

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

DISTRICT: SONITPUR

IN THE COURT THE OF MUNSIFF NO. 2, SONITPUR,
TEZPUR

Present: **Smti Priyanka Saikia, AJS,**
Munsiff No.2.

This the 29th day of November, 2022

Money Suit No. 05/2017

M/s Disha Travels

Represented by its Proprietor

Miss Shivani Tibrewal

D/o- Late Kanta Prasad Tibrewal

Resident of Binjraj Road

Mayur Bhawan, Tezpur Town

Near Canara Bank

P.O. & P.S.- Tezpur

District- Sonitpur, Assam

---Plaintiff

-versus-

Sri Jibon Jyoti Sharma

S/o- Pushpa Kanta Sharma

R/o. Village- Bamungaon,

Polofield, Tezpur

P.O. & P.S.- Tezpur

Mouza- Mahabhairab

District- Sonitpur, Assam

---Defendant

This is a suit came up for final hearing on 31-10-2022, in presence of following Advocates:

Counsel for Plaintiff : Sri P. Saikia

Counsel for Defendant : Sri K. Sharma

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

J U D G M E N T

Plaintiff's case in brief:

- 1.** This is a suit for realization of money.
- 2.** That the plaintiff is a travel agency at the above mentioned location and is represented by its said proprietor, who used to look after the day to day affairs of her said business of travel agency and deals in the travel network business and it usually books Air tickets, Rail tickets, hotels and arranging and conducting tour packages to the various parts of India and across the world to its intending customers and the defendant above named was/is one of the customer of the plaintiff and is a permanent resident of the above mentioned place and as such, both the parties hereto above resides within the jurisdiction of this Hon'ble Court.

3. That the defendant was an old customer of the plaintiff and was having a good friendly relationship between them and having so, the defendant sometimes used to purchase Air tickets on credit from the plaintiff for him to travel to different destinations as per his requirements and also the defendant used to purchase Air tickets for his well wishers and relatives and accordingly, a credit account against purchase of the Air tickets on credit was being maintained by the defendant with the plaintiff and the plaintiff used to maintain the said credit account ledger of the defendant in her day to day business affairs of her said business.

4. That the defendant on dated 29-02-2016 had approached the plaintiff and had booked for 4 (four) flight tickets for him and also for another three persons and accordingly, the Plaintiff had booked for four flight tickets for the defendant and his three other associates on the said date and the destination of travel was from Guwahati to Delhi and the schedule date for travelling was on dated 22-04-2016 and IndiGo Flight ticket was booked of Flight No. 6E 222 and departure time was 11:00 A.M. from Guwahati and booking reference was XGYERH and with numeric booking 1.D. No. 121314093515 and the said flight tickets were booked on credit basis by the defendant and accordingly, the plaintiff on good faith had booked for the defendant the said four Air tickets on credit basis and had maintained the statement of credit account by her in

her day to day business affairs against purchase / booking of the said Air tickets on credit by the said defendant and since the defendant was an old customer of the plaintiff, so the plaintiff had believed the defendant that he will pay the price of Rs.18,684/- (Rupees eighteen thousand six hundred and eighty four) only for the booking/ purchase of the said four Air tickets on credit from the plaintiff, so the said credit was given by the plaintiff to the defendant. The extract copy of the statement of credit entry ledger account of the defendant against booking / purchase of the said four Air tickets on credit which is being maintained by the plaintiff has been filed with the Plaintiff.

5. That, after booking /purchase of the said four Flight tickets by the defendant, the defendant suddenly on dated 20-04-2016 had ranged the Plaintiff and requested her to make cancel of the said four Flight tickets which he had booked on dated 29-02-2016 and accordingly, the Plaintiff on the said request of the defendant had cancelled the said four Flight tickets and a cancellation charge of Rs. 10,000/- (Rupees ten thousand) only was borne and paid by the Plaintiff to the said Aviation company and when the Plaintiff request and demanded for the said cancellation charge from the defendant, then the defendant had assured that he will make the said due cancellation charge payment within a period of one month's time.

