

GJSK020005272019



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
PRANTIJ, DIST. SABARKANTHA**

Special Summary Suit No. 09 / 2019

Exh. : 20

Plaintiff : UCO Bank
Through its Branch Manager Manoj Ankur
 Age About : 30 years, Religion : Hindu
 Address : Uco Bank, Opp. Civil Hospital, Civil Circle,
 Himmatnagar, Dist. Sabarkantha.

VERSUS

Defendant : Rathod Rangusinh Andarsinh
 Age : Adult, Religion : Hindu
 Occupation : Farmer,
 Resi. of : At – Mukhiwas - Mauchha,
 Ta. Prantij, Dist. : Sabarkantha.

:: Suit for Recovery of Rs.8,39,521/- ::

Appearance :

Ld. Adv. Mr. P. J. Soni appeared on behalf of plaintiff.

Ex.-Parte

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

01. The plaintiff has filed this Special Summary Suit against the defendant to recover due amount of Rs.8,39,521/- (Rupees Eight Lakhs Thirty Nine Thousand Five Hundred and Twenty One Only).
02. The brief facts of the suit are as under ;
- 2.1 The plaintiff is a Corporate Body of UCO Bank having its branch in different cities and having its one registered branch situated at Himmatnagar and its Zonal Office at Ahmedabad.
- 2.2 In the present case, the defendant has taken a K. C. C. term loan of Rs.5,50,000/- from the plaintiff bank's – branch at Himmatnagar by hypothecation agreement Dtd. 04.06.2013 with condition to pay the loan amount within 5 years, which was to be finalized on 04.05.2018 and the loan amount was credited in the loan account no. 24010510000601 of the defendant. The The interest rate was to be finalized as per the rules & regulations by loan agreement. The defendant signed hypothecation agreement and other necessary documents at the time of taking loan. Thereafter, the defendant failed not pay the installment of the loan regularly and therefore, the account of the defendant became irregular and despite of repeated requests and demands the defendant failed to regularize his account and also failed to make payment in time. The plaintiff issued notice

dated 29.06.2018 to the defendant through his advocate and demanded the due amount of Rs.8,39,521/- which was duly served to the defendant but the defendant did not pay the above said due amount to the plaintiff. Further, the plaintiff frequently intimated to the defendant by phone and demanded due loan amount. The defendant neither replied to the notice nor paid the due loan amount.

2.3 On basis of the above stated facts, the plaintiff has made following prayer.

- (a) A decree may kindly be passed in favour of the plaintiff and against the defendant for recovery of Rs.8,39,521/- along with interest @ 11.20% per annum.
- (b) Costs of the suit may be awarded to the plaintiff and an order to that effect may be passed against the defendant.
- (c) Any other relief which this Hon'ble Court deems fit and proper may kindly be granted in favour of the plaintiff and against the defendant.

03. On presentation of the plaint it was registered as Special Summary suit No.09/019 and a summons for appearance was issued to the defendant, which was duly served and it is on record vide Exh.7. Despite service of above said summons the defendant neither him nor through his advocate appeared before this Court.

04. Thereafter, the plaintiff filed an application as per Order-XXXVII, Rule 2(3), Vide Ex-9 and prayed for a decree in his favour stating that though the defendant was served with the summons for appearance he did not bother to appear before this court either personally or through his pleader and at the same time defendant has not filee any reply or leave to defend.
05. On the basis of the above said facts, the following issues are raised for my consideration to decide the present suit.

:: I S S U E S ::

1. Whether the plaintiff is entitled to recover dues from the defendant? If yes, than what amount?
 2. Whether the plaintiff is entitled to get interest? If yes, at what rate?
 3. What order and decree?
06. My answer to the above issues and reasons for such decision are as under :
1. In affirmative, Rs.5,23,922/-
 2. In affirmative, at the rate of 6% p.a.
 3. As per final order.

