Received on	16.03.2019
Registered on	16.03.2019
Decided on	30.11.2024
Duration	05 08 14
	YY/MM/DD

IN THE COURT OF 2nd ADDITIONAL SR. CIVIL JUDGE , AT AHMEDABAD (RURAL)

SPECIAL SUMMARY CIVIL SUIT NO.27 OF 2019
EXH.__

Plaintiff : **Allahabad Bank**
A body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
Having its Head office at:
2, Netaji Subhash Road, Kolkata,
Pin Code:700001
in the state of West Bengal and
having its Branch office inter alia at:
Sola Road Branch, Shop No. 14 to 16,
1st floor, Satyasurya Complex,
Opp. Sola Bridge BRTS Bus Stop,
Sola Road, Ahmedabad-380061.058 and
Having its Zonal office at:
104-105, First Floor, Zodiac Plaza,
H L Commerce College Road,
Navrangpura, Ahmedabad-38009
Through its Authorized officer
Chief Manager
Mr. K Jagdishwar Rao

Versus

Defendants : **(1) M/s Mahi Sound And Light (Proprietor Firm)**
A-6, Hirakunj Shopping Center,
Below Police Chowki, Janta Nagar Road,
Ghatlodiya, Ahmedabad-380061.
(2) Mrs. Sangitaben Baluji Thakor
Sole Proprietor of Mahi Sound and Light,
27, Shresiya Vas, Near Water Tank,
Ranna Park, Ghatlodiya,
Ahmedabad-380061.

Subject : Suit valued at Rs.8,88,646/-

APPEARANCE : For Plaintiff : Ld. Adv. Mr. N. H. Brahmkshatriya
For Defendants: Ld. Adv. Mr. P. D. Patel

J U D G M E N T

➢ **Facts of the Suit :**

1. The present suit has been filed by the plaintiff against the defendants for recovery of Rs.8,88,646/- (Rupees Eight Lacs Eighty Eight Thousand Six Hundred Fourty Six only) along with interest at the prevailing rate, from the date of filing of this suit till the date of realization. It is submitted that the plaintiff bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its address at mentioned above. It is further submitted that the defendants had approached the plaintiff bank to avail Term Loan facility to acquire machinery. After completing all the formalities and executing the required security documents for the said loan, the plaintiff bank has sanctioned loan of Rs.9,50,000/- under MSME Scheme. It is further submitted that defendants have executed the relevant security/loan documents along with Demand Promissory, Agreement for the Term Loan with General letter of hypothecation applicable in case of Individuals proprietorship firm for aforesaid loan.

(1.1) It is further submitted that for the lawful consideration received by the defendants are jointly and severally liable for the dues of the bank. It is further submitted that defendant has failed to adhere to the terms and conditions of the loan and by committing default in making repayment of loan availed by them and thereby committed an offence of breach of trust by violating the terms and conditions of loan, as a result of which the loan account has been classified as N.P.A. with effect from 27/08/2017. It is further submitted that plaintiff bank has thereafter served the legal notice to the defendants on 22/02/2019, and the defendants have failed to comply with the demands as per notice.

(1.2) It is further submitted that he cause of for filing this summary suit has arisen on 17/11/2014when the aforesaid loan was sanctioned to the defendants and also on the date when the defendants executed a demand promissory note with other relevant loan documents in security of the said loan, and thereafter on 22/02/2019 when the plaintiff bank served the legal notice to the defendants and is continuing thereafter till today.

(1.3) It is further submitted that the defendants have applied for loan with Sola Road branch of Allahabad Bank at and security documents has been executed at Sola Road branch and disbursement of loan is made from Sola Road branch and re-payment is to be made at Sola Road branch, hence this Hon'ble Court has the Jurisdiction to admit, entertain and decide this summary suit. It is further submitted that the summary suit filed well within the period of limitation on the basis of last transaction made by the defendants.

(1.4) The plaintiff therefore prays that:-

a) The Hon'ble Court be pleased to admit, entertain and decide the summary suit.

b) This Hon'ble Court be pleased to pass the decree for sum of **Rs.8,88,646/-** to be paid to the plaintiff bank to be paid to the plaintiff bank with interest at the prevailing rate, till the actual payment is made and on realization of cost, expenses, charges, etc. that ill be incurred from the filing of the suit from the defendants.

c) This Hon'ble Court be pleased to pass the decree awarding full costs of the suit from the defendants.

d) Any other relief that Hon'ble Court may deem fit and proper be granted in the interest of justice.