6. That, again the defendant on dated 04-03-2016 had approached the plaintiff and had booked for another 2

(Two) flight tickets in the name of (i) Mrs. J.K. Sharma and (ii) Child Manjistha Sharma and accordingly, the Plaintiff had booked for two flight tickets on the said date and the destination of travel was from Guwahati to Delhi and the schedule date for travelling was on dated 07-03-2016 and IndiGo Flight ticket was booked of Flight No. 6E 222 and departure time was 11:00 A.M. from Guwahati and booking reference was G5Y7Y1 and with numeric booking I.D. No. 132814321417 and the said flight tickets were booked on credit basis by the defendant and the plaintiff on good faith had booked for the defendant the said two flight tickets on credit basis and had maintained the statement of credit account by her in her day to day business affairs against purchase / booking of the said two flight tickets on credit by the said defendant and since the defendant was an old customer of the plaintiff, so the plaintiff had believed the defendant that he will pay the price of Rs.17,622/- (Rupees seventeen thousand six hundred and twenty two) only for the booking / purchase of the said two flight tickets on credit from the plaintiff, so the said credit was given by the plaintiff to the defendant. The extract copy of the statement of credit entry ledger account of the defendant against booking / purchase of the said two flight tickets on credit which is being maintained by the plaintiff has been filed with the Plaintiff.

7. That, after booking / purchase of the said above two flight tickets by the defendant, the defendant suddenly on

the very next date, i.e., on dated 05-03-2016 had asked the Plaintiff and requested her to make cancel of the said two flight tickets which he had booked on dated 04-03-2016 and accordingly, the plaintiff on the said request of the defendant had cancelled the said two flight tickets and a cancellation charge of Rs. 5,000/- (Rupees Five Thousand) only was borne and paid by the plaintiff to the said aviation company and when the plaintiff request and demanded for the said cancellation charge from the defendant, then the defendant had assured that he will make the said due cancellation charge payment within a period of one month's time.

8. That, since both the above stated flight tickets which were booked on credit basis by the defendant on dated 29-02-2016 and 04-03-2016 respectively with a promise to pay the price of the flight tickets to the plaintiff on a later date and subsequently when all the six flight tickets were cancelled for both the said two dates and the cancellation charges for it comes to a total sum of Rs. 15,000/- (Rupees Fifteen Thousand) only which the defendant had agreed and promised to pay the plaintiff within a period of one month's time and after completion of one month, when the plaintiff had requested the defendant to make payment for the said due amount, then the defendant had asked for some more time and thereafter the defendant always tried to avoid the plaintiff by taking this and that pretext to make payment of the said due amount. The plaintiff has made countless phone calls and text messages but the

defendant always have made false promises to pay for the said outstanding due amount but on the last phone call conversation which was made by the plaintiff on the first week of January, 2017 the defendant straight away refused to pay for the said due outstanding amount of the plaintiff and also had used some abusive language to the plaintiff. The plaintiff on the very next day had been to the defendant's house and asked the defendant for the said due amount and also asked him why he had abused her un-necessarily to which the defendant again became violent and asked the plaintiff to leave his residence immediately and told her that he is not going to pay the said due amount to her and to do whatever she likes and also has used some un-parliamentary language to her.

9. That the plaintiff finding no other alternative had approached before the concerning advocate for redressal of her grievances and to make recovery of her said legitimate due amount from the defendant and accordingly, a legal registered notice was served on dated 17-02-2017 upon the defendant through her appointed advocate demanding for the said legitimate due amount of Rs. 15,000/- (Rupees Fifteen Thousand) only from the defendant and had asked the defendant to pay for the said amount within a period of fifteen days from the date of receipt of the said notice and the said notice was duly served upon the defendant on dated 18-02-2017 and inspite of receipt of the said notice the defendant had not

paid the said legitimate due amount of the plaintiff nor the defendant had replied to the said notice.

