

Registered on :22.07.2017

Decided on : 30.08.2018

Duration : 01YY. 01MM. 08DD.

Exh-32

IN THE SMALL CAUSE COURT AT SURAT

SMALL MONEY SUIT NO. 190 OF 2017

Plaintiff:

Punjab National Bank , a bank corporate constituted under the Banking companies (Acquisition and transfer of undertaking) Act 1980, having head office at:
Ring Road Surat.

Through its authorised officer

Vijaykumar Babulal Sharma

Aged: 52 Years, Occupation: Service,

Add.: As Above.

:-:V E R S U S:-:

Defendants:

Legal Heirs of Late Narendrakumar Rana

(1) Gitaben Widow of Narendrakumar Rana

Age: 50 Years, Occupation: Business and Housewife,

Address: 3/1377, Badar Miya Street, Ambawadi,

Salabatpura, Surat.

(2)Nikul Narendra Rana (Jariwala),

Age: 27 Years, Occupation: Business,

Address: As above.

(3)Dharmesh Narendra Rana (Jariwala)

Age: 25 Years, Occupation: Business,

Address: As above.

(4)Nikita Narendra Rana (Jariwala)

Age:21 Years, Occupation: Business,

Address: As above.

Learned advocate for the Plaintiff. :-

S.J. Mithaiwala

Defendant -

Ex-parte.

Judge:- MR. AMRUT H. DHAMANI.

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

1. The plaintiff-Bank has filed the suit against the defendants for recovery of Rs.40,574.07 ps. with interest under Order 37 of civil procedure code as summary suit.

2. The brief facts of the plaintiff's suit are as under :-

The plaintiff is a body corporate constituted under the Banking companies (Acquisition and transfer of undertaking) Act 1980,

having head office at: 7, Bhikaji Cama Place New Delhi and inter alia a Branch Office at Ring Road Branch, Surat. The plaintiff's case is that defendant approached the plaintiff-Bank and Defendant is a Principal Borrower and who had availed term loan for machinery for his business. Defendant had approached the plaintiff bank term loan for machinery of Rs.40,574.07 ps. Forty Thousand Five Hundred Seventy Four Rupees and Seven Paisa, said term loan for Machinery. The defendant have executed security documents for Rs. 2,70,000/- the said term loan for machinery loan payable to the bank along with interest at the rate of 13% + 2% penal interest. The defendant agreed to said loan amount and as per agreement and credit facilities.

3. Defendant has executed loan agreement document in favour of the plaintiff bank. The defendant has executed several documents. Like loan application, Hypothication of assests to secure term loan on dated 22.12.2010, Term loan agreement on dated 22.12.2010, General undertaking from borrower on dated 22.12.2010, Ekrarnamu on dated: 22.12.2010.

4. The defendant has not paid term loan for machinery loan amount regularly. The defendant Narendra Rana (Jariwala) died on 06.12.2013, after the death of Narendra Rana, defendant no.1 to 4 have accepted liabilities of the said loan as legal heirs of late Narendra Rana are responsible and liable to repay outstanding dues in the nature of public money to the plaintiff bank as per concluded contract he is liable to pay amount is due as Rs.40,574.07 ps.

outstanding amount due and payable up to 31/05/2017 along with further interest till actual realization the account became. Therefore, plaintiff has issued legal notice on dated 08.08.2013 to the defendant said notice return served to the defendant, defendant has not paid said loan amount to the plaintiff bank. Therefore, the plaintiff has filed suit against the defendant to recover suit claim amount with interest at the rate of 13% + 2% penal interest per annum.

5. On the institution of the suit, summons for appearance was issued to the defendant, summons of the defendant served and duly returned. The plaintiff has served summons to the defendant but defendant himself or his advocate is not present in the court and did not chosen the contest the matter therefore, his right was closed below exh.1 on dated 27.12.2017 by my ld. Predecessor judge. The plaintiff has filed an application/affidavit vide Exh.9 for passing decree against the defendant as the defendant has not appeared before the Court. The plaintiff has produced certified copies and original documentary evidence vide Exh-08 which were ordered to be exhibit 11 to exhibit 30 which are consisting loan application form, General term agreement etc. and legal notice issued to the defendant.

