PBFZ020018512021

Presented on : 13-08-2021
Registered on : 13-08-2021
Decided on : 04-10-2023
Duration : 2 years, 1 months, 22 days

IN THE COURT OF GAGANDEEP SINGH KAINTH, 'PCS' CIVIL JUDGE, JUNIOR DIVISION, FEROZEPUR UID NO. PB0658

Case No. 402
Date of Institution:- 13.08.2021
CNR No.PBFZ02-001851-2021
CIS No. CS-1241-2021
Date of decision: 04.10.2023

Union Bank of India, a body corporate constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having its head office at 239, Vidhan Bhawan Marg, Nariman Point, Mumbai-400021, and one of its branch office is at Ferozepur city through its Branch Manager/ principal Officer Shri Sanjay Sharma.

---------Plaintiff

Versus

1. Karaj Singh son of Pritam Singh son of Bagicha Singh, resident of Basti Bagicha Singh, Dakhli Village Maste Ke, Tehsil and District Ferozepur.

….Borrower

2. Gurmukh Singh son of Niranjan Singh resident of Basti Wakilan Wali, Dakhli village Maste Ke, Tehsil and District Ferozepur.

(Guarantor)

…. Defendants

Civil Suit for a decree for recovery of Rs. 7,79,808.95 PS inclusive of principal amount and interest as calculated upto 30.6.2021 towards the agriculture credit limit under Union Green Card scheme of the bank along-with pendent-lite and future interest at the rate of 14% per annum with half yearly rests from the date of filing the suit till the realization of the decretal amount from the defendants, by sale of mortgage land measuring 16 Kanals 12 marlas comprised of Khewat No. 87, Khatauni No. 120, Rect No. 8, Killa No. 17/1(6-0), 24(8-0) and 25/1(2-12), situated in the area of village Kamal Wala Tehsil and District Ferozepur and also by sale of standing crops and other moveable and immovable property and assets of the defendants as well as from person of the defendants on the basis of oral and documentary evidence.

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Present : Sh. Satnam Singh Thind, Advocate for the plaintiff.
Sh. R. S Sidhu Advocate for the defendant no. 1
Defendant no. 2 exparte

JUDGMENT:-

1 The present suit has been filed by the plaintiff bank against the defendants for recovery of Rs 7,79,808.95/- inclusive of principal amount and interest as calculated upto 30.06.2021 alongwith pendente-lite and future at the rate of 14% per annum with half yearly rests by sale of mortgaged land measuring 16 Kanal 12 marlas being as detailed mentioned in the headnote of the plaint.

2. Brief facts of the case of the plaintiff bank as made out from the plaint are that the plaintiff bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having Its Head office at 239, Vidhan Bhawan Marg, Nariman Point, Mumbai-400021 and on of its Branch offices amongst others at Ferozepur City. Shri Sanjay Sharma is at present Branch Manager and the Principal officer of the Plaintiff bank and is fully conversant with the facts of the present case and as such is in a position to depose the correctness of the facts of the case. The Branch Manager of the plaintiff bank being the principal officer also got the administrative sanction to file the present suit from the competent authority. Moreover all the Branch Managers being the principal officer of the plaintiff bank are competent to institute the civil suit. That the plaintiff -bank has been transacting the business of bankers and receiving deposits, make loans and advances to the public under its various policies made from time to time at Ferozepur City. Further submitted that the defendant no.1 has approached the plaintiff bank and

requested to grant him financial assistance by way of Agriculture crop limit under Union Green Card Scheme of the bank to the tune of Ra. 5,00,000/ and submitted a loan application on 27.12.2013 and also offered third party guarantee of defendant no.2 and collateral security of mortgage of land. The defendant no.1 also submitted the certified copy of Jamabandi and khasra girdawri of his land. That the defendant no.1 has executed the following loan documents in favour the plaintiff bank for valuable consideration: i) Simple loan agreement dated 30.12.2013 ii) Letter of continuity dated 30.12.2013, iii) Agreement on rate of interest, iv) Declaration/undertaking dated 30.12.2013 v) Hypothecation agreement dated 30.12.2013 vi) Demand promissory note. Further submitted that in consideration of the financial assistance being granted and disbursed to defendant no.1, defendant no.2 for valuable consideration stood as guarantor for the due repayment of the loan and executed deed of guarantee (SD-08), whereby his liability is jointly and severally with defendant no.1 to repay the loan amount. Further submitted that to secure the loan amount, the defendant no.1 executed mortgage deed of his land in favour of the plaintiff bank as collateral security for crop loan account. Further submitted that the plaintiff bank became the mortgagee of the land measuring 16 Kanal 12 marlas and defendant no. 1 became the mortgager thereof. After execution of the mortgage deed by defendant no 1, he got a rapat entered with the Halqa patwart made a rapat entry no. 289 dated 27.12.2013. Further submitted that pursuant to the execution of loan