10. That it may be stated here that the plaintiff had maintained the statement of credit account of the defendant in her office ledger on her day to day affairs of her said business, which was/is maintained by the plaintiff at her said business office and the transactions which was made by the defendant with the plaintiff has been written therein and an extract photocopy of the same has been enclosed herewith and the original ledger account will be produced at the time of hearing of the above case with the leave of the Hon'ble Court.

11. That the plaintiff is entitled both in law and equity to recover from the defendant the said credit amount of Rs. 15,000/- (Rupees Fifteen Thousand) only as a cancellation charges for six flight tickets being the principal and the defendant is also bound to pay the same to the plaintiff along with interest thereon at the rate of 12% per annum on the said credit amount, from the date the said amount was kept lying outstanding due with the plaintiff to be paid by the defendant and also future interest at the said rate from the date of filing the suit till realization and liquidation of the entire amount.

12. That the plaintiff on a good faith and out of keeping good business relationship with the defendant had booked/purchased for the said six flight tickets on credit

basis and later on, after cancellation of all the said six flight tickets the plaintiff had paid from her pocket for a sum of Rs. 15,000/- (Rupees Fifteen Thousand) only as a cancellation charges to the said Aviation authority and the said amount is still lying outstanding due to the defendant, which is required to be paid by the defendant to the plaintiff, but the defendant with a malafide intention had willfully and negligently had failed to repay the said due amount to the plaintiff as promised and undertaken by the defendant and had intentionally withholding the said legitimate due amount of the plaintiff and thereby making a wrongful gain against the plaintiff which the defendant has no right to do so under law and equity.

13. That, under the aforesaid facts and circumstances the plaintiff has been compelled to institute this suit against the defendant for recovery of the said outstanding due amount of Rs. 15,000/- only with interest thereon at the rate of 12% per annum.

14. The plaintiff therefore prays that the suit be decreed as under:-

i) for recovery of Rs. 15,000/- (Rupees Fifteen Thousand) only inclusive interest @ 12 % per annum;

ii) for future interest @ Rs. 12 % per annum from the date of institution of the suit till its full realization thereof;

iii) for all costs of the suit; and

iv) for any other relief or reliefs to which the plaintiff is entitled to in law and equity may also be decreed against the defendant.

DEFENDANT'S CASE:-

15. The defendant's case appears to be in a nutshell is that the suit is barred by law of limitation. The defendant pleaded that the defendant is a customer of the plaintiff and used to purchase air tickets from plaintiff. That some time the defendant made the payment of air ticket in the office of the plaintiff and some time the plaintiff received the payment of air ticket from the house of the defendant through her employee. The defendant had booked air ticket on 29-02-2016 and 04-03-2016 respectively, and same were cancelled on 20-04-2016 and 05-03-2016 respectively, but the defendant denied that the defendant took one month time for payment of cancellation charge of the said air tickets. The defendant further submit that the plaintiff had received the account of air tickets which were booked on 29-02-2016 by the defendant from his house through her employee on 01-03-2016 and also received the cancellation charge amount on 05-03-2016 of the two tickets which were booked on 04-03-2016 by the defendant for his house through her employee. That the plaintiff acknowledgement the received the said amount over telephone. Defendant further submit that due to personal inconvenience of the defendant cancelled the four air tickets on 20-04-2016 which were booked on 29-02-

2016 but the plaintiff refund the amount of four air tickets after deduction of cancellation charge. The defendant had never promised to pay the price of the flight ticket to the plaintiff on the later date as because there were no due amount pending for those air tickets. That there is no any cancellation charge of air tickets pending as because the plaintiff had already received the cancellation charge of those air tickets from the defendant. That the plaintiff never requested the defendant to make payment and the plaintiff never made phone calls and text messages in regards of so called payment.

