Filed on	08-10-2022
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Decided on	08-10-2024
Duration	2y 0m 0d

IN THE COURT OF ADDL. SR. CIVIL JUDGE, AT KAPADWANJ

REGULAR CIVIL SUIT NO. 90 OF 2022
Exh.-

Plaintiff: Canara Bank
Kapadwanj Branch,
Ta. Kapadwanj, Dist. Kheda.

:: V E R S U S ::

Defendants: Legal heirs of deceased Samantsinh Ramsinh Gadhvi
1. Mohabatsinh Samantsinh Gadhvi
2. Rajendrasinh Samantsinh Gadhvi
Occupation: Agriculture
Both R/o. Charaniya, Po. Antroli,
Ta. Kapadwanj, Dist. Kheda.

Ld. Advocate Shri D. B. Soni for the plaintiff
Ld. Advocate Shri M. N. Inamdar for the defendants

SUIT FOR RECOVERY OF RS. 1,85,221.87/-

:: J U D G M E N T ::

1. The plaintiff herein has instituted the present suit for recovery of Rs. 1,85,221.87/- along with the interest, till realization of payment and

costs of this suit from the defendants. The concise statement of the present case is that plaintiff bank is carrying out its activities under Banking Regulation Act and having its Local office and Zonal Office at Ahmedabad and Regional office at Vadodara and having one Branch is situated at Kapadwanj, Ta. Kapadwanj, Dist. Kheda. It is case of the plaintiff that defendants herein are engaged in the business of agriculture and they demanded crop loan before the plaintiff bank and the plaintiff bank has granted the said loan for Rs.1,83,000/- on Dt. 28/11/2017. It is further case of the plaintiff-bank that defendants availed a loan for Rs.1,83,000/- along with interest thereon, for which defendants have executed agreements like Hypothecation Agreement, cursal letter and other relevant documents in favour of plaintiff bank. and defendant renewed their loan account on Dt.17/07/2020. Further, it is the say of the plaintiff bank that the defendant has mortgaged his agricultural lands against this loan and defendant has duly accepted the loan amount and signed necessary documents in favour of bank and create charge over the land.

It is further averred that defendants had not paid loan amount and very irregular in payment of installment of outstanding loan so that, Ld. Advocate of plaintiff send registered notice to the defendants on Dt.12/09/2022 and notice is duly served to the defendant, yet defendants make default in repayment of loan amount and under such circumstances, plaintiff-bank is constrained to file this suit wherein it is requested to grant reliefs in para-15 of the plaint.

2. The defendant has been duly served with summons. But the defendant did not take care to remain present before the court. So the defendant's right to produce written statement has been closed by passing an order below Exh. 1.

3. In support of the case plaintiff Institution has produced following oral and documentary evidence.

ORAL EVIDENCE

Sr. No.	Exhibit	Description
1	14	Affidavit on behalf of the plaintiff Ms. Sunita Singh

DOCUMENTARY EVIDENCE

Sr.No.	Exhibit	Description of Documents
1	16	Loan application by the defendants
2	17	Hypothecation Agreement
3	18	Bond Letter by the defendant, Dt. 23/11/17
4	19	Loan renewal letter by defendants, Dt. 23/11/20
5	20	Office Copy of legal notice
6	21	Postal receipt
7	22	Acknowledgment receipt
8	23	Certificate (U/S. 65 B(4)(C) of Evidence Act, 1872
9	24	NPA Certificate
10	30	Loan account statement of defendants

4. The plaintiff gave Closing Pursis vide Exh. 31. The defendants have not adduced any oral and documentary evidence in support of their defense. So that defendant's right to produce evidence has been closed by passing an order below Exh. 32.

5. For determination of the suit following issues framed vide Exh.11.

: I S S U E S :

1 Whether plaintiff proves that, defendant had taken loan of Rs. 1,83,000/- from the plaintiff bank ?

2 Whether plaintiff prove that plaintiff bank is entitled to recover outstanding loan amount of Rs. 1,85,221.87 Paisa from the defendant ?