/security document and creation of mortgage, the plaintiff bank advanced to defendant no.1, a sum of Rs. 5,00,000/- on 30.12.2013 and 03.01.2014 to the defendant no.1 and the relevant entries have been made in the crop loan account of the defendant no.1 maintained by the plaintiff bank regularly in the ordinary course of its banking business. The defendant no.1 has agreed to repay the crop loan limit alongwith interest on each harvesting of crop and renewing the same for the further period. The defendant no.1 has committed default in renewing the crop loan limit account as per the terms and conditions of the loan agreements. Further submitted that the plaintiff bank is now entitled to recover the outstanding balance in the agricultural cash credit limit account alongwith incidental charges by sale of mortgaged property as well as hypothecated standing crops. That defendant no.1 vide agreement of hypothecation and creation of charge mentioned herein-above executed by defendant no.1 promised to pay interest on the cash credit limit at the rate of 12% per annum with half yearly rests or any other rate of interest as may be prescribed by the plaintiff -bank under the directives of Reserve Bank of India. As per the loan documents, defendant no.1 has further agreed to pay penal rate of interest at the rate of 2% per annum on the overdue amount. At present the rate of interest is 14% per annum with half yearly rests on agriculture on crop loan limit account, Thus the defendants are liable to pay the aforesaid rate of interest to the plaintiff bank till the realization of the suit amount. Further submitted that the defendants have committed default by not renewing the cash credit limit account despite repeated requests and reminders. The defendant no.1 has committed breach of the terms and conditions of the agreement and have failed to fulfill his contractual obligations despite repeated requests and demands of the plaintiff bank. Further submitted that since the defendant no.1 did not make the payment of the crop loan as per the terms and conditions of the agreement and the account became irregular and termed as Nonperforming Asset accounts as per the Guidelines of Reserve Bank of India, the interest already charged in the account was reversed. As per the rules and regulations of the plaintiff bank. As per the internal norms of the bank, when the account became irregular and declared as Non Performing Asset Account, no interest was charged in the ledger on the outstanding amount, but the system, calculates the said interest separately. After calculating the unapplied interest on the loan account, the plaintiff bank is entitled to recover Rs. 7,79,808.95ps from the defendants. The Plaintiff bank is also entitled to recover the pendente-lite and future interest as the agreed rate, which is at present 14% per annum with half yearly rests on crop loan account. The plaintiff bank is also entitled to recover other incidental charges and costs of the suit from the defendants personally as well as by sale of mortgaged land and hypothecated standing crops and also from other moveable and immoveable properties of the defendants. Further submitted that the Branch Manager of the plaintiff bank issued a number of notices and reminders to the defendants to adjust the loan account and also issued legal notice through bank's counsel calling upon the defendants to adjust the loan account but of no use. Further submitted that the defendant no.1 has executed debit balance confirmation letters dated 01.10.2014, 19.05.2017 and 01.01.2019 whereby he had acknowledged the outstanding amount in his loan account for the purpose of section 18 of Indian Limitation Act. Further submitted that the suit is within limitation as the loan in question is secured by mortgage of immovable properties the limitation for which is 12 years from the date when he amount sued for becomes due within the meaning and spirit of law contained in article 62 of the limitation Act. The present suit is well within the period of limitation. Hence, the present suit.

