Received on 10.08.2021
Registered on 10.08.2021
Decided on 24.03.2026
Duration
YY. MM. DD

Exh. _____

IN THE COURT OF 2ND ADDL. SENIOR CIVIL JUDGE AHMEDABAD [RURAL], AT. NAVRANGPURA

REGULAR SUMMARY SUIT NO. 181 OF 2021

Plaintiff. **Bank of Baroda,**
Through its authorized signatory
Mr. Dhanraj Meena,
Having its head office at :
Baroda & Branches at :
Barejadi Branch, Barejadi, Ahmedabad.
(Previously Dena Bank, Now Bank of Baroda)

Versus

Defendants **Legal heirs of Lt. Popatbhai Shanabhai Sodha,**

1. **Jayeshbhai Poptabhai sodha,**
Male, Adult,

2. **Rupaben Popatbhai Sodah,**
Female, Adult,

3. **Dineshbhai Popatbhai Sodha,**
Male, Adult,

All are resi. At : 25, Sodha Vas,
Nandej, Tal. Daskroi, Dist. Ahmedabad.

Subject : **Summary suit for recovery of Rs.3,32,147/- under O.37 R.2 of the Code of Civil Procedure.**

APPEARANCE :

For Plaintiff : Ld. Adv. Mr. V. A. Shah.

For Defendant : None.

JUDGMENT

1. The present suit is preferred by the plaintiff under Order 37 of C.P.C. for recovery of suit amount of Rs.3,32,147/- from the defendant towards outstanding due of business transaction with the plaintiff.

2. The brief facts of the present suit is as follows :

2.1 It has been submitted by the plaintiff bank that it is banking company constituted under the banking companies Act, 1970 and carried out its business at the address mentioned in the cause title, while the deceased defendant has approached the plaintiff bank and requested for financial assistance under Kisan Credit Card/ loan facility of Rs.150000/-. Further it is submitted that the deceased defendant had visited the office of the plaintiff bank at Barejadi Branch, Ahmedabad for several times and furnished requisite documents and details and understood the terms and conditions of the loan procedure and loan agreement. Further in pursuance of application of the deceased defendant, the plaintiff bank had sanctioned the loan of Rs.150000/- carrying interest rate plus penal interest, tax etc. Further it is submitted that the defendant Lt. Popatbhai Sodha was the principal borrower of loan. It is further submitted that as per the terms and conditions of the loan agreement, the defendant should have to pay the said loan in 60 monthly equal installment to the plaintiff bank, however after availing the loan facility to the deceased original defendant, he was irregular in repayment and in this regard the plaintiff bank had made vigorous follow up and had requested to the defendant to make regularize his loan account, though the deceased original defendant has failed to repayment of legal dues of the plaintiff bank.

2.2 Further it is stated that, on 22.03.2021 the defendant no.1 was approached the plaintiff bank by way of an application and declared that his father was passed away on 12.05.2017 and at that time he also undertook that he will pay the legal dues of his father towards the plaintiff bank and thereafter the plaintiff bank has again requested and made vigorous follow up to the defendant No.1 to regularize the loan account of his father, however the defendant No.1 has chose to avoid the repayment of legal dues of the plaintiff and thereby though giving sufficient opportunity to the defendants for repayment of the dues, they have failed in observing financial discipline and they have also adopted non-cooperative attitude and therefore upon considering their act, they have purposely avoided the repayment of dues. Further it is stated that the statement of claim of the loan account of defendant being maintained by the plaintiff bank has also shows that total amount of Rs.332147/- is legal dues and payable by the defendants.

2.3 Further it is submitted that upon considering the aforesaid facts, it is very obvious and clear that the intention of the defendants is not to discharge their obligations and defraud the legitimate dues of the plaintiff bank and as a result the plaintiff has no remedy for recovery of loan amount except to file the present suit. Further it is stated that the original defendant Popatbhai Shanabhai Sodha expired and therefore his legal heirs are liable to pay the aforesaid due amount towards the plaintiff bank.

