

**High Court Form No. (J) 2.
Heading of Judgment in Original Suit**

District : Sonitpur.

In the Court of Munsiff No.1, Sonitpur.

**Present : Sri Vishek Bhuyan, AJS,
Munsiff No.1, Sonitpur.**

Monday, the 05th day of September, 2022

MONEY SUIT CASE NO. 30 OF 2020

Sri Mrigankar Das @ Mriganka Das Plaintiff

versus

Md. Ajij Ali

Defendant

**This suit/case coming on for final hearing on
10.08.2022 in the presence of -**

Sri R. BaruahAdvocate for the plaintiff;

and

None.....Advocate for the defendant,

**and having stood for consideration to this
day, the court delivered the following
judgment-**

JUDGMENT

- 1.** This is a Suit for recovery of principal amount of Rs. 1,05,000/- (Rupees one lakh five thousand) only and interest thereon from 02.07.2019 to 03.08.2020 amounting to Rs. 16,800/- only from the defendant.
- 2.** The plaintiff's case as set out in the plaint is given briefly herein under :

Plaintiff's case

- 3.** That the plaintiff is citizen of India and a permanent resident above mentioned place. And as such he entitled to all rights privileges under the constitution of India.

That the plaintiff and defendant are known to each other since a long time and they used to visit each other home very often and between them a very friendly relations developed.

That the defendant in the month of June 2019 in need of huge sum of money allegedly to repair a vehicle approached the plaintiff for a loan with the promise to return the amount with in one month to the plaintiff.

That the plaintiff is not a money lender and never before lent money to any person on interest. However the defendant being a good friend, the plaintiff being in good terms with the defendant could not refuse the defendant and agreed to advance the money on loan. The defendant promised to pay interest on the amount.

That the plaintiff was bewildered when the defendant asked for Rs. 1,20,000/- (Rupees one lakh twenty thousand) only from the plaintiff on loan, since the plaintiff personally was not advance on loan such a huge sum to any person. However at the relevant time a good amount of money was at the disposal of the plaintiff which came into the hand of the plaintiff from the certain source. The defendant knew about that money and knowing that only the defendant requested the plaintiff for the huge amount.

That the plaintiff after considerable thought agreed to pay Rs. 1,05,000/- (Rupees one lakh five thousand) only to the defendant and arranged the money. However, the plaintiff asked the defendant to pay back within next one month i.e. August, 2019 and demanded from a written

acknowledgment of receipt of Rs. 1,05,000/- with promise herein that the money shall paid back as and when demanded by the plaintiff. And the defendant agreed to tender a writing in acknowledgment of the money and he requested the plaintiff, the amount pay back within month of August, 2019. As such, the plaintiff agreed defendant term of pay back the amount within next month i.e. August, 2019. The plaintiff asked the defendant to come his residence on 02.07.2019.

That on 02.07.2019 the defendant came to the residence of the plaintiff and produce a hand note. In the said hand note it was written that the defendant being in reappear a vehicle land the sum of Rs. 1,05,000/- (Rupees one lakh five thousand) only as loan from the plaintiff and he shall return the amount with in month of August, 2019. Otherwise he is legally liable. And the defendant signed the hand note before the plaintiff and the said hand note was written by one Biju Saikia, ward no. 4 and paid the sum of Rs. 1,05,000/- (Rupees one lakh five thousand) only to the defendant in cash.

That after obtaining the said sum of Rs.

1,05,000/- (Rupees one lakh five thousand) only the defendant left behind the said hand note with plaintiff.

That thereafter the defendant failed to keep his promise and did not pay any interest to return the said amount after the lapse of stipulated time. The plaintiff personally asked to the defendant to pay back the said amount on several occasion. The defendant however on every occasion requested the plaintiff to grant him some more time to pay back the amount.

That in the month of December, 2019 the defendant finally said that he will return the amount within February, 2020 and he shall pay 16% interest on the amount from the date of receipt to the date of return of the amount to the plaintiff.

That during the month of February, 2020 the defendant did not pay the amount to the plaintiff. The defendant informed the plaintiff he has not been able to arrange the money. In spite of his renewed promise the defendant simply neglected to pay the said sum of Rs. 1,05,000/- (Rupees one lakh five thousand) only to the plaintiff. Now it appears to the plaintiff that the defendant was making false

promise to pay the amount from time to time with a view to malafide intention. Hence the plaintiff filed this suit with the limitation period.

That the defendant failed to pay the amount to the plaintiff, defendant is dodging the plaintiff and very conveniently not facing the plaintiff.

