Received on : 08.01.2018

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Decided on: 11.05.2018

Duration: D M Y

Ex No.

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT SURENDRANAGAR

Special_Civil Suit No.1/18

State Bank of India,
Constituted Corporation under the
State Bank of India Act-1955,
Sarla Branch, Tal. Muli,
Dist. Surendranagar. ...**Plaintiff**

V E R S U S

1. Mashrubhai Jesingbhai Chitra
   Aged about 45 years,
   Occu. Agriculture,
2. Hathisingbhai Jesingbhai Chitra
   Aged about 47 years,
   Occu. Agriculture,
3. Dhirubhai Jesingbhai Chitra
   Aged about 50 years,
   Occu. Agriculture,
4. Bajuben Jesingbhai Chitra
   Aged about 70 years,
   Occu. Agriculture,
   All resi.at Kalmaad,
   Tal. Muli, Dist. Surendranagar. **...Defendants**

L.As. Mr. D.G. Chudasama & Mr. Y.V. Mehta for the Plaintiff

Sub.:- Suit for recover of Rs.5,20,796/-

J U D G M E N T

1. **The facts of the case of the plaintiff be narrated as under.**

A. The State Bank of India, Constituted Corporation under the State Bank of India Act-1955, Sarla Branch, Tal. Muli, Dist. Surendranagar has filed this suit through its manager which is registered as special civil suit to recover the amount of Rs.5,20,796/- from the defendants.

B. It is the case of the plaintiff that the defendant had applied for the Crop Loan(K.C.C.) the State Bank of India and loan of Rs of Rs.3,00,000/- has been advanced to the defendant at the rate of interest. For said loan the defendant and guarantor has executed hypothecation agreement in favour of the plaintiff. Further it is the case of the plaintiff that necessary charge and loan documents are executed in favour of the plaintiff by the defendant. The defendant was obliged to repay loan amount as per agreement executed in favour of the plaintiff. As, the defendant has not re-paid said loan amount as per agreement between the parties and the defendant has not taken care to repay the loan amount plaintiff has issued notice to the defendant but he has failed to pay the due amount of the plaintiff till filing of this suit. Hence, the plaintiff has prayed for a decree of due amount of Rs.5,20,796/- along with interest from the date of filling of this suit till realization of the dues from the defendant.

2. After institution of this suit summons/notice/process are served to defendant and defendant has appeared before the Court and has engaged advocate, but after that defendant has not filed written statement/objection. Hence right to file written statements/objections of defendant is closed. Then after framing of issues ones more this court has issued notice to the parties then on behalf of defendant only some formal cross examination is made on behalf of defendant. Considering the cross examination on the part of the defendant no any substantial evidence regarding denial of the claim of the plaintiff is put on record. After that defendant has not given any oral as well as documentary evidence for denial of the claim made by the plaintiff and hence right to file evidence of defendant is closed in this proceeding, which is proceeded as per the prescribed

procedure of law.

3. **Evidence;- Following evidence has been adduced by the plaintiff in the form of oral as well as documentary.**

A. Oral Evidence of the plaintiff;-

1. Affidavit of Kanaksinh S. Parmar at Ex-11

B. **Documentary Evidence of the plaintiff;-**

1.	Copy of loan application form	at Ex-13
2.	Copy of Loan Sanction Letter	at Ex-14
3.	Copy of Hypothecation Agreement	at Ex-15
4.	Copy of Letter of Arrangement	at Ex-16
5.	Copy of Annexure-A	at Ex-17
6.	Copy of Revival Letter	at Ex-18
7.	Copy of Statement of Loan Account	at Ex-19
8.	Copy of Village Form No.8-A Account No.141	at Ex-20
9.	Copy of Village Form No.7/12 R.S. No.56/2	at Ex-21
10.	Copy of Village Form No.7/12 R.S. No.142/2	at Ex-22
11.	Copy of Village Form No.7/12 R.S. No.300	at Ex-23
12.	Copy of Village Form No.7/12 R.S. No.339/pai1/7	at Ex-24
13.	Copy of Election Card	at Ex-25

A. Evidence of the Defendant;- The defendants have not adduced any evidence.

4. After considering the material proposition of facts as well as law following issues have been framed at Ex-7.

/// મુ દા ///

૧) શું વાદી સાબીત કરે છે કે પ્રતિવાદીઆ.એ વાદી બેંકમાંથી તાઃ ૧૬–૦૬–૨૦૧૨ ના રોજ રુ.૩,૦૦,૦૦૦/૦૦ ની પાક ધિરાણ અંગેની લોન લીધેલ છે અને પ્રતિવાદીએ વાદી બેંકની તરફેણમાં લોન દસ્તાવેજ, હાઈપોથીકેશન એગ્રીમેન્ટ, લેટર ઓફ એરેજમેન્ટ , રીવાઈટલ લેટર વિગેરે કરી આપેલ છે ?

૨) શું વાદી સાબીત કરે છે કે, તેઓની , પ્રતિવાદી પાસેથી વ્યાજ સાથે , પાક

ધિરાણની લોનની રકમ પેટે રૂા.૫,૨૦,૭૯૬/૦૦ ની લેણી રકમ બાકી નીકળે છે?