2.4 Therefore upon pursuant to the loan agreement took place between both the parties the legal heirs of deceased original defendant are liable to pay Rs.3,32,147/- along with interest and penal charges. Further it is submitted that since the date of outstanding dues from the original defendant, the plaintiff bank has made several efforts for the recovery of the outstanding due amount, though the original defendant or his legal heirs have not made any payment to the plaintiff bank and therefore all the efforts of the plaintiff bank went in vain. Therefore, the plaintiff has remains with no option except to file the present suit for recovery of outstanding dues from the defendants and hence being aggrieved and dissatisfied with such act of the defendants, plaintiff bank has filed the present summary suit with following prayers :

(a) The defendants be jointly and severally ordered and decreed to pay to the plaintiff a sum of Rs.332147/- only due and further interest 24% p.a. till the actual payment and/or all costs, charges and expenses that may be incurred from the date of filing of this suit till payment and/or realization by the plaintiff;

(b) To award the costs of the present suit, including the notice charges, the typing charges, etc. of the pleadings, as provided in order XXA of the CPC, 1908 to the plaintiff.

3. The summons for appearance in prescribed proforma of Form No.4 are issued to the present defendants and it is served through RPAD but the defendants didn’t appeared before the court within 10 days and not defend the suit. Therefore, due to non-appearance of defendants, this court has passed an order under Exh.7 to proceed the suit exparte against the defendants.

4. 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".*

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 public notice 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.

5. Here in this case, the plaintiff bank in support of its

averments of the plaint, has produced following documentary evidence which is as follows :

[i] Documentary evidence submitted on behalf of the plaintiff :

Sr. No.	Particulars	Exh/ Mark
1	Copy of General letter of lien and set off borrowing arrangements from the borrower.	13
2	Power of attorney.	15
3	Bank Statement.	16
4	Claim certificate.	17
5	D. P. Note.	3/2
6	Hypothecation agreement for laon.	3/3
7	Copy of written application of defendant No.1.	3/5
8	Copy of death certificate of Lt. Popatbhai Sodha.	3/6
9	Pedigree with affidavit of Lt. Popatbhai Sodha.	3/7

6. The Ld. Advocate for the plaintiff bank has orally argued in consonance with the averments of the plaint and submitted to pass a decree in favour of the plaintiff as prayed for.

7. Now, in this case on perusal of the plaint and documents produced by the plaintiff in support of its plaint vide Exh.13 & 15 to 17, it transpires that the total

outstanding amount Rs.3,32,147/- is due from the defendants side towards loan facility availed from the plaintiff bank but the defendants have failed to make the repayment for the same to the plaintiff bank. It can be specifically seen from the statement of account produced vide Exh.16 that the amount of Rs.3,32,147/- is outstanding due remain to repay by the defendants to the plaintiff bank. Therefore, the plaintiff bank is entitled to get the said 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 would be deemed that the defendants have admitted the claim of the plaintiff bank as put forth in the plaint. Therefore, the plaintiff bank shall be entitle to a decree for a sum of Rs.3,32,147/- with interest.

7.1 Further it is pertinent to note here that in a suit under Order 37 of CPC, i.e., Summary Suit, the plaintiff bank is entitled only to recover a debt or a liquidated demand in money payable by the defendants with or without interest at the rate specified. Therefore, in view of provision of Order 37 of CPC, and on perusal of entire record it appears that between the parties there is no interest rate specified in the loan agreement, therefore, in view of Order-37, Rule 2(3) of C.P.C., and in view of ratio laid down by the higher courts in cases reported in **2014 (0) AIGEL 231567** and **2001(0) GLHEL-SC 214015,** the plaintiff cannot be entitled to get 24% interest on principle outstanding due amount till the date of the decree. However, considering the overall facts and circumstances of the case, nature of transaction and purport of Section 34 of CPC, if reasonable interest at the rate of 6% p.a on principal due amount of Rs.3,32,147/- is allowed from the date of this order till realization, it will serve the interest of justice. Therefore, in the interest of justice, I pass following final order;

-: <u>O R D E R</u> :-

(1) The suit of the plaintiff bank is hereby allowed.

(2) The defendants are jointly and/or severally directed to

pay the due amount i.e., **Rs.3,32,147/- (Rupees Three Lakhs Thirty Two Thousand One Hundred Forty Seven Only)** with simple interest at the rate of 6% p.a. from the date of this order till its actual realization to the plaintiff bank.

(3) It is further ordered that the defendants shall pay the costs of the suit to the plaintiff bank and bear their own cost of the suit.

(4) Decree be drawn accordingly.

Signed and pronounced in the open Court on this 24th day of March, 2026.

Date : 24.03.2026
Place: Ahmedabad.

[N. H. Nandaniya]
2nd Addl. Sr. Civil Judge,
Ahmedabad(Rural) Navrangpura at Ahmedabad
(UID : GJ00906)