MHSN05000204-2023

Received on	:	24.07.2023.
Registered on	:	24.07.2023.
Decided on	:	02.05.2025.
Duration- **01** Ys.**09** Ms.**08** Ds.		

IN THE COURT OF 3rd JOINT CIVIL JUDGE, JUNIOR DIVISION, ISLAMPUR, DISTRICT SANGLI.
(Presided over by Pankaja P. Ajgaonkar)

Regular Civil Suit No. 422/2023
Exhibit No.

State Bank of India,
Branch at Islampur, Through
Mr. Chandrashekhar Soudagar Didhe
Age – 36 yrs., Occ. Service,
R/o. Islampur, Tq. Walwa,
Dist. Sangli (A Corporation
Constituted under State Bank
of India Act, 1955). } **Plaintiff**

V/s.

Smt. Sunanda Uttam Mulik,
Age – 45 yrs, Occ. Agriculture,
R/o. 2073, Ahir Mulik Lane Parisar,
Walwa, Tq. Walwa, Dist. Sangli. } **Defendant**

G. S. Kapashikar, Advocate for the plaintiff.
Defendant – Exparte

JUDGMENT
(Delivered on 02.05.2025)

This is a suit for recovery of loan amount.

Panjaka P. Ajgaonkar

3rd Jt.C.J.J.D., Islampur

2. The Plaintiff's case, in brief is as under :-

State Bank of India, Br. Islampur, Tq. Walwa, Dist. Sangli constituted under State Bank of India Act 1955 and having Br. Office at Islampur and Branch Manager is head of the branch and authorized to file suit on behalf of plaintiff State Bank of India. The defendant is borrower. She is residing at Walwa and having movable & immovable property there. On request of defendant, plaintiff bank sanctioned her loan of Rs.3,80,000/- (BR ATL Other AGL Finance Loan) with interest 12.30% p.a. Which was to be repaid as mentioned in the letter of Terms and Conditions and the interest accrue was to be paid from time to time and if defendant fails to fully repay the loan amount. At present Rs.54,224/- (Rs. Fifty four thousand two hundred twenty four only) plus 13.30% interest till the legal notice. So legal demand notice was sent on 12.06.2023 through advocate. Despite that, defendant failed to pay the amount.

3. The plaintiff prayed for recovery of amount of Rs. 54,224/- + interest 13.30% p.a. from the date of 10.05.2013 till realization of whole amount. Hence, the suit.

4. Suit summons duly served on defendant vide Exh.5. But, even after sufficient opportunities, the defendant failed to appear before the court. Hence, on 06.05.2024 “Ex-parte” order passed against him and suit proceeded further.

5. Considering pleading of the plaint and documents on record, following points arose for my determination. The points for determination along with my findings thereon for the reasons stated thereafter are as under :

	POINTS		FINDINGS
1.	Does the plaintiff prove that, the defendant obtained loan of Rs.3,80,000/- from the plaintiff bank ?		In the affirmative.
2.	Does the plaintiff prove that, it is entitled to recover loan amount 54,224/- along with future interest @ 13.30% p.a. ?		In the partly affirmative.
3.	Whether suit is within limitation ?		In the affirmative.
4.	What would be an amount and at what rate and from whom ?		As per final order.
5.	What order and decree	Suit is partly allowed.	

6. In support of its case the plaintiff examined Mr. Chandrashekhar Soudagar Dighe as P.W.1 at Exh.8. So also the plaintiff relied upon the documents produced along with list of documents (Exh.3) at Sr. No.1 – Loan application, 2. Letter of agricultural finance crop/term loan, 3. Hypothecation Agreement, 4. Declaration form, 5 to 7 revival letter of defendant, 8. copy of Legal notice, 9. R.P.A.D. receipt, 10. Notice acknowledgment, 11. Account statement of defendant, 12. Authority letter of Manager (Exh.10 to 19 respectively) and filed evidence close pursis at Exh.9.

R E A S O N S

AS TO ISSUE NO.1:-

7. Heard learned advocate Smt. G.S. Kapashikar for the plaintiff. The learned counsel for the plaintiff argued that the evidence adduced by plaintiff on affidavit and documents produced by him are remained unchallenged and therefore there is no reason to disbelieve the case of plaintiff. She further argued that if a person, who is party

Panjaka P. Ajgaonkar

3rd Jt.C.J.J.D., Islampur

to suit, is not entering into witness box then the court can draw adverse inference against said person. She further argued that the defendant did not turn up before Court and therefore, an inference can be drawn that the claim made by the plaintiff is correct one. Despite sufficient opportunities, none argued on behalf of the defendants.

