Registered on :08.08.2017

Decided on : 26.09.2018

Duration :YY. 1 MM. 1 DD. 18

Exh-

IN THE SMALL CAUSE COURT AT SURAT, AT SURAT

SMALL MONEY SUIT NO. 209 OF 2017

Plaintiff:

The Jammu and Kashmir Bank Ltd. Is a Banking Company under Jammu and Kashmir Companies Regulation No.XI 1977 (Samwat) having its registered Office situated at residency road, Srinagar, Kashmir and having one of its branch at amongst other at Super Tower, Ring Road, Surat, represented by its Branch Head and Constituted Attorney **Mr. Avtar Singh Raina,**

Aged: 58 Years, Occupation: Service,

Add.: As Above.

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

Defendant:

M/s Jai Gurudev Fabrics,

a sole proprietary concern prop.

Pradeep Puri

Age: Adult, Occupation: Business,

Address: 101-A, Sunrise Apartment,
Near Someshwara, Vesu, Surat.

Learned advocate for the Plaintiff. :- ***K.R. Shah***
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.7,41,681.64 ps with interest under Order 37 of civil procedure code as summary suit. Plaintiff is a bank and defendant is a Jai Gurudev Fabrics, a sole prop. Concern firm and Pradeep Puri is prop. of the firm.

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

The plaintiff-bank is a Banking Company under Jammu and Kashmir Companies Regulation No.XI 1977 (Samwat) having its registered Office situated at residency road, Srinagar, Kashmir and having one of its branch at amongst other at Super Tower, Ring Road, Surat. The plaintiff's case is that defendant approached the plaintiff-Bank and Defendant is a Principal Borrower and who had availed and executed demand promissory note for his business and getting temporary overdraft facility for his business M/s Jai Gurudev Fabrics. Defendant had approached the plaintiff bank for demand promissory note of Rs.5,00,000/- (Five Lacs only) on dated 13.10.2009 and Rs.3,95,252.29 ps. On dated 13.10.2010, said Demand Promissory notes. The defendant has executed security documents for Rs.5,00,000/- and Rs.3,95,252.29 ps. said Demand Promissory note payable to the bank along with interest at the rate of 16.75%. The defendant agreed to said demand promissory note.

3. Defendant has executed demand promissory note in favour of the plaintiff bank. The defendant has executed several documents. Like copy of demand promissory note, balance confirmation i.e. acknowledgment of debt, payment voucher made by the defendant for Rs.7,188.20/-, and account statement of defendant signed by the bank officer.

4. The defendant has not paid above said 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.6,34,729.29 ps. outstanding amount due and defendant is liable to pay Rs.3,87,434.29 ps as per the book including interest upto dated 05.08.2013 is also liable to pay interest from the date 01.04.2010 to 05.08.2013 which amounts Rs.2,47,295/- is chargeable and leviable from the defendant hence, total

amount Rs.6,34,729.29 ps. From the defendant. But defendant has not paid above said amount. Defendant has not paid above amount and as per balance confirmation i.e. letter of the acknowledgment on dated 31.03.2010, dated 31.03.2011 and also on dated 11.12.2012 to the plaintiff bank. Therefore, the plaintiff has filed suit against the defendant to recover suit claim amount with interest at the rate of 16.75% 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 filed an application /affidavit vide Exh. 38 for passing decree against the defendant as the defendant has not appeared before the Court. The plaintiff has produced original documentary evidence vide Exh-37 which were ordered to be exhibit 41 to exhibit 47 which are consisting copy of demand promissory note, balance confirmation i.e. acknowledgment of debt, payment voucher made by the defendant for Rs.7,188.20/-, and account statement of defendant signed by the bank officer.

6. On the institution of the suit, summons for appearance was issued to the defendant, but summons of the defendant returned unserved. The plaintiff has filed an application /affidavit vide Exh. 37 for passing decree against the defendant as the defendant has not appeared before the Court. The plaintiff has produced original documentary evidence vide Exh-

37 which were ordered to be exhibit 41 to exhibit 47 which are consisting copy of demand promissory note, balance confirmation i.e. acknowledgment of debt, copy of current account statement of defendant. Defendant has executed loan agreement document in favour of the plaintiff bank. The defendant has executed several documents. Like letter of proprietorship, letter of undertaking cum declaration from borrower, letter of undertaking, request disbursement of loan and letter of consent for disclosure of information etc.

7. The plaintiff-bank 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-bank has proved that the amount of Rs.5,00,000/- as overdraft loan facility from the plaintiff-bank and the amount of Rs.5,00,000/- is still due from the defendants for the said period with interest. Moreover, the plaintiff-bank has submitted the affidavit at Ex.37 and adduced the documents at Ex.41 to Exh.47. But as discussed above, the defendants did not remain present before this Court to confront the submissions made by the plaintiff-bank and the defendant has also not challenged the documents adduced by the plaintiff-bank either in person or through his advocate. 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.

8. In view of above mentioned Provision of Law, it is clear that if defendant has filed his leave to defend vide Exh.18 and plaintiff has filed rejoinder thereof Hon'ble court has passed an order at Exh.9, Exh.15, Exh.16 and Exh.22 and matter is converted into summary suit to money suit hence, this matter is renumbered and converted into money suit. Thenafter, court has framed issues as under at Exh.32:

<u>Issues</u>

(1) Whether the plaintiff proves that Rs.6,34,729.29 ps. Are due fro the defendant towards Temporary Overdraft Loan ?

(2) Whether the plaintiff s entitled to get relief as prayed for ?

(3) What order and decree ?

9. For above issues my answer and finding are as under :-

1. In the Affirmative
2. In the Affirmative.

3. As per final order.

R E A S O N S

10. **Issues no.1 to 3**

Issues No.1 to 3 are closely interconnected with each other therefore, to avoid repetition of the evidence I discussed all three issues collectively

To prove plaintiff has produced original documents vide Exh.41 to Exh.47. Plaintiff has adhered with his plaint defendant has produced his leave to defend vide Exh.18 and taken many defence in that application thenafter many adjournments has been given to the defendant but defendant has not chosen to appear before the court. The plaintiff-bank has produced original documentary evidence on record. On perusing documentary evidence the plaintiff-bank's suit is within period of Limitation. The plaintiff bank has filed chief-in-examination on affidavit vide Exh.37 reiterated all facts which is averred in the plaint defendant is not appeared in the proceedings and not challenge any version of the plaintiff 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-bank has proved that the amount of Rs.5,00,000/- as overdraft loan facility from the plaintiff-bank and the amount of Rs.5,00,000/- is still due from the defendants for the said period with interest. Moreover, the plaintiff-bank has submitted the affidavit at Ex.37 and adduced the documents at Ex.41 to Exh.47. But as discussed above, the defendants did not remain present before this Court to confront the submissions made by the plaintiff-bank and the defendant has also not challenged the documents adduced by the plaintiff-bank either in person or through his advocate. 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.

5. The plaintiff-bank has prayed for interest at the rate of 16.75% 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 answered issues no.1 and 2 are in the affirmative and for issue no.3 and final order I pass following order as under.

FINAL ORDER

1. The suit of the plaintiff-bank is partly allowed.

2. The defendants are ordered to pay Rs.6,34,729.29 (Rupees Six Lacs Thirty Four Thousand Seven Hundred Twenty Nine and Twenty Nine Paise Only) to the plaintiff- bank 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 defendant.

Decree be drawn accordingly.

Pronounced and signed in open court today on 26th September, 2018.

Date:-26/09/2018 ***(Amrut H. Dhamani)***
Surat Judge, Small Cause Court
Surat. UID-Code No.GJ00518