IN THE COURT OF AJAY, PCS, CIVIL JUDGE (JUNIOR DIVISION), MOGA (UID No. PB0629).

CIS No.CS-104-2021
Date of institution: 12.01.2021
CNR No.PBMO02-0000612021
Date of Decision: 21.03.2023.

Punjab National Bank, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at plot no.4, Sector 10, Dwarka, New Delhi -110075 and the successor of Oriental Bank of Commerce by Scheme of Amalgamation of Oriental Bank of Commerce, passed by the Central Government under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, through one of its Branch, having office at Daudhar, through its Senior Manager Sandeep Kumar, Circle Sastra Moga.

.....Plaintiff.

Versus

1. Gurmel Singh son of Gurbachan Singh son of Mit Singh resident of House no. 152, Patti Gurian, Village Daudhar Sharki, Tehsil & District Moga. (Loanee/Borrower).
2. Mohinder Singh Son of Bachan Singh R/o Village Daudhar Sharki, Tehsil & District Moga. (Guarantor).

…....Defendants.

Mortgage Suit U/O 34 CPC for the recovery of ₹ 4,71,862/- rupees Four Lacs Seventy one Thousand Eight Hundred Sixty Two only) on the account of Principal, interest, and other incidental charges etc. calculated up to date on account of crop loan/OGC Limit along-with pendent-lite and future interest at the rate of 10.80% P.A with half-yearly rests, along with penal interest of 2% PA from the date of filing of the suit, till realization of the whole amount

by sale of the mortgage property measuring 8 K 0 M as follows:

(i). 4 K 15 M i.e. ¼ share of 19 K 0 M bearing khasra numbers 163//3/1, 3/2, 3/3, 12, 8/1, khewat no. 127 and 381, khatoni no. 157 and 484.

(ii). 3 K 5 M i.e. 65/267 share of 13 K 7 M bearing khasra numbers 142//22/2/2, 163//2, 8/2, khewat no. 502, khatoni no. 638.

Land situated in the area of village Daudhar Sharki 2nd Tehsil & District Moga, as mentioned in the jamabandi for the year 2007-2008, as per registered mortgage deed vasika no. 7713, dated 24.01.2013 registered in the office of Sub Registrar Moga duly mortgage by defendant no.1 in favour of plaintiff bank and by sale of hypothecated standing crops of defendant no. 1 and from the other properties of the defendants jointly and severally with costs of the suit. Or any other relief which this hon'ble court deems fit and proper;

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Present: Sh. R.K Goyal, Advocate, Counsel for the plaintiff bank.
Defendants exparte.

J U D G M E N T

The plaintiff bank has filed the present suit against the defendants on the assertions that defendant no.1 Gurmel Singh is agriculturist and carries his activity of cultivation and agricutural. The defendant no.2 is a guarantor who has undertaken liability for repayment of the loan amount advanced or to be advanced to defendant no.1 by the plaintiff bank. Defendant no.1 approached the plaintiff bank and requested

the plaintiff bank for crop loan and applied for OGC Limit/Loan vide application dated 02.12.2012 for Rs. 3,00,000/- for development of his crops, pesticides and fertilizers etc. The plaintiff bank considered the request of defendant no.1 and accepted the request of defendant no.1 and sanctioned the OGC limit of Rs. 3,00,000/-. In consideration of the sanctioning of said loan of ₹3,00,000/-, defendant no.1 against the gurantee of defendant no.2 duly executed the following loan documents in favour of the plaintiff bank for the due repayment of said loan i.e. hypothecation agreement with schedules dated 05.02.2013 loan DOC-45 and registered continuing mortgage deed bearing vasika no.7713 dated 24.01.2013. Thereafter, a rapat no.186 dated 24.01.2013 was duly entered in the revenue record by the patwari halqa regarding the property mentioned in the mortgage deed dated 24.01.2013 for ₹ 3,00,000/- in favour of the plaintiff bank. The defendant no.1 vide these documents/agreement agreed to pay minimum interest at the rate of 13.90% per annum with half yearly rests alongwith penal interest at the rate of 2% per annum besides agreeing to adjust the OGC limit after every harvest of crops. The defendant no.2 executed guarantee agreement loan DOC-11 dated 24.01.2013 duly signed by him to secure the liability undertaken by defendant no.1 in the event of default in respect of said loan facility. The liability of defendant no.2 is joint, several and co-extensive with that of defendant no.1. The loan amount was repayable after every harvest alongwith interest. However, defendant no.1 had the liberty to raise the loan again for next crop. It was the condition of the agreement that in case of default of payment as agreed, the plaintiff bank will be entitled to recover the entire outstanding amount with interest and costs in lump sum from the

defendants and by sale of the mortgaged property and hypothecated standing crops and from the person of the defendants. After execution of necessary documents by the defendants, defendants no.1 availed the said OGC limit from time to time as per the requirements and also got renewed the same from time to time. The defendants did not operate the said loan account as per the terms and conditions incorporated in the agreement for the grant of said loan. The defendants had failed to repay the said loan amount availed as per terms and conditions of the agreement for the grant of said loan and as per loan sanction letter. The plaintiff bank made several requests to the defendants to repay the entire outstanding dues alongwith interest upto date and other incidental charges as per the rules of the plaintiff bank but they failed to repay the same due to which, account of defendant no.1 has become irregular/NPA. On 31.12.2015 and 31.12.2018, defendant no.1 executed balance and security confirmation letters in favour of plaintiff bank and acknowledged his liability to pay the outstanding amount regarding the said loan as mentioned in the said letter. Now, an amount of ₹ 4,71,862/- is due and recoverable from the defendants with interest applied upto date. The defendants are liable to pay the said outstanding amount alongwith pendentelite and future interest from the date of filing of suit till the realization of entire outstanding dues jointly and severally. Hence, the present suit.

