PBGD020019092017

Presented on : 01-09-2017
Registered on : 04-09-2017
Decided on : 19-04-2021
Duration : 3 years, 7 months, 18 days

IN THE COURT OF ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) AT, GURDASPUR
PRESIDED OVER BY SUMIT SABHARWAL

CS/1138/2017

Union Bank of India a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 having its Head Office at Union Bank Bhawan, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai, with its Branch Office at Kot Santokh Rai through its Branch Manager and General Attorney Shri Shiv Kumar.

..................Plaintiff

Versus

1. Ranjit Singh son of Ajaib Singh,
2. Baldev Singh son of Karnail Singh,
3. Gurmukh Singh son of Gurdip Singh,

   All residents of Village Bhojraj, P.O. Dhariwal, Tehsil & District Gurdaspur.

................Defendants

Suit as per provisions under Order 34 CPC for recovery of Rs.4,38,750/- (Rupees Four Lacs Thirty Eight Thousand Seven Hundred Fifty Only) inclusive of interest calculated up to 30.06.2017 along with future interest @ 12.00% P.A. with half yearly rests prevailing rate till its realization by sale of the property mortgage detailed as under:-

Land measuring 8 Kanal comprised out of Rect. 23 Killa 18 (8-0) as entered in the jamabandi for the years 1998-99 situated in Village Bhojraj H.B. 414 Tehsil & District Gurdaspur.

Present: Shri Rajinder Kumar, Advocate, Ld. Counsel for plaintiff.
Defendants exparte.

JUDGMENT

1. The present suit has been instituted by Union Bank of India, Branch Office Kot Santokh Rai through its Branch Manager and General Attorney Shri Shiv Kumar for recovery of Rs.4,38,750/- on the averments that it is a Body Corporate onstituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and its Branch Manager is fully authorized and competent to institute the suit on behalf of plaintiff bank. On 23.12.2003 at the request of defendant No.1 a crop loan of Rs.1,50,000/- was advanced to him on interest @ 11.50% P.A. with half yearly rests. The rate of interest is variable as per instructions of Reserve Bank of India and at present rate of interest is 12% P.A with half yearly rests. At the time of advancement of loan defendant No.1 executed loan relevant documents i.e. demand promissory note, hypothecation agreement, letter of

consent, letter of continuity and declaration/undertaking. The defendant No.1 has also submitted certified copy of jamabandi with the bank and mortgage his land in favour of bank vide mortgage deed dated 17.12.2003. The defendants No.2 and 3 stood guarantee for the repayment of loan advanced to defendant No.1. The defendants No.2 and 3 executed deed of guarantee and letter of consent in favour of plaintiff bank. Therefore, defendants No.2 and 3 are equally liable for the repayment of loan as liability of the borrower and guarantor is joint and several. On 11.11.2004 defendant executed demand promissory note in acceleration of loan taken by him.

2. It has been further averred that on 31.08.2009 the defendant No.1 has also executed demand promissory note, hypothecation agreement, letter of consent, letter of continuity, declaration and agreement on rate of interest in acceleration of loan taken by him and defendant No.1 has not paid the loan amount of plaintiff bank and as per books of account/computerized record duly maintained by the plaintiff bank in regular and normal course of business transaction, a sum of Rs.4,38,750/- (inclusive of interest calculated upto 30.06.2017) is recoverable from the defendants jointly and severally along-with future interest at the rate of 12 % p.a. with half yearly rests from the date of filing this till fully realization of the entire outstanding amount against the defendants. Hence, this suit.

3. Upon notice, defendants have failed to appear before the Court despite service and were declared exparte vide orders dated 24.10.2017 and 20.02.2018 passed by Ld. Predecessor of this Court.