WRITTEN STATEMENT

3. Upon notice, Defendant no. 1 appeared through counsel and filed written statement. Preliminary objections are taken that suit of plaintiff is not maintainable in its present form and the same is liable to be dismissed. That the plaintiff has not come to court with clean h ands and has concealed suppressed the material and relevant facts from this court which disentitles then to claim any relief. The defendant no. 1 has obtained the loan from plaintiff bank and at that time it was agreed that the plaintiff bank will charge rate of interest as per agriculture loan at the rate of 4% per annum but now the plaintiff bank is charging exorbitant rate of interest which was never agreed. Moreover the defendant no. 1 has already paid the installments of loan to the plaintiff bank, which have not been properly adjusted. Infact the

Field Officer and other staff of the plaintiff used to visit the house of defendant no. 1 and collected installments of loan but the same were not adjusted. According to the Government Policy, loan of Rs. 2 lakh was to be waived/ rebate which has not been given to the defendants by the plaintiff bank. That the suit of plaintiff is hopelessly time barrd. That the suit of plaintiff s not maintainable under section 34 of Indian Evidence Act and under section 4 of Banking Evidence Act and the accounts books are not admissible in evidence. On merits:- Shri Sanjay Sharma is not competent to fie the present suit. That para no. 2 is matter on record. The remaining contents of the plaint are denied and dismissal of the suit was sought.

4. Notice issued to defendant no. 2 received back served, but he has not come present in the court despite service, he was proceeded against exparte vide order dated 21.10.2021.

5. ISSUES

Replication was not filed by plaintiff. From the pleadings of the parties, following issues were framed vide order dated 22.11.2022:-

I) Whether the plaintiff is entitled for recovery of Rs. 7,79,808.95PS inclusive of principal amount and interest as calculated up to 30.06.2021 towards the agriculture cash credit limit along-with pendent lite and future interest @ 14% per annum with half yearly rests from the date of filing the suit till the realization of the decretal amount as prayed for? OPP

ii) Whether the suit of plaintiff is not maintainable.? OPD

iii) Whether the plaintiff has not come to court with clean hands and has concealed or suppressed the material facts from the court? OPD 1

iv) Whether the suit of plaintiff is time barre? OPD 1

v) Whether the suit of plaintiff is not maintainable under section 34 of Indian Evidence At and u/s 4 of Banking Evidence Act ? OPD-1

vi) Relief.

EVIDENCE BY PLAINTIFF

6. Plaintiff examined Lachman singh Clerk Union Bank of India, Ferozepur City as PW-1, who tendered his duly sworn affidavit Ex.PW1/A alongwith following documents:-

1. Ex-P1 loan application 27.12.2013
2. Ex-P2 Copy of jamabandi for the year 2007-08
3. Ex-P3 Khasra girdwari
4. Ex-P4 Interview cum assessment
5. Ex-P5 Terms and condition of sanction
6. Ex-P6 Simple loan agreement
7. Ex-P7 Letter of continuity
8. Ex-P8 Agreement on rate of interest

9 Ex-P9 Declaration/ undertaking dated 30.12.2013

10. Ex-P10 Hypothecation agreement dated 30.12.2013
11. Ex-P11 Demand of promissory note
12. Ex-P12 Deed of Guarantee

13. Ex-P13 Mortgage deed
14 Ex-P14 endorsement of Sub Registrar
15 Ex-P15 Sanction of mutation sheet
16. Ex-P16 Certified copy of jamabandi for the year 2007-08
17. EX-P17 to Ex-P19 Debit Balance confirmation

7. Plaintiff examined PW2 Sanjay Sharma, Chief Manager, Union Bank of India, who tendered his duly sworn affidavit Ex.PW2/A alongwith following documents I. e

1. Ex.P20 Power of attorney
2. Ex-P21 Statement of account

8. Thereafter Ld. Counsel for plaintiff has tendered documents I.e Notice Ex-P22, Postal receipt Ex-P23. Thereafter, he has closed evidence on behalf of plaintiff bank. His statement has been recorded in this regard on 04.07.2023.

EVIDENCE BY DEFENDANT

9. On the other hand, appearing defendant failed to examine even a single witness nor he himself stepped into the witness box to defend his assertions, due to which, his evidence was closed by order on 22.09.2023.

