GJCU020012052024

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REGISTERED ON :**05.02.2024**

DECIDED ON: **26.09.2024**

DURATION: **00.07.21**

YY MM DD

IN THE COURT OF JUDGE, ADDL.CIVIL JUDGE & J.M.F.C COURT. CHHOTAUDEPUR

SMST - R No . 2 OF 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 Baroda and one of its branches isamongst others at Chhotaudepur, Dis.Chhotaudepur
Through its Authorized Signatory Mr.Neeraj Kumar

Versus

DEFENDANTS:

1. MRS. VILASHBEN MAHESHBHAI RATHVA
2. MR. MAHESHBHAI KANTIBHAI RATHVA
3. MR. PRABHUBHAI KANTIBHAI RATHVA

ALL RESIDING AT:VILLAGE: BAROJ,
POST: JALODA,OFFICE FALIYA,
TALUKA: CHHOTAUDEPUR,
DISTRICT: CHHOTAUDEPUR- 391165

Advocates:

Mr. **SapanTeredesai,**Ld. Advocate for plaintif-bank.
Ex-parte.

SUIT FOR RECOVERY OF Rs . 1,52,434.43/- UNDER ORDER-37 OF THE CIVIL PROCEDURE CODE.

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

(1) The plaintif-bank has fled this suit under the Provision of Order-37 of the Civil Procedure Code for recovery of 2, 57,310.44/-with interest accruing thereon @ 9.75 % p . a .from the date of filing the suit till payment along with the Overdue intrest of 2.00%. as per the Agreement. The short facts narrated in the present suit are as under :-

(2) The plaintif-bank herein is a Branch of Bank of Baroda at the address mentioned in the title of this plaint and defendants are borrowers. At the request of defendants,

the plaintif-bank had granted a Dairy Loan of Rs. 3,32,500.00/- on dtd: 07.08.2018 and defendants had agreed to repay the said loan amount. But defendants stopped making the payment and failed to pay the said loan. The plaintif-bank sent various reminders to the defendants to clear the outstanding dues and hence to clear such legal outstanding dues, defendants had failed and neglected to repay the outstanding amount of the plaintif-bank. Therefore plaintif-bank has filed the present suit for recovery of Rs.2, 57,310.44/- from the defendants along with interest at the rate of 9.75 % per annum till realization of the entire suit amount.

(3) The Court had issued summons for appearance on the defendants as prescribed under the provisions of Order XXXVII , Rule 2 of the Code of Civil Procedure, which was served upon the defendants on 14.03.2024.The defendants have neither appeared in response to the summons for appearance nor filed address for service as laid down under the provisions of Order XXXVII , Rule 3 of the Code of Civil Procedure.

(4) The plaintif-bank has submitted an application at Exh . 10 in accordance with the pleadings in the plaint. It is submitted

that the plaintif-bank has filed the present suit and has sought relief of decree in its favour in accordance with the provisions of O .37 of the Code of Civil Procedure. It is submitted that as the defendants failed to appear within the prescribed period the allegations in the plaint are deemed to be admitted and the plaintiff-bank is entitled to decree for the sum mentioned in the plaint.

(5) The plaintiff-bank has produced documentary evidence to prove its case. On perusal of the evidence placed on record, Original Loan application form is produced at Exh . 10, Original Cash Receipt of Mafat M. Arif A. Satar is produced at Exh . 11, Original Sanction Letter is produced at Exh . 12, Original Demand Promissory Note is produced at Exh . 13, Original Hypothecation Agreement is produced at Exh . 14, Original Letter of Authority to Make Payment Directly to the dealers is produced at Exh .15, Original Annexure-II (Declarations cum Undertaking Cum Authority) is produced at Exh . 16, Original General Form of Guarantee is produced at Exh. 17. Original Letter of Acknowledgement of Debt is produced at Exh . 18, Copy of Account Statement is produced at Exh. 19, Copy of authority letter of Mr. Neeraj Kumar is produced at Exh. 20.

(6) As per the provisions of Order XXXVII Rule 3(1) of the Code of Civil Procedure, a defendant may at any time within 10 days of the service of the summons enter an appearance either in person or by pleader and shall file address for service of notice. Order XXXVII Rule 2(3) provides that in default of the defendant in entering appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff-bank shall be entitled to a decree for a sum together with interest at the rate specified.

(7) In the facts and circumstances of the present case, summons was duly served. The defendants neither appeared nor filed an address for service in response to the summons for appearance within the time prescribed. Under the circumstances, the plaintiff-bank is entitled to a decree for the sum as prayed for. The plaintiff-bank has produced vide Exh . 12, document related to rate of contractual interest, from which, it transpires that, the rate of 9.75 % interest per annum were agreed upon by both the parties, but the rate of interest, at rate 9.75 % per annum is very high, therefore considering the present situation, it would be just and proper to hold that plaintiff-bank is entitled to get interest at the rate of 6% per annum from date of the suit till realization of the decreetal amount.

:: **ORDER** ::

~ The plaintif's suit bearing Summary Suit No. 2/2024 is hereby decreed under the Provision of Rule 2(3) Order XXXVII of the Civil Procedure Code.

~ The plaintif-bank does recover an amount of Rs.2, 57,310.44/-from the defendants with interest **@ 6%** per annum from date of the suit till realization of the decreetal amount.

~ The defendants have to pay the costs of the plaintif-bank and also bear their own costs.

~ Decree to be drawn up accordingly.

Signed and pronounced in the open Court today on the **26th** day of **SEPTEMBER, 2024**.

Date: 26.09.2024
Place: CHHOTAUDEPUR

(**AMISH PRAFULLCHANDRA JOSHI**)
ADDL . CIVIL JUDGE.
CHHOTAUDEPUR
(UIC GJ 01446)