4. In exparte evidence, plaintiff bank examined PW-1 Shiv Kumar, Branch Manager, who deposed through his duly sworn affidavit Ex.PW1/A as

per case of the plaintiff bank, which needs no repetition over here. Besides his affidavit, he also proved on record documents i.e. attested copy of power-of-attorney Ex.P1, loan application Ex.P2, sanction Ex.P3, demand promissory note Ex.P4, hypothecation agreement Ex.P5, letter of consent Ex.P6, letter of continuity Ex.P7, declaration/undertaking Ex.P8, certified copy of jamabandi Ex.P9, original mortgage deed dated 30.09.2011 Ex.P10, rapat roznamcha Ex.P11, original deed of guaraneet Ex.P12, letter of consent Ex.P13, demand promissory note dated 11.11.2014 Ex.P14, demand promissory note dated 31.08.2009 Ex.P15, hypothecation agreement dated 31.08.2009 Ex.P16, letter of consent dated 31.08.2009 Ex.P17, letter of continuity dated 31.08.2009 Ex.P18, declaration/undertaking dated 31.08.2009 Ex.P19, agreement of rate of interest Ex.P20, certified copy of statement of account Ex.P21, certificate under Section 65-B of Indian Evidence Act Ex.P22, copy of legal notice dated 23.02.2012 Ex.P23, postal receipts Ex.P24 to Ex.P26, revival letters Ex.P27 and Ex.28.

5. Thereafter, the plaintiff bank examined Sat Pal, Retired Officer, as PW2, who while stepping into witness box has tendered into evidence his duly sworn affidavit Ex.PW2/A and deposed as per the case of the plaintiff. He further deposed to the fact that all document relating to the loan were filled in his presence and after filling the same were read over to the defendants, who after admitting the contents of the same to be true has signed the same.

6. Thereafter, the Ld. Counsel for plaintiff has closed exparte evidence on behalf of plaintiff, vide his separate statement.

7. The Ld. Counsel for plaintiff has argued that the plaintiff has fully

proved its case by leading cogent and clear evidence on file. He further contended that all the documents placed on record by the plaintiff clearly show that the defendant No.1 took the loan in question and defendants No.2 and 3 were stood as guarantors. However, defendant No.1 defaulted in the repayment of the loan amount and now a sum of Rs.4,38,750/- is due towards the defendants inclusive of interest calculated upto 30.06.2017. Hence, the present suit is fit for the grant of decree in favour of plaintiff.

8. I have heard the contentions of Ld. Counsel for plaintiff bank and gone through the case file very carefully and minutely.

9. Clearly, the preponderance of probability is tilting towards the case of plaintiff bank. The plaintiff bank led cogent and convincing evidence to prove that the defendant No.1 availed loan facility and he failed to return the same as per agreement. PW1 has brought upon record account statement Ex.P21 proving the outstanding liability of defendant to pay Rs.4,38,750/- inclusive the interest up to 30.06.2017 which is outstanding against the defendant No.1. Per contra, the evidence of plaintiff remained unrebutted and unchallenged as defendants have failed to appear before this Court and were proceeded against exparte. Therefore, the plaintiff bank is entitled to recovery of Rs.4,38,750/- inclusive the interest up to 30.06.2017 from defendants.

10. Keeping in view my aforesaid thoughtful discussion, the suit of the plaintiff bank stands decreed exparte with costs for the recovery of Rs.4,38,750/- (including interest upto 30.06.2017) along-with future interest at the rate of 12 % P.A. compounded with half yearly till its actual realization. It is further made clear that all the defendants are

jointly and severally liable to repay the aforesaid loan amount. Decree sheet be prepared and file be consigned to the Record Room.

Pronounced in open Court.
Dated:19-04-2021
*Ravinder Singh**

(Sumit Sabharwal), PCS,
Addl. Civil Judge (Sr. Division),
Gurdaspur, UID No.PB0366.

Dictated on :19-04-2021
Transcribed on :19-04-2021
Checked on :19-04-2021
Signed on :19-04-2021

(Sumit Sabharwal), PCS,
Addl. Civil Judge (Sr. Division),
Gurdaspur, UID No.PB0366.