

Assam Schedule VII : Form No. 132

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

District : Sonitpur

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

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

Thursday, the 28th day of May, 2015

Money Suit NO. 19 of 2013

State Bank of India

Tezpur Bazar Evening Branch
PO & PS - Tezpur
District - Sonitpur (Assam)

..... Plaintiff(s)
Petitioner(s)

-VERSUS -

Sri Nitu Paul

Son of Niranjan Paul
GD Road, Tezpur
PO- Tezpur, PIN- 784001
District – Sonitpur, Assam

Residence :

C/o – Niranjan Paul
Ambagan, Ward No.9, Tezpur
PO - Tezpur, PIN- 784001
District – Sonitpur, Assam

..... Defendant(s)
Opposite Party

This Suit is coming on for final hearing or having been heard on
29-04-2015 in the presence of :

Mr. Paramanada Kakati
Advocate

Advocate(s)
Pleader(s)

for

Plaintiff(s)
Petitioner(s)

Mr. S. C. Acharya
Advocate

Advocate(s)
Pleader(s)

for

Defendant(s)
Opposite Party

And having stood for consideration to this day, the 28th May,
2015, the Court delivered the following Judgment :-

J U D G M E N T

This is a suit for recovery of money amounting to Rs.2,93,917/- due against cash credit loan with interest, other charges with sale of hypothecated goods.

2. The plaintiff's case, inter-alia, in brief, is that the plaintiff SBI is a body corporate constituted under the SBI Act, 1955 having its corporate Head office at State Bank Bhawan, Madame Cama Road, Narimon Point, Mumbai, 400021, carrying its banking business throughout diverse branches and in particular at Brinjraj Road, district Sonitpur, Assam known as Tezpur Bazar Evening Branch. The defendant No.1 Sri Nitu Paul is a businessman and is proprietor of retail and wholesale seller of fishnet and plastic items, carrying on business at GD Road, Tezpur, Assam. The defendant No.2 Sri Niranjnan Paul is also a businessman. The plaintiff-bank pleaded that the defendant No.1 approached and requested the plaintiff-bank to provide a cash credit loan facility for his business concern by application, dated 21-02-2009 and then, the plaintiff –bank sanctioned a cash credit loan amount facilities with limit of Rs.3,00,000/-, repayable on demand with interest @ 11.25%, p.a. on monthly rest basis, to the defendant No.1 with the terms and conditions contained in the letter of agreement (SME – 1), dated 03-03-2009. The defendant No.1 opened a cash credit loan account being No.30698677382. The defendant No.1 at the time of sanction of the loan amount executed agreement of loan cum hypothecation (SME -2) and consent clause on 03-03-2009 and hypothecated his stock in trade of the business establishment and other immovable assets against the said loan account. The defendant No.2 stood as guarantor against the cash credit loan account of the defendant No.1. The defendant No.1 also created lien of his fixed deposit account being No. STDR-095571 for Rs.1,00,000/- against the said loan by executing an agreement Form A on 03-03-2009. The plaintiff –bank further pleaded that the defendant No.1 thus, operated the said loan account by withdrawing loan amount on diverse dates, by making deposit transaction on various dates during the course of his business. The cash credit loan account was duly kept and maintained by the plaintiff-bank in its computer system. The plaintiff again pleaded that the defendant No.1 failed to deposit the sale

proceeds of his business regularly to the plaintiff-bank and thereby violated and breached the terms and conditions of the contract entered into between them. That the plaintiff served demand notice upon the defendant Nos.1 and 2 on 21-09-2010, demanding defendant No.1 to regularize the transactions in the said loan account and then defendant No.1 made some deposit on diverse dates, some amount which was so meagre and could not complete gather monthly interest there on. That, thereafter, the plaintiff served demand notice upon the defendant Nos. 1 and 2 on 18-06-2011 to make regularize the loan account but the defendants have failed to regularize the same. Hence, the suit.

3. The defendant No.1 contested the suit by filing written statement stating, inter-alia, that the suit is not maintainable ; not properly valued, barred by limitation and there is no cause of action. The defendant No.1 also contended that the defendant No.1 did not approach and requested the plaintiff-bank for any cash credit loan facility ; female person assured repayment regularly and not the defendant No.2. The defendant No.1 further contended that he did not make any transaction in any account on 05-04-2010, 30-04-2010, 14-05-2010, 24-05-2010 and 07-06-2010. The defendant No.1 having no business in his name, there does not arise any question of deposit of sale proceeds.

