

MHJN020002582025



Presented on : 06.02.2025
Registered on : 10.02.2025
Decided on : 07.05.2026
Duration : Y M D
01 00 29

IN THE COURT OF Jt. CIVIL JUDGE S.D., AT JALNA
DIST. JALNA

(Presided over by Aditi R. Nagori)

Spl. Civ. S. No.61/2025

Exh.No.25

Canara Bank,

Br. Kadrabad, Jalna
Through its Branch Manager
POA holder Mr. Vibhash Kumar,
Age- 48 years, Occup: Service,
R/o- Jalna Tq. & Dist. Jalna

... Plaintiff

VERSUS

1. Mrs. Shantabai Hukumcahnd Khakiwale,
Age : 72 years, Occu : Farming,
R/o- Rammurti,
Tq. and Dist. Jalna
2. Mr. Sudhakar Trimbak Kapse,
Age : 56 years, Occu : Farming,
R/o- at Tandulwadi Khurd,
Tq. and Dist. Jalna.

... Defendants

Suit for recovery of Loan Amount Rs.7,31,615/-

.....
Appearances:- Ld. Adv. A. N. Jha for plaintiff.

Suit is proceeded ex-parte against defendants.
.....

J U D G M E N T

(..... On 7th of May 2026

This suit is for recovery of amount of **Rs.7,31,615/-** outstanding as on the 31st July 2024 towards repayment of loan under the loan along with future interest thereon @ 9% p.a.

The case of the plaintiff Bank in nutshell is as under:-

02. As per the directive of the Government of India, Ministry of Finance, Department of Financial Services, the Syndicate Bank is now merged/amalgamated with the Canara Bank) Banking company, incorporated under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and having their head office at Banglore, Karnataka, interalia a Branch office at Jalna-Maharashtra.

03. The plaintiff Bank asserted that defendant No.1 had approached for loan under "SKCC Loan" facility of Rs.1,90,000/- in his name and defendant No. 2 stood a guarantor for the said loan. Which was sanctioned on 24.12.2013. For that, defendants submitted & executed all requisite documents. After considering the application of defendants and all annexed documents with it, defendants executed agreement in favour of plaintiff Bank & thereafter, sanctioned loan. Defendants accepted all terms & conditions of loan under their signature.

04. After executing agreement letter, mortgage deed dt.18.12.2013, deed of guarantee and other documents in Bank favour, plaintiff Bank sanctioned loan amount of Rs.1,90,000/-. Defendant No.1 availed said loan amount but, he committed breach of terms and conditions. The defendants made default in payment of loan amount. Lastly, plaintiff Bank is

constrained to file the present suit and request to decree suit as prayed.

05. Despite service of issue summons on defendants, they failed to appear. Hence, by order dt.20.09.2025 and dt.04.12.2025 suit is proceeded ex-parte against them.

06. On the basis of contentions made in the plaint and evidence by an affidavit and documents filed on record, the following points arise for my determination and I record findings thereon as per follows:-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Does plaintiff Bank prove that it had advanced loan of Rs.1,90,000/- which extended for Rs.7,31,615/- to the defendant no.1 and defendant no.2 stood as a Guarantor?	YES
2]	Does plaintiff Bank prove that defendants made default in repayment of loan amount ?	YES
3]	Whether the plaintiff Bank is entitled to recover amount of Rs.7,31,615 /- along with interest at rate of 9% per annum?	Partly Yes
4]	What order and decree?	As per final order

REASONS

07. It is for the plaintiff bank to prove its case as per Section 101 of the Indian Evidence Act, 1872. So to prove, the plaintiff Bank examined Branch Manager as (PW-1) Manish Bhaskar Gawande at (Exh-11), by filing affidavit of examination-in-chief. In support of his oral version, he relies on some documents viz.....

1. General Power of Attorney (Exh. 14)

2. Loan application (Exh. 15)
3. Agreement for agricultural advances (Exh. 16)
4. Letter for time barred debts. (Exh.17)
5. Acknowledgment of Debt and Security (Exh.18)
6. Deed of Guarantee (Exh. 19)
7. Simple Mortgage Deed (Exh. 20)
8. Account statements (Exh. 21)
9. Certificate under Banker Books Evidence Act. (Exh. 22)
10. N. P. A. Certificate (Exh.23)

Lastly, plaintiff Bank closed evidence vide pursis (Exh. 24).

AS TO ISSUE NOS. 1 to 4:-

08. Issues no. 1 to 4 are interlinked with each other. Hence, in order to avoid repetition of fact and for the sake of convenience, I discuss and decide them together.

09. To discharge burden by the plaintiff bank, he examined Branch Manager as head and principle officer as Manish Bhaskar Gawande, (PW-1). He reiterated averments made in the plaint. In support of his oral evidence, plaintiff bank relied on documents at (Exh.14 to Exh.23). On perusal, it clearly shows that loan sanctioned on 24.12.2013 and defendants received the said amount accordingly. As per terms & agreement, it was to be repaid within stipulated period with equated installments.

