GJPM020002822017

Received on	:	30/01/2017.
Registered on	:	30/01/2017.
Decided on	:	22/12/2022.
Duration	:	**Y** 5 **M** 9 **D** 22
Exhibit	:	65

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AT GODHRA.
DISTRICT : PANCHMAHALS.

SPECIAL CIVIL SUIT No.3 of 2017.

State Bank of India,
Through its Branch Manager,
Age : Adult, Occupation : Banking Service,
Having Address at: Main Branch,
Lokhandwala Complex, Godhra.

...Plaintiff.

V E R S U S

1. Rameshbhai Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

2. Dilipbhai Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

3. Vitthalbhai Kodarbhai Patel,

Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

*4. Ambaben Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

*5. Sukhiben Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.
***(Suit against defendant Nos.4 & 5 abated as per the order below Exh.1, dated 06.05.2019)**

6. Manguben Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

7. Rashmiben Muljibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

8. Prabhudas Dajibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

9. Mangalbhai Dajibhai Patel,
Aged Adult, Occupation: Agriculture,
Having address at: Gokulpura,
Taluka Shahera, Dist.Panchmahals.

...Defendants.

Ld. Advocate for the Plaintiff: **Mr.J.A.Pathak.**
Ld. Advocate for the Defendant No.1 : **Mr.A.R.Dave.**
Defendant Nos.2, 3 and 6 to 9 - **Absent**.

Suit for Recovery of Rs.8,14,452/-

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

1... The plaintiff has instituted the present suit against the defendants, for the recovery of Rs.8,14,452/- along with interest and costs. The brief facts leading to the filing of the present suit, are as under:

2... The plaintiff is a Nationalised Bank incorporated under the provisions of the Banking Regulation Act, and doing the business of banking, and having branches in India and abroad. One of its brancher is situated at Godhra Main Branch. The defendants herein were in need of money for agricultural purposes, and therefore, the defendants approached the plaintiff-bank, and applied for loan in the prescribed loan application form. Thereafter, on 18-09-2006, the crop loan of Rs.4,50,000/- was sanctioned in favour of the defendants, and the defendants executed necessary documents in favour of the plaintiff-bank. The defendants agreed to pay interest at the rate of 15.25% per annum on the said loan. The Loan Account Number is 30077768141. As against the said loan, the defendants also mortgaged, by way of mortgage by title deeds, the land owned and possessed by them, bearing (1) Survey No.458 admeasuring 0-76-89 Hector-Are-Sq.mtrs.; (2) Survey No.469 admeasuring 0-40-47 Hector-Are-Sq.mtrs.; (3) Survey No.475/1 admeasuring 0-08-09 Hector-Are-Sq.mtrs.; (4) Survey No.475/3 admeasuring 1-01-17 Hector-Are-Sq.mtrs.; (5) Survey No.397 Paiki 1 admeasuring 1-16-35 Hector-Are-Sq.mtrs.; and (6) Survey No.414 Paiki 1 admeasuring 0-32-37 Hector-Are-Sq.mtrs. of Village Vadi, Taluka Shahera, District Panchmahals, in favour of the plaintiff-bank. The defendants also executed letter of guarantee in favour of the plaintiff-bank for the repayment of the said loan. It is further case of the plaintiff-bank that thereafter, the defendants failed to regularly pay the installments, and therefore, the plaintiff-bank, by issuing notices dated 13-02-2011, 25-06-2011, 10-11-2011, 12-11-2011 and 23-07-2015 to the defendants, calling upon them to repay the entire due amount to the plaintiff-bank, however the defendants neither complied nor replied the said notices. It is further case of the plaintiff that thereafter, on 28-12-2014, the defendants executed Revival Letter in favour of the plaintiff-bank, however the defendants did not pay the outstanding amount in respect of the said loan account. Hence, the plaintiff-bank has filed the present suit for the recovery of the outstanding loan amount with interest and cost, against the defendants.

