Received on	22	06	2022
Registered on	22	06	2022
Decided on	24	4	2023
Duration	Y.	M.	D.
	00	10	02

Exh. 23

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

Summary Suit No. 499/2022

(Suit under the provisions of O.37 R.2 of C.P.C.)

Plaintiff:-
UNION BANK OF INDIA,
Through Branch Manager,
Mr. Abhishek Kumar Sinha
(Duly Constituted attorney and Principal Officer)
Address:
Nakshatra-1, Ground floor,
150 Feet ring road branch,
Rajkot

V/s.

defendant:-
M/s. King Enterprise,
Proprietor,
Mayurbhai Karshanbhai Gorfad,

ADDRESS:-
Flat No.218, Aadarsh Residency,
Village: Pal (Pipaliya), Taluka:Lodhika,
Dist: Rajkot.

Shri C.N.Asodariya Learned Advocate for the plaintiff.
defendant remained absent, though duly served and therefore, suit proceeded against the defendant as an exparte.

Suit For recovery of an amount of Rs.10,82,391/-

under the provisions of O. 37 R. 2. of C. P. C.

// J U D G 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.10,82,391/-** from the defendant. It is averred by the plaintiff that the plaintiff Bank is a Body corporate under the Banking Companies Act,1970. That the defendant approached plaintiff Bank for providing Term Loan 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 Term Loan facility Vide. Loan Account No. **578006170000075** and the defendant thus entered into Term Loan Facility Agreement with the plaintiff Bank on dated **14/08/2018** and executed other necessary document for repayment of the said facility. That after execution of necessary documents, the plaintiff Bank sanctioned the Term Loan amount of **Rs.10,00,000/-** facility to the defendant and the validity period of the facility was for **84 months.** It is stated by the plaintiff Bank that the defendant was irregular in paying the amount as per the terms and conditions of the Agreement and thereafter, the plaintiff Bank has requested to the defendant to pay the outstanding amount. However, the defendant failed and neglected to pay the same and therefore, the plaintiff has constrained to send a notice on dated **13/05/2022** 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 defendant, the defendant become found due to the sum of **Rs. 10,82,391/-** and the plaintiff Bank is also demanded to get an interest at the rate of **@12.20% P.A.** (**10.20**% p.a. plus **2**% penal interest for default on the said amount). That the defendant had deliberately not paid payment of the aforesaid amount and thereby he has committed breach of terms and conditions of the 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 defendant executed the 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. 7/1 by way of publication** and as per said provisions, the defendant are required to appear within 10 days from the service of summons. In the present case, the summons has been served to the defendant and in response to the same, the defendant did not appear before the Court and not preferred an application for leave to defend. Thereby, the defendant has not preferred an application for leave to defend and therefore, he has prayed to pass decree in favor 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	Sanction Advice	10
2	Demand promissory note	11

3	Interest agreement	12
4	Simple agreement	13
5	letter of continuity	14
6	Term loan agreement	15
7	Loan account statement of defendant	16
8	Legal notice served to defendant	17
9	RPAD receipt	18
10	Post return cover	19
11	Plaintiff P.O.A.	20
12	Plaintiff ID proof	21

4. Having carefully gone through plaint and the documents produced at **Ex. 10 to 21** as mentioned above. Thus, considering the averments in the plaint and after service of summons to the defendant vide **Ex.7/1,** it appears that the defendant not entered to defend the present suit within the time prescribed under law. Thus, it is presumed that defendant 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.10 to 21** and the said documents are pertaining to Term Loan availed by the defendant from the plaintiff Bank. Looking to above documents like Sanction Letter and Demand Promissory note executed between the defendant and the plaintiff vide **Ex.10 and 11,** it can be said that the defendant has obtained Term 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 defendant vide **Ex.16** and there is no reason to disbelieve the same as the defendant did not appear before the court for his defense. Looking to record of the case, it seems that after service of summons of suit at **Mark/Ex.7/1,** the defendant did not appear 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. 10,82,391/-** from the defendant. Looking to relief clause para 12 (a) of plaint, the plaintiff Bank has claimed an interest at the rate of **12.20%** p.a. (**10.20%** agreed interest + **2%** penal interest for default) on due amount of **Rs. 10,82,391/-** but looking to the Letter of Sanction at **Exh.10** there is mention the interest rate at **10.20% per annum.** 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 **10.20% P.A.** interest on suit amount and accordingly the plaintiff Bank is entitled to get an interest at the rate of **10.20% P.A.** 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 defendant is hereby ordered to pay **Rs.10,82,391/-**(Rupees ten lack eighty two thousand three hundred ninety one only) along with an interest at the rate of **10.20% p.a.** to the plaintiff Bank from the date of filing of this suit till payment of decreetal amount.

(3) The defendant 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 **24th day in the month of April-2023.**

Date : 24/04/2023
Place : Rajkot

(Nitinchandra N. Dave)
Additional Judge,
Small Cause Court,
Rajkot.
UID - GJ01069