Received on : 09/02/2011
Registered on: 09/02/2011
Decided on : 31/01/2018

Duration : **DD MM YY**
22 11 06

Exh. No.31

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IN THE COURT OF HON'BLE PRINCIPAL SENIOR CIVIL JUDGE

AT CHHOTAUDEPUR

==

Spl.Civil Suit No.47/2017 (New)

Spl.Civil Suit No.79/2011 (old)

State Bank of India,
Chhotaudepur Branch,
(An institution established under
State Bank of India Act,1955
Branch Office at Jetpur-Pavi,
Dist. Chhotaudepur.

...PLAINTIFF

V/S.

1. **Chimanbhai @ Chimkabhai Baladbhai Koli,**
Res. at Umarva, Ta. Jetpur-Pavi,
Dist. Chhotaudepur.

2. **Narsingbhai Maganbhai Koli,**
Res. at Gutanvad, Ta. Jetpur-Pavi,
Dist. Chhotaudepur.

3. **Shakabhai @ Shakhlabhai Koli,**
Res. at Umarva, Ta. Jetpur-Pavi,
Dist. Chhotaudepur.

...DEFENDANTS

SUBJECT: SUIT *TO RECOVER AMOUNT of Rs.5,65,388/-*

APPEARANCE ::-

****

Ld. Advocate Mr. R.B. Bhatt/ N.J. Kharadi for the Plaintiff.

Nobody appeared on behalf of the defendants.

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

1. The short facts of the plaintiff's suit are as under : -

1.1 It is the case of the plaintiff Bank that the plaintiff bank is established under State Bank of India Act,1955 and its Division Office is situated at Ahmedabad and one branch office is situated at Jetpur-Pavi, Dist. Chhotaudepur. The plaintiff bank is engaged in banking business.

1.2 That, the present defendants requested the plaintiff-bank for purchase of tractor, trailor and Agriculture Cash Credit loans, as per rules & regulations of plaintiff-bank. That, the defendants had made different applications for getting the said loan and the said applications had been accepted by the plaintiff-bank and the defendants had been sanctioned the agriculture term loan. Further, the loan account had been maintained by the plaintiff-bank for the said loan. The plaintiff bank had sanctioned Rs.5,00,000/- for purchase of Tractor, traior & Agriculture Cash Credit Loan of Rs. 90,000/- on dtd. 29.03.2007. That the required documentation had been made for the said loans like D.P. Notes, Letter of Continuing Security, Agreement for Hypothecation, General Form of Guarantee, Declaration cum Undertaking cum Authority, Agreement Letter etc.

1.3 That, the defendant no.1 had made charge over his properties Survey No. 63P3, 18P2 situated at village Umarva, defendant no.1 & 3 had made charge over their properties Survey No. 18P2 situated at village

Umarva, defendant no.2 had made charge over his properties Survey No. 232, 263, 300 situated at village Gutanvad. For that charge entries have been mutated in revenue records.

1.4 That, the defendants had not paid the said loan amounts in the prescribed period as per rules & regulations to the plaintiff-bank. That the plaintiff bank has to recover Rs.5,65,388/- towards agriculture loans from defendants and after making the due statement of account, the plaintiff has to recover Rs.5,65,388/- from defendants. Thus, total Rs.5,65,388/- are due upon the defendants to plaintiff bank. That even after repeated reminders for recovery of loan amount, the defendants have not paid the due amounts to the plaintiff bank. Therefore, the plaintiff bank had given legal notice through Advocate to the defendants, but even though the defendants have not paid the loan amount. Therefore, the plaintiff bank is constrained to file the present suit against the defendants and prayed to recover the due amount of Rs.5,65,388/- from the defendants.

2. That, the summons of the plaint are duly served upon the defendants as per the provisions of O.5 of the Code of Civil Procedure, 1908 (in short “Code”). The defendants neither have presented themselves personally nor through Learned Advocate and nor submitted any written reply. Hence, concerned rights of the defts. were closed. Thus, the suit is remained un-contested by the defts. side.

3. On the basis of the pleading of the plaintiff, issues have been framed by this Court at Ex.7, which are as under :-

1. Whether the plaintiff-bank proves that the loans worth Rs,5,00,000/- for tractor, trailer purpose & Rs.90,000/- for the purpose of agriculture have been sanctioned to the defendants on 29.03.2007 as alleged ?

