MHNG020025492015

Presented on : 03-08-2015
Registered on :17-08-2015
Decided on :04-03-2025
Duration : 9 years, 7 months, 1 days

IN THE COURT OF 9th JT. C.J.S.D. & A.C.J.M, NAGPUR

[Presided over by A. S. Atre]

Regular Civil Case No.921/2015 **Exhibit - 89**

Plaintiff Represented by Ld. Advocate **Mr. B. D. Dave**	**Jethanand Khemchand Khandwani,** Aged-46 years, Occupation : Business, R/o. Rewakhand, Opposite Poonam Mall, Hiwarinagar, Nagpur – 440008.

VERSUS

Defendant Represented by Learned Advocate Mr. V. K. Kolte	**ICICI Bank Ltd.,** Through its' Manager, 222, Vishnu Vaibhav, Ground Floor, Palm Road, Civil Lines Nagpur – 440001.

JUDGMENT

(Delivered on this 4th day of March,2025)

1. This is suit for recovery of amount of Rs.3,48,427/-.

Brief facts of the suit are as under:-

2. The plaintiff availed individual loan from the defendant bank against his family properties. He was not satisfied with the services provided by the defendant. He approached the defendant in May-2014 and requested to give details about the payment required to be made by him for full and final satisfaction of the loan amounts. The defendant by its letter dated

29/05/2014 asked the plaintiff to pay amount of prepayment charges in addition to the amount of loan balance standing against his name. Plaintiff objected for the same. However, the defendant bank declined to accept any amount without payment of prepayment charges. Hence, plaintiff paid Rs.2,52,556/-. On 11/07/2014 and 12/07/2014 the defendant issued no dues certificate to the plaintiff. It is contended that the bank had no right to force the plaintiff to pay prepayment charges. Plaintiff issued legal notice on 14/02/2015 to defendant and demanded refund of Rs.2,52,556/-. Despite receipt of said notice on 16/02/2015 defendant failed to comply. Hence, plaintiff has filed this suit for the recovery of amount of Rs.3,48,427/-. The particulars of the claim are given in para – 10 of the plaint.

3. The defendant filed written statement at Exh.15. The contents of para – 1 of the plaint are deemed to have been admitted. The defendant has not denied the same specifically. Correspondence between the parties and payment of prepayment charges is admitted. The defendant stated that it had advanced loans to plaintiff, M/s. T. Khandwani Builder and Developer Pvt. Ltd., Mahesh Khemchand Khandwani, Bhagwan Khemchand Khandwani, Laveena Bhagwan Khandwani, Pradeep Khemchand Khandwani, Bhavna Pradeep Khandwani and Mahesh Steel Traders. It is submitted that the loans advanced to M/s. T. Khandwani Builder and Developer Pvt. Ltd. and Mahesh Steel Traders were not individual loans. Hence, they are liable to pay prepayment charges. The defendant relies upon one circular of

RBI dated 07/05/2014. The defendant states that there is no merit in the case of plaintiff and hence, the suit be dismissed.

4. Plaintiff has filed on record following documents which I have gone through.

Sr. No.	Description	Exhibit
1	Loan Sanction Letter	26 to 28
2	Statement of interest	29 to 31
3.	Intimation letter for payment before due date	32 to 34
4.	Letter	35
5.	NOC	36 to 38
6.	Letter for foreclosure charges	39
7.	Letter to bank	40
8.	E-mail	41
9.	Notice to Bank	42
10.	Postal Receipt	43
11.	Postal acknowledgment	44

5. Defendant has filed on record following documents which I have gone through.

Sr. No.	Description	Exhibit
1	Authority letter	86

6. My learned predecessor framed issues at Exh.21. I am reproducing the same and recording my findings thereon together with the reasons therefor as under:-

Sr. No.	Issues	Findings
1	Does the plaintiff prove that the defendant bank forcefully compelled him to pay charges which are contrary to terms of loan agreement ?	**...In affirmative.**
2	Whether plaintiff has fully paid loan amount alongwith valid dues to the defendant ?	**...In affirmative.**
3.	Whether the defendant bank illegally withheld title documents of the plaintiff ?	**...In negative.**
4.	Whether the plaintiff is entitled to recover the amount of Rs.3,48,427/- ? If yes, what would be the rate of interest ?	**...In partly affirmative.**
5.	What order and decree ?	**...Suit is decreed with costs.**

REASONS

AS TO ISSUES NO.1 to 4 :

All the issues are interlinked with each other to avoid repetition those are discussed together.

7. On behalf of plaintiff Jethanand S/o Khemchand Khandwani is examined at Exh.10. In his affidavit in lieu of examination in chief he has reiterated all the averments those in the plaint. Hence, the same need not be repeated. He has proved the documents at Exh.26 to 44. Plaintiff closed his evidence by filing pursis at Exh.47.

8. Plaintiff in his cross examination has firmly stated that the loans mentioned in para – 1 of the plaint were taken in his individual capacity. He has repaid entire amount of loans as per the foreclosure letter of the defendant Bank. He was asked about the loans given to the other family members and two companies. However, said portion of cross examination is not relevant. Plaintiff is claiming relief about the three loans which were taken by him from the defendant in his individual capacity. It is to be noted that said fact is admitted by the defendant. Therefore, there is no need to take into consideration cross examination of plaintiff in respect of the loans advanced to his family members and two companies. Hence, the evidence of plaintiff is admissible.

