

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT ON ORIGINAL SUIT.

District : Sonitpur

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri P.C. Kalita,
Civil Judge,
Sonitpur,Tezpur**

Saturday the 31st May, 2014.

Money Suit NO. 04 of 2011

The State Bank of India,
Tezpur Branch,
Tezpur town,
District Sonitpur (Assam) Plaintiff.

-versus -

- 1.** Sri Bipul Borthakur,
S/O Late Dadhiram Borthakur,
Proprietor of M/S North East Industry,
Block A, Industrial Estate, Dolabari,
Tezpur, District Sonitpur (Assam).
Resident of Dadhara Bamun Chuburi,
PO & PS - Tezpur,
District Sonitpur (Assam).
- 2.** Sri Rabindra Borah,
S/O Late K.C. Borah,
Near Ananta Memorial Hospital, Murhateteli,
PO & PS - Tezpur,
District Sonitpur (Assam). Defendants.

This suit coming on for final hearing or having been heard on 15th May, 2014.

Mr. P. Kakoty,
Advocate. For the Plaintiff

Sri P.K.Dutta, Sr. Advocate For the defendants.

And having stood for consideration this day, the 31st May, 2014 the Court delivered the following Judgment:-

J U D G M E N T

1. This is a suit for recovery of money amounting to Rs. 6,88,596/- due to the loan amount advanced by way of cash credit loan along with interest and other charges with sale of hypothecated goods.

2. As reflected in the plaint, briefly, the plaintiff's case is that the plaintiff, the Tezpur Branch of State Bank of India (herein after called as plaintiff bank) is a body Corporate constituted under the Sate Bank of India Act, 1955. Defendant No.1 Sri Bipul Borthakur is a businessman and the Proprietor of M/s North East Industry, a spice manufacturing unit duly registered with District Industry Centre, Govt. of Assam, Tezpur. The defendant No.2 Sri Robindra Bora, is a permanent resident of Tezpur. The plaintiff pleaded that the defendant No.1 had approached and requested the plaintiff bank through its manager to provide a cash credit loan facility to meet the working capital to his business and defendant No.1 assured that the repayment would be made regularly and without any default, in the credit account with the plaintiff bank. The application dated 28-02-2008 made by the defendant No.1, plaintiff bank sanctioned a cash credit loan facility with aggregate limit of Rs. 5,00,000/- only repayable on demand on 08-03-2008 with interest@ 12.75% per annum payable with monthly rests basis and a cash credit Loan account No. 30344848286 opened in the name of the defendant No.1 as Proprietor of M/s North East Industry. The defendant No.1, at the time of sanction of the loan amount, executed an agreement of loan cum Hypothecation and Consent clause on 08-03-2008 and hypothecated all types of stocks and other movable assets available to defendant No.1 in his business concern.

Defendant No. 2 stood as guarantor and executed a Guarantee agreement with the plaintiff bank on 08-03-2008. The plaintiff bank also pleaded that from the entries made in the cash

credit loan account No. 30344848286 found that the defendant No.1 failed to operate the said loan account regularly. The defendant No.1 deposited Rs. 21,000/- only on 12-05-2008, Rs. 3,000/- only on 26-05-08, Rs. 10,000/- only on 12-06-08, Rs. 15,000/- only on 18-04-2008, Rs. 9,000/- only on 08-08-08 and Rs. 5,000/- only on 13-10-08 in the said cash credit loan account. The defendant No. 1 did not deposit the sale proceeds of his business regularly to the plaintiff bank and thereby violated the terms of contract entered with the plaintiff bank. The plaintiff bank also pleaded that the plaintiff bank served a letter to the defendant No.1 on 23-03-2009, requesting him to repay the overdue amount of Rs. 35,764/- payable as on 15-03-2009. But the defendant No.1 did not pay any heed to the plaintiff's letter. The plaintiff bank then served another letter to the defendant NO.1 on 22-10-2009 informing that an amount of Rs. 5,75,637/- remained due as outstanding as on 22-10-2009 by the defendant No.1. Thereafter, the defendant No.1 visited the plaintiff bank on 22-02-2010 and presented a letter to the Chief Manager of the plaintiff bank promising and assuring the plaintiff bank that the defendant No.1 would regularize the said loan account within 15-03-2010 and he also deposit an amount of Rs. 5000/- on 22-02-2010 but thereafter failed to take any step.

