PBFZE00017992022

IN THE COURT OF SH. SATISH KUMAR SHARMA,
ADDL. CIVIL JUDGE (SR. DIVN): ABOHAR.
(UID No.PB0375).

CIS No. CS/1056/2022.
CNR No.PBFZE0001799-2022.
Date of institution: 18.10.2022.
Date of decision : 05.12.2023.

Union Bank of India, is a nationalized Bank, a corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking), Act, 1970 having its Head Office at 239, Vidhan Bhavan Marg, Nariman Point, Mumbai and the successor to Andhra bank which is now amalgamated with Union Bank of India vide the Gazette of India Notification GSR 154(E) dated 04.03.2020 issued by the Government of India published under Extraordinary Part-II, Section-3 Sub Section (1) in the Gazette of India sanctioning the Amalgamation of Andhra Bank into Union Bank of India in terms of Section-9 of the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 and inter alia carrying on its business at one of its branch office at Bus Stand Road, Abohar thesil Abohar, District Fazilka, through Sh. Neeraj Thakran, Branch Manager and Principal and duly constituted attorney.

.... Plaintiff.

Versus

1. Hans Raj son of Fusa Ram, resident of village Bishanpura, thesil Abohar, District Fazilka.
2. Gurdev Singh son of Kaur Singh, resident of village Bishanpura, thesil Abohar, District Fazilka.

….Defendant.

Mortgage Suit for Recovery of Rs.19,79,642/- (Rupees Nineteen Lakh seventy-nine Thousand six Hundred forty-two Only) on

account of Principal amount, interest and other incidental charges calculated up to 15.10.2022 and along with interest pendentelite and future interest @ 10% PA with half yearly rests in till actual and final realization of decreetal amount by way of sale of agricultural property of Land measuring 42 Kanal 08 Marla i.e. 569/732 share of total land measuring 54 kanals 18 marlas situated at village Bishanpura thesil Abohar, District Fazilka as per Jamabandi for the Year 2010.2011, regarding which a registered Declaration Under Sub Section (1) of Section (4) of the Punjab Agriculture Credit Operation and Miscellaneous Provision (Banks) Act 1978 bearing Vasika/Serial No. 126 ated 10.12.2014 with Joint Sub Registrar Sitto Gunno has been executed by defendant no. 1 in favour of plaintiff bank regarding which an composite agreement dated 17.12.2014 has been executed by the defendant no. 1 in favour of plaintiff bank as security for the repayment of entire loan alongwith interest and other incidental charges thereon raised by defendant no. 1 from the plaintiff bank and also by sale of other properties and assests of defendants on the basis of oral and documentary evidence of all kinds required and found necessary.

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Present:- Sh. Mukesh Tanwar, Advocate counsel for plaintiff.
Sh. Gaurav Dhuria, Advocate counsel for defendants.

JUDGMENT:-

The brief facts of the present case, as averred in the plaint are that plaintiff bank is a body corporate constituted under the Banking Companies Acquisition and Transfer of Undertakings) Act 1970. Sh. Neeraj Thakran, at present is the Branch Manager of plaintiff bank at Branch Bus Stand Road, Abohar, District Fazilka. He is duly appointed attorney of the plaintiff bank and he is competent to engage a counsel and to file present suit and also to take all necessary steps to file the suit against the defendant. He is duly appointed attorney of the plaintiff bank and he is competent to engage a counsel and to file present suit and also to take all necessary steps to file the suit against the defendant. It has been further averred that on 15.11.2014 defendant no. 1 approached the plaintiff bank and requested for grant of financial assistance by way of loan to the turn of Rs. 13,00,000/- i.e. (Ist year Rs. 9,00,000/-, 2nd year Rs. 9,90,000/-, 3rd year Rs. 10,89,000/-, 4th year 11,97,000/-, 5th year 13,00,000/-) by way of crop loan limit/facility under KCC Scheme to derive the monetary benefits and agreed /undertook to abide by all the terms and conditions applicable to such type of advances. It has been further averred that the abovesaid request/proposal of the defendant no. 1 was accordingly acceded to by the plaintiff bank and loan of Rs. 13,00,000/- i.e. (Ist year Rs. 9,00,000/-, 2nd year Rs. 9,90,000/-, 3rd year Rs. 10,89,000/-, 4th year 11,97,000/-, 5th year 13,00,000/-) by way of crop loan under KCC Scheme was sanctioned and advanced to the defendant no. 1 on the basis of their agreeing to execute in favour of and deliver to the plaintiff bank certain other relevant documents as security for the repayment of the loan amount together with interest and other legally recoverable incidental/ insurance charges thereon qua the loan account. It has been further averred that on 10.12.2014, defendant executed a registered Declaration Under Sub Section (1) of Section (4) of the Punjab Agriculture Credit Operation and Miscellaneous Provision (Banks) Act 1978 bearing wasika no. 126 dated 10.12.2014 with Sub Registrar Sitto Gunno for Rs. 15,00,000/- by way of crop loan limit/facility under KCC Scheme without possession whereby defendant no. 1 mortgaged his agriculture property measuring 42 kanals 08 marlas as detailed in the head note of the plaint, situated within the revenue estate of Village Bishanpura, Tehsil Abohar, in favour of the plaintiff bank as security for the repayment of the loan together with interest and other incidental charges thereon. It has been further averred that on 17.12.2014, in consideration towards security of aforesaid loan facilities, the defendant no. 1 executed a composite agreement for Rs. 13,00,000/-, Demand Promissory Note in favour of plaintiff bank agreeing to repay the loan amount with interest thereon @12% per annum with half yearly rests. It was also agreed and settled upon between the parties the rate of interest can be changed or revised at any time as per directions of the Reserve Bank of India. It has been further averred that, by virtue of this agreement, the defendant also created first charge by way of hypothecation of entire crop standing, sown or to be sown in the land mortgaged by the defendant in favour of the plaintiff bank, for the repayment of loan amount and also for the payment of interest, costs, charges and expenses. It has been further averred that upon execution of all the relevant documents referred to herein above, the plaintiff bank made disbursement of sanctioned loan to the defendant, as per detail given in the statement of account. It has been further averred that as per the repayment schedule arrived at between the parties, the defendant agreed and undertook to repay the entire loan amount with interest and other charges thereon in case of crop loan account, the defendant also agreed and undertook to repay the entire loan amount with interest and other charges thereon. It has been further averred that defendant no. 2 stood as guarantor for the repayment of the loan amount with that of defendant no. 1