9. Plaintiff has examined Bhagwan Khemchand Khandwani at Exh.46. Said witness is elder brother of plaintiff. In his affidavit in lieu of examination in chief he has stated that plaintiff had availed loan from the defendant bank in his individual capacity. He had never applied for any loan to the defendant bank. The defendant had obtained his signatures on several blank papers as guarantor for the loans advanced to plaintiff. After going through the cross examination of this witness it appears that he was cross examined for the loans allegedly taken by said witness, his family members and their two companies. Therefore, the evidence of this witness is corroborating the evidence of plaintiff.

10. On behalf of defendant Vinit S/o Dilip Ukey is examined at Exh.85. In his affidavit in lieu of examination in chief he has reiterated all the contention in the written statement.

Hence, the same need not be repeated. Defendant closed its evidence by filing pursis at Exh.87.

11. In his cross examination said witness is admitted that he was not working with said branch of the defendant when loan was sanctioned to plaintiff. It is also admitted that he has no personal knowledge about said loan transaction. He has admitted that while granting the loan the defendant banks opened the bank account to disburse loan amount. It is further admitted that the defendant bank has not opened any accounts and issued loan sanctioned letter in the names of M/s. T. Khandwani, Bhagwan Khemchand Khandwani, Laveena Bhagwan Khandwani, Pradeep Khemchand Khandwani, Bhavani Pradeep Khandwani and Mahesh Steel Traders. From the oral evidence of this witness it transpired that even if there is a procedure as per rules of the defendant bank to open a bank account in the name of borrower before disbursing the loan amount, the same is not followed in the case of above referred persons. Therefore, it is hard to believe that the defendant bank had granted any loans to the above referred persons. Moreover, considering the issues before me said fact is immaterial. The defendant has nowhere denied that it had issued three loans to plaintiff in his individual capacity. Therefore, the evidence of this witness is not useful for the defendant.

12. After going through the entire material placed before me it is observed that the fact of disbursement of three loans to plaintiff in his individual capacity is proved. The said fact is admitted by the defendant bank. The defendant bank has tried to join the loans sanctioned by it to other family members of plaintiff and their two companies in this case. Accordingly it has raised the defense. The defense is based on one circular of RBI dated 07/05/2014, DBOD. Dir. BC. No. 110/13.03.00/2013-2014. I have gone through copy of the said circular which is placed on record at Exh.80. The last portion of said circular specifically excludes individual borrowers from payment of prepayment penalties. Therefore, the contention of learned advocate for plaintiff has to be sustained. He has stated that all the three loans mentioned in para – 1 of the plaint were taken in the individual capacity of plaintiff. Hence, the plaintiff was not supposed to pay any prepayment charges to the defendant. As per the circular of RBI (Exh.80). Therefore, it can be safely said that the defendant bank has forcibly recovered Rs.2,52,556/- from the plaintiff. The fact of full and final settlement of the loan accounts of plaintiff is also admitted by the defendant. Hence, I answer Issues No.1 and 2 in affirmative.

13. As far as Issue No.3 is concerned there is no specific relief claimed against said allegation. I felt to understand the purpose of framing of said issue. Even if the said issue is answered in affirmative there will not be any changed in the final relief to be granted in favour of plaintiff. Further there is no specific evidence in respect of this issue on the part of plaintiff. Hence, I answer Issue No.3 in negative.

14. Plaintiff is claiming Rs.3,48,427/- from the defendant bank. The bifercation of his claim is given in para – 10 of the plaint. On perusal of the said particulars it appears that plaintiff has imposed interest @ 15% on the basic amount of Rs.2,52,556/-. Further plaintiff has imposed Rs.50,000/- by way of damages for mental agony and harassment on the part of defendant. There is no justification for the rate of interest and the amount of damages. They appear to be exaggerated. Considering the fact that present suit is pending for more than 10 years plaintiff is certainly entitled for interest but not at the rate of 15% p.a. It would be expedite to grant interest at the rate of 6% p.a. As per as the damages are concerned appropriate amount would be Rs.10,000/- and not Rs.50,000/-. Hence, I answer the Issue No.4 partly in affirmative. The plaintiff is entitled to recover Rs.2,52,556/- together with interest @ 6% p.a. Accordingly I pass following order:-

ORDER

1. The Suit is decreed with costs.
2. The defendant shall pay Rs.2,52,556/- together with interest @ 6% p.a within a period of one month from the date of this order.
3. Decree be drawn up accordingly.

(Judgment pronounced in open court).

Place – Nagpur (A.S. Atre)
Date –04/03/2025 9th Jt. Civil Judge, Sr. Dn.
& A.C.J.M.,Nagpur

Case argued on :	18/02/2025
Judgment dictated on :	04/03/2025
Transcription ready on :	04/03/2025
Judgment checked and signed on:	04/03/2025

Place – Nagpur (A.S. Atre)
Date –04/03/2025 9th Jt. Civil Judge, Sr. Dn.
& A.C.J.M.,Nagpur

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same word to word, as per the original Judgment.

Date:04/03/2025 (M.Y. Mushtaque)
Stenographer Gr. II