That under the circumstance the plaintiff has been forced to file this money suit by incurring heavy expenditures paying for the court fees and other expenses.

That the plaintiff herewith filed a photocopy of the hand note on dated 02.07.2019 a acknowledgement receipt of Rs. 1,05,000/- (Rupees one lakh five thousand) only whereon the defendant with the ulterior motive did not pay a single penny as his promise to the plaintiff.

That the plaintiff is legally entitled to Rs. 1,05,000/- (Rupees one lakh five thousand) only only from the defendant and illegally retaining the said amount so long the plaintiff is entitled for interest of 16% P.A thereon from the date of receipt of amount by the defendant till recovery from him by the plaintiff.

That the plaintiff claims recovery of the principal amount of Rs. 1,05,000/- (Rupees one lakh five thousand) only with interest of Rs. 16,800/- only from 02.07.2019 to 03.08.2020 and further interest from 03.08.2020 to the date of recovery of the whole amount from the defendant and for all cost of the suit and all other relief/reliefs to which the plaintiff is entitled to.

Summons was issued to the defendant but the defendants failed to enter appearance and contest the suit. Accordingly, vide order dated 04.03.2021 proceedings was drawn ex parte against the defendant.

4. The plaintiff in order to prove its case adduced the evidence of one (1) number of witness.

5. Heard the arguments advanced by the learned counsel of the plaintiff.

6. Perused the case record.

7. The points for determination that has arisen in the instant case are as follows:

Points for determination

- I) **Whether the defendant had obtained a loan of Rs 1,05,000/-(Rupees One lakh five thousand only) from the plaintiff and having failed to repay the same he is liable to pay the same along with interest thereon from 02.07.2019 to 03.08.2020 amounting to Rs 16,800/- (Rupees sixteen thousand and eight hundred) only?**
- II) **Whether the plaintiff is entitled to get relief(s) prayed for?**

8. Thereafter, the plaintiff submitted his ex-parte evidence on affidavit.

I have heard the ex-parte-argument of the learned counsel for the plaintiff.

9. My decision of the above points for determination along with reasons is given herein under:

Discussion, Decision and reasons therefore

10. PW-1 in his evidence has reiterated the pleadings made in the plaint and corroborated the averments therein. PW-1 has exhibited the handnote executed by the defendant to establish the liability of the defendant. Exhibit 1: copy of hand note. Exhibit- 1(a) and Exhibit-1(b) -

signatures of Md. Ajij Ali, the defendant. The contents of the handnote appear to be consonance with what has been stated by the plaintiff in his plaint and what he corroborated in his evidence in chief. Furthermore, the hand note includes the signature of the defendant Md. Ajij Ali admitting the fact that he borrowed the said amount from the plaintiff for the purpose repairing his vehicle.

The defendant failed to submit their written statement and thereafter failed to appear and contest the instant suit. In such a situation, the evidence adduced by the plaintiff side has remained unchallenged. Since PW-1 has corroborated the averments made in the plaint, the allegations and claims made against the defendant stand proved. The suit is found to have been instituted within the period of limitation.

On the basis of the evidence on record, it is found that plaintiff bank is entitled to recovery of sum of Rs 1,05,000/- (Rupees One lakh five thousand only) only from the defendant along with interests therein.

The points for determination stands answered

in affirmative. Thus, in view of the above discussion it is held that the plaintiff has been able to establish his pleadings. As such the plaintiff is entitled to relief or decree as prayed for.

The points for determination stands answered in the affirmative in favour of the plaintiff.

ORDER

11. The suit of the plaintiff is decreed ex-parte to the following effects:- a) Plaintiff is entitled to recovery of an amount of Rs 1,05,000/-(Rupees One lakh five thousand only) from the defendant with interest from 02.07.2019 to 03.08.2020 amounting to Rs 16,800/-.

Draw up a decree accordingly within next 15 days from today.

Judgment is pronounced in open court. Suit is disposed of ex-parte.

12. Given under my hand and the seal of this court on this the 05th day of September, 2022 at Tezpur, Sonitpur.

**Sri Vishek Bhuyan
Munsiff No.1,
Tezpur, Sonitpur.**

APPENDIX

A. Plaintiff's Witnesses:

P.W-1: Sri Mrigankar Das @ Mriganka Das.

B. Defendant's Witnesses: Nil

C. Plaintiff's Exhibits:

Exhibit 1: copy of hand note.

Exhibit- 1(a) and Exhibit-1(b) – signatures of Md. Ajij Ali.

D. Defendant's Exhibit : Nil.

**Sri. Vishek Bhuyan
Munsiff No.1,
Tezpur, Sonitpur.**