in this respect defendant no. 2 executed an agreement of guarantee in favour of plaintiff bank. It has been further averred that in the ordinary and regular course of banking business, the plaintiff bank maintains true, proper and correct accounts in respect of all the accounts with the plaintiff bank and similarly the plaintiff bank maintains true, proper and correct accounts in respect of the loan amounts in question advanced to the defendant no. 1. Further, defendants miserably failed to adhere to financial discipline of the bank and defaulted in making the payment of the outstanding amount and in view of the defaults committed by the borrower in his obligation under the said Hypothecation agreement, plaintiff recalled the entire outstanding balance in the account in question with upto date interest. It has been further averred that now a sum of **Rs. 19,79,642/-** is due and payable by the defendants to the plaintiff bank, in which interest up to 15.10.2022 has been included. It has been further averred that the defendants are not paying the above said amount, though they are legally bound to pay the same. It has been further averred that the defendants were repeatedly requested to make the payment of above said entire outstanding balance with upto date interest and other charges thereon, but to no effect. Hence, the present suit.

2. Upon notice, defendants appeared through their counsel and filed written statement by raising some preliminary objections that the suit of the plaintiff is not maintainable in the present form; that plaintiff has no cause of action or locus standi to file the present suit. It has been further averred that the defendant no. 1 has never submitted any application for raising loan from plaintiff bank and also has not executed any alleged documents. It has been further submitted that no document i.e. mortgage

deed, hypothecation agreement etc. was executed by defendant no. 1 in favour of plaintiff bank and all the documents mentioned in the plaint are forged and fabricated. It has been further submitted that the defendant is not liable to pay any amount on account of alleged outstanding amount or interest or any charges because there is nothing due and recoverable from the defendant. It has further been submitted that defendant no. 2 has not execute any guarantee agreement in favour of plaintiff bank. It has been further averred that the alleged loan account statement produced by the plaintiff bank wrong, false and fabricated one. Denying rest of the averments, prayer for dismissal of suit has been made.

3. Replication was not filed. From the pleadings of the parties, following issues were framed on 27.02.2023:-

1. Whether the plaintiff is entitled for the relief of recovery as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD.
3. Whether plaintiff has no cause of action to file the suit? OPD.
4. Whether plaintiff has no locus standi to file the present suit? OPD.
5. Relief.

4. In order to prove its case, plaintiff-bank got examined **PW1 Varun Jain, Clerk,** who has deposed through her affidavit Ex.PW1/A and has also produced on record documents i.e. loan application Ex.P1, application for issuance of Agri Car Ex.P2, Enclosure Ex.P3, copy of jamabandi Ex.P4, khasra girdawari Ex.P5, D.P. Note Ex.P6, undertaking Ex.P7, composite loan agreement Ex.P8, Guarantee deed Ex.P9, Schedule IV (2) Ex.p10, copy of jamabandi reflection of mutation of sanction Ex.P11,

copy of votar card Ex.P12, copy of ration card Ex.P13, adhar card Ex.P14, copy of ration card of defendant no. 2 Ex.P15. In addition to plaintiff bank also got examined **PW2 Neeraj Thakran, Branch Manager,** who has deposed through his affidavit Ex.PW2/A and has also produced on record documents i.e. copy of recall notice dated 12.05.2021 Ex.P16, postal receipts Ex.P17 & Ex.P17/A, copy of recall noticeEx.P17/B, copy of legal notice dated 16.06.2021 Ex.P18, postal receipt Ex.P19, copy of power of attorney Ex.P20, copy of notification of amalgamation dated 12.03.2020 Ex.P21, copy of loan account statement Ex.P22, certificate u/s 65(B) Ex.P22/A, statement of accrued interest Ex.P23. Thereafter, learned counsel for plaintiff closed the evidence of plaintiff bank.

