Presented on : 09/06/2022

Registered on: 29/06/2022

Decided on : 05/09/2024

Duration : **02Y 02M 07D**

**IN THE COURT OF 2nd JOINT CIVIL JUDGE SENIOR DIVISION, DHULE**

**(Presided over by V .S. Madke)**

**SPECIAL CIVIL SUIT No.371/2022**

**CNR : MHDH020015842022**

**EXHIBIT No.68/A**

Bank of Maharashtra,

Branch Bhadane Tal. Sakri Dist.Dhule

Through Mukesh Popat Sathe

Age :- 36 yrs., Occu. :- Bank Manager

R/o.Bhadane Tal. Sakri Dist. Dhule

......**PLAINTIFF**.

**VERSUS**

1) Dinkar Natthu Desale

Age:- 53 yrs., Occu. :- Agriculturist,

2) Vijay Natthu Desale

Age:- Adult yrs., Occu. :- Agriculturist,

3) Chandrashekhar Gotu Desale

Age:- Adult yrs., Occu. :- Agriculturist,

nos. 1 yo 3 R/o. Kasare Tal. Sakri Dist.Dhule

4) Bhikaji Rajaram Patil

Age:- Adult yrs., Occu. :- Agriculturist

R/o. Varsus Tal. Sakri Dist. Dhule

… **DEFENDANTS**

**SUIT FOR RECOVERY OF LOAN AMOUNT AND INTEREST THEREON, TOTAL AMOUNT OF RS.7,04,639/-**

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**APPEARANCE** -

Shri. P. S. Khankari, Advocate for plaintiff.

Suit proceeded *ex-parte* against defendant Nos.1 to 4.

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## JUDGMENT

**(Delivered on 05/09/2024)**

The present suit is filed for recovery of an amount of Rs.7,04,639/- with interest.

2) **Brief facts of plaintiff's case are as under :-**

The plaintiff is a nationalized bank and constituted under Banking Companies (Acquisition and Transfer of Under Takings) Act, 1970. The main office of the plaintiff bank is situated at Pune and one of it's branch is located at Bhadane, Tal. Sakri Dist. Dhule. The case of the plaintiff bank is that, the defendant no. 1 is the borrower and defendant nos.2 to 4 are the guarantors of defendant no. 1. It is averred that, customer ID of defendant no. 1 is 40096586572. The defendant No. 1

requested the plaintiff bank for grant of A.T.L.(Minor) agricultural loan. Accordingly, the plaintiff bank sanctioned the loan of Rs.4,37,000/- to the defendant no.1 on 21/01/2014 and the said amount was accepted by defendant no.1 on 22/07/2014. So also plaintiff bank sanctioned loan of Rs.1,32,000/- to defendant no.1 on 22/07/2014. The defendant no.1 has received amount of Rs.1,32,000/-. The case of the plaintiff is that, the defendant no.1 again requested the plaintiff for sanction of loan amount and on 21/01/2014 an amount of Rs. 2,07,000/- has been sanctioned and disbursed to the defendant no. 1. The plaintiff averred that, at the time of sanction of loan amount the interest rate was 12.5% and 7% and the present interest rate is 10%.

3) It is the contention of plaintiff that, the defendants have also agreed to pay the rate of interest as and when the rate of interest is varied as per the instructions of the Reserve Bank and the head office of the plaintiff bank. Also in case of default of payment of any installment or interest, the defendants have also admitted that they are ready to pay additional interest @ 2% per annum.

4) It is averred that, the defendant no.1 is the principal borrower and he has executed several documents, such as demand promissory notes, loan amount receipts, agreement of loan and hypothecations payment receipts, agreements of

Mahabank Kisan Credit Card and declaration as per Section 5(1) of Maharashtra Provision of Facility for Agricultural Credit by Bank Act, 1974. The defendants after accepting the terms and conditions of various documents, which were explained to them in Marathi affixed their signatures and thumb impressions on those documents.

5) The contention of plaintiff bank is that, the defendant nos. 2 to 4 stood as guarantors for defendant no.1 in respect of the loan amount sanctioned and paid by the plaintiff bank. It is averred that, the defendant nos.2 to 4 have executed letters of guarantee dated 21/01/2014, 22/07/2014 and 21/01/2014. Therefore, all defendants are liable to repay the loan amount.

