Received on	5	12	2018
Registered on	5	12	2018
Decided on	15	2	2019
Duration	Y.	M.	D.
	00	02	10

EXH. 19

IN THE COURT OF ADDITIONAL JUDGE, SMALL CAUSES COURT, AT RAJKOT.

Summary Suit No. 503/2018
(Suit under the provisions of O. 37 R. 2 of C. P. C.)

Plaintiff:-
ICICI BANK LIMITED, a Company
incorporated under the provisions of
the Companies Act, 1956 and having it's
Registered Office at Landmark,
Race Course Circle, VADODARA and
having one of it's Branch office situated
at Jaihind Press Building,
Opp. Sharda Baug,
Rajkot

V/s.

Defendants:-
(1) **SHRI MAHADEVBHAI GOVINDBHAI PATEL,**
Hindu, Adult, Occu : Business,

(2) **SHRI BIRJU MAHADEVBHAI PATEL,**
Hindu, Adult, Occu : Business,
Address of both of them :-
Madhuli, 6 - Royal Park,
University Road, Nr. Kautilaya,
Rajkot

Shri P. H. Kotecha Learned Advocate for the plaintiff.
Defendants remained absent, though duly served and therefore, suit proceeded against the defendants as an exparte.

Suit For recovery of an amount of Rs. 5,61,005-90 under the provisions of O. 37 R. 2. of C. P. C.

// **J U D G E M E N T** //

1. The facts of the plaintiff's suit can be narrated as under.

That the plaintiff has filed the present suit under the provisions of Order-37 R. 2 of C.P.C. to recover an amount of **Rs. 5,61,005-90** from the defendants. It is averred by the plaintiff that the plaintiff Bank is a Company incorporated under the provisions of the Company Act, 1956. That the defendants approached plaintiff Bank for providing Personal Loan Facility and upon the application and other details, papers and documents and after completion of the procedure to be followed by the Bank for sanctioning the Personal Loan facility vide Loan Account No. **LPRAJ00033122755** of **Rs. 9,00,000/-** and the defendants thus entered into Personal Loan Facility Agreement with the plaintiff Bank on 23/07/2015 and executed other necessary documents for repayment of the said loan. That after execution of necessary documents, the plaintiff Bank sanctioned the Personal Loan facility to the defendants and the validity period of the facility was from 01/09/2015 to 01/08/2020. It is stated by the plaintiff Bank that the defendants were irregular in paying the amount as per the terms and conditions of the

Agreement and thereafter, the plaintiff Bank has requested to the defendants to pay the outstanding amount. However, the defendants failed and neglected to pay the same and therefore, the plaintiff has constrained to send a notice for making repayment of the outstanding amount. That the plaintiff Bank had no option but to recall the aforesaid amount forthwith as per the terms of agreement. That the plaintiff Bank is maintaining regular books of account and as per account of the defendants, the defendants become found due to the sum of **Rs**. **5,61,005-90** and the plaintiff Bank is also entitled to get an interest at the rate of 24% p.a. on the said amount. That the defendants have deliberately not paid payment of the aforesaid amount and thereby they have committed breach of terms and conditions of the loan agreement. That cause of action has arisen for the plaintiff Bank to file this suit within the jurisdiction of this Hon'ble Court at Rajkot when aforesaid transactions were made between the plaintiff Bank and the defendant and when the defendants executed the Loan Agreement and other security documents and failed and neglected to repay the outstanding amount due the plaintiff. In view of narration of above facts, the plaintiff Bank has prayed to pass a decree in favour of the plaintiff in terms of para-14 of the plaint.

2. It appears from the record that summons as provided under Order-37, rule-2, sub-rule 2 & 3 of the C.P.C. has been issued and served vide Ex. 5 and as per said provisions, the defendants are required to appear within 10 days from the service of summons. In the present case, the summons has been served vide Ex. 5 to the defendants and in response to the same, the defendants did not appear before the Court and not preferred an application for leave to defend. Thereafter, from the plaintiff's side, the plaintiff has filed filed an affidavit of the plaintiff's witness for drawing decree vide Ex. 06 wherein he has stated that summons has been duly served to the defendants and after serving of notice, the defendants did not appear before the court and no appearance has been filed from the defendant's side and thereby, the defendant has not preferred an application for leave to defend and therefore, he has prayed to pass decree in favour of the plaintiff.

