

IN THE CITY CIVIL COURT AT AHMEDABAD

SUMMARY SUIT NO. 1086 /2011

(Under Order XXXVII, Rule 1 & 2 of the Code of Civil Procedure)

Plaintiff :- Union Bank of India, a Body Corporate Bank constituted under Banking Companies (Acquisition & Transfer of Undertaking Act, 1970 and having its Head Office at 239, Vidhan Bhawan Marg, Nariman Point, Mumbai and interalia amongst others Branch known as Chandkheda Branch, Ahmedabad.

V/S

Defendants :- (1) Rasikhai Shambubhai Patel
A Proprietor of
M/s Rasikhai Shambubhai Patel
Address No. 1 at :-
2, Anandash Ganga Society, Opp. Chamak Chuna,
Thakkarbari anagar, Ahmedabad.
Address No. 2 at :-
848, Vasudhara Export, Mahavirnagar,
B/h Timuri Complex, India Colony
Bapunagar, Ahmedabad.

(2) Dhirusai Shambhubhai Patel
A Proprietor of
M/s D. S. Embro Impex
Address No. 1 at :-
B-55, Sardar Patel Mall, Nr. Dimond Mill,
Nikol Gam Road, Bapunagar, Ahmedabad-382350.

2

-

Sub :- Suits valued as Rs. 4,77,924/00 (Rupees Four Lac Seventy Seven Thousand Nine Hundred Twenty Four Only).

The above named plaintiff begs to submit as under :-

- (1) The plaintiff is a Banking Company constituted under Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 and having its Head Office at 239, Vidhan Bhavan Marg, Nariman Point, Mumbai and interalia amongst others Branch known as Chandkheda Branch, Ahmedabad. The plaintiff carries on business of banking and grants financial assistance by way of various credit facilities to individual, firm, companies, corporations, body corporate, local authorities etc.
- (2) That defendant no. 1 is doing the business at above said address in the manner and styles of M/s Rasikbhai Shambubhai Patel and whereas defe. no. 2 is a machinery' supplier and he has also given undertaking to be repaid the loan granted to defe.no. 1 and hence, he has joined in this suit.
- (3) That defendant approached to the Bank with a view to get loan facility to purchase Embroidery Machine and given an application or proposal on 2/9/2009 and thereafter the plaintiff bank has sanctioned SSI Term Loan Facility on 11/9/2009 of Rs. 4,50,000/- in response their application under CGFTMSE scheme. The defendant no. 1 was informed vide sanction letter dated 11/9/2009 that the said term loan facility would be released subject to acceptance of the terms and conditions mentioned in the sanction letter. As per the terms and conditions were such as the loan would be recovered in 60 equal monthly installments of Rs. 7500+Interest and first installment would be commenced from December-2009 and the rate of interest as per the Bank instruction and charged at 12.25% p.a. at monthly rest and the unit site for visit/any inspection would be allowed to any authorized person and bank also reserved the right to call up the loan amount if it is likely to jeopardise the interest of the Bank or any breach of conditions of any documents executed by the defendant.

(4) The plaintiff Bank has disbursed the loan amount directly to the supplier i.e. defe.no. 2 and for which the defendant no. 1 has signed, executed and delivered the following documents :-

- | | | |
|----|--|----------------|
| A. | Term Loan Agreement
dated 11/9/2009
(Hypothecation of Movable) | Rs. 4,50,000/- |
| E. | Demand Promissory Note | Rs. 4,50,000/- |

(5) It is submitted that the defendant agreed to pay interest @ 12.25% p.a. at monthly rests or other rests as may be prescribed by Bank from time to time depending upon the changes in the Prime Lending Rate of Bank or as per the guidelines issued by the Bank or RBI as applicable from time to time and the Bank should at any time and from time to time be entitled to change the rate of interest and such revised rate of interest should always be construed as agreed and the bank should be entitled to charge at its discretion enhanced/penal rate/s of interest on the balance due to the Bank for any delay in repayment /adjustment of the loan and/or interest thereon as agreed or in default or irregularity in observing the terms and condition of above referred agreement. The prevailing rate of interest is @ 14.75% p.a. at monthly rests. Therefore the Bank is entitled to recover the entire outstanding in respect of above loan from the defendants with interest @ 14.75% p.a at monthly rest.

