

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 Munsiff, Gohpur

Present : Diganta Goswami, AJS
Munsiff, Gohpur

The 13th day of June, 2018

Money Suit No. 3/2018

UCO Bank
Head Office
10, BTM Sarani
Kolkata – 700001
West Bengal

-Through-

UCO Bank
Helem Branch, Helem
P.O. – Helem, PIN - 784170
Dist. -Biswanath, Assam

..... Plaintiff

-Versus-

1. Sri Satya Baruah
Son of Dandadhar Baruah
Village - Maranbari
P.O.-Dipora Pukhuri – 784170
Mouza- Kalangpar, P.S.-Helem
District – Biswanath (Assam)

.....Defendant No. 1

2. Sri Chayan Bordoloi
Son of Late Abani Bordoloi
Village - Dipora
P.O.-Dipora Pukhuri, PIN – 784172
Mouza – Kalangpar, P.S.-Helem
District – Biswanath (Assam)

.....Defendant No. 2

This suit coming on for final hearing on 07.05.2018 in the presence of:

Sri Paramananda Kakoti : Advocate for the plaintiff; and
None : Advocate for the defendants

And having stood for consideration to this day, the court delivered the following judgment.

JUDGMENT

This is a suit filed by the plaintiff UCO Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of undertakings) Act of 1969 and 1970 having its Head Office at 10, BTM Sarani, Kolkata – 700 001, a Branch Office amongst at other places at Helem, known as Helem Branch represented by the Branch Manager cum Principal Officer of the said branch for recovery of Rs. 50,492.00 (Rupees fifty thousand four hundred ninety two) only from the defendants. The case of the plaintiff is that the defendant No. 1 Sri Satya Baruah who was a cultivator engaged in his land at Maranbari Dipora Pukhuri applied for an agricultural loan through the Agricultural Development Officer, Ghahigaon loan under KCC scheme on 15.11.2012. The bank after necessary formalities sanctioned a loan of Rs. 48,000.00 (Rupees forty eight thousand) on the terms and conditions that loan amount will carry interest @ 7% P.A. and the entire loan amount with accrued interest was to be repaid by the defendant to the plaintiff at the end of every crop season i.e. at an interval of every six months. The defendant No. 2 Sri Chayan Bordoloi stood as the guarantor and he submitted Guarantor's statement to the plaintiff. The

The defendant No. 1 at the time of disbursement of the term loan executed loan documents on 22.12.2012. The defendant executed one Demand Promissory Note (A.1) dated 22.12.2012, letter of Waiver of Presentment (A. 47) dated 22.12.2012 and a Hypothecation cum Agreement for Agricultural Loan (A. 105-Agri) was executed on 22.12.2012 by the defendant No. 1 and he hypothecated the standing crop and produce of his agricultural farm to the plaintiff. The defendant No. 2 stood as guarantor and executed guarantee agreement on 22.12.2012 and thereby binding himself to discharge all present and future debt and liability of the defendant No. 1 with due interest and other charges and indemnify the plaintiff bank from and against all claims, demands, losses, damages, costs, charges, expenses, whatsoever which the plaintiff bank might sustain or incur in respect of

all money advanced and paid to the defendant No. 1. Apart from it, the defendant No. 1 and defendant No. 2 jointly executed one agreement (PSLD-1) on 22.12.2012. Thereafter, a Term Loan Account being no. 10790510000076 was opened in the name of the defendant No. 1 in the books of accounts kept and maintained by the plaintiff on 24.12.2012.

The loan account was duly kept and maintained by the plaintiff bank in its usual and ordinary course of banking business. The plaintiff bank debited the disbursement made and all interest accrued as per the Reserve Bank Advance Rate with monthly rests and other charges accrued under the terms of the loan agreement and credited all amounts deposited by the defendant No.1 in his said account. The first instalment of the loan of an amount of Rs. 30,000.00 (Rupees thirty thousand) only was disbursed by the plaintiff to the defendant No. 1 on 24.12.2012, the second instalment of the loan of an amount of Rs. 5,000.00 (Rupees five thousand) only was disbursed on 28.12.2012, the third instalment of an amount of Rs. 8,000.00 (Rupees eight thousand) only was disbursed on 31.12.2012 and the fourth instalment of an amount of Rs. 1,000.00 (Rupees one thousand) only was disbursed on 03.01.2013. Finally, the last instalment of the loan of an amount of Rs. 3,000.00 (Rupees three thousand) only was disbursed on 16.01.2013.