3. In support of the suit, the plaintiff Bank has produced the following kind of documentary evidence.

:: DOCUMENTARY EVIDENCE ::

Sr. No.	Description	Ex. No.
1.	Original Application Forms of plaintiff for availing loan account for the Personal loan facility	08
2.	Copy of Pan Card of Applicant No. 2	10
3.	Copy of Passport of Applicant No. 2	11
4	Copy of Passport of Applicant No. 1	12
5	Copy of Letter for Prepayment	13
6	Copy of Loan Account Statement	14
7	Books of Account Certificate	15
8.	Copy of Power of Attorney issued by ICICI Bank	16
9.	Copy of Employee ED of Shailesh Kakadiya	17
10.	Copy of Closing Purshish	18

4. Having carefully gone through plaint and the documents produced at Ex. 4 as mentioned above. Thus, considering the averments in the plaint and after service of summons to the defendant vide Ex. 5, it appears that the defendants not entered to defend the present suit within the time prescribed under law. Thus, it is presumed that defendants are admitting the claim as mentioned in the suit. Therefore, considering the documents produced by plaintiff Bank and also considering that the defendant not entered to defend the suit, there is no reason to disbelieve the documentary evidence produced by the plaintiff Bank at Ex. 08 to 17 and the said documents are pertaining to loan availed by the defendants from the plaintiff Bank. Looking to above documents like Application Form, Personal Loan Agreement executed between the defendants and the plaintiff vide Ex. 08 and 09, it can be said that the defendants have obtained Personal Loan facility from the plaintiff Bank as alleged in the plaint. So far due amount of the plaintiff Bank is concerned, the plaintiff Bank has produced Statement showing total outstanding due of defendants vide Ex. 13 and there is no reason to disbelieve the same as the defendants did not appear before the court for his defence. Looking to record of the case, it seems that after service of summons of suit at Ex. 5, the defendants did not appear before the court and thereby, not preferred an application for leave to defend. Thereafter, Shailesh Meghjibhai Kakadiya the witness of plaintiff Bank has filed an affidavit at Ex. 06 wherein he has stated that he is serving as Debt Manager in the plaintiff Bank and he is well conversant with the facts of suit. He has stated that after service of summons to the defendants, the defendants have not filed appearance and thereby, not preferred an application for leave to defend and therefore, the plaintiff Bank is entitled to get decree as prayed for in the plaint. There is no reason to disbelieve the version of the plaintiff's witness at Ex. 06 as the defendants are not appeared before the court and thereby, not preferred an application for leave to defend. Therefore, in view of above, the plaintiff Bank is entitled to recover due amount of **Rs. 5,61,005-90** from the defendant. Looking to relief clause para 14 (a) of plaint, the plaintiff Bank has claimed an interest at the rate of 24% pa. on due amount of **Rs. 5,61,005-90.** The said demand of interest as claimed by the plaintiff Bank is exorbitant and excessive. Looking to prevailing rate of interest at present and as per provision of C. P. C., it would be just and proper to award 7% interest on suit amount and accordingly the plaintiff Bank is entitled to get an interest at the rate of 7% on suit amount. In view of above discussion and considering the provisions of O. 37 of C.P.C., nothing remains to proceed further, but decree is required to be drawn as prayed by the plaintiff Bank under the provisions of O. 37 Sub Rule (3) R. 2 of C. P. C. Therefore, I pass the following final order in the interest of justice.

// O R D E R //

(1) The present suit of the plaintiff Bank is hereby allowed & decreed under Sub-rule (3) of Rule-2 of Order – XXXVII of C.P.C.

(2) The defendants are hereby ordered to pay **Rs. 5,61,005-90/-** (Rupees Five Lakhs Sixty One Thousand Five and Ninety Paisa only) along with an interest at the rate of 7% p.a. to the plaintiff Bank from the date of filing of this suit till payment of decreetal amount.

(3) The defendants do bear their own cost and cost of the plaintiff Bank.

(4) Decree to be drawn accordingly.

Signed and Pronounced in the open court today on this **15th** day of February-2019.

Place : Rajkot.
Date : 15-02-2019.

(Chandrakant Nathubhai Desai)
Additional Judge,
Small Causes Court,
Rajkot
UIC NO.GJ 0995