3... On being served with the summons of the suit, the defendant No.1 appeared through his learned advocate, and filed pursis at Exh.14, declaring that the defendant Nos.4 & 5 have already died. Thereafter, even after sufficient time and opportunity, the plaintiff-bank failed to bring on record their heirs and legal representatives on the record of this suit, and therefore, as per the order dated 06-03-2019 below Exh.1, the present suit has been ordered to be abated against the defendant Nos.4 & 5.

4... The defendant No.1 has filed his Written Statement at Exh.13, and contested the present suit. So far as the rest of the defendants are concerned, none of them has appeared though duly served with the summons, and therefore, as per the order below application Exh.12, the present suit has been ordered to be proceeded *ex parte* against them.

5... In the Written Statement Exh.13, the defendant No.1 denied all the averments and allegations made in the plaint, and contended that the suit of the plaintiff is time-barred; that the plaintiff has fabricated false documents with mala fide intention to bring the debt within the period of limitation; that the defendants have not executed the documents in favour of the plaintiff-bank, as alleged. With these contentions, the defendant No1 prayed for the dismissal of the present suit with costs.

6... From the pleadings of the parties, my learned predecessor Judge framed the following issues in vernacular language at Exh.16, which are translated into English language as under:

1. Whether the plaintiff proves that the plaintiff-bank has granted loan of Rs.4,50,000/- to the defendant No.1 at the rate of 15.25% interest? **[Answer in the partly Affirmative]**
2. Whether the plaintiff proves that the defendants have mortgaged the agricultural land mentioned in paragraph 4 of the plaint, as against the said loan, in favour of the plaintiff-bank? **[Answer in the Affirmative]**
3. Whether the plaintiff is entitled to the reliefs as praye for? **[Answer partly in the Affirmative]**
4. What order and decree? **[As per final order]**

:: R E A S O N S ::

Issue Nos.1 to 3:

7... As all the issues are interconnected, they are being dealt with, discussed and decided together, for the sake of convenience and provided.

8... In order to prove its case, the plaintiff has produced the following oral evidence:

PW No.	Name of the witness	Exh.
1	Mr.Hemrajsinh Sarjansinh Gohil, Branch Manager of the plaintiff-bank.	23

9... In support of its claim, the plaintiff-bank has produced the following documentary evidence:

Sr. No.	Description of the documents.	Exh.
1	Statement of defendant's loan account.	26
2	Loan Application Form.	27
3	Interview cum Appraisal Form.	28
4	Memorandum for Sanction.	29
5	Copy of Report on Means and Standing of Borrower.	30
6	Agriculture Finance Arrangement Letter.	31
7	Agricultural Term Loan - Part-II.	32
8	Hypothecation Agreement.	33
9	Declaration in Schedule-A.	34
10	Revival Letter dated 12.03.2009.	35
11	Revival Letter dated 28.12.2015.	36
12	Revival Letter dated 10.03.2012.	37
13	Copy of demand notice dated 13-02-2011.	38
14	Copy of demand notice dated 23.12.2011.	39
15	Copy of demand notice dated 25.06.2011.	40
16	Copy of demand notice dated 10.11.2011.	41
17	Copy of demand notice given to the defendants by the plaintiff.	42
18	Copy of Post Sanction Inspection Report.	43
19	Copy of Title Clearance Report.	44
20	Copy of Village Form No.8A in respect of Revenue Khata No.510 of Mouje Vadi, Taluka Shahera.	45

