IN THE COURT OF MRS RADHIKA LIKHI P.C.S., CIVIL JUDGE (JUNIOR DIVISION) MOGA.

Civil Suit No.1073
Date of Institution:19.7.2022
Date of Decision:06.11.2023
CIS No. CS-1073/2022
CNR No.PBMO020014422022

Union Bank of India Company Constituted under the banking Companies (Acquisition & Transfer of Undertakings Act 1970) & Governed undzer Banking Regulation Act having its Head Office at 239, Vidhan Bhawan Marg, Nariman Point, Mumbai, Amalgated with Corporation Bank and branches all over India out of which is one at LIC Building, GT Road Moga, through its authorized Ripan Kumar.

------Plaintiff.

Versus

1- Paramjit Kaur w/o Gurmel Singh s/o Bara singh
2- Inderjit Singh s/o Gurmel Singh s/o Bara Singh
both are residents of House No.39, Village Ramuwala Kalan Tehsil and District Moga.
3- Roop Singh son of Niranjan Singh R/o House No.16, VPO Ramuwala Kalan Tehsil and District Moga.

----------Defendant.

Mortgage Suit for the recovery of ₹.2,53,622/- (₹.Two Lacs Fifty Three Thousand Six Hundred Twenty Two only) including interest up to filing of suit and future interest @ ₹.7.00% per annum with half yearly rests alongwith penal interest @ ₹.2% PA against the defendants secured by a mortgage and immovable property by way of sale of standing and grown crops, machinery and mortgage property of deceased Gurmel Singh.

Land measuring 12 Kanals 04 Marlas as per detail below:

1-Land 03 Marlas being 3/37 share of 01K-17M bearing Khasra No.186(1-11), 187(0-6), Khewat No.26,

2-Land 01K-08M being 1/12 share of 16K-18M bearing Khasra No.33//4/5(2-4), 66//1(7-11), 11(7-3), Khewat No.25-

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3-Land measuring 05K-05M being 1/12 share Khewat No.25-24 bearing Khasra No.439//15/2(4-0), 17(8-0), 18(8-0), 62//3(8-0), 4/1(5-7), 5/2(4-0), 63//1(1-13), 48//20/2(0-18), 21(7-2), 49//16(8-0), 25 (8-0), Khewat No.27.

4- Land measuring 05K-8M being ½ share of 65K-12M bearing Khasra No.67//4(7-4), 62//5/1(3-18), 49//8/1(0-19), 8/2/1(2-3), 49//9/1(3-16), 67//14/1Min (4-10), 14 Min (3-10), 49//7(7-11), 14 (8-0), 6 (7-11), 24 (8-0), 67//13(8-0), Khewat No.29-30, situated at village Ramuwala Kalan District Moga.

AND

By sale of other movable and immovable properties of defendants.

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Present:Shri KK Gupta Advocate, Counsel for the plaintiff.
Defendants exparte.

JUDGMENT:

1- Plaintiff bank has filed the present suit for recovery of ₹.2,53,622/- on account of principal, interest, as prayed for.

2- As per plaintiff, deceased Gurmel Singh had approached the plaintiff bank formerly Corporation bank for grant of facility of ₹.3,00,000/- in the month of August 2013 by way of cash credit for raising of crop, existing or in future for raising of live stock, repair and maintenance of equipment/machinery and for non activities and submitted application dated 05.9.2013 which was sanctioned on the same day which was duly acknowledged and accepted by deceased Gurmel Singh. In order to avail the said facility, deceased Gurmel Singh executed mortgage deed of immovable property as security with I nterest for the due repayment of loan advanced with interest vide Vasika No.3784 dated 21.8.2013 which was got registered in the Office of Sub Registrar Moga and entry thereof was made in the revenue record at Serial No.395 dated 23.8.2013 by the revenue authority. Deceased Gurmail Singh had also executed DP Note, Take Delivery Letter to DPN, Letter of Undertaking and Common Deed Hypothecation Agreement dated 05.9.2013 in favour of plaintiff vide which he agreed to hypothecate the standing crops, macnhinery and further agreed to repay the utilized amount in lump sum alongwith at the rate of ₹.7.00% per annum with half yearly rests after harvesting of each crop and could avail of the limit for the next crop after the return of the loan amount. Defendant No.2 stood guarantor for the loan to be availed by the deceased Gurmel Singh. He had executed agreement of guarantee dated 05.9.2013 in favour of plaintiff bank. So, defendant No.2 is jointly and severally liable to pay the dues of plaintiff bank. Plaintiff bank repeatedly requested Gurmail Singh During his life time and after his death to his legal heirs to make the payment but they failed to do so. They did not adhere to the financial discipline of the plaintiff bank and ultimately their account was termed as NPA on 21.6.2021. After adjusting the debit and credit entries, there was a debit balance of ₹.2,49,945.40/- in the said account which includes interest upto 21.6.2021. The interest in the above said account after classified NPA upto filing of suit comes to ₹.33676.80 out of which ₹.31698/- are debited and ₹.1978/- to be debited and ₹.30,000/- amount deposited after NPA. Thus, plaintiff bank is entitled to ₹.2,53,622/- from defendants jointly and severally alongwith interest @ ₹.7% PA with half yearly rests alongwith ₹.2% penal interest from the date of filing of suit till realization of whole amount. Defendants had executed Balance of Security of documents on 20.6.2016 in favour of plaintiff bank and acknowledged his liability to pay the outstanding amount regarding said loan. Now amount total amount including interest is due ₹.2,53,622/- towards the defendants. Since defendants failed to pay the above said amount, this necessitate filing of the present suit.

