Filing Date	**:**	**18-02-2021**
Registered Date	**:**	**18-02-2021**
Deciding Date	**:**	**29-09-2023**
Duration	**:**	**D: M: Y:**

IN THE COURT OF 2nd ADDITIONAL SENIOR CIVIL JUDGE, BHARUCH.

Regular Civil Suit No.: 57/2021

Exh.:

Plaintiff : Shri Narsinh Kumar, Assistant Manager
of State Bank of India, RASECC,
Resident: RASECC, Near Rang Multiplex,
Zadeshwar Road, Bharuch.

V/s.

Defendant : Sunilkumar Vasantlal Ramjiwala,
Age: Adult, Occupation: Business,
Shop at: Shop No. 102, Akshardham Apartment
Zadeshwar Road, Bharuch.
Residing at: Flat No.16, Gayatri Flat,
Maktampur, Bharuch.

Sub :-Suit for Recovery of Rs. 6,71,328/-

Ld. Adv. Ms. P. H. Thakar for the plaintiff.
Ex-parte against the defendant.

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

Brief fact of the suit :

1. The plaintiff bank is an authorized banking organization. The plaintiff's bank engaged in banking services and different types of loan facilities. The plaintiff's branch situated at RASECC, Bharuch & Mr. Narsinh Kumar, Assistant Manager, is an authorized person for this case.

Plaintiff plead that the defendant resides at the address mentioned in the title of the suit and has applied to get a term loan in the plaintiff's bank on date 01/11/2018, after approval the plaintiff bank has sanctioned a term loan of Rs. 4,00,000/- in favour of the defendant.

Plaintiff plead that the defendant has defaulter to pay the loan installments of plaintiff's bank. Hence, the total outstanding amount of Rs. 6,71,328/- till date against the loan. Therefore, the plaintiff has informed the defendant for outstanding amounts but however, the defendant has not paid any amount till now.

Plaintiff plead that the defendant was agreed to pay the loan amount with interest. Still he has not paid any amount. The plaintiff bank mostly contacted the defendant to clear the outstanding loan amount. But he will given only assurance to pay amounts not paid any amount. Thereafter, the defendant has not given proper reply regarding payment of loan amounts. It seems that defendant wants to cheat and fraud with plaintiff's bank. Therefore, the plaintiff has filed this case against the defendant regarding recovery of loan amount.

Plaintiff plead that he has requested so many times to the defendant for make the payment of such amount, however the defendant has not paid the said amount so far. Thenafter, the plaintiff on date 20/01/2021 has sent a legal notice to the defendant through registered post for payment of such amount which has got by the defendant but he has not paid any amount till now against outstanding loan amount. Therefore, the cause of action has arisen on that date. This suit is not barred by law of limitation.

Plaintiff prayed to recover Rs.6,71,328/- along with cost of this suit from the defendant.

2. While service of the summon to defendant vide Exh.06. Further a public notice was issued in local newspaper of Sandesh of Bharuch edition on 31st July, 2022. The defendant did not appear in the court, hence, the rights of the defendant to file written statement was closed.

3. The plaintiff has produced evidence in support of his pleading as under:

Plaintiff's Oral evidence :

Sr. No.	Exhibit	Deposition
1.	19	Examination in chief of the plaintiff Shri Narsinh Kumar(Assistant Manager).

Plaintiff's documentary evidence :

Sr. No.	Exhibit	Particulars of document
1.	15	Zerox copy of Notice through Ld. Advocate.
2.	16	Zerox copy of defendant's statement of account.
3.	17	Zerox copy of Loan Agreement.
4.	18	Public Advertisement in local Newspaper on 31/07/2022.

The plaintiff has produced closing pursis vide Exh.20.

4. Plaintiff has produced the evidences vide Exhs.-15 to 18 and closing pursis at Exh.-20. In absence of defendant his cross examination's right has been closed by this court on dt.27/09/2022.