4. Upon perusal of the pleadings of both parties and also hearing learned advocate of both sides, the following issues are settled :

1. Whether there is any cause of action for the suit ?
2. Whether the suit is properly valued and properly verified ?
3. Whether the suit is barred by limitation ?
4. Whether the suit is bad for non-joinder of necessary parties ?
5. Whether the defendant availed a cash credit loan amount of Rs.3,00,000/- with interest @ Rs.11.25% per annum from the plaintiff bank ?
6. Whether the defendant made any default in making repayment of the loan amount to the plaintiff bank ?
7. Whether the defendant is liable to pay the loan amount with

interest and cost of the suit to the plaintiff bank ?

8. Whether the plaintiff is entitled to a decree as prayed for against the defendant ?

9. To what relief / reliefs the parties are entitled ?

5. It may be mentioned that the suit against defendant No.2 Niranjana Pual (guarantor) was struck off, vide order, dated 04-11-2013,

6. During trial, the plaintiff has examined one witness Sri Hira Ghimire, Assistant Manager (Credit), SBI Tezpur Bazar Evening Branch, and exhibited as many as 18 (eighteen) documents to prove its case. The defendant has examined none.

Discussions, Decision and reasons thereof :-

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

ISSUE NO. 1

Whether there is any cause of action for the suit ?

The plaintiff – State Bank of India represented by Sri Sanjay Mazumdar, Branch Manager of the Principal Officer, SBI Tezpur Bazar Evening Branch, pleaded that plaintiff-bank sanctioned a cash credit loan amount to the limit of Rs.3,00,000/- to the defendant No.1, on 03-03-2009, which was repayable on demand with interest @ Rs.11.25%, p.a., on monthly rest basis, with the terms and conditions contained in the letter of agreement, dated 03-03-2009. The plaintiff-bank stated that the defendant No.1 operated the said loan account on diverse dates, made deposit transactions, on various dates, during the course of his business, but subsequently, the defendant No.1 has failed to regularize the cash credit loan account. On the other hand, the defendant has denied and disputed the assertion of the plaintiff made in the plaint through his written statement.

A cause of action is a bundle of essential facts. The plaintiff's assertion of right and denial the same by the defendant necessarily arises a cause of action which requires judicial adjudication. Thus, it appears that there is a cause of action. Hence, this issue is decided in the affirmative and in favour of the plaintiff.

9. **ISSUE NO. 2**

Whether the suit is properly valued and properly verified ?

The defendant No.1 in his written statement has taken the plea of valuation and verification of the plaint by the plaintiff-bank, but the defendant has failed to establish the plea of proper valuation of the suit and proper verification of the plaint by adducing any oral or documentary evidence. Therefore, in absence of any specific plea, the suit cannot be said not to be properly valued and not to be properly verified. Hence, this issue is decided in the negative.

10. **ISSUE NO. 3**

Whether the suit is barred by limitation ?

The issue of limitation of filing the suit is taken by the defendant in the written statement. The plaintiff at para No.7 of the plaint stated that the defendant No.1 made last deposit 29-09-2010 in the said loan account of Rs.3,000/- and the suit was filed on 15-07-2013.

This is a money suit for recovery of money amounting to Rs.2,93,917/- only due against cash credit loan account.

The period of limitation for filing a suit for recovery of money is three years from the date of last transactions made, as per provisions of Indian Limitation Act, 1963.

Here, it appears that the last transaction was made by the defendant in the said loan account on 29-09-2010 for Rs.3,000/- and the suit was filed on 15-07-2013 within the period of limitation, i.e. three years. Thus, it appears that the plaintiff has filed the suit within the period of limitation i.e. three years. Therefore, the issue is decided in the negative and against the defendant.

11. **ISSUE NO. 4**

Whether the suit is bad for non-joinder of necessary parties ?

The defendant No. 1 raises the plea of non-joinder of necessary parties in the written statement, but the defendant No.1 has failed to mention as to who are / how they are necessary parties in the suit. Hence, this issue is decided in the negative and against the defendant.

12. **ISSUE NOS. 5,6 and 7**

5. Whether the defendant availed a cash credit loan amount of Rs.3,00,000/- with interest @ Rs.11.25% per annum from the plaintiff bank ?
6. Whether the defendant made any default in making repayment of the loan amount to the plaintiff bank ?
7. Whether the defendant is liable to pay the loan amount with interest and cost of the suit to the plaintiff bank ?

All the three issues are co-related each other, and as such, for convenience, taken together for discussion.