10. However, as per Section 3 of the Limitation Act, 1963 even if the plea of limitation was not set up by the opposite party, it is the duty of the Court to go into that question. The loan was sanctioned on the above said date respectively. As already mentioned hereinabove, property is also mortgaged and acknowledgment of debt and security executed on

18.12.2013 and 01.02.2023. Thus, even on the facts of the instant case, it cannot be said that the charge was created on the immovable properties belonging to defendants No.1 & 2 for securing the loan advanced. As per documents, the loan was sanctioned on 24.12.2013 and present application is filed on 06.02.2025. It means property is mortgaged for security of loan amount within the prescribed period of limitation after sanctioning loan. Thus, the suit of the plaintiff for recovery of amount could not be based against the charged property. Therefore, it is justified in holding that the provisions of Article 62 of the Limitation Act, 1963 is applicable to the facts of the case as relief is claimed by the plaintiff as against the immovable properties charged. Thus, a suit to enforce the payment of money secured by a mortgage upon immovable property is covered by Article 62 of the Limitation Act, 1963 if the recovery is sought against the mortgaged properties and the prescribed period of limitation would be twelve years in the instant case. It proves that suit is filed within 12 years from the date from the date when the money issued have become due to the defendant no.1 when the plaintiff bank was claimed against the mortgaged property after getting the account NPA on 30.03.2017.

11. Now I turn towards evidence of plaintiff. From oral & documentary evidence i.e. General Power of Attorney (Exh. 14), Loan application (Exh. 15), Loan application (Exh. 15), Agreement for agricultural advances (Exh. 16), Letter for time barred debts. (Exh.17), Acknowledgment of Debt and Security (Exh.18), Deed of Guarantee (Exh. 19), Simple Mortgage Deed (Exh. 20), Account statements (Exh. 21), Certificate under Banker Books Evidence Act. (Exh. 22), N. P. A. Certificate (Exh.23) it proves that defendant No.1 agreed for Working SKCC loan, which sanctioned on

24.12.2013 but, on demand defendants denied to deposit due amount. Account extract (Exh.21) shows that after sanction, loan amount credited to the defendant No.1. At the same time, said account extract does not show that he has re-paid the whole outstanding amount of principle loan amount with agreed interest.

12. This apart, account extract (Exh.21) reveals that an amount of Rs.7,31,615/- was due and payable on the date of filing suit. There is no discrepancy in the oral evidence of (PW-1) and account extract (Exh.21). From the oral & documentary evidence led by the plaintiff, I come at a conclusion that an amount of Rs.7,31,615/- is outstanding therefore, plaintiff Bank has proved that an amount of Rs.7,31,615/- is due and defendants defaulted in repayment of said amount. Therefore as the disbursement of loan amount and non-payment is proved the defendant No.1 being borrower and defendant No.2 being guarantor are bound to repay the loan by virtue of documents executed by them in favour plaintiff bank. Thus the liability of the defendants to repay the loan is joint and several.

13. Oral evidence as well as documentary evidence adduced by the plaintiff Bank is remained unchallenged, as the suit is proceeded ex-parte against the defendants. There is nothing on record to disbelieve evidence led by the plaintiff bank. As such the plaintiff bank is entitled to an outstanding amount of Rs.7,31,615 /-.

14. Now, it is required to see, at what rate, the defendants are liable to pay the interest. Plaintiff bank is claiming agreed rate of interest rate 9% per annum from the date of filing the Suit. Therefore, the defendants are

liable to pay principle loan amount at the interest rate of 9% per annum from the date of the suit till decree of the suit as per section 34 of the Code of Civil Procedure, 1908. Even, the said provision is conferred the discretion on the Court as record to award of future rate of interest. The said discretion has to be exercise judicially.

15. On perusal of oral evidence as well as documentary evidence, I held that the transaction in the suit is for agricultural purpose and therefore, does come within the meaning of explanation 2 of Section 34 of the Code of Civil Procedure, 1908. Therefore, it would to appropriate to award future interest agreed at the rate of 6 % per annum on principle amount from the date of decree till its actual realization. Accordingly I recorded findings to issues No 1 to 3 in the affirmative and answer to issue No. 4, I proceed to pass following order.

ORDER

- 1] The suit is partly decreed with costs as under.
 - A] The defendants shall jointly & severally pay an amount of Rs.7,31,615/- (Seven Lac Thirty One Thousand Six Hundred and Fifteen Only) with agreed interest rate of 9 % per year from the date of filing suit till realization of entire decretal amount to the plaintiff bank within 2 months from the date of this order.
 - B] The defendants shall jointly & severally pay an amount of Rs.7,31,615/- (Seven Lac Thirty One Thousand Six Hundred and Fifteen Only) with interest at the rate of 6% per year from the date of this order to till their realization of entire decretal

amount to the plaintiff bank within 2 months from the date of this order till the realization of amount.

2] Drawn Decree accordingly.

Date :- 07.05.2026

(**Aditi R. Nagori**)
Jt. Civil Judge (S.D.),
Tal.& Dist. Jalna.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : P. B. Magare
Court Name : Jt. C.J.S.D., Jalna.
Date : 07.05.2026

Sd/-
Signature