5. The plaintiff has produced documents vide Exhibits-15 to 18 as well as examination-in-chief vide Exh.-19 but defendant has not produced any evidences.

6. For final disposal of the suit my predecessor judge has framed issues at Exh.-12 which are as under :

ISSUES

1. Whether the plaintiff proves that the defendant has taken a term loan of Rs. 4,00,000/- from them?

2. Whether the plaintiff proves that the defendant has executed all the documents in favour of the plaintiff bank with respect to the loan given by them?

3. Whether the plaintiff proves that the amount of Rs. 6,71,328/- is due from the defendant?

4. Whether the plaintiff is entitled for interest on the due amount?, if affirmative, at what rate?

5. What Order and Decree?

7. My reasons and answers for aforesaid issues are as under.

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

Issue Nos.1 & 2:

8. Ld. Advocate for the plaintiff Ms. P. H. Thakar argued that

plaintiff is a Nationalized Bank and it is engaged in the business of public money. She further argued that defendant has taken the term loan from the plaintiff's bank while executing mortgage and other related documents. She further argued that after verified all the documents bank has sanctioned the loan of Rs. 4,00,000/-. She further argued that defendant had not paid any loan installment, therefore, plaintiff has sent a legal notice to the defendant vide Exh.15 but defendant fail to repay the loan amount and interest hence plaintiff has filed the suit. Ld. Advocate for the plaintiff further argued that all the relevant document is produced by the plaintiff at Exh.15 to Exh.17 and bank manager has deposited on oath vide Exh.19. According to the plaintiff's document vide Exh.17 i.e. Loan Application, it seems that defendant has applied for a term loan and agreed to pay loan amount with interest. In the application the defendant has signed all the papers of loan application with hypothecation letter. Ld. Advocate argued that though for summon was published vide Exh.18 in local newspaper Sandesh on date 31/07/2022 but defendant has not appeared before this court neither cross-examined, the plaintiff's witness and nor challenge the plaintiff's contention as well as document produced by the plaintiffs hence adverse inference can be drawn and suit be decree in favor of the plaintiffs. Therefore, in the interest of justice my answers for issue no. 1 as well as issue no.2 are in affirmative.

Issue No.-3

9. According to the plaintiff's document vide Exh.16 i.e. defendant's statement of account, it seems that defendant has applied for a term loan and defaulter in paying the loan with interest. In the application the defendant has signed all the papers of loan application with hypothecation letter. The defendant was agreed to pay the loan amount with interest. Therefore, it proves that defendant is a defaulter for paying loan amount with interest of plaintiff's bank. Therefore, my answer for issue no. 3 is affirmative.

Issue Nos. 4 & 5:

10. The plaintiff is nationalized bank, he has given term loan which is not paid by the defendant and these issues are proved by the plaintiff. Plaintiff is the Nationalized Bank and it is entitled to get interests from the defendant but plaintiff is not get the interests at the rate of 18% p.a. because it is not contractual interest. Therefore, plaintiff is entitle to get the interest at the 7% p.a. of the said amount from filing of the suit to realization of the suit amount. Therefore my answer for issue no. 4 is partly in affirmative and partly in negative and I pass the following order for issue no.5 as under:-

:Final Order:

1. Plaintiff's this Regular Civil Suit No. 57/2021 is partly

allowed.

2. Defendant is directed to pay Rs.6,71,328/-(Rs. Six Lacs Seventy One Thousand Three Hundred Twenty Eight only) within 3 (three) months with 8% per annum interest to the plaintiff till its realization.

3. The defendant has to pay the cost of this suit to the plaintiff.

4. Decree be drawn accordingly.

This order is signed and pronounced in the open court today on 29th day of September, 2023.

Date :- 29/09/2023.
Place :- Bharuch.

Eng. Steno: Ashutosh

(Geetaben Manubhai Ahir)
2nd Additional Senior Civil Judge,
Bharuch. UIC : GJ00808