(6) It is submitted that the defe. no. 1 executed Term Loan Agreement dated 11/9/2009. As per the said Agreement, defendant no. 1 agreed to repay the said loan in equal 60 monthly installment of Rs. 7500/-+Interest per month with effect from December-2009 and the agreements should operate as a security to the bank in addition to any other security already held by the bank for repayment to the bank of the loan and/or the balance outstanding due to the Bank by the defendant and the defe.no. 1 also hypothecated and charged all those machinery/plant/vehicle/capital goods/assets purchased or to be purchased by the defendant no. 1 out of this loan and all those existing and future machinery/plant/vehicle/capital goods/assets/craft and all those assets/movable properties capable of passing by delivery as specified in Schedule A(2) of Agreement as security for the payment to the Bank of the loan or balance due to

4

the Bank by the defendant and the defe.no. 1 agreed to remain lawful and absolute owner of the Embroidery Machine hypothecated and should not deal with or part with possession of the same in any manner, whatsoever, until the amount of the loan with interest and all the moneys due by the defe. no. 1 to the Bank were paid off and the defe.no. 1 also agreed to indemnify and keep indemnified the Bank against any claim for damager by reason of loss or destruction of the Embroidery Machine hypothecated to the Bank from any cause and the defendant no. 1 also agreed that in default of payment of any installment, the whole of the loan or the entire balance thereof outstanding at the time of happening of the event should fall due and payable by the defe.no. 1 to the plaintiff Bank.

(7) The plaintiff says and submits that equated monthly installments are the essence of the contract and the defendants were bound to make the payment regularly without committing any default.

(8) The plaintiff submits that after availing the said facility the defendant no. 1 failed to pay installments regularly and hence, the Bank has requested to pay installments regularly and also to pay the overdue amount but the defendants have not paid outstanding dues or installments regularly. In this connection official of the plaintiff Bank on various occasions requested and reminded to defendant to regularise the account but the defendant has given false promises and assurance without making actual repayment of the dues. The plaintiff has given various notices to pay the overdue amount but the defendant has not paid outstanding dues or installments regularly. Due to persistent default of the defe.no.1, his account including all facilities has been classified as a Non Performing Asset (NPA) with effect from 29/9/2010. As the last resort the plaintiff Bank has given the legal notice through its advocate on 15/4/2011 and the same have been received by the defendants. But the defendants have not complied with the notice. It shows that defendant is not willing to pay loan outstanding to the Bank. It is submitted that the defendant is willful defaulter and hence, the plaintiff has no alternative except to file the present suit for recovery of the dues.

(9) The plaintiff Bank further submits that as per the Statement of Account the following amounts are due from defendant and which are payable by the defendant.

Due amount as on 24/9/2010	4,36,831/00
+ accrued interest but not applied from 1/10/2010 to 31/3/2011	41,093/00

Total	4,77,924/00

(10) The plaintiff submits that a sum of Rs. 4,77,924/00 (Rupees Four Lac Seventy Seven Thousand Nine Hundred Twenty Four Only) is due outstanding in the account of the defendant on 31/3/2011 with running interest from 1/4/2011 @ 14.75% with all costs till the realisation of the said amount.

(11) The cause of action arose when the defendant has made application and when the plaintiff Bank has sanctioned the above referred facility on 11/9/2009 and disbursed the loan amount and when the defendant has executed the documents in favour of the Bank on 11/9/2009 and when the defendant agreed to pay the loan amount regularly and when the defendant failed and neglected to pay the amount with interest and cost on various dates and when the plaintiff Bank has given the legal notice through its advocate on 15/4/2011 and the defendants have received the notice and they have not paid to pay overdues amount as and when arose.

(12) Therefore plaintiff prays that :-

(A) This Hon'ble Court be pleased to pass a decree and judgment in favour of the plaintiff and against the defendant no. 1 for the sum of Rs 4,77,924/00 (Rupees Four Lac Seventy Seven Thousand Nine Hundred Twenty Four Only) with @ 14.75% p.a. running interest from 1/4/2011 till the realisation and that amount be recovered from person and properties of the defendant.

(B). The costs of the suit be awarded in favour of the plaintiff.

(C) Such other and further relief as the Hon'ble Court deemed just and proper in favour of the plaintiff.

(13) The present suit is valued at Rs. 4,77,924/00 for the purpose of court fees, advocate fees and jurisdiction this court fee stamp of Rs. 13550/- affix herewith.

(14) The plaintiff admits that the suit is filed as summary suit under order XXXVII Rule (2) of the Civil Procedure Code for liquidated amount in sum and interest and other charges payable under the agreement referred to above between the parties. It is submitted that no relief which does not fall within the ambit of the said rule has been claimed in the plaint, hence the suit may be treated as summary suit.

(15) The address of the plaintiff bank is shown in the title of the plaint is correct as per order 6 Rule 14(a) of C.P.C.

(16) The present suit is filed within the period of Limitation as provided under the Limitation Act.

(17) The plaint, Vakalatnama, list of documents, pursis are annexed herewith.

Ahmedabad.

Dt: 10/5/2011

Verification

I, Ramanlal S. Parmar, Branch Manager of the plaintiff bank do hereby verify and states the averments made in the suit are derived from the office record and what is stated above is true and to the best of my knowledge and belief.

Ahmedabad.

Dt: 10/5/2011
