Received on	:	05-05-2023.
Registered on	:	05-05-2023.
Decided on	:	27-03-2024.

Duration

Years.	Months.	Days.
00	10	22

<u>IN THE COURT OF HON'BLE ADDL. CIVIL JUDGE, TAL. NANDOD, DIST. NARMADA.</u>

<u>SUM. SUIT No. – 27/2023.</u>

<u>Exb. - 16.</u>

Plaintiff/s : IDBI Bank – Having its Head Office At, Mumbai and Branch Office At, Tal - Nandod., Dist. - Narmada.
Through Mr. Rupesh Kumar,

<u>::Versus::</u>

Defendant/s : 1. Keyur Kanchanbhai Patel,
Aged – Major, Occupation – N. A.
2. Riddhiben Keyurbhai Patel,
Aged – Major, Occupation – N. A.
Both Add. – Plot No. 10, Survey No. 147, Shri Jalaram Township, Vadia, Tal. Nandod, Dist. Narmada.

Lrd. Adv.	:	Sapan Teredesai, Kalpesh Helaiya, Deepawali Nath, Pushpendra Tiwari, Vikram Solanki on behalf of

		plaintiff/s.
Lrd. Adv.	:	No one appear on behalf of defendant/s.

Subject	**:**	**Suit Under Order XXXVII of Code of Civil Procedure – 1908, for recovery of sum of ₹. 10,82,433.08/-**

::JUDGMENT::

1. The brief facts of the plaintiff suit are summarized just as below.

2. The plaintiff has brought the present suit by virtue of Order – 37 of "The Code of Civil Procedure – 1908". Alleging the facts that, as per the application of the defendant side who happens to be the original borrowers, the plaintiff bank has granted a credit facility under Corp HOme - Construction of House / Flat in Pre-Owned Land to the defendant side as on Dt. 27-11-2015 for an amount of Rs. 20,00,000.00/-. For, this purpose the defendant side has provided / executed necessary details, papers, and declarations. The credit facility was to be governed as per the terms and conditions agreed between the parties and at an interest rate of 8.35% p.a. Upon non regularization of instalments the defendant side was liable for an addition overdue interest @ 2.00% p.a.

3. As, per the agreement between the parties, Defendant side was required to repay the amount financed as per the terms of the said loan agreement.

4. The Defendant side was required to repay from such date as per agreement but he has neglected to do so. Thereafter, despite of repeated

demands by the plaintiff, defendant side has failed and neglected to make the payment of the aforesaid amount.

5. Thus, the plaintiff has pleaded within his suit that, in this manner defendant side is liable to repay the said amount with interest due thereon as determined by the Court. Apart from this the defendant side is also liable to pay the cost and expenses of the suit.

6. The plaintiff within his plaint has made a declaration that, as the present suit is for the liquidated demand of ₹. 10,82,433.08/- the present suit has been brought under O – 37 of "The Code of Civil Procedure – 1908", and no relief which doesn't fall within the scope of the O-37 of "The Code of Civil Procedure – 1908", has been sought for.

7. Consequently within his prayer clause, within the plaint, plaintiff has made below said prayer -

a) To order the defendant side to repay the sum of ₹. 10,82,433.08/- with an interest @ 8.35% p.a. to the plaintiff from filing of the suit, till the final realization of the suit amount. Alongwith, overdue interest of 2% as per the agreement
b) Entire cost of the present suit.
c) Any other relief the Court may deem appropriate and just.

8. This Court has issued summons for appearance in prescribed format (Form – 4) upon defendant side of the case. Having a reference to report upon process, produced in the record of the case vide Ex. 7 & 15, it appears that, the said summons for appearance has came to be duly served upon defendant side of the case. Upon service of such summons upon him defendant side hasn't appeared before the Court.

(N. A. Kulkarni)
Addl. Civil Judge,
Narmada.

9. As, despite of due service of summons for appearance, defendant side hasn't appeared before the Court, thus, as per settled principles of civil procedure code dealing with summary suit the matter has came to be directly posted upon judgment.

10. The plaintiff of the case has produced following documentary evidence in support of his case.

Sr. No.	Ex.	Particulars.
01.	08	Loan Application Form.
02.	09	Sanction Letter
03.	10	Loan Agreement.
04.	11	Affidavit.
05.	12	Declaration cum indemnity
06.	13	Statement of accounts.
07.	14	Authority Letter to plaintiff officer.

11. As, the defendant side failed to cause his appearance before the Court despite of due service of summon upon him, considering the O – 37, Rule – 3(2)(3), the matter has came to be proceeded further. Thus, heard the Lrd. Adv. appearing on behalf of the plaintiff of the case.

::Reasoning::

12. It is undoubtedly clear that the present suit has been instituted by the plaintiff for recovery of liquidated sum of ₹. 10,82,433.08/-. Having a reference to document produced in the record vide ***Ex. 10***, it appears that, the defendant of the case has loan agreement for the said loan facility.

Thus, so far validity of suit under O – 37 of "The Code of Civil Procedure – 1908", is concerned, having a reference to the **Rule – 1(2),(b)**, the present suit becomes tenable under the said procedural law. Further scrutinizing the record of the case it appears that, the defendant side of the case has not appeared before the Court, upon execution of summons for appearance, he has failed to appear before the Court to contest the matter or otherwise. Thus, as per the settled procedural law the matter shall proceed to O – 37, R – 2 (3) of "The Code of Civil Procedure – 1908", and consequently entitles the plaintiff for the judgment forthwith. ***Further the amount mentioned within plaint is also getting proved by Statement of Account produced in the record of the case vide Ex. 13.***

13. The plaintiff in the present suit has claimed an amount of ₹. 10,82,433.08/-, alongwith the interest as may be determined by the Court. As the defendant side of the case has failed to cause his appearance hence, considering the provision of O – 37, R – 2 (3) of "The Code of Civil Procedure – 1908", the allegation made within the plaint in relation to same shall be admitted by the defendant side, and consequently plaintiff is entitled to get judgment. In the instant suit, plaintiffs claims for interest 8.35% p.a., having a reference to the contract between the parties, it appears to be a contractual rate. Thus, considering Sec. 34 of "The Code of Civil Procedure – 1908", the rate of interest claimed appears to be proper. So, far the question relating to commencement of period of interest upon principal amount is concerned, having a reference to the facts of the case and transaction between the parties this Court is of the opinion to allow the interest to the plaintiff commencing from the date of intuition of the present suit i.e. 05-05-2023 till the date of decree. As, the date of realization may vary until the period prescribed for filing of execution petition, by the decree holder as per the law of limitation and further till recovery within such petition or otherwise. Thereby, in the

opinion of the Court it shall not be proper, to order the interest until the date of realization.

14. Thus, taking into consideration all the aforesaid facts, this Court is of the opinion to pass below said final order in the present suit.

::Order::

- The suit of the plaintiff is hereby partly allowed.
- The defendant side of the case is hereby order to pay sum of ₹. 10,82,433.08/- at a rate of interest @ 8.35% p. a. (as per contract), to the plaintiff, accumulating from the date of institution of the present suit Dt. 05-05-2023, till the date of decree.
- The defendant side is hereby ordered to bear the cost of the suit.
- Decree to be drawn accordingly.

Order pronounced in the open Court today as on 27th of March 2024.

Dt. : 27-03-2024.
Place : Narmada.

(N. A. Kulkarni)
(Judge Code – GJ01389)
Addl. Civil Judge,
Narmada

(N. A. Kulkarni)
Addl. Civil Judge,
Narmada.