5. On the other hand, to rebut the case of the plaintiff, defendant Hans Raj himself stepped into witness box as DW1 and deposed through his affidavit Ex.DW1/A and reiterated the entire submissions made in his written statement. Thereafter, he failed to produce his remaining evidence and ultimately, remaining evidence of defendant was closed by order.

6. I have heard Sh. Mukesh Tanwar, Advocate, Ld. counsel for plaintiff-bank and Sh. Gaurav Dhuria, Advocate, counsel for defendant have also gone through the case file carefully.

7. Sh. Mukesh Tanwar Advocate, Ld. Counsel for plaintiff-bank has argued that in present case, plaintiff Bank has been able to prove its case, since **PW1 Varun Jain, Clerk and PW2 Neeraj Thakran, Branch Manager,** have deposed in their official capacity and proved the documents on record i.e. Ex.P1 to Ex.P23 and there is no evidence on record to show the fact that loan amount has been paid. He further argued that defendant

failed to produce any cogent evidence to disprove his signatures on the loan documents. Therefore, suit of plaintiff be decreed.

8. On the other hand, Ld. Counsel for the defendant has argued that defendant no. 1 has never availed any loan from plaintiff bank as alleged. He further argued that the documents as alleged by Ld. Counsel for the plaintiff bank are forged and fabricated one. He further argued that defendants are not liable to pay any loan amount to plaintiff bank. Therefore, present suit be dismissed.

My Issue wise findings are as under:-

ISSUE No.1:-

1. Whether the plaintiff is entitled for the relief of recovery as prayed for? OPP.

9. In present case plaintiff bank has taken plea that plaintiff bank has advanced a sum of Rs. 13,00,000/- to defendant no. 1 and defendant no. 2 stood as guarantor to repay the said loan, but they have failed to paid the same. Both the defendants are legally and morally bound to repay the loan amount. On the other hand, appearing defendants have denied above facts. They have denied taking of loan.

10. On careful perusal of oral as well as documentary evidence produced and proved on record by the plaintiff and as the defendants have failed to produce any cogent evidence to disprove their signatures on loan documents. Even defendants have not made any effort to examine Handwriting and Fingerprint Expert to disprove their signatures and since there is no evidence regarding repayment by defendants, this Court is of the opinion that the plaintiff bank has succeeded to prove its case that defendant

no. 1 took above mentioned loan amount from the plaintiff bank and failed to pay said loan amount. Witnesses of the plaintiff bank have deposed in official capacity and there is nothing on record to show that they have deposed falsely. In their cross-examination, nothing adverse could be extracted in favour of defendant. No ill will has either been averred or proved on record that why above witnesses have deposed in favour of plaintiff. So, plaintiff is entitled to recover the same from defendant from property mentioned in Mortgage deed and other property of defendant.

11. Now a sum of Rs. 19,79,642/- is outstanding, in which the interest uptill 15.10.2022 is included. Therefore, plaintiff bank is entitled to recover above amount, along with pendente lite and future interest from the defendant.

12. So far as the rate of interest is concerned, plaintiff has claimed interest @ 10.00% p.a. with half yearly rests, which is as per limits of above documents. Therefore, plaintiff bank is entitled to above interest from 16.10.2022 (date upto which interest has already been included) till date of realization.

13. So, in view of the above discussion, it can be said that Plaintiff is entitled to recovery, as mentioned above. Accordingly, this issue is decided in favour of plaintiff and against defendant.

ISSUES No. 2 TO 4:-

2. Whether the suit of the plaintiff is legally not maintainable in the present form? OPD.
3. Whether plaintiff has no cause of action to file the suit? OPD.
4. Whether plaintiff has no locus standi to file the suit? OPD.

14. The onus of proving these issues was upon defendant. defendant has not produced any evidence on these issues and even Ld. counsel for

defendant have not pressed upon these issues at the time of arguments. Suit of the plaintiff is well maintainable and plaintiff has cause of action or locus standi against defendant, in view of above findings on above issue. Accordingly, these issues are decided in favour of plaintiff and against the defendant.

<u>RELIEF</u>:-

15.   In view of above findings, suit of the plaintiff succeeds and is hereby decreed for recovery of Rs. 19,79,642/- with costs of suit, along with interest @ 10.00% per annum with half yearly rest from 16.10.2022 till date of realization against the defendants. Preliminary decree is passed accordingly. The defendants are granted six months' time to make the payment of entire decretal amount along with interest and cost, failing which this preliminary decree shall become final decree automatically and in that situation, the plaintiff shall be entitled to recover the entire decretal amount along with interest and costs by sale of mortgaged property of defendants, as mentioned in head note of plaint and from other property of defendants. The defendants shall be jointly and severally liable to pay decretal amount.

Preliminary decree sheet be prepared and file be consigned to the Judicial Record Room, Abohar.

Pronounced in open court:
Dated: 05.12.2023

(Satish Kumar Sharma)
Addl. Civil Judge (Sr. Divn.)
Abohar.(UID No.PB0375)

Vineet Behl
(Stenographer-II)

Satish Kumar Sharma,
ACJ(SD), Abohar. 05.12.2023