6) It is the contention of plaintiff that, the defendant no. 1 has opened A.T.L. account nos.60159589086, 60175382185 and 60159570267 of defendant no.1 in the plaintiff bank. The entries in the regular course of business have been recorded in the accounts maintained by the plaintiff. At the same time, all deposits made by the defendant no.1 have been entered in their respective accounts. It is averred that, as per computerized extract the interest is not debited in their account from 31/01/2019. According to the plaintiff, as per the guidelines of R.B.I. if a loan account is in arrears above 90 days the debit of interest in that account is stopped. However, this does not mean that the defendants are not liable to pay interest

on the outstanding amount. The plaintiff averred that, the defendants are liable to pay an amount of Rs.7,04,639/- till the date of filing suit and thereafter the outstanding amount shall carry an interest of 10% per annum.

7) The plaintiff bank averred that, it requested the defendants to pay the outstanding amount. As the defendants neglected and avoided to repay the loan amount, the plaintiff bank is constrained to file present suit against the defendants. The plaintiff averred that, the loan amounts have been advanced on the dates mentioned above and in respect of those amounts the defendant no. 1 has made declaration under the Act, 1974. According to plaintiff, since the defendants have deliberately avoided to pay the outstanding amount, the cause of action for filing the suit is recurring and therefore the suit is within limitation. Hence, the plaintiff bank filed the present suit for recovery of amount of Rs.7,04,639/- with interest.

8) The suit proceeded *ex-parte* against the defendants *vide* order dated 05/09/2022.

9) Heard learned Advocate for plaintiff bank.

10) After going through the pleadings, following points arise for consideration to which I have answered accordingly for the reasons mentioned hereunder :

| Sr. No. | Point | Findings |
|---|---|---|
| 1) | Does the plaintiff bank prove that the defendant no.1 sanctioned agriculture term loan of Rs.4,37,000/-, Rs.1,32,000/- and 2,07,000/- for agricultural purpose and the defendant nos.2 to 4 stood guarantors for the said loan ? | **Yes.** |
| 2) | Does the plaintiff bank prove that an amount of Rs.7,04,639/- is outstanding against the defendants? | **Yes.** |
| 3) | Whether the plaintiff bank is entitled for an amount Rs.7,04,639/- together with interest thereon at the rate 10% p.a.? | **Partly yes, with interest @ 7% p.a.** |
| 4) | Whether the suit is barred by limitation? | **Yes, in respect of the two loan amounts and no in respect of one loan amount.** |
| 5) | What Order and Decree ? | **The suit is partly decreed with costs.** |

## REASONS

11) To substantiate its claim the plaintiff bank examined PW-1 Mukesh Popat Sathe *vide* Ex.12. The documents produced

by the plaintiff bank include the memorandum at Exhs. 13 and 17, Request letters for making credit facility available at Exhs. 14 and 28, D.P. notes at Exhs. 15 and 19, amount received receipts at Exhs.16, 17 and 30, loan demand application at Exhs. 18 and 31, Deed of guarantee at Exh. 19 and 33, Declaration as per Section 5(1) of the Act at Exh. 20 and 34, affidavit at Exh.35, Surety letters at Exhs. 36 and 37, agricultural loan applications at Exhs. 21 and 38, Surety letters at Exhs.22 and 23, Pre-sanction visit report at Exhs. 24 and 39, post sanction visit report at Exh. 25, hypothecation agreement at Exhs.26 and 32, account extracts of defendant no.1 at Exhs. 40 and 41, authority letter at Exh. 42 and certificate as per Section 2A(B) of the Banker Book Act at Exh. 43. After examining the said witness the suit came to be amended and the plaintiff led additional evidence by examining Mukesh Sathe at Exh.48. In his evidence he produced documents such as memorandum at Exh. 49, Request letters for making credit facility available at Exh. 50, D.P. note at Exh.51, amount received receipt at Exh.52, loan demand application at Exh.53, hypothecation agreement at Exh. 54, Request letters for making credit facility available at Exh. 55, Deed of guarantee note at Exh.56, loan demand application at Exh. 57, copy of charge relief of bank at Exh. 58, affidavit at Exh. 59, surety letters at Exhs. 60 and 61 and account extract of defendant no. 1 at Exh. 64.