21	Copy of Village Form No.7/12 in respect of Survey No.342/8 paiki 4 of Village Vadi, Taluka Shahera.	46
22	Copy of Village Form No.6 - Mutation Entry No.3490.	47
23	Copy of Village Form No.8A of Revenue Khata No.304 of Village Vadi, Taluka Shahera.	48
24	Copy of Village Form No.7/12 in respect of Survey No.458 of Village Vadi, Taluka Shahera.	49
25	Copy of Village Form No.7/12 in respect of Survey No.469 of Village Vadi, Taluka Shahera.	50
26	Copy of Village Form No.7/12 in respect of Survey No.475/1 of Village Vadi, Taluka Shahera.	51
27	Copy of Village Form No.7/12 in respect of Survey No.475/3 of Village Vadi, Taluka Shahera.	52
28	Copy of Village Form No.6 - Mutation Entry No.3457.	53
29	Copy of Village Form No.8A of Revenue Khata No.117 of Village Vadi, Taluka Shahera, Dist.Panchmahal.	54
30	Copy of Village Form No.7/12 in respect of Survey No.397 paiki 1 of Village Vadi, Taluka Shahera.	55
31	Copy of Village Form No.7/12 in respect of Survey No.414 paiki 1 of village Vadi, Taluka Shahera.	56
32	Copy of Title Clearance Certificate issued by advocate Mr.P.L.Gandhi.	57
33	Copy of the demand notice dated 12-11-2011.	58
34	Copy of the demand notice dated 10-03-2009.	59

10.. Thereafter, as the plaintiff failed to produce further evidence in the matter, the stage of production of further evidence of the plaintiff came to be closed, by the order dated 28-06-2022 below the plaint Exh.1.

11.. Though the defendant No.1 appeared and filed the Written Statement, and thereby, contested the present suit, he has not stepped into the witness box. The other defendants have also not produced any oral/documentary evidence in the matter.

12.. In the instant case, initially, the plaintiff-bank had filed the affidavit in lieu of examination-in-chief, at Exh.23, of Mr.Satyanarayan N. Solanki, the Branch Manager of the plaintiff-bank. However, later on, as he has been transferred, the plaintiff moved an application at Exh.60 to de-exhibit his affidavit. The said application came to be allowed, and accordingly, the said affidavit has been ordered to be de-exhibited. Thereafter, the plaintiff-bank has filed the affidavit in lieu of examination-in-chief, at Exh.61, of Mr.Hemrajsinh Sarjansinh Gohil, Branch Manager of the plaintiff-bank. This witness has reiterated what has been stated in the plaint.

In the cross-examination on behalf of the defendant No.1, the PW-1 Mr.Hemrajsinh Sarjansinh Gohil admitted that at the time of loan transaction, he was not serving in the plaintiff-bank at Godhra. He admitted that he has not filed any authority letter in the present suit. He volunteered to state that he has the authority to proceed by virtue of his designation. He admitted that he has nothing to show that he is the Deputy Branch Manager in the plaintiff-bank. He admitted that there are nine applicants in the document at Exh.27. He denied that the said Exh.27 does not bear the signatures of all the nine applicants. He admitted that the revenue records pertaining to three Khata Numbers mentioned in Exh.27, have been produced from Exh.45 to Exh.56. He denied that the consent of co-owners have not been obtained. The witness volunteered to state that the form bears their signatures. He denied that no any title clearance certificate was obtained. He admitted that in Exh.44, three columns have been left blank. He did not remember whether the tractor has been seized or not. He admitted that except the defendant No.1 Rameshbhai, no other defendants were given notice prior to filing of the present suit. He admitted that as regards the share of the defendant No.1 Rameshbhai in the suit-land, no any title clearance certificate was obtained, and he cannot say about the share of Rameshbhai. He admitted that the rate of interest has not been mentioned in the notice. He admitted that the debt is of the year 2006. He denied that the present suit has been filed in the year 2017 after the lapse of period of limitation. He denied that most of the columns of Exh.33 have been left blank. He denied that he has no evidence to show that the amount shown in the bank statement is outstanding. He denied that in the bank statement Exh.26, the amounts of interest and expenses, have been wrongly debited. After verifying the record, the witness states that in this case, the tranctor has not been seized. He admitted that the first notice was issued on 13-02-2011, and the plaintiff has mentioned about the subsequent notices, in the plaint. He denied that the plaintiff has wrongly issued the notice on 23-07-2015 in order to bring the suit within the period of limitation. He denied that the defendants have not given any letter of revival. He denied that the details in the revival letter have been concocted in order to bring the suit within the period of limitation. He denied that at the time of execution of loan revival letter, all the documents are scrutinized afresh. He denied that nothing remained due to the defendants. He denied that the plaintiff has filed this false suit. Lastly, he denied that he has given false deposition in support of the suit of the plaintiff.

