Received on	29	12	2018
Registered on	29	12	2018
Decided on	08	01	2025
	YY	MM	DD
Duration	06	00	10

सत्यमेव जयते

IN THE COURT OF 2ND ADDL. CIVIL JUDGE AT DHOLKA

REGULAR CIVIL SUIT NO. 82 OF 2018

Exh.:______

Plaintiff : **"State Bank of India,** A Body Corporate Constituted under the Provision of "State Bank of India" Act, 1955. Its central office is located at Mumbai and its local head office is located in Ahmedabad and one of its branches is located at Badarkha, Ta. Dholka, Dist. Ahmedabad.

VERSUS

Defendants : **1) Ushaben Jivabhai Thakor**

(Leader of Jay Bhathiji SGSY SHG Self Help Group), Badarkha.

2) Laxmiben Jagdishbhai Thakor

(Vice Leader of Jay Bhathiji SGSY SHG Self Help Group), Badarkha.

Age: Adult, Occupation: Animal Husbandry.

R/o: Sajiyavas, Badarkha, Tal. Dholka, Dist.A'bad.

Suit Valued at Rs.2,86,918/- for Recovery of Money

==

APPEARANCE:

Ld. Advocate for the plaintiff - Mr. R. N. Pujara

Ld. Advocate for the defendants - Ex-parte

==

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

1) The short facts of the suit are that the plaintiff has filed the present suit and prayed for the recovery of the due amount of

Rs.2,86,918/- (Rupees Two Lakh Eighty Six Thousand Nine Hundred Eighteen Only) from the defendant Nos.1 and 2 or their properties along with the interest rate of 15 %.

2) As mentioned in cause title, being a group leade and vice-leader of the aforesaid group respectively, the defendant Nos.1 and 2 were in need of money for purchasing buffaloes for their 12 members of their group so they applied for loan facility from the plaintiff bank. By approving the application of the defendants, the plaintiff bank sanctioned the loan of Rs.4,20,000/- on 08/10/2012 and in order to obtain the loan, the defendants have executed all the necessary documentary evidences in favour of the plaintiff bank and the assurance was also given to the plaintiff bank to repay the loan amount regularly at the rate of interest of 12.85 % as per the norms of the plaintiff bank in the prescribed performa. That the defendants were agreed to pay the amount taken from the plaintiff bank regularly as per the bank's rules and for that, necessary documents were made in this regard. Therefore, the account was opened bearing No.32589788796 for the defendants.

3) Thereafter, the defendants did not conducted the loan account satisfactory and failed to operate the said account in accordance with the agreed terms in spite of repeated reminder from the plaintiff bank.

4) The outstanding amount of the defendants towards the bank is Rs.2,18,414/- upto the date 22/12/18 as well as the accrued interest amount of Rs.68.504/- from 01/12/17 to 18/10/18 and hence, the total amount in a regular manner which is Rs.2,86,918/- (Rupees Two Lakh

Eighty Six Thousand Nine Hundred Eighteen Only) from the defendant Nos.1 and 2 as on date 22/11/2018 along with interest and if the same is not recovered in the stipulated time, the plaintiff bank is legally bound to recover the same with the loss of interest as per the norms.

5) Therefore, the plaintiff has filed the present suit and prayed for a decree in its favour for the recovery of Rs.2,86,918/- (Rupees Two Lakh Eighty Six Thousand Nine Hundred Eighteen Only) from the defendant Nos.1 and 2 as on date 22/11/2018 along with the compound interest of 15 % per annum along with all the expanses for filling the suit from defendant.

6) The summons/notice were duly served to the defendants in which defendant No.1 was appeared before the Court on 02/03/2019 and filed an adjournment. Thereafter, neither the defendants nor his Ld. Advocate has remained present and filed any adjournment / report. Therefore, the matter was proceeded ex-parte against the defendants.

7) The plaintiff, in order to prove its case, has relied upon following oral as well as documentary evidence;

:: ORAL EVIDENCE ::

Sr. No.	Particulars	**Exh.**
01	Testimony of Ms. Urvi Bhadrayu Trivedi, Branch Manager of State Bank of India, Badarkha Branch, Tal. Dholka	12

:: DOCUMENTRY EVIDENCE ::

Sr. No.	Particulars	**Exh.**
01	Original copy of loan application form.	15
02	Original copy of agreement signed by all the group members of Jay Bhathiji Group - Annexure I	16
03	Original Annexure II executed by defendants.	17
04	Original Annexure III executed by defendants.	18
05	Original Annexure IV executed by defendants.	19
06	Original documents for SHG finance executed by defendants.	20
07	Original copy of consent letter by defendants.	21
08	Original Sanction Letter dtd.08/10/12.	22
09	Original Revival Letter dated 15/09/2015.	23
10	Original Revival Letter dated 18/08/2018.	24
11	Copy of statement of account of defendants.	25

8) Thereafter, Ld. Advocate for the plaintiff has filed closing pursis vide Exh. 26 and orally argued that the fact of his pleadings are proved by his oral as well as documentary evidences therefore, the present suit should be allowed and prayed for to pass the decree in favour of the plaintiff.

9) For determination, following issues have been framed vide **Exh.7** :

:: I S S U E S ::

1) Whether the Plaintiff Bank proves that the Defendant has taken loan from the bank and he had also executed the documents in favour of the Bank ?
2) Whether the Plaintiff Bank proves that, they are entitled to recover Rs.2,86,918/- from the present defendant and properties of defendant ?

3) Whether the Plaintiff Bank proves that, defendant have duly acknowledged the debt within the time prescribed by law of limitation ?
4) Whether the Plaintiff Bank is entitled to get relief as prayed for ?
5) Whether Plaintiff's suit is barred by limitation ?
6) What order and decree ?

