IN THE COURT OF JATIN GARG, ADDITIONAL CIVIL JUDGE (SENIOR DIVISION), KURUKSHETRA (UID:HR0278)

Computer ID No.	CS/1364/2022
CNR No.	HRKU02-001721-2022
Date of Institution:	30.09.2022
Date of Decision:	**01.05.2024**

Punjab National Bank, Branch Office Kharindwa, Tehsil Shahabad, through its General Power of Attorney Holder Shri Naresh Bheem posted at Punjab National Bank, Circle SASTRA Centre, Kurukshetra.

…....Plaintiff

Versus

Satwant Singh son of Rachan Singh, resident of Village Jhal Kheri, District Kurukshetra.

…....Defendant.

SUIT FOR RECOVERY OF RS.13,22,493.73/-

Present:- Shri Lovkesh Machhal, Advocate for the plaintiff.
Defendant proceeded as ex-parte vide order dated 06.07.2023.

JUDGMENT:

The present suit has been filed by the plaintiff Bank against the defendant seeking recovery of ₹13,22,493.73/- in KCC Limit Account including interest upto 31.03.2022 along with pendente-lite and future interest w.e.f. 01.04.2022 @10.75% per annum in KCC Limit and 2% per annum extra upon the outstanding amount and interest revised by the Government/R.B.I. from time to time and miscellaneous expenses till actual realization and to pass a preliminary decree under Order 34, Rule 4

C.P.C. for recovery of above said amount with costs throughout and pendente-lite and future interest at the agreed and contractual rate, by way of sale of mortgaged property, fully described in forgoing paras of the plaint, in case, the defendant fail to deposit the decretal amount within the period fixed by this Court, this decree may be treated as final decree entitling the plaintiff Bank to recover the decretal amount by way of sale of mortgaged land and hypothecated property as well as other properties and assets of the defendant. In case of any deficiency being found in the recovery of decretal amount with all costs, interest etc. from the sale proceeds of the mortgaged property and hypothecated assets, the balance amount so found due to the plaintiff, be ordered to be realized from the person and other properties of the defendant.

2. Brief facts of the case are that Punjab National Bank, Branch Kharindwa, Tehsil Shahabad, District Kurukshetra ***(hereinafter called a bank)*** instituted the present suit through its Authorized Signatory, who is competent to file the suit and has been authorized by the competent authority to institute the present suit. The defendant had approached the plaintiff bank on 06.12.2011 for Financial Assistance under Kissan Credit Card Scheme and same was sanctioned on 19.12.2011 and defendant mortgaged his 14 Bigha 08 Biswa vide registered Mortgage Deed No. 17963 dated 15.12.2011. The KCC Limit amount was disbursed to the defendants as per agreement. The relevant mutation vide Mutation No. 135 dated 15.12.2011 in favour of plaintiff bank has been entered in

revenue record. In consideration of sanction of above said K.C.C. Limit to defendant, he had also executed the loan agreements.

3. On 06.11.2015, defendant again approached the plaintiff Bank and applied for enhancement of the present Kissan Credit Card Limit Rs.4,00,000/- to Rs.10,00,000/- and same was sanctioned by the plaintiff bank and in lieu of the same, defendant mortgaged his land 27 Bigha 08 Biswa in favour of plaintiff Bank vide Supplementary Mortgage Deed No. 6950 dated 26.11.2015 and after that enhanced KCC Limit Amount was disbursed to the defendant as per agreement. In consideration of sanction of above said K.C.C. Limit, defendant had also executed the loan agreement, hypothecation agreement, whereby he hypothecated the tools equipment, tractor, tube well, electric motors, diesel engine, house and other movable connected with the relating to farming etc. and other property including 27 Bigha 08 Biswa, situated at Village Jal Kheri, Tehsil Thanesar, District Kurukshetra as security and other loan agreement.

4. But despite this, defendant did not adhere to the financial discipline of the plaintiff Bank and did not pay the due amount of KCC Loan as per the terms of the agreement. Since the defendant did not adhere to the financial discipline of the plaintiff Bank, therefore, account of the defendant has been declared as NPA on 31.03.2022. Legal Notice was also served upon the defendant, but all in vain. Thus, the plaintiff Bank was left with no other option except to knock the doors of the Court.

Hence, the suit.

5. Notice of the suit was duly served upon the defendant, but he did not turn up despite service of notice and ultimately, he was proceeded against as ex-parte vide order dated 06.07.2023. Accordingly, case was adjourned for ex-parte evidence of the plaintiff.

6. In ex-parte evidence, the plaintiff has examined Gopesh Gaurav, Branch Manager of plaintiff Bank as PW-1 and tendered his duly sworn Ex.PW1/A, whereby, he reiterated the contents made in the plaint, which are not repeated for the sake of brevity.

7. Further, in order to prove its case, plaintiff bank has placed reliance on following documents:-

Document Number	Document Name
Ex.C1	Copy of Application form for agricultural limit.
Ex.C2	Copy of Recommendations of the Appraising Officer.
Ex.C3	Copy of Hypothecation Agreement.
Ex.C4	Copy of Supplementary Agreement.
Ex.C5	Copy of Letter of Undertaking.
Ex.C6	Copy of Letter of consent (Revised).
Ex.C7	Copy of Affidavit dated 03.12.2011.
Ex.C8	Copy of Mortgage Deed.
Ex.C9	Copy of Entrance & Confirmation of Mutation.
Ex.C10	Copy of Application Form for agricultural credit.
Ex.C11	Copy of Recommendations of the Appraising Officer.
Ex.C12	Copy of Hypothecation Agreement.
Ex.C13	Copy of Supplementary Agreement.
Ex.C14	Copy of Letter of Undertaking.
Ex.C15	Copy of Letter of Consent (revised).
Ex.C16	Copy of Declaration regarding Agricultural Land.
Ex.C17	Copy of Affidavit dated 20.11.2015.
Ex.C18	Supplementary Mortgage Deed.
Ex.C19	Copy of Entrance & Confirmation of Mutation.