:: REASONS / DISCUSSIONS ::

Issue Nos. 1 & 2 :

07. As the issue No.1 & 2 are interconnected therefore, to avoid the repetition, they are discussed together.
- A. The learned Advocate for the plaintiff has argued as per his case and prayed to grant the relief claimed and further submits that as the defendant failed to appear despite of service of summons for appearance the plaintiff is entitled for the decree as per the provision contain in O-37, R-2(3).
- B. Now, on perusal of the record it appears that the plaintiff has produced a copy of K.C.C. hypothecation agreement Dtd. 04.06.2013 Vide Exh.15, O/c copy of legal notice dated 29.06.2018 Vide Exh.16, original acknowledgement receipt Vide Exh.17, a copy of Bank account statement of the defendant account from 04.06.2013 to 05.08.2019 Vide Exh. 18, a Copy of authority letter Vide Exh. 19.
- C. Now, on perusal of Exh. 18 it is the statement of account of the defendant for the period of 04.06.2013 to 05.08.2019 wherein total outstanding amount shown is Rs.5,44,671=89 paisa but in the said statement suit file stamp duty of Rs.20,750/- was added on 24.01.2019 which the plaintiff is not entitled to get along with the suit amount, because the said amount along with other suit file charges was prayed by the plaintiff in para-2 of his

prayer and in the above said statement of account the liability of the defendant is shown to be Rs.5,23,921=89 paisa along with interest amount and other bank charges and the plaintiff has not shown any justification on the interest on the above said amount and therefore in absence of any such justification if it is allow then that would be grant of interest over interest and therefore, in my view plaintiff is entitled to have decree of only remaining loan amount with interest as he has claimed in the present case and therefore in my view the plaintiff is entitled to get round amount of Rs.5,23,922/-. Further, as the plaintiff has served legal notice to the defendant but, the said legal notice is not replied by the defendant and as the defendant has neither cared to remain present in the court after service of the summons for appearance and not cared to produce even a single documentary evidence and Hence, the plaintiff is entitled to judgment forthwith under the provisions of Code of Civil Procedure under Order XXXVII Rule 2(3).

- D. That, looking to the Provision of Order XXXVII, Rule 2(3) of C.P.C. and looking to the Judgment of **Vijaya Homes Loan Ltd. V/s. M/s. Crown Traders Ltd.** reported in **A.I.R. 1998 Delhi 182** under Order XXXVII, Rule 2(3) of C.P.C., the legal

proposition is declared that, *‘if the defendant fail to appear within 10 days of service of summons, it shall be deemed to be admitted the allegations made in the plaint.’* and the said ratio laid down in the above said judgment is applicable to the facts of the present case. In the present case, the defendant has not tried to contradict the pleadings of documents produced by the plaintiff. Hence, looking to the judgment cited above, the Court has to passed Ex-Parte decree. Therefore, my answer to the issue No.1 & 2 are In Affirmative. So far as interest rate is concern, there is no any specific agreement between the parties regarding rate of interest, but looking to the prevailing situation of market rate and Bank rate, the interest at the rate of 6% p.a. is found legal and proper.

08. So far as interest rate is concerned. Looking to the present situation of market rate & bank rate the interest rate of 6% is found legal & proper.

:: FINAL ORDER ::

01. The suit of the plaintiff is hereby partly allowed.
02. It is ordered that the defendants shall pay Rs.5,23,922/- (Rupees Five Lakhs Twenty Three Thousand Nine Hundred and Twenty Two

Only) with simple interest at the rate of 6% p.a. from the date of filing of the suit i. e. 30.01.2019 till the date of decree.

03. The defendant is directed to bear the costs of the plaintiff's suit.
04. The suit stands disposed off accordingly.
05. Decree be drawn accordingly.

**Signed and Pronounced in the open Court on 27th
day of September, 2019.**

Place : Himmatnagar
Date : 27.09.2019

(Nazarmahmad Hamidullah Shaikh)
Principal Senior Civil Judge,
S. K. @ Himmatnagar
Judge Code No. GJ00863

***PARIJITSINH**