8. No doubt, when a person, who is party to suit, does not enter into the witness box, a presumption may be drawn against that person. In this suit, summons duly served on the defendant, but, she failed to appear before the court and adduce her evidence. Hence, by passing exparte order, suit proceeded exparte against her. In present case, the defendant did not turn up before the Court and therefore, there is no defence in present proceeding on behalf of defendant. The absence of party to suit may be a ground for strengthening the case of other side as the case remains unchallenged, but the initial burden always lies on the person who wants the Court to believe existence of certain facts. Merely because a party did not appear in Court, it would not mean that the person claiming relief is exempted from adducing such evidence on record which must be of such a nature that the Court can act upon his evidence so as to believe the existence of certain facts. Therefore, if the evidence adduced by the plaintiff does satisfy the court to believe the existence of certain facts, then such evidence would not be helpful to the plaintiff in establishing his claim even if it has not been challenged by the other side. Therefore, the plaintiff has to prove his own case by adducing believable evidence and his case cannot be said to be acceptable merely because it has not been challenged by other party to suit.

Panjaka P. Ajgaonkar

3rd Jt.C.J.J.D., Islampur

9. Therefore, the initial burden always lies on the plaintiff to establish his own case by adducing reliable evidence and thereafter only he can claim benefit of nonappearance of other side in proceeding for strengthening his case. Thus, now, it will have to be seen whether the evidence adduced by the plaintiff is sufficient to accept its contentions.

10. The witness of the plaintiff bank have reiterated entire contents of the plaint (Exh.1) in his affidavit of examination in chief. So, it is not reproduced again. Though sufficient opportunities were given to the defendant for cross-examination of the witness of the plaintiff bank, she failed to do so. So due to absence of defendant and due to non cross-examination his testimonies remained unchallenged.

11. As far as this issue is concerned, it is the contentions of the plaintiff bank that, defendant has obtained agricultural loan total Rs.3,80,000/-, out of it Rs.54,224/- is due from her. This fact has been deposed by the witness of the plaintiff on oath. So also this fact is clear from documents relied upon and produced along with list of documents (Exh.3) at Exh. Nos.10 to 19 respectively. As the testimonies of the witness of the plaintiff are supported by documentary evidence and is remain unchallenged. I have no hesitation to hold that the plaintiff has proved that the defendant has obtained a Agriculture loan i.e., total Rs.54,224/- in the year 2023. Hence, in the result I answer **issue nos.1 in the affirmative**.

AS TO ISSUE NO.2 :-

12. As far as this issue is concerned, it is the contention of the plaintiff bank that on 10.05.2013 Agriculture Credit loan Rs.3,80,000/- out of it Rs.54,224/- was due and recoverable from the defendant as principle amount. This fact is also contended by the witness of the plaintiff and is very well supported by the documentary evidence and account extract (Exh.22). The defendant did not appear for cross-examination of the witness of the plaintiff. Therefore, testimony of the plaintiff witness remained unshattered. So I have no reason to discard the testimony of the witness of the plaintiff. Though, the defendant was having opportunity to discard his testimony. But, she failed to do so. Therefore, an adverse inference is required to be raised against her vide Section 114 of the Indian Evidence Act. Hence, I hold that plaintiff bank is entitled to recover total amount of Rs.54,224/- from the defendant. However, on perusal of the letter of agricultural finance (Exh.11) it shows that the rate of interest is not mentioned in the interest column. Therefore as per civil procedure code when rate of interest is not mentioned in contract , and the transaction between plaintiff and defendant is commercial transaction, then Sin my opinion 7% rate of interest may be allowed. Hence, I answer **issue no.2 in the partly affirmative**.

AS TO ISSUE NO.3 :-

13. As far as limitation is concerned, the plaintiff bank had issued last notice to the defendants on 12.06.2023 and it was accepted by the defendant. Hence, from that date suit is within 3 years. Hence, it is well within limitation. Hence, I answer this issue **in the affirmative**.

Panjaka P. Ajgaonkar

3rd Jt.C.J.J.D., Islampur

As to Issue No. 4:-

14. In view of discussion of issue nos. 1 to 3, the suit is required to be decreed. The defendant failed to deposit the amount. So the plaintiff is constrained to file suit. Hence, the plaintiff is entitled to cost of the suit from the defendants. Hence, plaintiff is entitled to get cost of the suit from the defendants. Hence, I answer issue no.4 accordingly and in the answer to point no.5, I proceed to pass the following order.

O R D E R

1. Suit is partly decreed with costs as under.

2. Defendant is liable to pay loan amount of Rs.54,224/- (Rs. Fifty four thousand two hundred twenty four only) to the plaintiff along with further interest at the rate of 7% per annum from the date of institution of this suit, till its entire realization.

3. Decree be drawn up accordingly.

DISTRICT COURTS MAHARASHTRA

Digitally signed by PANKAJA PRASAD AJGAONKAR
Date: 2025.05.09 17:58:15 +0530

(Pankaja P. Ajgaonkar)
3rd Jt Civil Judge Jr.Dn.,
Islampur, Dist. Sangli.

Islampur.
Date : 02.05.2025

- : C E R T I F I C A T E : -		
I affirm that the contents of this Pdf file order is same word as per original order.		
Name of Stenographer	:	Satish N. Pethkar,
Court Name	:	Pankaja P. Ajgaonkar, 3rd Jt. Civil Judge (J.D.) and J.M.F.C., Islampur
Date of decision	:	02.05.2025.
Order signed by P.O. on	:	02.05.2025.
Order uploaded on	:	09.05.2025.