16. That there is no any due amount pending, so question of agreed and promised to pay the plaintiff or pretext to make payment of the due amount dose not arise at all. That on the first week of January 2017 or any other date the plaintiff never made any phone call conversation with the defendant and the defendant never used some abusive language to the plaintiff. That there is no due outstanding amount so question of refused to pay the due outstanding amount does not arise at all. That the plaintiff never visited the house of the defendant so question of became violent and asked the plaintiff to leave his residence and told the plaintiff that he is not going to pay the due amount and had used some un parliamentary language does not arise at all. The defendant surprisingly received a registered legal notice from the plaintiff then the defendant personally met the plaintiff to consult about the

legal notice. That after discussion with the defendant the plaintiff acknowledge that she had already received the amount for cancellation of six tickets and apologized for her mistake. That the defendant surprised after receive the summon of the above case. That there is no ground or reason to institute the case against the defendant.

17. Upon perusal of the pleadings of both parties and hearing learned advocates of both sides, the following issues are settled:

- i. Whether there is any cause of action for the suit?
- ii. Whether the plaintiff is entitled to recover Rs.15,000/- at the interest of 12% per annum from the defendant?
- iii. To what other relief (s) the parties are entitled to?

18. The plaintiff has examined one witness as PW-1 in this suit and also relied on 8 (eight) numbers of documents. Per contra the defendant side did not adduce any evidence to support his pleadings.

19. I have gone through the evidence on record including the documents relied on and also heard the arguments of learned counsel of both sides.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

Issue No. i:

Whether there is any cause of action for the suit?

CAUSE OF ACTION

20. "Cause of action" as envisaged under Section 20 (c) of the Code of Civil Procedure, it means a bundle of facts which are required to be proved. The defendant pleads that the plaintiff does not have the cause of action for institution of this suit. The cause of action is nothing but a bundle of material fact which the plaintiff must allege and prove in order to succeed in his case. In the instant suit the plaintiff prays for recovery of Rs.15,000/- with an interest @ 12% p.a. and the denial of the same by defendant, arise a cause of action for the suit. Thus from the perusal of the above pleaded facts it is seen that there is cause of action for institution of this suit. Hence, this issue is answered in affirmative.

Issue No. ii:

Whether the plaintiff is entitled to recover Rs.15,000/- at the interest of 12% per annum from the defendant?

21. The plaintiff to substantiate the pleadings adduced both oral as well as documentary forms of evidences. Plaintiff examined PW-1 and who submitted her evidence-in-chief through affidavit supporting and reproducing the entire contents of the plaint. PW-1 in her evidence-in-chief corroborated the entire versions of plaint and exhibited the following documents:

- (i) Exhibit-1: The statement of the credit entry of the defendant dated 29-02-2016 maintained by the plaintiff in the ledger in her daily business affairs.
- (ii) Exhibit-2: The statement of the credit entry of the defendant dated 04-03-2016 maintained by the plaintiff in the ledger in her daily business affairs.
- (iii) Exhibit-3: The system generated copy of the flight ticket details of the defendant which was booked/purchased by the defendant on dated 29-02-2016 with the plaintiff.
- (iv) Exhibit-4: The system generated copy of the flight ticket details of the defendant which was booked/purchased by the defendant on dated 04-03-2016 with the plaintiff.
- (v) Exhibit-5: The copy of the pleader's notice dated 17-02-2017 of the plaintiff.
- (vi) Exhibit-6: The copy of the registered postal receipt being no. RS455881932IN dated 17-02-2017.
- (vii) Exhibit-7: The delivery report of the above said registered legal notice which was obtained from the India Post web site and shown to be delivered on dated 18-02-2017.
- (viii) Exhibit-8: The Trade Licence in the name of the plaintiff dated 21-03-2016.