**AS TO POINT NOS.1 AND 2 :-**

12) The witness of the plaintiff in his evidence has replicated all the averments in the plaint. The version of the PW-1 purports to show that, the defendant no.1 has obtained agricultural term loan of Rs.4,37,000/-, Rs.1,32,000/- and Rs.2,07,000/- from the plaintiff bank. The PW-1 deposed that, the defendant no.1 after accepting the terms and conditions of sanctioned loan amount executed loan documents in favour of the plaintiff. The defendant nos. 2 to 4 are guarantors for defendant no.1 in respect of the loan amounts sanctioned and paid by the plaintiff bank.

13) The evidence on behalf of the plaintiff has remained unchallenged and uncontroverted as the defendants neither cross-examined plaintiff's witness nor remained present to contest the suit. The documents evidencing contractual terms of the parties have been proved in the evidence of P.W-1 and those documents clearly shows sanction as well as transfer of loan amounts by the plaintiff to the borrower i.e. defendant no. 1.

14) It is evident that, the plaintiff has clubbed three different loans advanced to defendant no. 1. The plaintiff has further established from documents that the defendant no. 1 has received the respective loan amounts which were sanctioned to him after execution of necessary documents. The defendant no. 1 has even acknowledged the receipt of loan

amount. The documents *vide* Exhs. 15 and 18 show that the loan amount of Rs.4,37,000/- was to be repaid within 7 years in yearly installments. The defendant nos.2 and 3 have guaranteed to repay the amount *vide* Exh. 19. Similarly, the document vide Exh. 29 purports to show that the defendant no.1 has executed demand promissory note in respect of loan of Rs.1,32,000/-. He had further agreed to repay the said loan amount with interest @ 11.90%. The document *vid*e Exh. 30 is the receipt of loan of Rs.1,32,000/- executed by defendant no.1. The defendant nos. 3 and 4 have executed deed of guarantee in respect of this loan and the same is at Exh. 33.

15) Again with respect to the third loan of Rs.2,07,000/- the plaintiff has proved demand promissory note and receipt of loan amount *vide* Exhs. 51 and 52. It evidences receipt of loan of Rs.2,07,000/- and promise by defendant no.1 to repay the said amount along with interest @ 7% per annum. The defendant nos. 2 and 3 have executed deed of guarantee promising to repay the said amount along with agreed interest in case of default by defendant no. 1. All these documents are further corroborated by the account extracts filed at Exhs. 40, 41 and 64. As stated earlier, the oral evidence of plaintiff’s witness has remained unchallenged. Taking stock of ocular and documentary evidence on record I hold that the plaintiff bank has disbursed the above loan amounts to the defendant no.1 and an amount of Rs.7,04,639/- is outstanding against the

defendants. Hence, I answer issue nos. 1 and 2 in the **affirmative**.

**AS TO POINT NO.4:-**

16) At the outset, it is apposite to state that the plaintiff has instituted the suit for recovery of three different loan amounts advanced to the defendants. As stated earlier, the plaintiff has clubbed all demands against defendant no. 1 in one suit. It is trite law that the nature of suit has to be ascertained from the averments in the plaint. For that purpose the plaint averments has to be considered in it’s entirety. The title clause in the original as well as amended plaint categorically mentions that it is the suit for recovery of loan amount. The plaint averments when read as a whole manifestly indicates that, it is suit for claiming personal decree against defendants for recovery of the amount. Nowhere in the plaint the plaintiff has prayed for passing preliminary decree for the sale of property for realising the loan amount. In para no. 8 of the plaint the plaintiff has mentioned about the creation of charge in respect of the loan amounts over the immovable property of the defendant no. 1. Similarly, in the prayer clause the plaintiff has prayed for sale of the immovable property belonging to defendant no. 1 on which the charge is created.