The plaintiff –SBI in the plaint and Sri Hira Ghimire, Assistant Manager (Credit), SBI Tezpur Bazar Evening Branch, as PW-1, stated that plaintiff –bank on 03-03-2009 sanctioned a cash credit loan facility with limit of Rs.3,00,000/- to the defendant, repayable on demand with interest @ Rs.11.25%, p.a. , on monthly rest basis. The defendant No.1 at the time of sanction of the said loan, opened a cash credit loan account being 30698677382

in his name. The defendant No.2 stood as guarantor against the said loan account of defendant No.1. PW-1 also stated that the defendant No.1 created lien on his fixed deposit account being No. STDR 095571 for Rs.1,00,000/- against the said loan account in favour of the plaintiff, on 03-03-2009. PW-1 further stated that the defendant No.1 made some transactions in the said loan account on various dates, but thereafter, the defendant No.1 failed to operate the said loan account regularly. The plaintiff further pleaded that on 21-09-2010, the plaintiff served demand notice upon the defendants Nos. 1 and 2 calling upon the defendant No.1 to make regular payment in the said loan account, in reply the defendant No.1 made some deposits on diverse dates, last on 29-09-2009. Subsequent failure of the defendant No.1 to make regular the loan account, the plaintiff served another demand notice upon the defendant No.1 on 17-05-2011, calling upon the defendant No.1 to make regular transaction in the said loan account but not to any avail. For this situation, the plaintiff-bank closed the STDR No. STDR 095571 for Rs.1,00,000/- kept as lien.

The plaintiff also pleaded that as per the plaintiff's bank of account and after calculating all the debits and credits in the said loan account of defendant No.1, a sum of rupees mentioned hereinbelow remained outstanding as on 30-04-2013 :

(a)	Book Balance (unpaid principal)	Rs.2,10,670.00
(b)	Interest accrued but unapplied	Rs. 71,453.41
(c)	Penal Interest	Rs. 11,793.72

PW-1 has exhibited the loan application form dated 21-09-2009 as Ext.1, letter of arrangement, dated 03-03-2009 as Ext.5, agreement of loan cum hypothecation, dated 03-03-2009 as Ext.6, notice of demand (first one) by the plaintiff to defendants Nos. 1 and 2, dated 21-09-2010 as Ext.10 and second one dated 17-05-2011, as Ext.11, notice of demand intending suit from P. Kakaty, advocate of defendant Nos.1 and 2, dated 18-06-2011 as Ext.12, statement of account of defendant dated 29-4-2013 as Ext. 17 and loan status enquiry report of the defendant, dated 29-04-2013 as Ext.18.

I have carefully perused all the exhibited documents.

Ext.6, agreement of land –cum- hypothecation dated 03-03-2009, shows that the plaintiff Bank sanctioned a cash credit loan amount of Rs.3,00,000/- (three lakhs) only @ 12.25 %, p.a. on monthly rest basis in favour of the defendant Nitu Paul. From the statement of account (Ext.17, print out copy) in the name of defendant Nitu Paul under Account No. 30698677382 from 03-03-2009 to 29-04-2013, certified by the Branch Manager, Tezpur Bazar Evening Branch, it is seen that an amount of Rs. 2,10,670/- is remained as outstanding. Ext.18 (print out copy) certified by the Branch Manager, Tezpur Bazar Evening Branch in the name of defendant Nitu Paul under account No. 30698677382, it is found that an amount of Rs. 2,10,670/- is unpaid principal, Rs. 71,453.41 interest accrued and Rs. 11,793.72 penal interest accrued thereon.

The defendant though denied the averments of the plaint through his written statement, but has not come forward to prove his contentions.

From the evidence discussed, hereinabove, it is seen that the defendant No.1 availed a cash credit loan amount of Rs.3,00,000/- (rupees three lakhs) from the plaintiff bank and sometimes, made payments in his loan account, but subsequently, the defendant has failed to regularise the said loan account. Therefore, I hold that the defendant No.1 availing the said loan amount from the plaintiff bank, subsequently has failed to make payment and as such, liable to pay the loan amount with interest and with the cost. Hence, all the three issues are decided in the affirmative and in favour of the plaintiff.

13. **ISSUE NOS. 8 and 9**

8. Whether the plaintiff is entitled to a decree as prayed for against the defendant ?
9. To what relief / reliefs the parties are entitled ?

Both the two issues are inter-related and as such, for convenience

taken together for discussion.

In view of the discussions and decisions made in Issue Nos. 5,6 and 7, these two issues are also decided accordingly.

ORDER

14. In the result, the plaintiff's suit is decreed, on contest, with the following relief :

- (i) the suit is decreed for recovery of Rs.2,93,917/-
- (ii) the suit is decreed for interest @ Rs.6% p.a. from the date of decree till realization of the amount.
- (iii) The suit is decreed for sale of hypothecated goods towards protanto satisfaction of the decretal dues.
- (iv) Attachment of the movable properties ;
- (v) Cost of the suit.

Prepare the decree accordingly.

The suit is disposed of accordingly.

Given under my hand and seal of this Court on this day, the 28th day of May, 2015.

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

Dictated and corrected by me.

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

Dictation taken and
transcribed be me :

(J. K Muru)
Steno.