ARGUMENTS

10. Ld counsel for the plaintiff has argued that plaintiff has filed the present suit for a decree of recovery of Rs. 7,79,808.95PS inclusive of principal amount and interest calculated upto 30.06.2021 alongwith pendente- lite and future at the rate of 14% per annum with half yearly rests from the date of filing of the suit till realization of the decreetal amount by sale of mortgaged land as detailed in the head note of the plaint. He prayed that suit be decreed.

11. On the other hand ld counsel for the defendant No. 1 has argued that suit of the plaintiff bank is not maintainable. He argued that he denied all the averments mentioned in the plaint and prayer has been made for dismissal of suit.

12. **I have heard the Learned Counsel for the plaintiff and the defendant no. 1 and have gone through the case file carefully. My issue-wise findings are as under;**

ISSUE NO. 1

13. PW2 Sanjay Sharma Chief Manager has tendered his duly sworn affidavit Ex.PW2/A alongwith the General Power of Attorney executed by bank in his favour which is Ex.P20 on the file. Sanjay Sharma was authorized to file the present suit by the General Power of Attorney dated 16.10.2006. He tender document I.e Statement of account Ex-P21 which is certified by plaintiff Bank. Thus suit is filed by a competent person.

14. Plaintiff also examined PW1 Lachman Singh, Clerk Union Bank of India, who has tendered into evidence his duly sworn affidavit Ex.PW1/A. He also brought the record of loan availed by Karaj Singh defendant no. 1. Ex.P1 is the loan application for agriculture crop limit under Union Green Card scheme of the bank to the tune of Rs. 5,00,000/- filed by Karaj Singh and also offered third party guarantee of defendant no. 2. It bears signatures as well as

photograph of Karaj Singh. Certified copy of jamabandi for the year 2007-08 Ex-P2 and Khasra Girdwari Ex-P3 were given by defendant no.1 to the plaintiff bank. Ex.P4 the interview cum assessment forms duly signed by defendant no. 1 and appraising officer as well as Branch Manager. Ex-P5 is letter for sanctioning of loan. Ex-P6 simple loan agreement was duly signed by defendant No. 1 Karaj Singh. Ex.P7 I.e letter of continuity and Ex-P8 Agreement on rate of interest were also signed by defendant no. 1 Karaj Singh, Ex-P9 is the declaration executed by Karaj Singh. Ex-P10 hypothecation agreement duly executed by Karaj Singh, Ex.P11 is the demand promissory note executed by Karaj Singh. Ex-P12 guarantee deed was executed by defendant no. 2 Gurmukh Singh. Ex-P13 mortgage deed was executed on 23.12.2013 and registered on 27.12.2013 bearing Wasika No. 5668 registered in the office of Sub Registrar, Ferozepur of land measuring 16 Kanals 12 marlas, endorsement of Sub Registrar Ex-P14. Mutation was sanctioned on 27.12.2013 vide Ex-P15 and rapat No. 289 was entered in the revenue record on 27.12.2013 in furtherance of mortgage of land measuring 16 Kanal 12 marla was got mutated. Entry regarding mutation was made on jamabandi **Ex-P16** for the year 2007-08 of Village Kamal Wala Tehsil and District Ferozepur**,** vide Rapat No. 289 dated 27.12.2013. Debit balance confirmation **Ex-P17 to Ex-P19**. The suit was instituted on 13.08.2021 which is within the limitation period as per law of Limitation.

15 Further, account statement **Ex-P-21** makes it evident that a sum of Rs.**7,79,808.95PS** including interest was outstanding against the defendant as on **30.06.2021. T**hus, the suit being presented on 13.08.2021 is well within limitation. Ex.P21 is the statement of account which is admissible under Section 4 of the Bankers' Books Evidence Act, 1891. As per the account statements, an amount of Rs. **7,79,808.95PS** is due and payable as on 30.06.2021. Plaintiff is entitled to this amount. Plaintiff has pleaded that plaintiff bank is keeping its account books regularly in the ordinary course of its banking business. Thus, plaintiff is entitled to that amount which is reflected in the account statements regularly maintained in the ordinary business. Thus, plaintiff is entitled to recovery of an amount of Rs. **7,79,808.95PS** as reflected in the account statements. Defendants no. 1 being principal borrower is liable to pay the same.