17) The paragraphs describing cause of action to the suit is extracted below:

वादी बँकेने प्रतिवादीकडे वारंवार लेखी-तोंडी कर्ज रक्कमेची मागणी केली असता प्रतिवादीने कर्जाची परतफेड केलेली नाही. प्रतिवादीने कर्ज रक्कमेची परतफेड न केल्यामुळे व कर्ज फेड करण्याचे जाणुन-बुजून टाळलेले आहे. म्हणून प्रतिवादी यांचेकडून कराराचा भंग झाला आहे. तसेच दिनांक २१/०१/२०१४, दि. २२/०७/२०१४ व दि. २१/०१/२०१४ रोजी घेतलेल्या कर्जाबाबत वादी बँक ऑफ महाराष्ट्र यांच्या लाभात प्रतिवादी यांचेकडून ए.टी.एल. कृषी कर्जाच्या सोयीच्या तरतुद करण्याबाबत अधिनियम १९७४ कलम ५ पोट कलम (१) नुसार प्रतिज्ञापत्र/डिक्लेरेशन डि मा.दुय्यम निबंधक सोा. यांचेसमोर लिहून व नोंदवून दिलेले आहे. वादी बँकेने प्रतिवादींकडे वादी बँकेचे घेणे असलेल्या रक्कमेची मागणी केली परंतु प्रतिवादींनी कर्ज फेड करण्याचे जाणुन बुजून टाळले. सबब दाव्यास सतत कारण घडले व घडत आहे. त्यामुळे या दाव्यास मुदतीची बाधा येत नाही. सबब सदरहु दावा मुदतीत दाखल केलेला आहे.

18) The plain reading of paragraph nowhere indicates that, the plaintiff has applied for sale of immovable property for realization of the loan amount.

19) The learned advocate for the plaintiff submitted that, since the charge is created over the immovable property of defendant no. 1 the present suit will be governed by Article 62 of the Limitation Act, 1963, for which the prescribed period of limitation is 12 years. He has placed reliance on the decision of the Hon'ble Bombay High Court in ***State Bank of India Vs. Ramkrishna J. Sakharar, 2006 CJ (Bom)1398***.

20) I have carefully gone through the decision of the Hon'ble High Court in the above cited case wherein the Hon'ble

Bombay High Court has observed that the period of 12 years limitation would be applicable on to the suit where loan amount is sought to be recovered against the immovable property. It is trite law that, when the outstanding amount is sought to be recovered against the immovable property the plaintiff is required to apply for sale of the immovable property which acts as security for the repayment of loan amount. The decision cited nowhere declares that when charge is created even suit for personal decree would be governed by Article 62 of the Act.

21) In that context, assuming that the present suit is for recovery of outstanding amount by sale of immovable property. It is necessary scrutinize whether the plaintiff is entitled for that relief on the basis of documents produced. In that regard, the crucial documents are the declaration cum undertaking under Section 5(1) of the Maharashtra Provision of Facility for Agricultural Credit by Bank Act, 1974 executed by defendant no. 1 in favour of the plaintiff bank. The case of the plaintiff is that, on the basis of charge created and evidenced by the above declarations it is entitled for recovery of outstanding from defendant nos. 1 to 4.

22) The document at Exh. 20 is the letter written to Talathi by the Manager of the plaintiff bank for recording charge of the amount in the revenue record of the land bearing

Gat no. 370/2. It is pertinent to note that, it categorically mentions an amount of Rs.5,000/- in respect of which the land in question is made security for repayment. Similarly, the document bears two dates namely 13/01/2014 and 16/01/2014. The similar document is filed at Exh. 34 and it again directs the Talathi for creation of charge for Rs.5,000/- only. The document at Exh. 59 is an affidavit of the defendant no. 1 wherein he has affirmed the receipt of loan amount of Rs.50,000/- from the plaintiff bank. There is no way to ascertain as to which loan amount this document is refering. Apart from that, the plaintiff bank has not produced any validly executed document showing creation of charge of actually sanctioned loan amounts over the immovable property of the defendant no. 1. The 7/12 extract of land bearing Survey No. 370/2 filed along with Exhs. 20 and 34 merely indicates that the charge over that property is created for an amount of Rs.5,000/- only. In these circumstances, I hold that the documents referred above and the oral testimony of plaintiff's witness do not establish that the charge of the three loan amounts sanctioned to the defendant no. 1 on 21/01/2014, 22/07/2014 and 21/01/2014 was created by the plaintiff bank. Thus, no question arises for selling that land for recovery of above loan amounts.

