Exh.
Received on : 28.09.2017.
Registered on : 28.09.2017.
Decided on : 31.08.2020.
Duration : Y. 2, M. 11, D. 3

BEFORE THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE, PORBANDAR.

Regular Civil Suit No. 133 of 2017.

State Bank of India,
A Statutory Incorporate Body,
Head Office at Mumbai,
Branch Office at Bagvadar,
Taluka/District Porbandar. ....Plaintiff

VERSUS

Savdas Anand Pathar,
Age. Adult, Occu. Farming,
Res. Ishwariya, Tal. / Dist. Porbandar.
.............Defendant

Mr. D. B. Lakhani, L.A. for the plaintiff.
Ex-parte against the defendant.

Subject : To recover Rs.2,32,226/- with interest. As per Sec. 72 to 75 of Contract Act.

J U D G E M E N T

1). The brief facts of plaintiff's suit are as under.

The plaintiff is a nationalized bank constituted under the State Bank of India Act, a statutory corporate body, having its head office at Mumbai, one of its branch is at Bagvadar, Taluka/District Porbandar, does the banking business. The plaintiff being the Branch Manager, is authorized to sign the plaint and has power to file this suit. It is alleged by the plaintiff bank that the defendant has applied for the loan under KCC Rs.68,000/-, KCC Rs.49,000/-, DL Rs.50,000/- and DL Rs.45,000/- (Total Rs.2,12,000/-) which were granted by the plaintiff bank and in respect of the said loans, the defendant has mortgaged his agricultural land bearing Revenue Survey No. 127 / 17P1 / P1, H. 1-53-78 situated at Ishwariya, village of Porbandar, with the plaintiff Bank executing all the necessary loan agreement-documents and in this regard, necessary entry for mortgage is also entered in the Revenue Record. The plaintiff bank further alleges that as per the ledger account of the defendant maintained by the plaintiff Bank, Rs.2,32,226/- is due from the defendant with interest as per terms and condition of loan agreement. The plaintiff Bank further alleges that, in spite of frequent request, the defendant has not paid the due of the said loans by way of installments and ultimately the plaintiff bank has issued him legal notice for the dues of above loans to the defendant, albeit the defendant has not complied or reply the said notice. Therefore, to recover the suit dues, the plaintiff bank has filed present suit and prayed to decree this suit.

2). After presentation of this suit, summon has been issued and served upon the defendant Vide, Exh. 5, 6 & 7, but he was neither appeared before the Court nor filed his reply to resist the present suit. Therefore, My Predecessor passed an ex-parte order on dated 03-12-2018 against the defendant closing his right of reply.

3). This Court has framed following issues vide Exh. 8 for the determination of this case.

ISSUES

1). Whether plaintiff prove that, it has sanctioned the loan as mentioned in para, 3 of plait to defendant and in lieu of them, they have mortgaged their Agriculture lands of village Ishwariya of Porbandar taluka with plaintiff Bank.

2). Whether plaintiff prove that, defendant has not paid Installments amount regularly ?

3). Whether the plaintiff bank is entitled to recover suit amount with interest ?

4). Whether the plaintiff bank is entitled to get relief as prayed in plaint ?

5). What Order & Decree ?

4). My findings on the above issues are as under.

1) In the Affirmative.
2) Partly In the Affirmative.
3) Partly in the Affirmative.
4) Partly in the Affirmative.
5) As per the Final Order.

REASONS

5). To prove this suit, the plaintiff has produced following oral as well as documentary evidences.

Sr. No.	Evidence	Exh. / Mark
1	Oral Evidence of Mr. Dipakkumar, Principal	11

Sr. No.	Evidence	Exh. / Mark
	Officer of Bank.	
2	Loan Application	13
3	Consent Clause (Annexure-I)	14
4	Letter of Arrangement	15
5	Hypothecation Agreement	16
6	Gam Namuna No.8-A & Gam Namuna No. 7&12	17
7	Statement of Account	18
8	Letter of Continuation	19 to 23
9	Legal Notice	24

6). Heard Mr. D. B. Lakhani, L. A. for the plaintiff, who has submitted as per the contentions raised in the plaint. He has submitted to allow the present suit in the interest of justice.

The defendant has not appeared before this Court even though service of summon. Therefore, the matter has been proceeded ex-parte against the defendant.

7). **<u>Issues Nos. 1 to 2</u>** :-

To avoid repetition of the facts as above issues are inter connected to one other, are discussed and decided altogether.

Mr. Dipakkumar of plaintiff bank has produced his affidavit vide Exh. 11 and he has corroborated all the facts shown in the plaint. The affidavit of Mr. Dipakkuamar has remained unchallenged and hence there is no reason for not to believe these facts.

I have gone through the oral as well as documentary evidences produced by the plaintiff. On the other hand, the defendant has not filed his written statement in spite of serving the summon and hence this Court has passed the order to proceed this suit ex-parte against the defendant.

8). Looking to documents produced by the plaintiff bank, it appears that Vide, Exh. 13, the defendant has taken Agricultural loans from the plaintiff bank and the plaintiff bank has sanctioned the said loans. The defendant has also executed consent clause Vide, Exh. 14. It also appears from the record that, the loan agreement was continued vide letter for arrangement of continue loan vide Exh. 15. it also appears that the defendant has executed the necessary loans documents in favour of the plaintiff bank for the said loans and he has also mortgaged his agriculture land with the plaintiff bank by executing the mortgage deed-hypothecation agreement Vide, Exh. 16. Looking to the Revenue Record produced by the plaintiff Bank vide Exh. 17, it appears that the defendant has mortgaged his suit agricultural land with the plaintiff bank. Further, looking to the Exh. 18, Statement of Account of defendant which is maintained by the plaintiff bank, there are loan dues of Rs.2,32,226/- to be recovered by the plaintiff bank from the defendant. Vide, Exh. 19 to 23, the defendant has also given Loan revival letter & his consent for Loan continuation. (Moreover, the plaintiff bank has issued legal notice Vide, Exh. 24, to the defendant regarding loan dues.) Perusing the said documents, it appears that the defendant has signed each & every loan documents. Thus, the plaintiff bank succeeds to prove that the defendant has obtained agricultural loans from the plaintiff bank as mentioned in the plaint, which was not repaid by the defendant till date.

9). The plaintiff bank has demanded the interest and I have gone through the document, wherein it shows that the defendant has admitted to pay the rate of interest as per Exh.14, Exh.15 & Exh.16. It also appears that there is agreement or contract between the defendant and the plaintiff Bank regarding the rate of interest. Therefore, the plaintiff bank is entitled to recover the interest at the rate of average 9.75% p.a. and in view of the above admitted position of law and discussion, the Issue Nos. 1 to 2 are answered in the affirmative, Issue Nos. 3 & 4 are answered partly in the affirmative and for issue No. 5, following order is passed.

: : O R D E R : :

1). The plaintiff's suit is hereby partly allowed ex-parte.

2). The plaintiff bank is entitled to recover Rs.2,32,226/- with interest at the rate of 9.75% p.a. from the date of filing the suit to till the realization from the defendant.

3). The defendant has to bear the whole cost of the suit.

4). A decree to be drawn up accordingly.

Signed and Pronounced in the V. C. Court today on this 31st day of August, 2020.

Place : Porbandar.
Date : 31-08-2020

(Paraskumar Vinodray Bhatt)
Principal Senior Civil Judge,
Porbandar. GJ00948.