2. Whether the plaintiff-bank proves the total due amount of Rs. 5,65,388/- against the defendants ?

3. Whether the plaintiff-bank is entitled to get interest ? If yes, at what rate and since when ?

4. Whether any amount of the suit of the plaintiff bank is barred by law of limitation ?

5. What order and decree ?

4. Findings to the above referred issues are as under :-

1. In affirmative

2. In affirmative

3. In partly affirmative

4. In negative

5 As per final Order.

5. Evidence led by the party in the proceedings are as under :-

PLAINTIFF SIDE :-

ORAL EVIDENCE :

Exh.	**Particulars of Witness**
Exh.14	Affidavit of evidence u/O.18, R. 4 of the Code, of Kundan Sinha, Branch Manager, S.B.I., Pavi Jetpur Branch.

DOCUMENTARY EVIDENCE:

Exh.16	Application for agriculture loans.
Exh.17	Hypothication Agreement
Exh.18	Undertaking letter executed by defendants Civil letter (Annexure -I)
Exh.19	Credit facilities and agreement /documents executed by the defendants. (Annexure -G)
Exh.20	Revival letter
Exh. 22	Bank statement of defendant s
Exh.22 to 26	Abstract of Village Form No. 7/12 & 8A

Defendants' side:-

The defendants have neither appeared nor submitted any documentary evidences nor oral evidences in support of their case.

6. Heard the arguments made by the Ld. Advocate Mr. N.J. Kharadi for the plaintiff-bank. As discussed above, no matter is contested by the defts., hence no argument is taken place on behalf o the defts.

7. The defendants did not adduce any evidence in the Court, however, the burden to prove the case is totally on the shoulder of the plaintiff, because *it is very well settled principle of law that the party has to prove his case on his own strength and can not take advantage of weakness of the opposite party*. So, in the light of above referred principle, this Court scrutinized the entire pleading, evidence and argument raised by Ld. Advocate for the plaintiff with microscopic view.

R E A S O N S

ISSUE No. 1 ::-

8. Issue No.1 is related with sanction/availment of loan. That, the defendants had requested the plaintiff-bank for agriculture loans as per rules & regulations of plaintiff-bank. That the defendants had made different applications for getting the said loan and the said applications had been accepted by the plaintiff-bank and the defendants had been sanctioned the agriculture term loan. Further, the loan account had been maintained by the plaintiff-bank for the said loan. The plaintiff bank had sanctioned loan of Rs.5,00,000/- & Rs.50,000/- on dtd. 29.03.2007. That the required documentation had been made for the said loan like D.P.Notes, Consent letter of arrangement, Letter of Continuing Security, Agreement for Hypothecation, Agreement Letter etc. That the defendants had accepted all the conditions for the said loan and given signatures in this regard. On going through the plaint, it reveals that the Branch Manager of the Bank has stated all these facts on affidavit [Exh.14] and various documents vide Exhs.16 to 26 establish that a loan of Rs.5,00,000/- for purchase of

Tractor & Agriculture Cash Credit Loan of Rs.90,000/- on dtd. 29.03.2007 have been availed by the defts. on execution of necessary documentation in favour of the plaintiff-bank. Further, being a head of the Bank, all powers are with him in case of loans default. And, no defts. have rebutted the evidence of this P.W.-1, who has no prejudice with the defts. & has given evidence in capacity of Branch Manager. Hence, from these facts, it is proved that a loan of Rs.5,00,000/- for purchase of Tractor & Agriculture Cash Credit Loan of Rs. 90,000/- on dtd. 29.03.2007 sanctioned by the plaintiff-bank to the deft. & defendants have executed necessary documents in favour of plaintiff-bank, hence, Issue No.1 are answered 'I*n Affirmative*'.