23) The learned advocate for the plaintiff relied upon the photo copy of the circular of the plaintiff bank dated

08/12/1994. It is submitted that on the basis of this circular the plaintiff bank is permitted to create charge for an amount of Rs.5,000/- at the time of sanction of loan. It is required to be stated that, the internal circular of the plaintiff cannot override the contractual terms between the parties. Apart from that, the statutory provisions from which parties cannot derogate will prevail over any internal arrangement of the contracting party.

24) The cumulative effect of the foregoing discussion is that, from averments in the plaint if read as a whole the suit of the plaintiff is for personal decree against the defendants and for such relief the period of limitation prescribed under Article 62 is not applicable. Even otherwise the plaintiff is not entitled for enforcing recovery of the loan amount against the immovable property of defendant no.1 for reasons mentioned above and in that case also the Article 62 will be of no assistance for recovering the loan amounts prescribed in para no. 2 of the plaint.

25) It is now necessary to examine whether the suit for personal decree against defendants is within limitation. The averments in para no. 8 of the plaint show that the plaintiff claims that the cause of action for the present suit is recurring. It is settled position of law that mere demand of outstanding loan amount and refusal by the defendants do not extend the period of limitation. Nor does it mean that the cause of action

for the recovery of loan amount is recurring. In the present case, the suit should have been instituted within 3 years from the date of default. There is nothing in the plaint which shows that the default of the defendants is anywhere within 3 years next before the institution of suit. The loan extract *vide* Exh. 40 records the entries in loan account no. 60159589086. This account does not show that any payment is made on behalf of the borrower after 2014. Similarly, the loan account no. 60175382185 does not reveal that any payment is made by defendant no. 1 after sanction of the loan amount. In respect of these loan amounts the plaintiff has not established that his claim is within limitation. However, as regards the loan account no. 60159570267 vide Exh. 64 it clearly appears that the borrower has credited an amount of Rs.3,160/- on 28/09/2022. This payment on account of dabt results in extension of period of limitation and in respect of this loan transaction the claim of plaintiff for personal decree against defendant no.1 is within limitation. It appears from this loan extract an amount of Rs.1,46,614/- is outstanding against the defendant no. 1. The defendant nos. 2 and 3 are guarantors for this loan vide Exh. 56 and therefore they are also jointly and severally liable. Hence, I answer this issue in respect of loan transaction in account no. 60159570267 in **negative** and in respect of loan transactions in account nos.60159589086 and 60175382185 in the **affirmative**.

**AS TO POINT NO. 3:-**

26) As regards the payment of interest, it is required to be stated that the interest accumulated for the period prior to the institution of suit the plaintiff is entitled to adjudge the same in the suit claim. Section 34 of Code of Civil Procedure provides that where there is contractual rate of interest, the plaintiff bank is entitled to claim recovery of the loan amount along with agreed rate of interest. Available documentary evidence specially document vide Exh. 50 and 51 clearly show that the loan was sanctioned @ 7% per annum. Hence, I hold that the plaintiff bank is entitled to the recovery of an amount of Rs.1,46,614/- along with interest @ 7% per annum. Hence, I answer point no.3 as **partly in affirmative**.

**AS TO POINT No. 5 :-**

27) Hence, I answer point nos.1 and 2 in the **affirmative** and point nos.3 and 4 in the **partly affirmative.** In the result, I proceed to pass the following order.

**ORDER**

1. The suit is partly decreed with costs.
2. The defendant nos.1 to 3 do pay to the plaintiff bank an amount of Rs.1,46,614/- alongwith interest @ 7% per annum from the date of filing suit till the realization of amount.

3. The decree shall be drawn accordingly.

MADKE VISHAL Digitally signed by MADKE VISHAL Date: 2024.09.10 17:35:33 +0530

Date:-05/09/2024 ( V .S. Madke )

Dhule 2nd Joint Civil Judge (Sr.Dn.), Dhule