13.. Thereafter, though sufficient time and opportunity was given to the plaintiff to lead further evidence in the matter, the plaintiff failed to do so, and therefore, the right of producing/leading further evidence in the matter, has been closed.

14.. Thereafter, though sufficient time and opportunity was given to the defendants to lead evidence in the matter, the defendants failed to do so, and therefore, their right to produce/lead evidence, has been closed.

15.. Thereafter, I have heard the submissions of Mr.J.A.Pathak, learned advocate for the plaintiff, and Mr.A.R.Dave, learned advocate for the defendant No.1.

16.. Before I read in evidence the documents produced by the plaintiff from Exh.26 to 59, it is required to be noted that all these documents have been produced from the custody of the plaintiff-bank. Moreover, the plaintiff's witness, who is a responsible officer of the plaintiff-bank, has referred to and relied upon all these documents in his affidavit in lieu of Examination-in-Chief. Thirdly, all the documents are either the certified copies of the originals or the original documents, produced for the inspection of the Court. All the documents have been duly certified by the plaintiff-bank's officer, as required under the provisions of the Bankers' Books of Evidence Act. Apart from that, except the defendant No.1, no other defendants has challenged the execution and existence of the said documents. It is true that in the cross-examination of the PW-1, the defendant No.1 has sought to challenge the existence of the said documents, however has failed to prove the non-existence of the said documents. The defendant No.1 has not entered into the witness-box. In short, the existence and execution of these documents has remained unchallenged on the part of the defendants. Under these circumstances, I have no hesitation to read these documents in evidence while deciding the dispute between the parties in the present suit.

17.. Now, if we go through the documents produced by the plaintiff-bank, the document at Exh.26 shows that it is the computer-generated statement of account of the defendant No.1, kept and maintained by the plaintiff-bank, according to which the defendant has withdrawn the loan amount, however the defendant was very irregular in making the payment of installments, and has not fully re-paid the entire loan. Exh.27 is the loan application form, from which it appears that the defendants had applied for the AGL Term Loan for Rs.4,50,000/-. It bears the passport size photographs and signatures/thumb impressions of all the defendants. Exh.28 is the Interview Cum Appraisal Form for Tractors, Power Tillers & Farm Machineris. It is signed/thumb marked by all the defendants. Exh.29 is the Memorandum for Sanction of Term Loan for Tractors, Power Tillers and Farm Machineries. Exh.30 is the Report on means and standing of the borrower. It is signed / thumb marked by all the defendants. Exh.31 is the Agricultural Finance Arrangement Letter written/executed by and between the parties. It is in the names of the defendants and it bears the signature/thumb marks of the defendants. Exh.35 to 37 are the revival letters executed by the defendants in favour of the plaintiff-bank in respect of the said loan, on different dates. Exh.38 to 42 are the notices issued by the plaintiff-bank to the defendants on different dates, calling upon them to repay the outstanding amount. Exh.45 to 56 are the revenue records pertaining to the agricultural land owned and occupied by the defendants. Exh.58 & 59 are also the notices issued by the plaintiff-bank to the defendants.

18.. So far as the dispute regarding limitation as raised in the cross-examination of the plaintiff's witness is concerned, from Exh.36

