सत्यमेव जयते

Received on : 03 / 10 / 2022.

Registered on : 03 / 10 / 2022.

Decided on : 01 / 05 / 2023

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Duration :

YY MM DD

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IN THE COURT OF HON'BLE PRINCIPAL SENIOR CIVIL JUDGE, (COMMERCIAL COURT) AT. MUNDRA-KACHCHH.

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<u>Commercial Civil Suit No. 18 Of 2022.</u>

EXH. :

I D B I Bank
Through Manager Shri,
Port Road, Mundra - Kachchh. ..... Plaintiff.

V/s.

Shivubha Bhanji Rathod
Age : Adult, Occu. : --
Residing At :- Village Mangara,
Taluka Mundra - Kachchh. ..... <u>Defendant.</u>

<u>ADVOCATES</u> : **Plaintiff :** Ld. Advocate **<u>Mr. R. P. Raval.</u>**
Defendant : Exparte.

-: <u>J U D G M E N T</u> :-

(1.0) Present plaintiff has come forward before this court and filed the present suit to recover the due amount of Rs. 5,04,221/- (Rupees Five Lacs

Four Thousand Two Hundred Twenty One Only) with interest and cost from the defendant.

(2.0) The relevant facts stated in the present suit are as under :

2.1 That, the original plaintiff - IDBI Bank is constituted in the year 1964, having its Head Office at Mumbai and having Regional Office at Rajkot and having Zonal Office at Ahmedabad and having its various branches including one branch at Port Road Mundara-Kachchh.

2.2 It is the case of the plaintiff that, the defendant approached plaintiff bank with an application for Crop Loan. The defendant has produuced the papers of Agriculture Land situated at Village Vadala, Servey No. 346, ad measuring Hector 2-98-45 Are, and Servey No. 361 total admeasuring land Hector 7-33-59 Are, That, said documents were deposited by the defendant to the plaintiff. Therefore, as per application of the defendant on dated 03-10-2017 the plaintiff had sanctioned **Rs. 3,70,000/-** in favour of defendant to Crop Loan. The defendant had executed hypothication loan cum agreement on dated 03-10-2017. That the defendant has signed the said agreement and other documents and accepted all the terms and conditions mentioned in Loan-cum-Hypothecation Agreement **dtd.03/10/2017** for crop loan.

2.3 Thereafter, the defendant has not paid dues and on dated 02-07-2019 total Rs. 5,04,221/- due from the defendant. Hence plaintiff bank did inform defendant to pay the dues of the said account, but the defendant fails to pay the dues. Hence, the plaintiff bank was constrained to file the present suit for the recovery of **Rs.5,04,221/-** from the defendant.

(3.0) The summons was issued to the defendant, which was duly served on the defendant himself. The summnons is produced vide **Exh.6**. Looking to the record, it transpires that the defendant is not remained present in this suit proceedings since long and the opportunities were given to the defendant to produce evidence, but the defendant is failed to do so, hence the rights of the defendant to file written statement has been closed on and ordered suit be tried exparte against the defendant on 14/11/2022.

(4.0) In support of the case, the plaintiff has filed following oral as well as documentary evidence which are as under.

Sr. No.	Particular	Exhibit
01	Application Form.	14
02	Hypothication Deed.	15
03	Account Ledger.	16
04	Office copy of the Notice served to the defendant.	17
05	Registered A.D. Slip.	18
06	Office copy of the Notice served to the defendant.	19
07	Registered A.D. Slip.	20
08	Copy of Revenue records of the land of the defendant.	21
09	Report of Meditiaon Report.	22
10	Closing Pursis.	23

(4.1) Many opportunities have been given to the defendant for evidence and arguments but neither defendant nor his Ld. Advocate had remained present before the Court. He had also not cross-examined the witness of the plaintiff nor had produced any evidence regarding his defence and thereafter, the Court has closed the right to defence and proceed exparte against defendant. On the other side, the Ld. Advocate for the plaintiff bank had argued that the plaintiff bank had given loan to the defendant on dated 03/07/2017. The plaintiff bank has produced all the documents with the statement of accounts of defendant and as per the said statement the amount of Rs. 5,04,221/- is being due against the defendant. The defendant has deposited Rs. 60,000/- on Dt. 02-07-2019 and therefore the present suit filed within limitation. Therefore, plaintiff has proved his case and issues by giving oral evidence and documentary evidence and the defendant has not chellanged the case of plaintiff. Therefore, suit may be allowed.

