Registered on :22.07.2017

Decided on : 30.08.2018

Duration : 01Y. 01M. 08D.

Exh-44

IN THE SMALL CAUSE COURT SURAT AT SURAT

SMALL MONEY SUIT NO. 188 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:
Ringh Road Surat.
Through its authorised officer
Vijaykumar Babulal Sharma
Aged: 52 Years, Occupation: Service,
Add.: As Above.

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

Defendant:

1. Shri Sai Creation, A Propritery concern,
Address: Plot No.5, Second Floor,
Divya Vasundhara Ind. Estate,
Nr. Patel Nagar, A.K. Road, Surat.

2. Mr. Shailesh Labhubhai Donda,
   Prop of Shree Sai Creation,
   Age: 33 years, Occupation: Business,
   Address: 2, Deviji Nagar Society-2,
   A.K. Road, Surat.

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.5,96,776.69 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 Personal Loan for various credit facilities for his business Shree Sai Creation. Defendant had approached the plaintiff bank for credit facilities of Rs.5,96,776.69 ps Five Lac Ninety Six Thousand Seven Hundred Seventy Six and Sixty Nine Paisa, said credit facilities. The defendant have executed security documents for Rs.9,93,000/- the said credit facilities for machinery loan payable to the bank along with interest at the rate of 11.5% + 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, letter of Hypothication Agreement dated 20/11/2009, General undertaking by borrower on dated 20/11/2009, letter of undertaking on dated 20/11/2009, agreement for availing of CLCS-TUFS for Small Textiles and Jute Industries on dated 02/07/2010.

4. The defendant has not paid machinery 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 liable to pay amount is due as Rs. 5,96,776.69 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 21.04.2015 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 11.50% per annum.

5. On the institution of the suit, summons for appearance was issued to the defendant, but summons of the defendant returned unserved. The plaintiff has served summons to the defendant but summons was not served upon the defendant hence plaintiff had also tried for served summons by Register AD Post, despite that the defendant was not appeared before the Court. Hence, plaintiff given a public notice in newspaper for wide publicity and service of summons through public notice on defendant it produced vide Ex-43 then after. The plaintiff has filed an application/affidavit vide Exh. 12 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-11 which were ordered to be exhibit 14 to exhibit 42 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 machinery 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.5,96,776.69 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 11.5% + 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 12.03.2018 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-11 which were ordered to be exhibit 14 to exhibit 42 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 thenafter, another two applications also filed by the defendant's side thenafter, 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.11 which was contained mark 11/1 to mark 11/29, all documents are original or office copy of the commercial transaction between plaintiff and defendants hence all documents are exhibited as Exh.14 to Exh.42.

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.9,930,000/- as they obtained term loan from the plaintiff-bank and the amount of Rs.5,96,776.69 ps. is still due from the defendants for the said period with interest. Moreover, the plaintiff-bank has submitted the affidavit at Ex.11 and adduced the documents at Ex.14 to Exh.42. 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 11.50% + 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 are ordered to pay 5,96,776.69 ps. (Rupees Five Lacs Ninty Six Thousand Seven Hundred Seventy Six and Sixty Nine 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 defendant did not pay such due amount then plaintiff-bank may recover the due amount from the

movable or immovable property of the defendant.

Decree be drawn accordingly.

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

Date:-30/08/2018 ***(Amrut H. Dhamani)***
Surat Judge, Small Cause Court
Surat. UID-Code No.GJ00518