सत्यमेव जयते

RECEIVED ON	**:**	**23/03/2017**
REGISTERED ON	**:**	**23/03/2017**
DECIDED ON	**:**	**25/06/2021**
DURATION	**:**	
		YY MM DD

IN THE COURT OF 2ND ADDITIONAL JUDGE SMALL CAUSE COURT AT VADODARA

SMST-R No.61/2017

Exh.___

PLAINTIFF:

UNION BANK OF INDIA
Through Authorized Officer
Mr. Nitin Kumar,
Address: M.G. Road Branch,
Vadodara.

Versus

DEFENDANT:

M/S. TIFFIN EXPRESS
Proprietor Tejalben Vipinbhai Parmar,
Address: Ground Floor,
Sri Hansh Party Plot,
Manjalpur, Vadodara.

Advocate:
Mr. D.D. Rana, Ld. Advocate for plaintiff.
Defendant failed to enter their appearance.

Suit Value at Rs.3,35,523/- in Term Loan and Court fee paid of Rs.10,750/-.

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

The plaintiff- Bank has filed the present suit against defendant for the recovery of Rs. **3,35,523/-** with interest @ **13% p.a**., interest from date of filing this suit, till realization of entire decreetal amount. The brief facts of the case of the plaintiff-Bank may be summarized as under:

1. Plaintiff is a Bank constituted and Functioning Under the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970 having its Head office at 239, Union Bank Bhavan, Vidhan Bhavan Marg, Nariman Point, Mumbai, Maharashtra and branch office amongst other places at M.G. Road Branch, Mandvi, Vadodara in the State of Gujarat. Further, Mr. Nitin Kumar is the Authorized Officer of the Plaintiff Bank and has been authorized by the Bank to sign, institute, verify and pursue the captioned proceeding.

2. That, the defendants M/s. Express, having its address at Ground Floor, Sri Hansh Party Plot, Manjalpur, Vadodara and its Proprietor Mrs. Tejalben Vipinbhai Parmar, is having a permanent address at 91- Shanti Nagar, Krishna Nagar, Patan-18, Veraval Patan, Junagadh, Gujarat, Pincode-362268 have obtained a Term Loan of **Rs.5,00,000/-** vide **Account No.31050615000384**7 from the plaintiff under the scheme for professional and self employment covered under **CGTMSE**. In this regard, a sanction letter dated 09/11/2013 has been issued by the bank. The said sanction letter contained all terms and conditions in respect to purpose of loan, rate of interest, repayment schedule etc., were explicitly mentioned and same were duly accepted and acknowledged by the defendants. The defendant has also executed a "Term Loan Agreement cum Hypothecation Movables" on date 11/11/2013 in favour of plaintiff bank. The defendant has also executed Demand Promissory Note, Letter of Undertaking not to alienate hypothecated goods in favour of the plaintiff bank on 11/11/2013. It is further stated that by virute of aforesaid executed documents defendant is liable to repay the said loan alongwith all accumulated interest thereon and other incidental charges and additional interest. As per the terms and conditions of sanction, the loan was extended for a period of **60 months** having monthly installment of **Rs.8,334/-** and the @ **2.75** of over Union Bank of India's base rate or such other rates as may be prescribed by the Bank from time to time with a minimum of 13% interest p.a., with monthly rests for value received. The plaintiff bank had issued a Legal Notice on 07/03/2017 recalling the entire advance and requested to make payment regular. That, the defendant has not fulfilled his promise to make repayment the loan advanced to him as per agreement entered into between the defendant and the plaintiff bank. The defendant has neglected and avoided regular repayment by EMI agreed. The plaintiff bank has several times intimate verbally to the defendant to regularize his loan account by making payment of overdue amount. But, all went into vain, as the defendant never made any attempt to regularize his loan account by making payment of overdue amount. Thereafter also, the defendant has never attempted to make any payment to regularize his loan account. Thereafter, the plaintiff bank has given many remainders to make payment of outstanding overdue amount and to make his loan account regular. The defendant's disregard and negligence in making regular repayment of his loan account has put the plaintiff into condition. Under the circumstances, the present suit is filed against defendant to recover the suit amount of Rs. **3,35,523/-** alongwith interest @ 13% p.a., from the date of filing of this suit till realization of the entire decreetal amount.

3. The summons for appearance were issued upon the defendant, which were returned served vide **Exh.6**, then public notice vide **Exh.9** published in daily newspaper "Loksatta Jansatta" on date 10/01/2020. But nobody appeared on defendant's side and matter was exparted.