6. The defendant has not paid term loan for hypothecation of assets to secure term loan amount regularly. The defendant is responsible and liable to repay outstanding dues in the nature of public money to the plaintiff bank as per concluded contract he is liable to pay amount is due as Rs.40,574.07 ps.. outstanding amount

due and payable up to 31.05.2017 along with further interest till actual realization the account became. Therefore, plaintiff has issued legal notice on dated 08.08.2013 to the defendant said notice return served to the defendant, defendant has not paid said loan amount to the plaintiff bank. Therefore, the plaintiff has filed suit against the defendant to recover suit claim amount with interest at the rate of 13% + 2% penal interest per annum.

7. On the institution of the suit, summons for appearance was issued to the defendant, summons of the defendant served and duly returned. The plaintiff has served summons to the defendant but defendant himself or his advocate is not present in the court and did not chosen the contest the matter therefore, his right was closed below Exh.1 on dated 27.12.2017 by my ld. Predecessor judge. The plaintiff has filed an application/affidavit vide Exh.10 for passing decree against the defendant as the defendant has not appeared before the Court. The plaintiff has produced certified copies and original documentary evidence vide Exh-8 which were ordered to be exhibit 11 to exhibit 30 which are consisting loan application form, General term agreement etc. and legal notice issued to the defendant.

8. The summons for appearance was not produced by the defendants not appeared hence, summons is served upon the defendant has not appeared in the court and thereafter, another two applications also filed by the defendant's side thereafter, neither defendants nor their advocates present before the court hence, court

is pass an order for close their right to produce written statement and also close the right for cross-examination of plaintiff. Thenafter, plaintiff has filed documentary evidence list vide Exh.9 which was contained mark 8/1 to mark 8/20, all documents are original or office copy of the commercial transaction between plaintiff and defendants hence all documents are exhibited as Exh.11 to Exh.30.

9. The plaintiff has produced documents which are remained unchallenged by the defendants. Hence, considering the affidavit as well as documentary evidence adduced with the suit as also, considering that the defendants have not challenged the suit and remained absent and therefore, the plaintiff has proved that the amount of Rs.2,70,000/- as they obtained term loan from the plaintiff-bank and the amount of Rs.40,574.07 ps. is still due from the defendants for the said period with interest. Moreover, the plaintiff-bank has submitted the affidavit at Ex.9 and adduced the documents at Ex.12 to Exh.31. But as discussed above, the defendants did not remain present before this Court to confront the submissions made by the plaintiff-bank and the defendants have also not challenged the documents adduced by the plaintiff-bank either in person or through their advocates. As also, they have not made cross-examination of the plaintiff-bank. Further, on going through the ledger account of the plaintiff-bank and other documents which is produced by the plaintiff-bank, after giving considerable opportunity by the plaintiff-bank to the defendant for outstanding amount and in absence of any positive reply from the defendants side, file the present suit.

Therefore, this court has remain no any reason to disbelieve / discard the facts as stated by the plaintiff-bank as also it is supported by the documentary evidence as well as affidavit by the plaintiff-bank.

10. In view of above mentioned Provision of Law, it is clear that if defendant failed to file an appearance before the Court within a stipulated time from the date of service of summons upon him. The defendant has not appeared before the Court. The plaintiff-bank has produced original documentary evidence on record. On perusing documentary evidence the plaintiff's suit is within period of Limitation. The plaintiff-bank has prayed for interest at the rate of 13% + 2% penal interest p.a. which is very high rate of interest. If on suit claim amount 08% interest p.a. awarded to then plaintiff-bank. It is just and proper in the interest of justice, under such circumstances, I may pass following order.

FINAL ORDER

1. The suit of the plaintiff-bank is partly allowed.
2. The defendants no.1 to 4 are jointly and severely liable for the above said payment they are ordered to pay Rs.40,574.07 ps.(Rupees Forty Thousand Five Hundred Seventy Four and Seven Paise Only) to the plaintiff along with interest thereon @ 8% p.a. from date of filing the suit and till realization of said amount.

3. If the defendants do not pay such due amount then plaintiff-bank may recover the due amount from the movable or immovable property of the defendants.

Decree be drawn accordingly.

Pronounced and signed in open court today on 30th August, 2018.

Date:-30/08/2018
Surat

(*Amrut H. Dhamani*)
Judge, Small Cause Court
Surat. UID-Code No.GJ00518