16. Thereafter, Pw-1 and Pw-2 were subjected to cross examination and was cross examined at length by the counsel for defendant no. 1. Above said witness stood firm in his testimony and their credibility could not be shaken by the defendant no. 1 counsel.

17. Therefore, this court is of considered opinion that plaintiff has proved the loan transactions and proved its case. Perusal of the loan documents reveal that defendant no. 1 agreed to repay the loan amount along with interest as is mentioned in the loan documents which was subject to be revised from time to time as per the guidelines of Reserve Bank of India but in the present suit, the plaintiff bank has claimed interest at agreed rate on loan account thereby averring the same to be the prevalent rate of interest. However, it deems unreasonable and unfair. As per the principles laid down under order 34 rule 11 of CPC, this court is of the view that plaintiff is entitled to recover interest from defendant no. 1 @ 9% per annum on amount of Rs. 7,79,808.95PS from the date of institution of the present suit till date of decree and @ 6% Per annum on amount of Rs. 7,79,808.95PS from date of decree till its realization.

18. In view of above said discussion, defendant no. 1 is liable to pay the same to the plaintiff bank. Defendant no. 2 is jointly and severally liable to pay the loan amount being guarantor to the loan transaction. Defendant no. 2 is also liable being party to the original loan agreement I.e guarantee deed. Therefore, Issue no.1 is decided in favour of plaintiff bank and against defendants.

ISSUE NO. 2, 3 and 5

ii) Whether the suit of plaintiff is not maintainable.? OPD1

iii) Whether the plaintiff has not come to court with clean hands and has concealed or suppressed the material facts from the court? OPD 1

v) Whether the suit of plaintiff is not maintainable under section 34 of Indian Evidence At and u/s 4 of Banking Evidence Act? OPD-1

19. Onus to prove these issues were upon the defendant no. 1. But defendant no. 1 has failed to prove that how the suit is not maintainable, and how the plaintiff has not come to court with clean hands and has concealed or suppressed the material facts from the court. Defendant no. 1 has not produced any evidence with regard to issues no. 2, 3 and 5. Accordingly, these issues are decided against the defendants and in favour of the plaintiff.

ISSUE NO. 4

iv) **Whether the suit of plaintiff is time barred? OPD1**

20 Onus to prove this issue no. 4 was upon the defendant no. 1. Further, contention of the learned counsel for defendant no. 1 is that the present suit is out of limitation as agriculture crop limit under Union Green Card Scheme was sanctioned in favour of the defendant on 30.12.2013 whereas the present suit has been filed on 13.08.2021 which is out of limitation but this contention of the learned counsel for the defendant no. 1 is not sustainable as the present suit has been filed by the plaintiff bank. The limitation period prescribed for filing mortgage suit as per the Limitation Act is 12 years. Hence, the present suit presented is well within limitation. Accordingly, this issue is decided against the defendants and in favour of the plaintiff.

RELIEF

21. In view of the above discussion, the suit of the plaintiff bank succeeds and accordingly is hereby **decreed with costs**. Decree is passed in favour of the plaintiff bank and against the defendants for recovery of Rs. **7,79,808.95PS**/- including of principal amount, interest and incidental charges as calculated upto 30.06.2021 towards crop loan along with interest from defendant @ 9% per annum on amount of Rs. **7,79,808.95PS** from the date of institution of the present suit till date of decree and @ 6% Per annum on amount of Rs. **7,79,808.95PS** from date of decree till realization of decreetal amount is ordered to be passed in favour of plaintiff and against the defendant no.1. **Defendant no. 2 is jointly and severally liable to pay** the debts. However, if defendant no. 1 fails to repay the loan amount then defendant no. 2 will be liable to pay off the debts.

22. Defendants are directed to make the payment of the above said amount within six months from the passing of this decree, failing which decree shall automatically attain finality and the plaintiff bank shall be entitled to recover the decreetal amount by way of sale of hypothecated crop and mortgage property as per rules. The decreetal amount be recovered from defendants by sale of the mortgaged property. Decree sheet be prepared accordingly and file be consigned to record room, Ferozepur, after due compliance.

Pronounced in open court :
Dated: 04.10.2023
(Jyoti)
Directly dictated

(Gagandeep Singh Kainth)
Civil Judge (Jr. Division)
Ferozepur.(UID No.PB0658)