3 Whether plaintiff is entitled to get interest? if yes, at what rate ?

4 Whether plaintiff bank is entitled to get relief as prayed for ?

5 What order and decree ?

6. My findings to the above issues are as under with the reasons to follow.

1. In the Affirmative
2. In the Partly Affirmative
3. In the Partly Affirmative
4. In the Partly Affirmative
5. As per final order

:: R E A S O N S ::

7. Issues No.1 to 5 :-

To avoid repetition of facts, I discuss issue No. 1 to 5 together.

7.1 First of all, it is to be noted here that as discussed earlier, defendants remain present before the court through their Ld. Advocate but not submitted written-objection during the course of proceedings of this matter. However, it is well settled principle that the plaintiff must stand on his own legs and can not take the advantages of the defect of the defense of defendant unless the circumstances justifies such thing. In such circumstances, in the present case, the plaintiff Ms. Sunita Singh has filed his affidavit-cum-examination-in-chief under Order 18, Rule 4 of the Code of Civil Procedure at Exh. 14. Looking to it, she has supported all the facts of plaintiff's case, as I have narrated above in Para-1 of this judgment and therefore, the same facts are not reproduced here in order to avoid repetition. The above oral evidence is supported by affidavit cum-examination-in-chief produced at Exh. 14 and documentary evidence which are placed on record at Exh. 16 to 24 & 30 i.e. original Application of loan, hypothecation agreement and copy of other related documents as stated in plaint. After perusing all this documents, each documents have been signed by the defendants. However, no cross examination has been done by the other sides for rebutting the documentary evidence. Therefore, this court have no reason to disbelieve the evidence produced by the plaintiff.

7.2 Looking to all these documentary evidence, it is clearly proved that defendants availed a loan for Rs. 1,83,000/- along with interest thereon, Moreover, plaintiff-bank is a government body and the records which are being maintained by them is in regular course of business, and unless it is shown that said record is false or prepared with malafide intention, the same cannot be doubted.

7.3 Now, looking to the defendant's bank account statement which is produced vide Exh. 30, total Rs. 1,36,518/- amount is due. Therefore, plaintiff bank is entitled to recover total outstanding amount of Rs. 1,36,518/- with interest.

7.4 Further, plaintiff bank has claimed the interest @ 14 % per annum. The plaintiff institution has claim the interest at the rate of 14 % per annum, but on perusal of documentary evidence that there is no evidence on record to show that there is clear stipulated terms and conditions for the interest between plaintiff and defendants. The plaintiff is claiming 14% interest p.a. which is in my opinion excessive and penal. Further, as per the provision of Section 34 of the Civil Procedure Code, the discretion always lies with the court, for awarding the interest. Looking to the present situation and circumstances prevailing in market 6% p.a. interest would be awarded, then it is just and proper in the interest of justice and it will meet the end of justice. Therefore, in view of the above discussion, answer Issue No. 1 in "Affirmative" and Issue No. 2 to 4 in the "Partly Affirmative" and pass the following final order in the interest of justice.

:: F I N A L O R D E R ::

(i) The present suit of the plaintiff is hereby partly allowed.

(ii) The defendants are here by directed to pay sum of Rs.1,36,518/- (Rupees One Lacs Thirty Six Thousand Five Hundred Eighteen only) along with the interest @ 6% per annum thereon to the plaintiff-bank from the date of filing of the suit till the payment.

(iii) Further the defendants directed to pay the costs of this suit to the plaintiff-bank and shall bear their own costs.

(iv) Decree be drawn accordingly.

Pronounced in the open Court today on 08th October, 2024.

Place : Kapadwanj
Date : 08/10/2024

Vandana Lalitchandra Pardeshi
Addl. Sr. Civil Judge, Kapadwanj
GJ01013