Document Number	Document Name
Ex.C20 to Ex.C23	Copy of Balance & Security Confirmation Letters.
Ex.C24	Copy of Legal Notice dated 30.07.2022.
Ex.C25	Copy of Account Ledger Inquiry.
Ex.C26 & Ex.C27	Copy of General Power of Attorney.

8. No other evidence was led by plaintiff and same was closed by PW-1 vide his separate recorded statement.

9. I have heard the Learned Counsel for the plaintiff and have gone through the case file carefully.

10. In order to prove its case, the plaintiff bank has examined Gopesh Gaurav, Manager of plaintiff bank as PW1 who has tendered his affidavit Ex.PW1/A, wherein, he reiterated the facts mentioned in the plaint, which are not repeated for the sake of brevity and in support his case, he also tendered documents Ex.C1 to Ex.C27 as detailed above.

11. From the aforesaid documents, it is clear that defendant had approached the plaintiff bank for Financial Assistance of Rs.4,00,000/- under KCC, for agriculture purpose from plaintiff Bank vide application Ex.C1. The plaintiff Bank considered and sanctioned the facility of the said financial assistance and disbursed the same vide letter of sanction and had also executed Hypothecation Agreement Ex.C3, whereby, defendant agreed to hypothecate his property and tools equipment and further he offered collateral security by way of mortgaging of his land vide Mortgage Deed No. 17963 dated 15.12.2011 and charge of the same was duly entered in favour of plaintiff bank in the revenue record vide Ex.C9. Further defendant again approached the plaintiff Bank for enhancement of

KCC Limit from Rs.4,00,000/- to Rs.10,00,000/- and same was duly sanctioned by the plaintiff Bank. In lieu of the said enhancement, defendant mortgaged his land measuring 27 Bigha 8 Biswa vide supplementary mortgage deed Ex.C18 and charge was duly entered in favour of plaintiff bank in the revenue record vide Ex.C19. But despite this, defendant did not adhere to the financial discipline and did not pay the installment of said loan despite making several request made to him and despite issuing legal notice to him Ex.C24, ultimately, account of defendant become irregular and same was declared as Non-Performing Assets. Although, the said loan documents pertains to year 2011 and 2015, whereas, Balance and Security Confirmation Letters Ex.C20 to Ex.C23 are dated 30.11.2014, 06.02.2016, 05.01.2018 & 12.10.2020, whereas, plaintiff Bank has filed the present suit on 30.09.2022, which shows that the claim of the plaintiff Bank is within the prescribed law of limitation. Further, the evidence produced by the plaintiff has gone unrebutted and unchallenged. It stands proved from the oral as well as documentary evidence that the defendant defaulted in the payment of the said KCC loan amount and also failed to pay the installment due towards the plaintiff and as such, an amount of ₹13,22,493.73/- (also shown in the statement of account Ex.C25) is outstanding against him and the plaintiff Bank is entitled to recover the same from him along with interest. Thus, the defendant is liable to pay the above amount along with interest.

12. In civil cases, the burden of proof is much lighter as

compared to criminal trials. Rather than having to prove the case beyond reasonable doubt, the parties just have been establishing a balance of probabilities in their favour. If one party succeeds in tilting the scales of probabilities in its favour, the compass of the opinion of the Court veers into believing what he/she avers/defends. Moreover, the oral as well as documentary evidence of the plaintiff is unrebutted as defendant has failed to appear before the Court inspite of the service upon him, therefore, adverse inference is drawn against him that he admits the case of the plaintiff and has nothing to say in this case. Hence, there is no reason to disbelieve and disregard the evidence of plaintiff.

13. Since, in the given case, amount to be recovered from defendant is quantified and assessed by plaintiff, thus, there is no need to pass a preliminary decree, thereby directing the parties to tender the true accounts on the file or for rendition of accounts.

14. In view of the aforesaid discussion, the suit of the plaintiff succeeds and the same is hereby decreed with costs. A money decree in the sum of ₹13,22,493.73/- along with pendente-lite interest as well as future interest at the rate of **6%** per annum from the date of filling of the suit till the date of actual realization of the amount, is passed in favour of the plaintiff and against the defendant, who shall be liable to pay the same within two months from today, failing which, plaintiff Bank shall be entitled to get the same recovered through process of the Court. It shall be a composite decree i.e. (preliminary & final) and the amount will be

recoverable from the sale of the hypothecated/mortgaged property and in case, sale proceeds thereof are found insufficient, then the plaintiff Bank is at liberty to recover the balance amount from the person and other properties of the defendant. Decree Sheet be prepared accordingly. File be consigned to the record room after due compliance.

Pronounced in Open Court.
01.05.2024

(Jatin Garg)
Addl. Civil Judge (Senior Division),
Kurukshetra. 01.05.2024
(UID:HR0278)

Note: This judgment contains eight pages and all pages have been checked and signed by me.

(Jatin Garg)
Addl. Civil Judge (Senior Division),
Kurukshetra. 01.05.2024
(UID:HR0278)

(Ravi Kumar, SGG-II)

RAVI KUMAR

I attest to the authenticity of this document Digitally Signed By
Digitally signed by RAVI KUMAR
Location: District Courts Kurukshetra
Date: 2024.05.01 16:15:09 +0530

(Jatin Garg)
ACJ(SD), Kurukshetra,
01.05.2024 (UID:HR0278)