2. Upon notice of the suit having been issued to the defendants through munadi, they failed to appear in the court despite service and accordingly, they were proceeded against exparte vide order dated 25.05.2022.

3. In order to prove its case, plaintiff bank examined PW1 Sandeep Kumar (Senior Branch Manager/Principal Officer, Punjab National Bank, Circle Sastra, Moga) who appeared and deposed through his duly sworn affidavit Ex.PW1/A in which he has reiterated the entire version of pleadings. Thereafter, learned counsel for the plaintiff bank closed the exparte evidence vide separate statement by tendering guarantee deed as Ex.P11. By way of examining the above said witness, plaintiff bank has proved on record following documents:-

Ex.P1:- Power of attorney
Ex.P2:- Statement of account
Ex.P3:- Original loan application.
Ex.P4:- Sanction letter
Ex.P5:- Agreement of hypothecation
Ex.P6 & Ex.P6/A:- Mortgage deed and its endoresement respectively
Ex.P7: Rapat of Patwari
Ex.P8 & Ex.P9:- Balance Confirmation letters
Ex. P10:- Renewal application
Ex.P11:- Guarantee deed

4. After hearing the contentions of learned counsel for the plaintiff bank and perusing the file, carefully, it stands proved that defendant no.1 approached the plaintiff bank for grant of loan of ₹ 3,00,000/- under OGC Scheme vide loan application dated 02.12.2012 placed on record as Ex.P3 and said loan was duly sanctioned by the plaintiff bank vide sanction letter Ex.P4. It is further made out that to secure this loan amount, defendant no.1 executed agreement of hypothecation with schedule dated 05.02.2013 Ex.P5. Plaintiff bank has duly proved on record that defendant no.2 stood as guarantor for the repayment by defendants no.1 by executing guarantee agreement dated 24.01.2013 as Ex.P11. Moreover, in pursuance of terms of

sanction, defendant no.1 executed mortgage deed dated 24.01.2013 Ex.P6 in favour of the plaintiff bank with regard to his property mentioned in the head note of the plaint as collateral security with interest for the due repayment of the said loan and other charges. The plaintiff bank also proved on record abovesaid documents. The plaintiff bank has proved on record attested copy of statement of loan account as Ex.P2 showing the the balance of ₹ 4,71,862/- due towards the defendants.

5. Suit filed is within limitation from the date of acknowledgement of debts. The defendant no.1 applied for loan which was sanctioned on 02.12.2012 for sum of ₹ 3,00,000/-. Further, defendant no.1 executed the balance confirmation letters dated 31.12.2015 and 31.12.2018 in favour of plaintiff bank which are duly proved on record as Ex.P8 and Ex.P9. As such, the cause of action is continued and is within period of 12 years from the last balance confirmation letter executed by defendant no.1 in favour of plaintiff bank against the said loan. Hence, suit filed is within limitation.

6. Further the defendants failed to contest the present suit due to which claim of the plaintiff bank goes unrebutted and unchallenged. As such, plaintiff bank is able to prove its case against the defendants.

7. Accordingly, in view of my above discussion, suit of the plaintiff bank succeeds and same is hereby exparte decreed with costs for the recovery of ₹ 4,71,862/- with interest upto date of filing of the suit and pendentlite interest @ 10.80% PA with half yearly rests along with penal interest of 2% PA i.e. from date of filing of suit till decision of suit and future interest at the rate of 10.80% per annum with half yearly rests along with penal interest of 2% PA against the defendants by sale of hypothecated

and mortgaged assets as detailed in the head note. The defendants are severally and jointly liable to pay the said amount. In case the decreetal amount or interest remains unpaid for a period of three months from the date of this decree, the plaintiff bank shall be at liberty to realize this amount through sale of the property lying hypothecated and mortgaged with it. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

Pronounced in open Court:
on: 21.03.2023

(Ajay, PCS,)
Civil Judge (Junior Division)
Moga. (UID PB0629)

(Direct Dictation)

(Pooja STG-II)

Present: Sh. R.K Goyal Advocate, Counsel for the plaintiff bank.
Defendants exparte.

PW1 Sandeep Kumar is present and examined. Ld Counsel for the plaintiff bank closed the exparte evidence on behalf of plaintiff bank by tendering guarantee deed as Ex.P11. Arguments heard. Vide my separate Judgment of even date, suit of the plaintiff bank succeeds and decreed exparte, as detailed therein. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room, Moga after due compliance.

Pronounced in open Court:
on: 21.03.2023

(Ajay, PCS,)
Civil Judge (Junior Division)
Moga. (UID PB0629)

(Direct Dictation)

(Pooja STG-II)