Thereafter, the plaintiff bank issued several notice to the defendant No.1 but the defendant No.1 failed to deposit the loan amount. Hence, this suit.

3. After receiving the summons, both the defendants have filed joint written statement stating, inter-alia, that the suit is not maintainable u/s 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, and U/s 9 of the CPC, and the suit is barred by law of limitation. The defendants admitted that the defendant No.1 approached the plaintiff bank to provide him a cash credit loan facility vide loan

application dated 28-02-2008 and the plaintiff bank sanctioned a cash credit loan to a limit of RS. 5,00,000/- only on 08-03-08 with stipulated interest @ 12.75% per annum payable with monthly rests against hypothecation of goods and assets of his SSI Unit M/S North East Industry. It is also admitted that the defendant No. 2 stood as guarantor for the borrower, defendant No.1, in the said cash credit loan. It is further admitted that the defendant No.1 withdrew Rs. 50,000/- on 11-03-08, Rs. 3,20,000/- on 13-03-08 and Rs. 1,20,000/- on 15-03-08 from the said cash credit loan account. The defendant No.1 deposited Rs. 21,000/- on 12-05-08, Rs. 3,000/- on 26-05-08, Rs. 10,000/- on 12-06-08, Rs. 15,000/- on 18-06-08, Rs. 9,000/- on 08-08-08 and Rs. 5,000/- on 13-09-08 in the said Cash credit account and thus, the defendant No. 1 duly operated the said cash credit account as per the bank norms.

The defendant No.1 contended that he borrowed a total amount of Rs. 4,90,000/- only on diverse dates and did not withdraw Rs. 5,00,000/- on 08-03-2008 from the said cash credit account and similarly deposited an amount of Rs. 63,000/- only in the cash credit account on diverse dates. The defendant No. 1 denied that the operation of the cash credit account by the defendant No.1 became irregular. The defendant No.1 contended that he did not receive any letter of demand dated 23-03-09 from the plaintiff bank nor received any letter dated 21-05-10 from the plaintiff bank requesting him to regularize the operation of cash credit account. Both the defendants stated that they did not receive any Pleader's notice on 16-08-2010.

The defendant No.1 further contended that he did not deposit further amount of Rs. 500/- on 29-01-11, Rs. 500/- on 01-02-11 and Rs. 300/- on 03-02-11 in the said cash credit account. The defendants also did not sign any acknowledgment in writing thereby acknowledging any outstanding debts in favour of the plaintiff bank u/s 5 of the Limitation Act.

The defendants denied that after calculating all the

interest accrued upto 04-02-2011 the unpaid balance towards principal amount stood Rs. 5,05,923/- and any accrued interest at Rs. 1,75,497/- and purported penal interest of Rs. 7,176/- thereby showing a purported outstanding balance of Rs. 6,88,596/- as on 14-02-11, as such, they are not jointly and severally liable to pay the suit amount. Therefore, the defendants prayed for dismissal of the suit.

4. Upon considering the contents of the pleadings and also after hearing both sides, my learned predecessor framed the following issues :-

- 1.** Whether there is cause of action for the plaintiff to file the present suit ?
- 2.** Whether the Civil Court has jurisdiction to try the suit in view of the express bar by Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 and U/s 9 of the CPC?
- 3.** Whether the suit is barred by limitation?
- 4.** Whether the plaintiff is entitled to the decree for recovery of money amounting to Rs. 6,88,596/- from the defendants on account of granting the cash credit loan to the defendant No.1?
- 5.** To what other relief / reliefs the parties are entitled to?

5. During the trial, the plaintiff has examined one witness namely, Sri Chitendra Nath Goswami, Assistant General Manager and Principal Officer of the State Bank of India, Tezpur Branch and exhibited certain documents. On the other hand, defendants has examined one witness Sri Bipul Borthakur, defendant No.1, as DW 1 and exhibited certain documents.