The borrower defendant No.1 was irregular in repayment of the above loan despite repeated demands made by the plaintiff. The defendant No. 1 deposited Rs. 4,000.00 (Rupees four thousand) only by cash on 13.06.2015 and Rs. 3,000.00 (Rupees three thousand) only by cash on 04.07.2015 in his said loan account.

The borrower defendant No. 1 and defendant No. 2 signed separate Balance Confirmation Letters (S. 14) on 18.12.2015 and submitted it to the plaintiff and acknowledged their joint and several liability with the plaintiff thereby the Defendant No. 1 and Defendant No. 2 respectively confirmed their liability for payment of outstanding amount in respect of the said loan account for the purpose of section 18 of the Indian Limitation Act, 1963. The plaintiff bank repeatedly demanded the defendant No.1 and defendant No.2 to make regular repayment in the said loan account of defendant No.1 but none of the defendants paid any heed to the plaintiff's demand. Moreover, the plaintiff's official visited the permanent residence of the Defendant No.1 many times for recovery of the outstanding amount but in vain and the family members revealed to the plaintiff that the defendant No.1 ceased to be engaged in agriculture and the hypothecated goods were also non-existent.

That after calculating all the interest accrued upto 31.03.2016 in the said loan account, the recorded liability as on 31.03.2016 stood at Rs. 50,492.00 (Rupees fifty thousand four hundred ninety two).

In the course of trial the plaintiff examined 1 (one) witness and exhibited several documents.

Proceedings of the suit:

Notices were served upon the defendants but as the defendants were absent without any steps on the date fixed, the suit was directed to proceed ex parte against the defendant vide this court's order 07.03.2018.

Discussion, Decision and Reasons thereof:

The P.W. 1 Sri Mrigen Kakati, the Branch Manager – Principal Officer, UCO Bank, Helem Branch in his evidence reiterated the averments made by the plaintiff in the plaint. The PW 1 exhibited the following documents:

- Ext. 1 is the loan application dated 15.11.2012 from the defendant No. 1,
- Ext. 2 is the letter from Agricultural Development Officer, Ghahigaon dated 16.11.2012,
- Ext. 3 is the Certificate issued by the Agricultural Development Officer, Ghahigaon, dated 16.11.2012,
- Ext. 4 is the Application submitted by the defendant No. 1 in prescribed format dated 22.12.2012,
- Ext. 5 is the No dues certificate dated 14.12.2012 issued by the Allahabad Bank, Tetonbari branch,
- Ext. 6 is the No dues certificate dated 15.12.2012 issued by the Assam Gramin Vikash Bank, Gamiri branch,
- Ext. 7 is the No dues certificate dated 15.12.2012 issued by the Assam Gramin Vikash Bank, Barangabari branch,
- Ext. 8 is the Jamabandi dated 20.11.2012,
- Ext. 9 is the Guarantor's Statement,
- Ext. 10 is the Sanction Letter dated 22.12.2012,
- Ext. 11 is the Demand Promissory Note (A. 1) dated 22.12.2012,
- Ext. 12 is the Waiver of Presentment (A.47) dated 22.12.2012,
- Ext. 13 is the Agreement (PSLD-1) jointly executed by defendant Nos. 1 & 2 dated 22.12.2012,

- Ext. 14 is the Hypothecation-cum-Agreement for Agricultural Loan (A. 105-Agri) dated 22.12.2012,
- Ext. 15 is the Guarantee agreement (A.21) executed by the defendant No. 2 dated 22.12.2012,
- Ext. 16 is the short term agricultural loan document A-117 dated 22.12.2012,
- Ext. 17 is the Balance Confirmation Letter (S.14) signed by the defendant No. 1 dated 18.12.2015,
- Ext. 18 is the Balance confirmation letter (S. 14) signed by defendant No. 2 dated 18.12.2015,
- Ext. 19 is the Certificate from the person in-charge of computer system of Plaintiff, dated 13.07.2017,
- Ext. 20 is the statement of the loan account No. 10790510000076 of defendant No. 1 dated 13.07.2017.