3- Notice of the suit was given to the defendants. They had appeared through their ld. Counsel Sh. BS Gill Advocate and case was fixed for filing of written statement but thereafter did not appear and consequently they were proceeded against exparte vide order dated 28.9.2022.

4- In exparte evidence, plaintiff bank has examined Amit Kumar Branch Manager/Principal Officer as PW-1. Through his affidavit Ex.PW1/A, he has reiterated the version of plaint on oath and also proved documents i.e. Authorization Letter Ex.P1, Original Loan application Ex.P2, Sanction Letter Ex.P3, Mortgage Deed Ex.P4, its endorsement Ex.P4/A, entry of Rapat Ex.P5, Jamabandi Ex.P6, DP Note Ex.P7, Undertaking Ex.P9, Common Deed Hypothecation Agreement ExP10, Guarantee Deed Ex.P11, Statement of account Ex.P12, Balance Confirmation Letter Ex.P13.

5- According to Section 101 and 102 of the Indian Evidence Act,1872 the burden was upon the plaintiff to prove the fact that it is entitled to the relief of the recovery, as prayed in the head note of the plaint, from the defendants.

6- At the preliminary stage, I find it apposite to ascertain the maintainability of the suit from the perspective of the Limitation Act, 1963. In the present case, the loan was sanctioned to the defendant on 05.9.2013 and subsequently cause of action arose to the plaintiff on 21.6.2021 when the account was declared Non Performing Assets whereas the present suit was filed on 19.7.2022, that is, within 03 years and as such, the suit has been filed within the statutory period of limitation.

7- In order to discharge the burden, plaintiff has placed predominant reliance the testimonies of PW1 Amit Kumar, Branch Manager of the plaintiff bank who have proved the above said documents **Defendants,** in order to rebut the claim of plaintiff, have not come forward meaning thereby they have nothing to say but to block the public money. Thus, this Court, therefore, observes that on the force of the afore referred oral and documentary evidence so adduced, the plaintiff has been able to prove that the plaintiff bank is entitled to recover the amount of ₹.2,53,622/- alongwith interest from defendants as is clear from the statement of account Ex.P12, which has been prepared by a responsible officer of the plaintiff bank. So, the genuineness of the same can not be doubted. Further, the liability of both defendants joint and co-extensive.

8- As a final upshot to the foregoing determinations, the suit of plaintiff stands decreed exparte with costs and it is concluded that the **plaintiff bank is entitled to recover an amount of ₹.2,53,622/- from defendants.** Plaintiff is allowed interest at the rate of ₹.7.00% PA with half yearly alongwith penal interest @ ₹.2% PA from the date of filing of suit till the realization of the entire decretal amount. Defendants are directed to pay the decretal amount within two months from today failing which this decree shall be treated as final decree in terms of Order 34 CPC and plaintiff bank shall be entitled to recover the decretal amount alongwith interest whatsoever by way of sale of mortgaged property and sale of hypothecated standing crops as well as from the other assets of defendants. The liability of all the defendants is joint and several to pay the decretal amount. Decree sheet be prepared and file be consigned to the Record Room after due compliance.

Pronounced:
06.11.2023
bs sandhu steno

(Radhika Likhi, PCS).
Civil Judge (Jr.Division) Moga.
UID No.PB0597.

BHUPINDER SINGH
"I attest to the accuracy and authenticity of this document."
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Present:Shri KK Gupta Advocate, Counsel for the plaintiff.
Defendants exparte.

Ld. Counsel for plaintiff has closed exparte evidence. Arguments heard. Vide separate detailed Judgment of even date, the suit of plaintiff stands decreed exparte with costs. Decree sheet be prepared and file be consigned to the Record Room after due compliance.

Pronounced:
06.11.2023 **(Radhika Likhi, PCS).**
bs sandhu steno Civil Judge (Jr.Division) Moga.
UID No.PB0597.