- Revival letter executed by the defendant No.1, it appears that the defendant No.1 has acknowledged the debt on 28-12-2015, and therefore, fresh limitation period begins to run from that date i.e. 28-12-2015. The plaintiff has intituted the present suit on 30-01-2017 i.e. within three years from 28-12-2015. Therefore, the present suit has been filed by the plaintiff within the period of limitation. But, since the debt has been acknowledged only by the defendant No.1, the decree can be passed only against the defendant No.1. The dispute raised by the learned advocate for the defendant No.1 that the plaintiff has fabricated this Revival Letter Exh.36 with *mala fide* intention to bring the debt within the period of limitation, is not acceptable, because the defendant No.1 has not denied his signature on the Revival Letter Exh.36. Moreover, the plaintiff being a Nationalized Bank, whatever documents executed by the defendants, have been executed in due course of banking business, and the bank officials cannot have any interest in falsely implicating the defendants in the financial liability. So far as the other defendants are concerned, according to my view, the present suit is barred by law of limitation, because the loan was given to the defendants in the year 2006, and the loan account has been declared N.P.A. Account from 07-10-2011, as is revealed from the Statement of Account Exh.26. Thus, as per the record of the plaintiff-bank, the defendants have been declared as defaulters from 07-10-2011, however except giving notices, the plaintiff-bank has not taken any steps to recover its dues. The plaintiff-bank ought to have instituted the present suit within three years from 07-10-2011 or within three years from the date of acknowledgement of debt, as the case may be. The Revival letters Exhs.35 & 37 also cannot come to the rescue of the plaintiff-bank, because they are dated 12-03-2009 and 10-03-2012, respectively, whereas the plaintiff has filed the present suit on 30-01-2017, much beyond the period of limitation.

19.. As stated earlier, except the defendant No.1, the other defendants though have been duly served with the summons of the present suit, have chosen not to appear and contest the present suit. They have neither challenged the oral evidence nor challenged the documentary evidence produced by the plaintiff. The plaintiff being a Nationalized Bank and all the documentary evidence produced by the plaintiff - Bank are prepared by the plaintiff-Bank in the due course of its business, I have no reason not to believe the oral as well as documentary evidence produced by the plaintiff. Under these circumstances, I come to the conclusion that the plaintiff has proved that the defendants had obtained the AGL Term Loan of Rs.4,50,000/- on 19-09-2006 and had executed necessary documents in favour of the plaintiff-Bank. It has also come on record that the defendants have not repaid the entire loan. Therefore, in my opinion, the plaintiff is entitled to recover the amount claimed in the present suit. But, as discussed in paragraph-18 of this Judgment, the present suit being barred by law of limitation, is not maintainable against the defendant Nos.2, 3, 6, 7, 8 & 9. The suit against the defendant Nos.4 & 5 have already been abated as per the order dated 06-05-2019 below Exh.1. Therefore, the present suit deserves to be allowed against the defendant No.1 only.

20.. So far as the rate of interest is concerned, the plaintiff has claimed the interest @ 15.50% per annum on the outstanding loan amount, but none of the documents produced by the plaintiff, reflect the defendants have agreed to pay the interest at the rate of

15.50% per annum on the loan amount. On the contrary, the documents produced by the plaintiff, show that the defendants had agreed to pay interest at the rate of 9.25% per annum on the loan amount. From the Statement of Account Exh.26, it appears that the plaintiff has charged different rates of interest ranging from 9.25% to 11.00%. Therefore, I am of the view that the plaintiff is entitled to get interest at the rate of 9.25% on the amount due and payable by the defendant No.1.

21.. Hence, in view of my above discussion, I answer issue Nos.1 to 3 in the affirmative. In conclusion, I pass the following order:

:: O R D E R ::

1. The plaintiff's suit is hereby partly allowed.
2. The defendant No.1 is hereby held liable to pay Rs.8,14,452.00ps (Rupees Eight Lakhs Fourteen Thousand Four Hundred Fifty Two) to the plaintiff along with interest at the rate of 9.25% (Nine point Two Five per cent) per annum from the date of the suit till its realization.
3. The present suit against the defendant Nos.2, 3, 6, 7, 8 and 9, is hereby dismissed.
4. The parties to bear their own costs.
5. Decree be drawn accordingly.

Pronounced in the open Court on this 22nd day of December 2022.
Place: Godhra.
Date : 22-12-2022.

[Hitesh Jayantilal Tanna]
Principal Senior Civil Judge, Godhra.
Judge Code: GJ00955.

Vaisshali K. Makkawana, + Self.
Eng.Steno, Gr.II