<u>Court proceedings:</u>

2. The Summons/ Notice has been served to the defendants and the defendants remained present through her advocate and filed adjournment application for filing the reply vide Exh.7. The defendants have filed application for condonation of delay vide Exh.8, which was allowed, **<u>after depositing Rs.500/- at DLSA</u>**

within 10 days of this order. Thereafter, Summons for Judgment has been filed by the plaintiff vide Exh.11, which was delivered to the defendants but the defendants have not produced Leave to Defend.

3. Here, in this case, the plaintiff in support of his averments of the plaintiff, has been produced following documentary evidence which is as follows:

(i) Documentary Evidence submitted on behalf of the plaintiff:

Sr. No.	Particulars	Date	Exh.
1	Original Application for Term Loan facility	10.11.2014	12
2	Original Sanction issued by the bank to the defendants	17.11.2014	13
3	Original demand promissory note signed by borrower	18.11.2014	14
4	Original Term Loan Agreement executed by borrower in favour of bank	18.11.2014	15
5	Statement of loan account		16
6	Original legal notice to the defendants	22.02.2019	17
7	Closing Pursis	10.04.2023	*

Arguments on behalf of the Plaintiff:

4. The Ld. Advocate Mr. N. H. Brahmkshatriya on behalf of the plaintiff has argued in consonance with the averments of the plaint and submitted to pass a decree in favour of the plaintiff as prayed for.

5. Therefore, in view of above circumstances, it is necessary to refer provision of Order-37, Rule-2(3) of C.P.C. That is as under;

The **"defendant shall not defend"** the suit referred to in sub-rule(1) unless he enters an appearance and **"in default of his entering an appearance"** the **allegations** in **"the plaint shall be deemed to be admitted"** and **the plaintiff shall be entitled to a decree for any sum,** not exceeding the sum mentioned in the summons, **together with interest at the rate specified**, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith".

6. Therefore, looking to the above provision, it is clear that, **if defendant shall not appear before the court** within 10 days from the date of service of summons under Rule-2(3) of Order-37 and not defend the suit, in default of his entering an appearance the allegations **in the plaint shall be deemed to be admitted and the**

plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, **up to the date of the decree** and such sum for costs, as may be determined.

<u>Finding/Reasons of Court:</u>

7. Now, in this case on perusal of the plaint and document produced by the plaintiff in support of his plaint, it transpired that the total principle amount Rs.8,88,646/- (Rupees Eight Lacs Eighty Eight Thousand Six Hundred Fourty Six Only) along with interest at the prevailing rate is due from the defendants' side. The plaintiff has sent Legal Demand Notice at Exh.17 dated 22.02.2019 to recover the outstanding amount to the defendants despite of that the defendants have not given the said amount to the plaintiff and hence, it is an ascertained claim and the defendants absolutely have no defence available and hence, the present suit is summary suit as envisaged under Order XXXVII of Code of Civil Procedure, 1980. Therefore, the plaintiff is entitled to get the said principal amount. Also, as discussed above, in this case the defendants despite the service of summons, failed to put in appearance as per sub-rule (3) of Rule-2 of Order 37 and not defend the suit, so in view of Order

37, Rule 2(3) of C.P.C., **"it shall be deemed" that the defendant "has admitted the claim" of the plaintiff as put forth in the plaint."** Therefore, the plaintiff shall be entitled to a get a decree for a sum of Rs.8,88,646/- (Rupees Eight Lacs Eighty Eight Thousand Six Hundred Fourty Six Only). At this stage, when the defendant has not appeared and challenged the plaint as well as the documents produced by the plaintiff, in that circumstance, recent judgment of the Hon'ble Gujarat High Court, ***Jay Ambe Industries Proprietor Shri Dineshkumar bajranglal Somani Versus Garnet Specialty Paper Ltd. 200(0) AIJEL-HC 243577 decided on 07.01.2022 is required to be considered in the judgment of Hon'ble High Court of Gujarat has discussed the Evidence Act Section 34,59, 61 & 62 and at Para 11, Para 14 and Para 28 has held as under:***

