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**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE ,
CHHOTAUDEPUR**

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SMST R NO.53/2024
Exhibit :

PLAINTIFF:

BANK OF BARODA

A Nationalized bank constituted under
The provisions of Banking Companies
(Acquisition and transfer of undertakings)
Act 1970 having its head office at vadodara
and one of its branches is amongst others
at Chhotaudepur, Dist.Chhotaudepur.
Through its Authorized Signatory
Mr Liju Daniel .

Versus

DEFENDANTS :

1. Mr. Shanibhai Radheshyam Sharma

Residing at :- Near Gita Gas Agency,
Ta.,Dist.,Chhotaudepur.

Advocates:

Learned advocate for the applicant :- Mr. Sapan Teredesai.

Learned advocate for the defendant :- Ex-parte.

Subject : Summary suit to recover Rs.1,76,437.62/- (Rupees One Lakh Seventy Six Thousand Four Hundred Thirty Seven and Sixty Two Paisa Only.

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

(1) The plaintiff bank has filed present suit against the defendant under- **Order 37 of the Civil Procedure Code** for recovery of Rs.1,76,437.62/- with interest @ 7% P.A. from the date of suit till actual realization.

(2) Short facts narrated in the present suit are as under :-

The plaintiff is a body corporate, constituted under the provisions of Banking companies' (Acquisition and transfer of undertaking) Act 1970 having its head office at Vadodara and one of its branch at Chotadaipur District. The defendant had taken loan from the Plaintiff bank for the purpose of Purchasing Grocery for Kirana Store. As per the Composite Hypothecation Agreement dated 13th of October 2017 the defendant agreed to repay the loan amount of rupees 3,15,000 with variable rate of interest @ 7% with 60 monthly installments. Further the defendant is also liable to pay Additional overdue interest at the rate of 2%. Further the defendant has not paid installment and committed breach of contract. As per last approved rate of interest applicable Rs.1,76,437.62/- is due on the defendant. Despite of several reminders the defendant has not paid any due amount.

(3) On filing of the present suit this court issued notice of appearance to the defendant which was served on him on 03rd of December 2024 and despite of service of summons the defend failed to appear before this court.

(4) Thenafter, on behalf of the Plaintiff Bank, an application vide Exhibit-16 was submitted, wherein all the facts stated in the plaint were reiterated. In the said application, the Plaintiff prayed for a decree against the Defendant under the provisions of Order XXXVII, Rules 1, 2, and 3(1) of the Code of Civil Procedure, 1908. Further, The plaintiff has submitted original documents Vide list at **Exh-04**. On perusal of record it

appears that the plaintiff has produced Original application for Pradhan Mantri Yojana Loan at **Exh-07**, Original Copy of Bill of Supply Of Nure Mohamadi Kirana Store at **Exh-08**, Original Copy of Appraisal Format at **Exh-09**, Original Copy Of Demand Promissory Note at **Exh-10**, Original Copy of Composite hypothecation agreement at **Exh-11**, Original Copy of Declaration-cum-Undertaking-Cum- Authority at **Exh-12**, Original Copy of Letter of Aknowledgement Of Debt at **Exh-13**, Copy Of Statement of Account at **Exh-14**, Authority Letter of MR. Lizu Daniel Branch Manager Of Bank Of Baroda - Chhotaudepur Branch is produced at **Exh-15**.

(5) Heard Ld. Advocate for the plaintiff and read the record. Before discussing about evidence produced on the behalf of the plaintiff, it is advertent to refer relevant provisions of Order 37 wchich is as under :-

Order-37, Rule-2(3) 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.]

Order-37, Rule-3(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

As per Order XXXVII, Rule 3(1) of the Code of Civil Procedure a defendant shall appear within ten days from the date of the service of summons and enter an appearance either in person or by pleader and shall file address for service of notice and as per the provisions contained in Order XXXVII Rule provides.2(3) in default of the

defendant in entering appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for a sum together with interest at the rate specified and so for the cost as specified by the Hon'ble High court from time to time.

(6) Keeping in mind the above discussed legal provision if we peruse the record it transpires that summons was duly served on defendant and the same is on record Vide **Exh-06 and despite of service of summons** the defendant neither appeared in person or through his pleader and nor complied with the procedure mentioned in Order-37, Rule- 3(1). Further on perusal of documentary evidences produced on behalf of the plaintiff Vide **Exh-07 to Exh-15** it is evident that the defendant took loan of **Rs.3,15,000/-** from the plaintiff bank and on perusal of **Exh-14** it is evident that **Rs.1,76,437.62/-** is due on defendant. On perusal of **Exh. 10** it also transpires that 7% rate of interest was agreed but the plaintiff has failed to show that addition overdue interest @ 2% was agreed between the parties. Further, as the defendant has not appeared before this court and not challenged any evidence produced on the behalf of the plaintiff, I am of the view that the plaintiff bank is entitled for a decree under order 37 Rule 2(3) of the civil procedure code as prayed and entitled to interest @ 7% pa on the due amount Hence I pass the following final order .

: **ORDER** ::

- (1) The plaintiff's suit bearing Summary Suit No. 53/2024 is hereby decreed under the Provision of Rule Order XXXVII, Rule- 2 (3) of the Civil Procedure Code .
- (2) The plaintiff bank shall be entitled to recover **Rs. 1,76,437.62 /-** (**Rupees One Lakh Seventy Six Thousand Four Hundred Thirty Seven and Sixty Two Paisa Only.**) from the defendants with interest @ 7% per annum from date of the suit till realization of the

decretal amount .

- (3) The defendants shall pay the costs of the plaintiff bank and also bear his own costs .
- (4) Decree to be drawn up accordingly .

Pronounced in the Open Court today on this 23rd day of January, 2025.

Place :- Chhotaudepur.

Date :- 23/01/2025.

(N. H. Shaikh)

Principal Senior Civil Judge,
Commercial Court Chhotaudepur,
Judge Code-GJ00863