(5.0) From the pleadings of the plaintiff, the following issues have been framed at **Exh.07** for the determination of this suit.

ISSUE

1. Whether the plaintiff Bank proves that Rs.5,04,221/- are due from the defendant ?
2. Whether the plaintiff is entitle to interest ? If yes, at what rate ?
3. Whether the plaintiff is entitled to get relief and interest as prayed for?
4. What order and decree ?

My findings to the above issues are as follows.

1. In the Affirmative.
2. In the Affirmative.
3. In the Affirmative.
4. As per Final Order.

-: R E A S O N S :-

(6.0) **ISSUE Nos. : 1 to 3**.

(A) In support of this case, Shri Ghanshyam, Branch Manager of the plaintiff bank has filed his affidavit in the form of chief examination at **Exh.12**. The plaintiff has produced the documentary evidence at **Exh.14** to **Exh.22**. If, we appreciate the affidavit as well as the documentary evidence produced by the plaintiff, it transpires that the defendant was in need of financial assistance for the agriculture, and that he had applied to the plaintiff bank for the grant of Loan. The loan application form duly signed by the is produced at **Exh.14**. On receiving the loan application from the defendant, the plaintiff bank on the basis of the said documents submitted by him granted Loan to him to the tune of **Rs.3,70,000/-** on **03/10/2017** and the defendant had accepted to pay and agreed to pay interest @ **9.00%** and the agreement letter / hypothication executed by the defendant is produced at **Exh.15**. That the plaintiff has produced account ledger at Exh. 16 and It transpires that the defendant has paid Rs. 60,000/- towards the loan on dated on Dt. 02-07-2019. It further appears that the defendant has failed to repay the Loan amount regularly and thereby, he has defaulted in payment of regular installments and he has not complied the terms and conditions of the **Loan Agreement**. According to the plaintiff bank, the total amount of **Rs.5,04,221/-,** is shown as an outstanding due against the defendant. Though, the plaintiff bank had requested several times to the defendant to pay the loan amount, he has failed to repay the loan amount. Thus, the loan amount is remained unpaid. That looking to the agreement which is signed by the defendant, therefore as per section 4 of the Bankers Books Evidence Act, 1891 these documents are admissible.

(B) That, the defendant has availed the Crop **Loan** of **Rs.3,70,000/-** from the plaintiff bank. But, the defendant has failed to repay the loan amount to the plaintiff bank and total amount of **Rs.5,04,221/-,** is still due. Though, the plaintiff bank had requested repeatedly to the defendant to repay the said outstanding amount, he has not paid the same. Therefore, it transpires from the said account ledger Exh. 16 that defendant had borrowed Crop Loan of **Rs.3,70,000/-** for agriculture from the plaintiff and looking to the date of deposited Rs.60,000/- on dated 02-07-2019 plaitiff has filed this suit is within limitation. Therefore, the plaintiff bank is entitled to recover its legitimate amount of **Rs.5,04,221/-** from the defendant. Hence, I answer issue Nos.1 to 3 in the affirmative and accordingly.

(7.0) So far as the rate of interest is concerned, the plaintiff bank has sanctioned the Loan with interest @ **9.00%** per annum. Looking to the record, it is crystal clear that the defendant had executed relevant documents for availing the Loan from the plaintiff bank and thereby, he will abide by all the terms and conditions of the agreement entered upon. The said documents are duly signed by the defendant. Hence, considering the above documents, the plaintiff bank is entitled to charge and recover the interest @ **9.00%** from the defendant.

(8.0) ISSUE No. : 4.

(A) In view of the above discussion, the defendant has failed to repay the outstanding dues of the plaintiff bank and therefore, the plaintiff bank is entitled to recover the amount as claimed in this suit. Hence, I pass the following order.

-: ORDER :-

- The present suit is hereby allowed.
- The plaintiff shall be entitled to recover an amount of **Rs.5,04,221/-, (Rupees Five Lacs Four Thousand Two Hundred Twenty One Only)** from the defendant together with costs and interest at the rate of **9.00%** p.a., from the date of suit till its realization.
- The defendant is hereby ordered to pay **Rs.5,04,221/-, (Rupees Five Lacs Four Thousand Two Hundred Twenty One Only)** to the plaintiff together with costs and interest as ordered.
- Decree be drawn accordingly.

Signed and pronounced in the open Court today on this 1st day of May, 2023.

Date : 01/05/2023
Place: Mudra

(A.G.OZA)
Principal Senior Civil Judge,
(Commercial Court,)
Mundra. [Code No.GJ00839]