11. *"The short question that falls for our consideration is, whether the trial court was justified in dismissing the suit instituted by the plaintiff, despite there being no denial and/or no rebuttal evidence led by the respondent-original defendant."*

14. *"At the outset we may take notice of the fact that the respondent-original defendant had not appeared before the trial court as well as before this Court so as to put-forth his defense. In other words, the pleadings of the plaint and evidence so adduced remained un-controverted all throughout. Thus, the suit for* *recovery of dues based on documentary evidence such as invoices, duly signed and acknowledged delivery challan and ledger account has not been disputed by the respondent-defendant".*

28.**"To hold that a particular document is not admissible for proof of its contents unless the writer is called, is to denude the documentary evidence of all its value and is clearly contrary to certain express statutory provisions to be found in the Evidence Act, more particularly, Section 59 of the Evidence Act. In our opinion, the documentary evidence becomes meaningless if to prove it in every case by way of oral evidence of its contents. If that is the position, it would mean that, in the ultimate, the analysis of the evidence must be oral and that the oral evidence would virtually be the only kind of evidence recognized by law, however, that is not the position under the Evidence Act. The definition of the term evidence in Section 3 of the Evidence Act lays down that evidence means and includes statements made by the witnesses, which are called oral evidence, and documents produced before the court, which are called documentary evidence.* ***A bare perusal of Section 59 of the Evidence Act states that all facts, except the contents of documents, may be proved by oral evidence. Needless to say, that once the documents is proved in the manner provided under the provisions of the Evidence Act, the contents of that documents are also proved. It is for that reason that the Evidence Act adviseldy lays down that the contents of a document can be proved by proving the document in the usual manner, a proposition that emerges unquivocally from a combined reading of Sections 59,61 and 62 of that Act. *Thus, according to us, the trial court should have believed the documents of invoices, such as invoices of the delivery chalan and ledger account,* ***in absence of any dispute or rebuttal evidence submitted by the respondent-original defendant.*** *Once the document has been exhibited, the initial burden of proof could be said to have been discharged by the original plaintiff.* ***The original defendant was expected to deny the same with cogent rebuttal evidence, but having failed in submitting the rebuttal evidence, the trial court could not have ignored the exhibited evidence/undisputed evidence merely because there was no oral evidence in the form of examination of***

any evidence *by the witness in support of the documentary evidence."*

INTEREST:

8. Now, It is also transpired from the averments of the plaint that, plaintiff has mentioned prevailing rate, interest rate on the principal sum. It is settled position of law that the Court has discretionary power to award the interest and the discretionary power of the Court is governed by Section 34 of the Code of Civil Procedure. The Court can grant the different rate of interest for the different period. i.e. pre-suit period, pendentalite period and post decree period. The Ld. Counsel for the plaintiff has submitted that as per the terms and condition of Sanction letter produced vide **Exh.13** as well as loan agreement vide **Exh.15**, the plaintiff is entitled to recover the interest at the rate of **10.25%** p.a. from the defendants. And the plaintiff in his plaint has prayed for prevailing rate of interest. Therefore, the plaintiff is entitled to recover interest at **contractual rate of interest** as agreed between the parties. Hence, it would be just and proper to award interest @ 10.25% from the date of filing the suit till the date of realization.

9. Therefore, as per discussions made herein above, the plaintiff SUCCEED to prove his PRINCIPAL amount due from the defendant, with interest in this case. Hence, he is entitled to get the decree of principal amount i.e. Rs.8,88,646/-. Therefore, in the interest of justice, following final order is passed:-

:: F I N A L O R D E R ::

1. The suit of the plaintiff is hereby **PARTLY ALLOWED**.
2. The defendants are directed to pay the principal amount i.e., **Rs.8,88,646/- (Rupees Eight Lacs Eighty Eight Thousand Six Hundred Fourty Six Only) with interest @ 10.25% per annum** on the principal amount from the date of the filing of the suit, till the date of decree.
3. It is further ordered that the defendants shall pay the costs of the suit to the plaintiff and bear its own cost of the suit.
4. Decree be drawn accordingly.

Signed and pronounced in the open Court on
this **30th day of November, 2024.**

Place: Ahmedabad (Rural)
Date: 30.11.2024

J.A.BAXI
2nd Addl. Sr. Civil Judge & A.C.J.M.,
Ahmedabad(Rural)
Code No.GJ00903