I have heard the learned counsel for the plaintiff bank.

The plaintiff bank has submitted the bank statement of the Loan Account number 10790510000076 of defendant No. 1 dated 13.07.2017. The case was lodged on 12.02.2018. The plaintiff bank hasn't submitted the up-to-date statement of the Loan Account Number of the defendant. Therefore, it is not clear if any transaction took place in between 13.07.2017 and 12.02.2018.

The plaintiff bank has stated that defendant No. 1 and defendant No. 2 were served notices for repayment in the said loan account of the defendant No. 1, but none of them paid any heed to the plaintiff's demand. It has also been stated that Plaintiff's officials visited the permanent residence of the defendant No. 1 many times for recovery of the outstanding amount but in vain. The plaintiff bank hasn't submitted copy of any such notices which were issued to the defendants and on failure of the defendants, the cause of action has arisen. Merely stating that notices were issued to the defendants for repayment of the loan without submitting any such supporting documents does not lead to rise of cause of action.

Further, if the defendants had defaulted in making the repayment of the loan, they should have been served legal notice of the Advocates. The plaintiff bank hasn't submitted any such kind of Advocates' notice being served to the defendants for repayment of the loan.

The signatures of the loanee defendant No. 1 Sri Satya Baruah in the loan application dated 15.11.2012 (Ext. 1), in the Application in the prescribed format dated 21.12.2012 (Ext. 4) and the supposed guarantor defendant No. 2 Sri Chayan Bordoloi in the Guarantor's statement (Ext. 9) have not been proved. Section 67 of the Indian Evidence Act states as follows:

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature of the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

In the event of not proving the signatures of the defendant No. 1 and the defendant No. 2 by the plaintiff, the mandate of the section 67 of the Indian Evidence Act has been hit which is in the negative and against the plaintiff.

ORDER

After going through the all the averments on record, this court finds that the plaintiff has not been able to prove its case and hence the plaintiff is not entitled to any decree or other relief in this suit as prayed for.

The suit of the plaintiff is dismissed without cost.

Prepare a decree accordingly.

Given under my hand and seal of the court on this 13th day of June, 2018.

DIGANTA GOSWAMI
MUNSIFF, GOHPUR

APPENDIX

Plaintiff's Witness : P.W.1 Sri Mrigen Kakati
Defendant's Witness : None

Plaintiff's Exhibits :

- Ext. 1 - The Loan Application dated 15.11.2012,
 Ext. 2 - The letter from Agricultural Development Officer, Ghahigaon dated 16.11.2012,
 Ext. 3 -The certificate issued by the Agricultural Development Officer, Ghahigaon, dated 16.11.2012,
 Ext. 4 - The Application submitted by the defendant No. 1 loan in the prescribed format of plaintiff dated 22.12.2012,
 Ext. 5, Ext. 6 and Ext. 7 - The No dues certificates,
 Ext. 8 - The Jamabandi dated 20.11.2012,
 Ext. 9 - The Guarantor's Statement,
 Ext. 10 - The Sanction Letter dated 22.12.2012,
 Ext. 11 - The Demand Promissory Note (A. 1) dated 22.12.2012,
 Ext. 12 - The Waiver of Presentment (A.47) dated 22.12.2012,
 Ext. 13 - The Agreement (PSLD-1) jointly executed by defendant Nos. 1 & 2 dated 22.12.2012,
 Ext. 14 -The Hypothecation-cum- Agreement dated 22.12.2012,
 Ext. 15 - The Guarantee agreement (A.21) executed by the defendant No. 2 dated 22.12.2012,
 Ext. 16 - The short term agricultural loan document A-117 dated 22.12.2012,
 Ext. 17 - The Balance Confirmation Letter signed by the defendant No. 1 dated 18.12.2015,
 Ext. 18 - The Balance confirmation letter (S. 14) signed by defendant No. 2 dated 18.12.2015.
 Ext. 19 - The certificate from the person in-charge of computer system of Plaintiff, dated 13.07.2017.
 Ext. 20 - The statement of the loan account No. 10790510000076 of defendant No. 1 dated 13.07.2017.

Defendant's Exhibits : None

Court Witnesses : None

Court Exhibits : None

DIGANTA GOSWAMI
MUNSIFF, GOHPUR