Despite several dates granted to the defendant, defendant No. 1 failed to appear before the court to face cross-examination, therefore, the plaintiff side could not cross-examine

the defendant witness (DW 1).

DISCUSSIONS, DECISION AND REASONS THEREOF.

6. I have carefully perused the case records, evidence, both oral and documentary, available on record. Heard the argument advanced by learned advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.

Issue No.1.

Whether there is cause of action for the plaintiff to file the present suit?

7. The plaintiff, State Bank of India, Tezpur Branch, pleaded that the defendant No.1 was granted a cash credit loan amounting to Rs. 5,00,000/- on 08-03-08 payable on demand with an interest @ 12.75% per annum and in this regard a cash credit loan account being No. 30344848286 was opened in the name of defendant No.1. The defendant No. 2 stood as guarantor in the said cash credit loan account. The defendant No. 1 withdrew different amount on diverse dates from the said account. The defendant No.1 failed to deposit the sale proceeds of his business regularly to the plaintiff bank and thereby violated the terms and conditions of the loan agreement entered with the plaintiff bank.

On the other hand, defendant Nop.1 in his written statement stated that he has deposited a total amount of Rs. 63,000/- in the said cash credit account on various dates. So, the defendant No.1 has denied that he was irregular in operating the said case credit account.

Thus, it appears that the assertion of fact being irregular by the defendant No.1 in depositing the monthly rests in the said cash credit account and the denial of this fact by the defendants, requires judicial determination. Therefore, I find that there is a cause of action for the suit. Hence, this issue is decided in the affirmative and in favour of the plaintiff.

Issue No.2.

Whether the Civil Court has jurisdiction to try the suit in view of the express bar by Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 and U/s 9 of the CPC?

8. The defendants in their written statement have raised this plea of jurisdiction to try the suit by this court.

Upon perusal of the case record, it appears that the plaintiff bank has initiated no action under the provision of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, against the defendants. Moreover, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees. Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act will not attract in this suit.

Section 9 of CPC lays down that – the Court shall (subject to the provisions herein contain) have jurisdiction to try all the suits of civil nature excepting suit of which their cognizance either expressly or impliedly barred.

This is a suit for recovery of money against the cash credit loan granted with interest and other charges with sale of hypothecated goods. Thus, it appears that this is a suit of civil nature. So, the jurisdiction of this court is not barred to try the suit. Therefore, the issue is decided in the negative and in favour of the plaintiff.

Issue No.3.

Whether the suit is barred by law of limitation?

9. The defendants in their written statement, stated that the suit is barred by law of limitation. The defendants stated that the period of limitation is 3 years for a suit for recovery of money, for money lent on which the loan is made. The defendants further

stated that the loan was sanctioned and advanced to the defendant No. 1 on 08-03-08 and the suit was filed on 18-03-11 which is clearly barred by limitation.

As per Article 21 of the Limitation Act, 1963, the period of limitation, for money payable for money lent under an agreement that it shall be payable on demand, limitation is 3 (three) years when the loan is made.

Here in the present suit the loan of Rs. 5,00,000/- was sanctioned by the plaintiff bank on 08-03-08 to the defendant No1 with interest @ 1.75% repayable on demand with monthly rests. The present suit was filed on 18-09-11 beyond the period of 3 years when the loan was made.

Section 18 of the Limitation Act, 1963, provides - Effect of acknowledgment in Writing –(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

Perusal of the case record, it appears that before the expiration of prescribed period of 3 years, i.e. 08-03-08 when the loan was made, the defendant has acknowledged his liability in writing in respect of the suit property by letter dated 22-02-2010 (Ext. 11), so a fresh period of limitation shall run from the date of acknowledgment in writing i.e. 22-02-10. Thus, it appears that the suit has been filed with the prescribed period of limitation i.e. 3 years. Therefore, this issue is decided in the negative and in favour of the plaintiff.

Issue No.4.

Whether the plaintiff is entitled to the decree for recovery of money amounting to Rs. 6,88,596/- from the defendants

on account of granting the cash credit loan to the defendant No.1 - is the vital issue to be decided in this suit.