ISSUE No. 2 ::-

9. The Issue No.2 is about proof of the due amount Rs. 5,65,388/- as on dtd. 03.11.2010. As the Issue No.1 is decided "In Affirmative", it is proved that the defendants have asked the agriculture loans from the plaintiff-bank and which is sanctioned by the plaintiff-bank Rs.5,00,000/- for purchase of Tractor & Agriculture Cash Credit Loan of Rs. 90,000/- on dtd. 29.03.2007. Now, on going through the documents especially Exh.21 *i.e.* Statements of Account for agriculture loans, it can be seen that the plaintiff bank has maintained the loan account for the said agriculture loans which is availed by the defendants. Moreover, it can be seen that the defendants have failed to deposit the installment as shown in the statements of account and even after repeated reminders by the plaintiff bank the defendants have not cared to pay the installments and then after due amounts. Therefore, the plaintiff bank has finally given legal notice through Advocate to the defendants, even though the defendants had not come forward and paid the due amounts. The plaintiff bank has continued to count the rate of interest on the loan amount and due amounts and the defendants are duty bound to pay the due amounts. But, the defendants are failed to do so. The statement of account maintained by the plaintiff bank is computerized one and there is no possibility for any mistake for counting the rate of interest, installment or due amount against the loan and even it is not challenged by the defendants. Therefore, it is proved by the plaintiff bank that the defendants have to pay the due amount Rs. 5,65,388/- as on dtd. 03.11.2010. Thus, the Issue No. 2 is answered "In Affirmative".

ISSUE No. 3 ::-*(As to Interest)*

10. The plaintiff has prayed for interest a the rate of 12.25% in his relief. Looking to the present transaction and documents produced, the fluctuating interest rate is @ 7% p.a.. The plaintiff advocate argued that the rate of interest is decided by the Reserve Bank of India. This Court is agree with the submission with the Ld. Advocate that as per the document, the defendants was bound to pay the interest as per the prevalent conditions made by R.B.I. Also as per the S.34 of Civil Procedure Code, when there is no specific contract between the parties regarding the payment of interest, the Court is in discretion to grant the contractual interest. As per judgment passed in the case of *"Anshumansinh Vs. State of UP & others reported in 2004(3) CCC 19 Allahabad",* Wherein it is held that the Interest if not allowed on payment due, then even a losing party actually wins the case. But, in the same way, the plaintiff-bank has not produced any certain specific deed which shows the facts of interest @ 12.25%, hence, the plaintiff-bank has not discharged its burden to that effect. Therefore, at this stage, this Court is not in a position to award the said rate of interest. Therefore, the plaintiff-bank is entitled to get the dues with interest @ 9% from the date of the suit. As there was no any privy of contract about considering the penal interest. The plaintiff is not liable to charge the penal interest from the defendants. Looking to the documents, the said agriculture loans like K.C.C.., A.L.T. was sanctioned on dtd. 29.03.2007 and the plaintiff bank had issued notice to defendants through advocate, so when the present suit filed on dtd.09.02.2011, there is no necessity to charge any interest at the rate of 12.05% p.a. It is considered the rate of interest at the rate of 9% as the current rate of interest is running for most of the loans in most of nationalized banks. Therefore, it is proper to grant 9% interest for the said loan from the date of institution of the suit. Hence, this issue is answered '*In Partly Affirmative*'.

ISSUE No.4 (As to Limitation) ::-

11. So far the point of limitation is concerned, loan is availed on dtd. 29.03.2007 and there is revival letter of dtd. 06.01.2010 [Exh.20] is there. These facts are also mentioned in the affidavit of P.W.-1, whose evidence is remained un-constested. Thus, the loan seems to be revived within limitation as per Sec.18 of the Limitation Act, 1963. Therefore, the present suit to be filed within 05-01-2013, whereas the present suit is filed on dtd.09-02-2011, therefore, the suit is not time barred. Therefore, this issue No.4 is answered "In Negative".

11. After hearing the arguments of the Ld.Advocate for the plaintiff, evidence & findings to the issue Nos.1 to 4, this Court passes the following final order to the Issue No.5 in the interest of justice :

-:: O R D E R ::-

1. The suit of the plaintiff is hereby partly allowed.
2. It is hereby ordered that the defendants have to pay the due amount of Rs.5,65,388 (Rs. five lacs sixty five thousand three hundred eighty eight only) by person or property, with interest at the rate of 9% p.a. from the date of institution of suit.
3. Defendants to bear the Costs of their own and also bear the cost of suit of the plaintiff.
4. Decree to be drawn accordingly.

Pronounced in the Open Court today on this 31st day of January, 2018.

Place:-Chhotaudepur
Date :- 31/01/2018

(Prakash Khubchand Khanchandani)
Principal Senior Civil Judge
Chhotaudepur Code : ***GJ00806***