10) My findings for the aforesaid issues are as under :

1) In affirmative.
2) In affirmative.
3) In affirmative.
4) In partly affirmative.
5) In Negative.
6) As per final order.

:: R E A S O N S ::

11) Issue Nos. 1 & 2 :-

(11.1) As there is no appearance from defendant side, hence, as per Evidence act, Section **101 to 103,** the initial burden is on the plaintiff side to prove the existence of the facts and it is very well settled principle of law that the party has to prove his case on his own strength and can not take the advantage of weakness of the opposite party. So, recognizing the above referred principle, let us visit to check material placed before this Court by the plaintiff in order to succeed in his suit.

(11.2) The plaintiff bank has produced an affidavit for examination-inchief of its Branch Manager, Ms. Urvi Bhadrayu Trivedi at Exh.12 wherein she has reiterated the averments of the plaint and fully supported the case of the Plaintiff-bank on the basis of documentary evidences which are exhibited at Exhibit Nos.15 to 25 which were produced on record. Considering the fact that the plaintiff bank has sanctioned the personal loan of the defendant Nos.1 and 2 for the amount of Rs.4,20,000/- (Rupees Four Lakh Twenty Thousand only) on dated 08/10/2012 and the defendants have executed necessary documents in favour of the plaintiff bank. Further, as per the regular loan account of the defendant maintained by the plaintiff bank, the defendants are liable to pay the amount of Rs.2,86,918/- (Rupees Two Lakh Eighty Six Thousand Nine Hundred Eighteen Only) upto the date of 22/11/2018 along with interest as per agreement. After taking into consideration of oral as well as all the documentary evidences, it transpires that the defendants have taken the aforesaid loan from the plaintiff bank and further, they failed in paying the installments even after given full opportunity. Further, considering the fact that the defendants in this case, have not challenged any of the aforesaid documents in any manner. Therefore, it can be said that the version of the plaintiff bank remains unchallenged. In this way, the facts of the pleading are proved by the deposition of the plaintiff as well as documentary evidences and therefore, the answer of Issue Nos.1 and 2 are given in the Affirmative.

12) **Issue No. 3 & 5:-**

(12.1) So far as the Issue No.3 is concerned that whether the plaintiff proves that the defendants have duly acknowledged the debt within the time prescribed by law of limitation ? In this regard, if I peruse the plaint, oral testimony as well as the documentary evidences produced by the plaintiff in which it appears that the plaintiff-bank has sanctioned the said loan amount to the defendants which is repayable within a stipulated period as per decided by the terms and conditions of the plaintiff bank. Also, it is cleared from the record that as per the terms and conditions of the sanction, the defendants have signed and executed the necessary financial documents and subsequently on default in repayment of the outstanding amount, the plaintiff-bank has issued notice and called upon the defendants to make the repayment of the loan and financial advances to the satisfaction of the bank. Further, the defendant has acknowledged the the debt by giving two revival letters dated 15/09/2015 and 18/08/2018 vide Exh.23 & 24 and these documents of acknowlegment were produced on the record. Therefore, it is cleared that the present suit for the recovery of the outstanding amount from the defendants filed by the plaintiff bank on dated 29/12/2018 is well within the prescribed period of limitation i.e. three years from the date of arising of the cause of action. Hence, it is proved that the defendants have duly acknowledged the debt within the time prescribed by law of limitation and for that, the answer of Issue No.3 is given in affirmative and further, for Issue No.5, it can be said that it is not barred by law of limitation. Accordingly the answer of the Issue No.5 is given in Negative.

13) **<u>Issue No.4 :</u>**

(13.1) As discussed above, it is cleared that the plaintiff bank is entitled to recover its due amount from the defendant. On the other hand, looking to the prayer of plaintiff bank, it is asked 15 % interest over its recovery amount while looking to the documentary evidences, it is agreed the rate of interest between the parties is 12.85 %. For the decision of this issue, the principle laid down by the Hon'ble High Court in **Central bank V/s P.R.Germents reported in AIR 1986 Gujarat 113**

and by the Hon'ble High Court of Karnataka in case of Vijaya bank V/s. S. Bhathija reported in AIR 1994 Kant 123 is required to see, as per the above judgment, *"in commercial transaction by public financial institution the contractual rate of interest should be rule and departure rare exception and in such case granting of lesser rate of interest is ordinarily ruled out. If the rate of future interest is granted at lesser rate than that of contractual rate that will amount to giving premium to those who trade upon the money of others. To reduce or deny interest would amount to penalizing the creditor for approaching the court and encouraging the debtor to deliberately and unjustly prolong the litigation".* Now in the case on hand, the defendants have not even appeared to answer the claim of the plaintiff so it is fair and proper case to order the rate of interest at contractual rate i.e. 12.85 % p.a. on the outstanding principal amount from the date of filing of the suit till its realization. Hence, I answer the Issue No.4 in **partly Affirmative.** Now, considering the aforesaid discussion and reasons, in reply to Issue No.6, following final order is passed in the interest of justice;

:: F I N A L O R D E R ::

1) The suit of the plaintiff is hereby **partly** allowed.

2) The defendant Nos.1 and 2 are hereby ordered to pay the amount of Rs.2,86,918/- (Rupees Two Lakh Eighty Six Thousand Nine Hundred Eighteen Only) along with interest at the rate of 12.85**%** p.a. jointly and severally from the date of filing of this suit till the realization.

3) The defendant shall bear his own cost as well as the cost of the plaintiff for filling of the suit.

4) Decree be drawn accordingly.

Signed and pronounced in the open Court on this 08th day of January 2025.

Place : Dholka
Date : 08/01/2025

[P. M. Joshi]
2nd Additional Civil Judge
Dholka, Ahmedabad (Rural)
(GJ 01716)