10. The plaintiff bank in the plaint and Sri Chitendra Nath Goswami, Assistant General Manager and Principal Officer of State Bank of India, Tezpur Branch as PW 1, in his evidence-in-affidavit stated that the plaintiff bank sanctioned a cash credit loan amounting to Rs. 5,00,000/- to the defendant defendant No.1 on 08-03-2008 payable on demand with an interest @ 12.75% per annum on monthly rests with the terms and conditions incorporated in the letter of arrangement dated 08-03-08 and the defendant No.2 was the guarantor, on behalf of defendant No. 1 borrower. The defendant No.1 withdrew Rs. 50,000/- on 11-03-08, Rs. 3,20,000/- on 13-03-08 and Rs. 1,20,000/- on 15-03-08 through the cash credit loan account being No. 30344848286 opened in the name of defendant No.1 in the plaintiff bank .The defendant No.1 from 12-05-08 and thereafter on various dates till 13-09-08 deposited various amounts in the said account but, thereafter, he failed to operate the said loan account regularly. The plaintiff bank served various letters to the defendant No.1, requesting him to deposit the loan amount regularly but, the defendant failed to do so.

During cross-examination, PW 1 stated that the withdrawal cheques and deposit vouchers are not submitted in the case. As per Exhibit 7, the book is maintained by the Bank. All the entries made in Ext.7, were not made by him. The defendant No.1 withdrew Rs. 4,90,000/- out of total sanctioned amount of Rs. 5,00,000/-.

PW 1 has proved the loan application dated 28-02-2008 as Ext.1, Letter of Arrangement dated 08-03-2008 as Ext. 2, Agreement of loan cum hypothecation dated 08-03-08 as Ext.3, Statement of loan account No. 3034484286 dated 12-02-11 as Ext. 7 and Deposit – Overdraft enquiry report dated 14-02-11 as 8 and Notice of Demand dated 16-08-2010 as Ext. 13.

The defendants in their written statement admitted that the defendant No.1 withdrew Rs. 50,000/- on 11-03-08, Rs. 3,20,000/- on 13-03-08 and Rs. 1,20,000/- on 15-03-08 from the said cash credit loan account. Thus, the defendant No.1 withdrew a total amount of Rs. 4,90,000/- from the said cash credit loan account and deposited an amount of Rs 63,000/- in the cash credit loan account on diverse dates. The defendants denied that the operation of cash credit loan account was irregular by defendant No. 1 and also denied the receiving a letter of demand dated 23-03-09 from the plaintiff bank.

It is admitted position that, the defendant No.1 received the loan amount of Rs. 4,90,000/- and made payment only Rs. 63,000/- on various dates. Admitted fact need be proved (section 58 of Evidence Act) It is also seen that the plaintiff made demand notice to the defendants on 16-08-2010 to make regular the loan account (Ext. 13). In spite of, the defendants have failed to regularize the cash credit loan account. The defendants have though denied the fact of non-regularizing the cash credit account but failed to substantiate their claim.

Thus, it appears that the plaintiff is entitled to get a decree for recovery of Rs. 6,88,596/- from the defendants.

Therefore, this issue is decided in the affirmative and in favour of the plaintiff.

Issue No. 5.

To what other relief / reliefs the parties are entitled to?

11. In view of the discussions and decisions made in issue, Nos. 4, this issue is decided in favour of the plaintiff.

O R D E R.

12. In the result the suit is decreed, on contest, with the following reliefs:-

(i) for recovery of Rs. 6,88,596/- from the defendant Nos. 1 and 2 jointly and severally, along with future interest @ 6 % per annum on monthly rests from the date of filing of the suit till realization.

(ii) for sale of hypothecated goods mentioned in the schedule towards protanto satisfaction of the decretal dues.

(iii) the parties shall bear their own cost.

13. Prepare the decree accordingly

14. Judgment is given under my hand and seal of this Court on this 31st day of May, 2014.

(P.C. Kalita)
Civil Judge, Sonitpur,
Tezpur

Dictated and corrected by me,

(P.C. Kalita)
Civil Judge, Sonitpur,
Tezpur

Transcribed by me.

(R. Hazarika)
Steno.