૩) શું વાદી લેણી રકમ પર વ્યાજ મેળવવા હકકદાર છે ? જો હા તો કેટલા ટકાના દરે ?

૪) શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

૫) શું હુકમ અને હુકમનામુ ?

5.My findings on the above issues are as under.

1.**હકારમાં**

2.**હકારમાં**

3.**હકારમાં**

4.**હકારમાં**

5.**આખરી હુકમ મુજબ**

R E A S O N S

6. Argument;-

L.A. Mr. D.G. Chudasama and Mr. Y.V. Mehta for the plaintiff has argued that as per oral as well as documentary evidence which is on record the plaintiff proves the fact of taking loan by the defendant, but the defendant has not taken care to re-pay the outstanding loan amount even he has neither remained present before this court nor has filed any reply to the suit and therefore the suit of the plaintiff may please be decreed as prayed.

7. Considering the entire record oral and documentary evidence to prove its case the plaintiff has examined witness, Kanaksinh S. Parmar at Ex-11 and during the deposition and proceedings of this case document Ex-13 to 25 are produced in support of the claim of the plaintiff, who is Branch Manager of the Bank. He has deposed that he has knowledge of the transaction. The defendant has admitted the liability to pay all the dues of the plaintiff by executing document Ex-13 to Ex-25 and the defendant has executed hypothecation agreement thus the defendant stood guarantor for the repayment of loan amount with interest within stipulated time. At the time of deposition he had deposed that the defendant has executed documents in favour of the plaintiff and it also shows the liability of the defendant

for payment of outstanding amount in question and since the witness is not been materially cross examined by the defendant and the defendant has not remained present before this court for denial of the claim by the plaintiff therefore deposition of the witness and documentary as well as oral evidence on record are remained unchallenged.

8. At this stage, considering the judgment of Hon'ble Supreme Court reported in AIR 1977, Hon'ble Supreme Court has established that when any persons has taken the loan from bank, is proved by the documentary as well as oral evidence in that circumstances objections like authorized officer has not signed plaint or affidavit are not to be considered, the court has to see that whether evidence is such that decree can passed and plaintiff has proved his case. Thus, procedural irregularities are not to be considered.

9. **At this stage considering the judgment In case of Vidhyadhar V/S Manik Rao reported in AIR 1999 S. C. Page no 1441**

"Evidence Act, 1872 - Secs. 3 & 114 - Civil Procedure Code, 1908 - Order 17, Rule 3A - When a party to the suit does not step into the witness-box nor offer himself for cross-examination, presumption would arise that his say is not correct.

Transfer of Property Act, 1882 - Sec. 54 - Once a sale-deed is executed and ownership is transferred part-payment of consideration would not vitiate the sale - In present case, one of the defendants had executed complete sale-deed, findings of the High Court held to be erroneous.

Thus Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh & Anr.1. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh & Ors.2 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh3. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat4 also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath & Anr.5 held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand & Ors.6, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box".

10. While considering the grant of interest Section 34 of CPC is to be seen.

"**34. Interest.-** Where and insofar as a decree is for the payment of money, the court may, in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjusted, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit,(with further interest at such rate not exceeding six per cent, per annum as the court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

(provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I.- In this sub-section, "nationalised bank means a corresponding new bank as defined in the Banking Companies(Acquisition and Transfer of Undertakings) Act, 1970(5 of 1970)

Explanation II.- For the purpose of this section, a transaction is a commercial transaction, it is concerned with the industry, trade or business of the party incurring the liability.)

(2) Where such a decree is silent with respect to the payment of further interest(on such principal sum) from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest and separate suit therefore shall not lie.

Considering the above Section 34 with the case on hand transaction in case on hand is not of the commercial nature. In that circumstances, interest can be more than 6%. Considering the facts of the case on hand, while granting loan, loan documents are executed by defendant. On considering these documents there is contract between the bank and the debtor i.e. plaintiff and defendant which clearly indicates that there is contract between bank and debtor and debtor is oblige to pay contractual interest, hence I give findings of the issue regarding interest in partly affirmative.

11. Thus, it is crystal clear and established from the evidence that the defendant has taken loan from the plaintiff bank and executed the loan agreement in favour of the plaintiff bank and looking to the statement of loan account, it appears that the amount of Rs.5,20,796/- is due.

It has proved that as per agreement with plaintiff the plaintiff is entitled to interest at the rate of 12.75% from the defendant on the loan amount as he has agreed with to re-pay the loan amount with the minimum interest of 12.75% as per the terms & conditions of the loan documents, it seems from the loan agreement that there is contract regarding interest hence the plaintiff is entitled to recover outstanding amount with interest of 12.75% per annum and considering the same I give my reply of Issues No. 1 to 4 in the affirmative and so far as point No. 5 is concerned I pass the following order.

<u>O R D E R</u>

1. The suit of the plaintiff is hereby allowed.

2. The defendant is hereby ordered to pay Rs.5,20,796/- along with interest at the rate of 12.75% per annum from the date of filing of this suit till the realization.

3. The defendant shall bear his own costs and pay the costs of this suit to the plaintiff.

4. Decree be drawn accordingly.

Pronounced in open court today on 11th day of May, 2018.

Place;- Surendranagar
Date:11/05/2018

(Kamal R. Pandya)
Principal Senior Civil Judge
Surendranagar.
Code No. GJ 00739