant number 1 to 4 were duly served with the notice and they have not appeared before this Court thus, matter was taken *ex-parte* against defendant number 1 to 4.

4. Heard L.A. for the plaintiff and he has argued as per facts narrated in **Exh.1**. The plaintiff has filed oral as well as documentary evidence which are as follows.

A) **Oral Evidence:**

Exhibit 18. Deposition of Anand Kumar Singh, Manager *cum* Authorized officer, State Bank of India, Vallabhvidhyanagar Branch, Anand.

B) **Documentary Evidence:**

SR NO	EXHIBIT	DOCUMENT
1.	20	Loan Application
2.	21	Loan Agreement
3.	22	Loan Agreement
4.	23	Guarantee Agreement
5.	24	Arrangement Letter
6.	25	Application for loan
7.	26	Annexure I
8.	27	Receipt of title deeds
9.	28	Memorandum of deposit of title deeds

10.	29	Revival Letter
11.	30	Revival Letter
12.	31	Index No. 2
13.	32	Statement of Account
14.	33	Certificate
15.	34	Gazette
16.	35	Closing pursis

4. From the above facts following issues have been framed by this court vide Ex. 15

મુદ્દા

૧. શું વાદી પુરવાર કરે છે કે, વાદી બેંકમાંથી લીધેલી હાઉસીંગ લોન પેટે તા.૩૧/૫/૨૦૦૭ થી રૂ.૮,૧૦,૧૮૫/- પ્રતિવાદી પાસેથી વસુલ લેવાના બાકી નીકળે છે.?
૨. શું વાદી માંગ્યા મુજબ વ્યાજ મેળવવા હક્કદાર છે ? જો હા તો કેટલા દરે ?
૩. શું વાદી માંગ્યા મુજબ દાદ મેળવવા હક્કદાર છે ?
૪. શું હુકમ અને હુકમનામું ?

5. My findings to the above issues are as under:

1. In Affirmative,
2. In Affirmative, @ 7%.
3. In Affirmative,
4. As per final order.

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

7. **Issue No. 1 to 3:**

To avoid the repetition of facts, I hereby find it necessary to discuss all issues together.

8. In the present matter, plaintiff has filed his examination-in-chief as per the provisions of Civil Procedure code in written in the form of affidavit at **Exhibit 18**. In support of the affidavits, plaintiff had produced documents vide **exhibit 20 to 34**. Perusing the evidence on oath, the said evience is not challenged by the defendaants. In that scenario, the burden solely lies upon the plaintiff to prove his case through documentary evidences. Perusing **exhibit 20**, it transpires that it is form for loan worth **Rs.8,00,000/- (Eight lakhs only)**. It is also evident that a term loan of **Rs.8,00,000/- (Eight lakhs only)** was sanctioned by the plaintiff bank which is evident from **exhibit 21**. Also, the plaintiff had submitted the ledger of loan account details which is evident to show that a sum of **Rs.8,00,000/- (Eight lakhs only)** was transferred to the defendant number 1 and 2 as loan. Thus, it transpires that the amount of **Rs.8,00,000/- (Eight lakhs only)** was granted to the

defendant number 1 and 2 and defendant number 3 and 4 stood as guarantor of same.

10. Now, taking into consideration, the ledger account, it transpires that amount of **RS.8,10,185/- (EIGHTLAKHS TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE ONLY)** was due on defendants. Therefore, perusing the oral evidence led by the plaintiff there is nothing to disbelieve the contentions that the defendant number 1 and 2 took loan and with interest **RS.8,10,185/- (EIGHT LAKHS TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE ONLY)** was due on defendants on 31/05/2007. The say of the plaintiff in suit as well as in written affidavit of examination-in-chief at **exhibit 18** is not challenged by the defendants. The defendants have not produced any documentary and oral evidence in support of their case.

11. The plaintiff has claimed the interest at the rate of **13.5%** annually. The plaintiff had submitted that the said loan was given to the defendant number 1 and 2 at the interest rate of **11.5%**. Nothing is brought on record by the plaintiff to state that any penal interest will be applicable, if the loan is not

paid back. Therefore, this court is of the view that in absence of any written agreement of penal interest, the prayer cannot be granted accordingly. Thus, if 7% p.a. of interest would be awarded, then it will be just, proper and in the interest of justice. Therefore, this court hereby answers all the issues are in the affirmative. Issue number 5 shall follow the order:

-:: O R D E R ::-

- The plaintiff's suit against the defendant is hereby allowed partially.
- The plaintiff is entitled to recover the amount of **RS.8,10,185/- (EIGHTLAKHS TEN THOUSAND ONE HUNDRED AND EIGHTY FIVE ONLY)** from the defendants along with the interest at the rate of 7%. p.a., thereon from the date of filing of the suit till its realisation.
- Parties should bear their own cost.
- Decree be drawn accordingly.

Signed and Pronounced in open court today on this **6th** day of **December** month of year **2018**.

Date : 06-12-2018.
Place: Anand.

(Jyotiben Raghuvirsinh Dodiya)
Principal Sr. Civil Judge,
Anand.
(UIC NO. GJ00637)