सत्यमेव जयते

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DECIDED ON	**:**	**30/03/2022**
DURATION	**:**	
		YY MM DD

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

SMST-S No.104/2021

Exh.___

PLAINTIFF:
BANK OF BARODA
A Body corporate constituted under
The Banking Companies,
(Acquisition of Transfer of Undertaking)
Act V, 1970 Having its Head Office at
Baroda Bhavan, Alkapuri, R.C. Dutt Road,
Vadodara, One of its Branches at Raopura,
Vadodara, though its authorized
Mr. Shankar Lal Meena
Chief Manager.

Versus

DEFENDANTS:

(1) Mr. Ranjit Arun Bhagat

(2) Mrs. Deepali Narendrakumar Bhagat

Both are residing at B-25, Vallabh Nagar Society, Opp. Mential Hospital,Vadodara.

Advocate:
Mr. D N Shete, Ld. Advocate for plaintiff.
Exparte for defendant.

Suit for recovery of amount of Rs.2,49,473/-.

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

The plaintiff- Bank has filed the present suit against defendants for the recovery of **Rs.2,49,473/-** with interest @ **12.80% p.a**. **+ 2 %** penal interest from the date of filing of 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 Bank of Baroda a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertaking) Act V 1970, having its Head Office at Baroda Bhavan, Alkapuri, R.C. Dutt Road, Vadodara and one of its branches at Raopura Branch, dist. Vadodara.

2. The defendant no.1 was in need of finance for personal need and therefore on his request the plaintiff bank had granted **Rs.2,00,000/-** on date 17/09/2018 to defendant no.1 and defendant no.2 is the guarantor for the said loan. The defendants have executed demand promissory note & declaration cum undertaking cum authority dtd.18/09/2018 for loan

amount of Rs.2,00,000/- and defendants agreed to repay the loan amount in 48 monthly installment of Rs.5,346/-. Thenafter defendant became uncooperative and stopped to pay the agreed installment and account became NPA on 16/08/2019. The defendants have breached the agreement and have filed in payment of installment. Thenafter plaintiff bank has issued legal notice to the defendants but despite receiving of notice they haven't replied nor make the demanded payment. The plaintiff bank maintains the account no.01980600002136 in the name of Ranjit Arjun Bhagat the and amount deposited by the defendant is given the credit in the account. As per the account the amount of Rs.2,49,473/- is outstanding as on date 12/07/2021. The defendants have executed documents/deeds in favour of plaintiff bank for aforesaid loan availed and for scheduled repayment of the same. That, the defendants have not fulfilled their promise to make repayment the loan advanced to them as per agreement entered into between the defendants and the plaintiff bank. The defendants have neglected and avoided regular repayment by EMI agreed. The plaintiff bank has several times intimated verbally to the defendants to regularize his loan account by making payment of overdue amount. But, all went into vain, as the defendants never made any attempt to regularize their loan account by making payment of overdue amount. Thereafter also, the defendants have never attempted to make any payment to regularize their loan account. Thereafter, the plaintiff bank has given many reminders to make payment of outstanding overdue amount and to make his loan account regular. The defendants' 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.2,49,473/-** alongwith interest @ **12.80% p.a. + 2% penal interest** from the date of filing of this suit till realization of the entire decreetal amount.

3. The summons for appearance were issued upon the defendants vide **Exh.6** on 04/10/2021 and mobile no.9824082814 and 9824082285 with sign and bailiffs endorsement on oath before nazir of this Court. But, nobody appeared on defendants' side and the matter was exparted.

4. Defendants have 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", they have not cared to submit the same. hence, no evidence is on records produced towards defendants side and they "A Jure Suo Cadaunt" (they fall from their rights).

5. To the above pleadings of plaintiff, the following issues have been framed for the determination of this case vide **Exh.08** on dtd.28/02/2022.

   1) Whether plaintiff is entitled to recover suit amount with interest from defendant as alleged?

   2) What order and decree?

6. <u>RELATED PROVISIONS OF LAW</u>

<u>(A)THE EVIDENCE ACT</u>

(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.

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

7. <u>**General Principle of Evidence in Civil Cases :-**</u>

(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. Gopinath Panda,** vide **Exh.11**, 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. Plaintiff has placed the ledger of the defendant's account vide **Exh.26**.

8. My answers to the above issues are as under:

1) In Affirmative.

2) As per final order.

9. **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. Gopinath Panda**	11
	Documentary Evidence:	
1.	Authority to file a Money Suit given by the plaintiff (original)	13
2.	Application for personal loan dtd.17/09/2018 (original)	14
3.	Particulars to be supplied by the applicant advances by defendant no.1 (original)	15
4.	Particulars to be supplied by the guarantor for advances by defendant no.2 (original)	16
5.	Sanction letter dtd.17/09/2018 (original)	17
6.	D.P. note for Rs.2,00,000/- dtd.18/09/2018 (original)	18
7.	General form of guarantor dtd.18/09/2018 (original)	19
8.	Letter of installment with acceleration clause dtd.18/09/2018 (original)	20
9.	Declaration cum undertaking cum authority dtd.18/09/2018 (original)	21
10.	Notice issued by the bank (office copy) dtd.08/05/2019	22
11.	Notice issued by the bank (office copy) dtd.10/06/2019	23
12.	Notice issued by the bank (office copy) dtd.08/08/2019	24
13.	Notice issued by penal advocate of the plaintiff bank to defendants (office copy) dtd.30/01/2020	25
14.	Statement of account (office copy) dtd.09/07/2021 no.01980600002136	26
15.	Bank's circular (computerized certified copy)	27

(B) **Oral/Documentary evidence adduced by defendants: NIL**

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

10. It is pertinent to note that though sufficient time and opportunity has been afforded to defendants, they failed to file their written statement and also failed to cross-examine the witness of plaintiff, and thereby, they failed to rebut the oral as well as documentary evidence adduced by the plaintiff. Not only that, the defendants also failed to adduce and produce any oral as well as documentary evidence in support of their case or denial of plaintiffs suit. Therefore, as per Banker's Book Evidence Act and documents provided on record, plaintiff succeeds to prove that the defendant has taken **Rs.2,00,000/-** from the plaintiff bank as loan on 17/09/2018. In the present suit, plaintiff has claimed interest **@12.80% p.a. + 2% penal interest** from the date of filing the suit till realization of entire amount of **Rs.2,49,473/-** and then only it will meet the end of justice. Therefore, findings to **Issue No. 1 to 4** are given in affirmative accordingly.

11. Looking to the entire facts and circumstances of the present case, plaintiff succeeds to prove his case, and the suit of plaintiff requires to be decreed, and hence, following final order towards **Issue No.2** is passed in the interest of justice.

:: <u>ORDER</u> ::

- The plaintiff's suit bearing **SMST-S No.104/2021** stands decreed.
- The plaintiff is entitled to recover amount of **Rs.2,49,473/-** along with **@12.80% interest p.a. + 2% penal interest** from the date of filing of the suit till realization of entire decreetal amount.

- The defendants to bear their cost and shall pay the cost of this litigation to the plaintiff.
- Decree to be drawn up accordingly.

Signed and pronounced in the open Court on this **30th day** of **March**, **2022**.

Date: 30/03/2022.

Vadodara.

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

MM ASHIF