Registered on :21.03.2017

Decided on : 26.09.2018

Duration :YY. 1 MM. 06 DD. 05

Exh-

IN THE SMALL CAUSE COURT AT SURAT, AT SURAT

SMALL MONEY SUIT NO. 77 OF 2017

Plaintiff:

State Bank of India, a body corporate,constituted
under the State Bank of India Building Madam

Cama Road Nariman point Mumbai and having

Local Head office at Lal Darwaja Ahmedabad

one of it's branches among other places State ***PLAINTIFF***

Bank of India (RACP) Branch

A-24, 2nd floor State Bank Bhavan
Opp. Pajrapol, Ghod dod Road Surat
Mr. Himanshu Kantilal Chotaliya.
Aged: 55 Years, Occupation: Service,

Add.: As Above.

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

Defendant:

M/s Krisna Viswas Bhavishkar

Age : Adult , Occupation Business ***DEFENDENT***

Res:- Plot no. 107/48. Sanjay Nagar

Lane no. 4 S.M.C. School near

Limbayat. Surat.

Learned advocate for the Plaintiff. :- **G.J. *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. 4,17,819-54 ps with interest under civil procedure code as money suit. Plaintiff is a bank and defendant has applied for the car loan

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

The plaintiff-bank is a Banking Company under . State Bank of India, a body corporate,constituted under the State Bank of India Building Madanm Cama Road Nariman point Mumbai and having one of it's branches among other places State Bank of India (RACP)Branch A-24, 2nd floor State Bank Bhavan Opp. Pajrapol, Ghod dhod 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 necessary papers for the car loan Defendant had approached the plaintiff bank for his car loan of Rs.5,30,000/-

(Five Lacs Thirty thousand only) on dated 6/06/2013 and signed necessary papers like loan application, personal segment advance for car loan(Agreement letter) loan cum hypothication agreement consent of discloser and furnish to SIBIL Letter The defendant has executed security documents which is payable to the bank principal amount along with interest at the rate of 10.05%. plus 2% penal rate The defendant agreed to for that condition

3. Defendant has executed all papers in favour of the plaintiff bank. The defendant has executed several documents. & acknowledgment of debt, 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. 4,17,819-54 ps. outstanding amount due and defendant is liable to pay Rs. Above said amount as per the book including interest upto dated 29.11.2016 is also liable to pay interest from the date availed loan amount which is chargeable and leviable from the defendant hence, total amount Rs. 4,17,819-54 ps. Because defendant has paid some amount and as per ledger account of the bank amount Rs. 4,17,819-54 ps outstanding against the defendant. But defendant has not paid above said

amount. Therefore, the plaintiff has filed suit against the defendant to recover suit claim amount with interest at the rate of 12.05% per annum.

5. On the institution of the suit, summons for appearance was issued to the defendant, but summons of the defendant returned unserved. Therefore plaintiff has applied for public summons that application was granted and copy of newspaper was produced in the document list vide mark 9/1 to 9/3 The plaintiff has filed an application /affidavit vide Exh. 14 for passing decree against the defendant as the defendant has not appeared before the Court. The plaintiff has produced original documentary evidence vide Exh-13 which were ordered to be exhibit 16 to exhibit 24 which are consisting copy of loan application , personal segment advance for car loan (Agreement letter) loan cum hypothication agreement consent of discloser and furnish to SIBIL Letter 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. Therefore public summons was served upon to the defendant 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.

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 outstanding amount of Rs 87,099.11 as car loan from the plaintiff-bank and it is still due from the defendants for the said period with interest. Moreover, the plaintiff-bank has submitted the affidavit at Ex.13 and adduced the documents at Ex.16 to Exh.24. 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.. Thenafter, court has framed issues as under at Exh. 09 :

Issues

(1) Whether the plaintiff proves that Rs.4,17,819-54 ps. is due

fro the defendant towards Car Loan ?

(2)Whether the plaintiff s entitled to get interest ? If yes at what rate ?

(3) Whther plaintiff id entitled to get relief as -prayed for ?

(4)What order and decree ?

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

1. In the Affirmative

2. In the Affirmative.

3 IN the affirmative

4. 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. 16 to Exh. 24. Plaintiff has adhered with his plaint summons was not served upon to the defendant hence public notice was given by the bank but 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.13 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 outstanding amount of Rs.4,17,819-54 as Car loan from the plaintiff-bank and that amount is still due from the defendant for the said period with interest. 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 12.05% 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 3 are in the affirmative and for issue no.4

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.4,17,819-54 Rupees Four lac seventeen thousand Eight Hundred nineteen rupees Fifty four paise 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.
4. Defendant will bear cost his suit along with plaintiff. Bank

Decree be drawn accordingly.

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

Date:-26/09/2018
Surat

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