4. It seems that the present plaintiff has filed this suit under the special provision of Order 37 of Civil Procedure Code wherein the Rule 3 provides that "**3.Procedure for the appearance of defendant. -** (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 and address for service of notices on him. (2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such revise. (3) On the day of entering the appearance, notice on such appearance shall be given by the defendant to the plaintiff's pleader, or if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be. (4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No.4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. (5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

5. Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

6. Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

7. At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made as is refused, the plaintiff shall be entitled to judgement forthwith.**"**

8. At the relevant time, this Court has issued summons for appearance as per the provisions of Order 37 Rule (2) of C.P.C. which was duly served upon both the defendants, but, they were not appeared before this Court nor they filed their appearance memo as provided in the special provision. Thereafter, the present plaintiff has applied for summons for judgement which were issued in form No.4-A Appendix B upon both the defendants. The same was duly served upon both the defendants, but, in prescribed period they were failed to appear before this Court and they were failed to file the application for defend this suit as provided in Rule 3 of Order 37 of Civil Procedure Code. Hence, this Court has decided to pass a decree under the provisions of Order 37 Rule 4 of Civil Procedure Code.

9. Looking to the facts here, it seems that the present plaintiff has filed this suit under the special provision of Order 37 of Civil Procedure Code wherein the Rule 3 provides that "**3.Procedure for the appearance of defendant. -** (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 and address for service of notices on him. (2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such revise. (3) On the day of entering the appearance, notice on such appearance shall be given by the defendant to the plaintiff's pleader, or if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be. (4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No.4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. (5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

10. Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

11. Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

12. At the hearing of such summons for judgment,-

(a) if the defendant has not applied for leave to defend, or if such application has been made as is refused, the plaintiff shall be entitled to judgment forthwith.**”**

13. As the defendant failed to register their appearance on record, the matter has been put for submitting affidavit of Examination-in-chief of the witness of plaintiff bank with documentary evidence. The Authorized Officer of the plaintiff Bank i.e. **Rohan Tamanekar** has submitted his Examination-in-chief in form of Affidavit vide **Exh.14** and also submitted documentary evidence vide **Exh.16 to Exh.21**. The witness of plaintiff has reiterated almost all material facts of the plaint at **Exh.1**, however, the facts narrated therein are not repeated here, but sum and substance of it are considered in this Judgment. The witness of plaintiff bank has specifically stated that the defendant had requested for loan from the plaintiff bank worth of **Rs. 5,00,000/-** and in this regard, the defendant had declared details of his address and other relevant information to the plaintiff bank. The plaintiff bank had granted term loan of **Rs. 5,00,000/- @ 13% p.a**., with monthly rest to the defendant and the entire amount of loan and interest is to be repaid in **60 EMI** of **Rs. 8,334/-** p.m., and the defendant had unconditionally accepted all the terms and conditions of the plaintiff bank, mentioned in credit sanction advice dtd.09/11/2013. That, the plaintiff bank had made repeated request and demand to make the repayment of suit amount, but it had gone in vain and the defendant has not paid any amount. Now, looking to the statement of loan account produced vide **Exh.20**, it transpires that **Rs. 3,35,523/-** is outstanding against the defendant and the said loan amount is not controverted in any manner by the defendant. The plaintiff has claimed due amount of Rs. **3,35,523/-** as outstanding amount against the defendant. If we refer the original Agreement of Term Loan and Hypothecation produced vide **Exh.18**, it is reflected that, the defendant had made his signature on each and every page of this loan agreement. Considering the evidence adduced by the plaintiff bank, it is proved that the defendant has obtained loan of **Rs. 5,00,000/-** from plaintiff Bank and given assurance to repay the same, but the defendants failed to make the payment of remaining amount of **Rs. 3,35,523/-** with interest, and therefore, the plaintiff bank is entitled to recover the suit amount with interest from the defendant.

14. Defendant has neither place any documentary nor oral evidence, and despite of repeated and ample opportunities to provide written statement and evidence as principle of "Audi Alteram Portem", he has not cared to submit any reply or to be present, as summons were personally served to the defendant vide **Exh.6 & 9** as public notice**.** Hence, no evidence is on records produced towards defendant side and they "A Jure Suo Cadaunt" (they fall from their rights).

15. RELATED PROVISIONS OF LAW

(A)THE EVIDENCE ACT

(a) Section 3 -“Proved”: - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

(b) Section 61. Proof of contents of documents: - The contents of documents may be proved either by primary or by secondary evidence.

(c) Section 62. Primary evidence: - Primary evidence means the document itself produced for the inspection of the court.

Explanation 1: - Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2: - Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of original.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Bankers Book Evidence Act.

(d) Section 64. Proof of documents by primary evidence: - Documents must be proved by primary evidence except in the cases hereinafter mentioned.

16. General Principle of Evidence in Civil Cases :-

(a) As per the S.102 of Indian Evidence Act, the burden of proof lies on the plaintiff to produce the facts before the Court regarding his claim, upto satisfaction of the Court then after he will get decision in his favour. He has to lead such evidence as Court draws inference in his favour. He has to establish his case prima facie. Court relies on the principle of Preponderance of Probability at the time of arriving decision in civil matters.

(b) As per the provisions of Section 101 to Section 103 of the Indian Evidence the burden to prove all the issues are lay on the plaintiff. Plaintiff has produced the affidavit of chief examination of Affidavit of **Mr. Rohan Tamanekar**, vide **Exh.14**, as per the provisions of under Order 18 Rule 4 of the Code of Civil Procedure. He has claimed to allow the relief as demanded in the plaint. He has placed the ledger of the defendant's account vide **Exh.20**.

17. Production of evidence by parties:

(A) Oral/Documentary evidence adduced by plaintiff:

Sr.	Particulars	Exh.
	Oral Evidence:	
1.	Examination-in-chief in form of affidavit of evidence of Plaintiff – **Mr. Rohan Tamanekar**	14
	Documentary Evidence:	

1.	Loan Application Form	16
2.	Sanction Letter	17
3.	Term Loan Agreement cum Hypothecation Movable	18
4.	Demand Promissory Note and Letter of undertaking not to alienate hypothecated goods.	19
5.	Account Statement	20
6.	Legal Notice dated 07/03/2017	21

(B) <u>Oral/Documentary evidence adduced by defendants</u>: NIL

:: **<u>REASONS</u>** ::

18. Pertaining to the matter, the plaintiff bank in contest to the Bankers Book Evidence Act has placed every necessary Loan Paper, Acknowledgment Notice, Statement of Accounts and Notice to defendant perusing all these documentary evidence. It is imminent that defendant has taken loan and despite legal notices, he has not paid the amount back to Union Bank of India also defendant hasn't even cared to protest or deny any prayer of plaintiff in this Court. Hence, the plaintiff suit is decreed in their favour.

Further as per the principle laid down in AIR 1998 Delhi, page 183, in the case of Vijayee Home loan Ltd V/s. M/s. Crown Traders wherein the Hon'ble High Court has held that "As the defendant failed to enter appearance within ten days of the service of summons, the allegations made in the plaint shall be deemed to be admitted by then under said sub rule (3) of Rule 2 of Order XXXVII of C.P.C. the plaintiff company is thus, entitled to a decree for the suit amount with interest pendente lite and further @ 22% P.A. being contractual rule against the defendants"

Further a citation reported in 1999 (1) Civil L.J. 255, Delhi wherein the Hon'ble Delhi High Court has held that 'A careful perusal of above provision goes to show that suit under order XXXVII are maintainable not only on the basis of a promissory note but on the basis also to recover a debt or liquidated demand in money on the basis of a written contract or on an agreement of guarantee between the parties."

If, we compare the facts of this case with the facts of above two judgments of Hon'ble High Court, it seems that the defendant has acknowledged the bill and agreement in favour of plaintiff bank and therefore, under the provisions of order XXXVII, the plaintiff bank's suit is maintainable. Moreover as per the agreement, the defendant has agreed to pay interest also, and therefore, as per the law laid down by the Hon'ble High Court, the defendant is responsible to pay the interest to the plaintiff bank.

On perusal of the said Statement of Account at **Exh.20**, it appears that an outstanding amount of **Rs. 3,35,523/-** remains due to the plaintiff on the date of filing the suit from the defendant. But, the defendant has not tried to repay the same amount. Hence, the plaintiff is entitled to recover the amount of **Rs. 3,35,523/-** as per the statement of account at **Exh.20** alongwith interest @ **13%** from the date of filing of this suit till its realization. Therefore, the plaintiff bank has proved their say as per the settled position of law. All the documents are duly proved and hence, as provided in Order 37 Rule 3(6) of C.P.C., it seems that the defendants are failed to comply the provision and as it is provided, if the defendant has not applied for leave to defend, the plaintiff shall be entitled to judgment and hence, this suit requires to be allowed and therefore, in the interest of justice, the following final order is passed:-.

:: **ORDER** ::

- The Summary Suit under Order 37 is allowed.
- The plaintiff is entitled to recover amount of **Rs. 3,35,523/-** with interest @ **13% p.a.**, interest from date of filing of the suit till realization from the defendant.
- The defendant shall born cost of the plaintiff and the suit.
- Decree to be drawn up accordingly.

Signed and pronounced in the open Court on this 25th day of **June**, **2021**.

Date:25/06/2021.

Vadodara.

(D.P. Oza)
2nd Addl. Judge, Small Cause Court,
Vadodara.
Code No.GJ01110

MM ASHIF-P.S.