22. I have carefully travelled through the oral and documentary forms of evidences adduced before this Court and it finds that the defendant side failed to dismantle the

credence of PW-1 by bringing out any sort of material contradictions. The exhibited documents signpost that the defendant booked on credit basis by the defendant on dated 29-02-2016 and 04-03-2016 respectively with a promise to pay the price of the flight tickets to her on a later date and subsequently when all the said 6(six) flight tickets were cancelled by the defendant for both the said two dates and the cancellation charges for it comes to a total sum of Rs. 15,000/- (Rupees fifteen thousand) only i.e. (Rs. 10,000/- + Rs. 5,000/- = Rs. 15,000/-). Ext.1 appears to be the extract copy of statement of credit entry of the defendant dated 29.02.2016, Ext.2 is the extract copy of statement of credit entry of the defendant dated 04.03.2016, Ext.3 & 4 are the flight tickets which were booked by the defendant on 29.02.2016 and 04.03.2016 respectively, Ext.5 is the pleader's notice by the plaintiff against the defendant.

23. On scrupulous indebtedness of documentary forms of evidences it becomes crystal clear before this court that defendant has cancelled the flight ticket which was he previously booked and the cancel amount of Rs.15,000/- remained due from the defendant.

24. Now, coming to the pleadings of the defendant side, it is seen that the defendant has admitted the fact of booked the flight tickets in his written statement that plaintiff had received the account of air tickets which were booked on 29-02-2016 by the defendant from his house

through her employee on 01-03-2016 and also received the cancellation charge amount on 05-03-2016 of the two tickets which were booked on 04-03-2016 by the defendant for his house through her employee. That the plaintiff acknowledgement the received the said amount over telephone. The defendant side failed to adduce any forms of evidences to substantiate his pleadings.

25. The documentary forms of evidences exhibited in the forms of original before this Court makes it crystal clear that defendant has cancelled the flight ticket without pay the cancellation fees.

Therefore, the oral as well as documentary forms of evidences proved and established before this Court that defendant did not pay the cancellation amount to the plaintiff and total amount of Rs.15,000/- remained due from the defendant.

26. In the result, it can safely be concluded here by way of observing that defendant booked the flight tickets but did not pay the cancellation fees. Hence, this issue is answered in affirmative and in favour of the plaintiff.

Issue No. iii:

To what other relief (s) the parties are entitled to?

27. In the light of discussion and decisions of issue no. ii, this court is of considered opinion that plaintiff is entitled to get a decree of recovery of an amount of Rs. 15,000/-.

The plaintiff further entitled to get interest @ 12% p.a. from the date of decree till its realization. The plaintiff is further entitled to get the cost of entire proceeding. Accordingly, this issue is answered partly in affirmative in favour of the plaintiff.

ORDER

28. In the result, the plaintiff's suit is decreed partly with cost by passing the following reliefs :

(i) The plaintiff is entitled to get a decree for recovery of amount of Rs.15000/- (Rupees Fifteen Thousand Only) ;

(ii) Plaintiff is entitled to get 12% interest p.a. on the outstanding due till its realization from the date of decree ;

(iii) The plaintiff further entitled to get cost of the entire proceeding.

(iv) The defendant is directed to release the entire amount within three months.

Prepare a decree accordingly.

Given under my hand and seal of this court on this 29th day of November, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur

APPENDIX

Plaintiff's Witnesses:

PW-1 : Miss Shivani Tibrewal

Plaintiff's Exhibits:

Exhibit-1: The statement of the credit entry of the defendant dated 29-02-2016 maintained by the plaintiff in the ledger in her daily business affairs.

Exhibit-2: The statement of the credit entry of the defendant dated 04-03-2016 maintained by the plaintiff in the ledger in her daily business affairs.

Exhibit-3: The system generated copy of the flight ticket details of the defendant which was booked/purchased by the defendant on dated 29-02-2016 with the plaintiff.

Exhibit-4: The system generated copy of the flight ticket details of the defendant which was booked/purchased by the defendant on dated 04-03-2016 with the plaintiff.

Exhibit-5: Copy of advocate notice to the defendant.

Exhibit-6: The copy of the registered postal receipt.

Exhibit-7: The delivery report of the above said registered legal notice which was obtained from the India Post web site and shown to be delivered on dated 18-02-2017.

Exhibit-8(i) to 8(iii): Copy of Trade Licence in the name of the plaintiff.

Plaintiff's Witnesses: None

Plaintiff's Exhibits: Nil

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur