

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 M. Kalita,**
Civil Judge,
Sonitpur, Tezpur.

Tuesday the 14 th day of August, 2012.

Money Suit NO. 11 of 2007.

1. Smti Boby Deka,
W/O Sri Pradip Deka,
Vill – Suryapur Tiniali,
Mouza – Biswanath, P.S- Biswanath Charali,
Dist. Sonitpur, (Assam) **Plaintiff.**

–VERSUS–

1. Smti Jinti Das,
W/O Sri Dilip Das,
Resident of Barahalia, Tezpur Town,
P.S.- Tezpur
Dist. Sonitpur(Assam)
Defendants.

This suit coming on for final hearing or having been heard on 30th day of July, 2012.

Mr. S.L. Gupta, Advocate ... For the Plaintiff

Mr. P.Ch. Sharma, Advocate For the defendant.

And having stood for consideration this day, the 14th August, 2012 the Court delivered the following Judgment :

J U D G M E N T

1. This is the suit for recovery of money advanced by way of loan along with interest. The suit is valued at Rs. 2,85,133/- and accordingly, the ad-valorem court fee is paid.

2. The plaintiff's case as set up in the plaint may be narrated thus :

The defendant being well known to the plaintiff and the defendant having good terms with the plaintiff, she approached the plaintiff because she was in urgent need of money for the purpose of marriage of her daughter and pressed on the plaintiff for a loan of Rs. 2,60,000/-. Then the plaintiff being old acquaintance of the of the defendant having good terms with her had to accede to the request of the defendant. So, the plaintiff on 08-1-04 and on 12-10-04 granted an advance to the defendant a sum of Rs. 1,40,000/- and RS. 1,20,000/- respectively (total Rs. 2,60,000/-) at Suryapur, Biswanath Charali. The plaintiff is not a money lending business man nor a money lender and as a token of acknowledgement for granting such advance of loan by the plaintiff, the defendant executed a document in writing on a non-judicial stamp paper on 15-11-04 in favour of the plaintiff in presence of witnesses. She also promise to repay the loan to the plaintiff within one year from the date of execution of written document. The defendant also agreed to pay the interest at the rate of banking business in case of any default committed by him. But the defendant failed to repay the loan amount as per said terms and conditions on or before 15-11-05 voluntarily. So, the plaintiff had to demand the amount but the defendant did not pay any heed to her demand. As the defendant failed to repay the said amount to the plaintiff so she had to serve a pleader's notice on the defendant on 10-02-07 through her lawyer Sri H. Hzarika by demanding repayment of loan amount within 10

days from the date of receipt of the notice. But to the utter surprise of the plaintiff, the defendant replied the notice by denying any execution of hand note in favour of the plaintiff at any time through her pleader. The reply was sent on 8-02-07. Hence, the plaintiff has to institute the suit against the defendant for recovery of Rs. 2,60,000/- as principal amount along with RS. 25,133/- for interest @ 4% per annum till to the institution of the suit for which the defendant is legally liable to pay.

3. The cause of action for the suit arose on and from 08-10-04, 12-10-04, 15-11-04, 15-11-05, 10-02-06, 20-02-06, 10-02-07, 28-02-07 and thereafter at Biswanath Charali within the district of Sonitpur and within the jurisdiction of this Court.

So, the plaintiff has prayed for a decree for recovery of Rs. 2,60,000/- as principal amount along with Rs. 25,133/- as interest on the principal amount till to the date of institution of the suit. The plaintiff's has further prayed for decree of future interest @ 10% per annum on the decretal amount along with the cost of the suit.

4. After receiving the summon the defendant contested the suit by filing the written statement on the grounds that the suit is not maintainable and tenable under law and equity; there is no cause of action to the suit, the suit is barred by limitation and the suit is bad for waiver, estoppel and acquiescence.

The defendant has further stated in the written statement that as the plaintiff has not properly filed the plaint and it has not been supported by an affidavit so, the suit is liable to be dismissed. The defendant has also denied the averments of the plaint because the contents of the plaint are false, untrue,

vexatious, malafide, imaginary and concocted. The defendant has further stated in the written statement that the plaintiff and the defendant were acquainted with each other for a long time. The defendant never approached the plaintiff for granting any loan at the time of marriage of her daughter because no formal marriage of her daughter was solemnized. Hence, the question of taking loan from the plaintiff for the purpose of marriage of her daughter does not arise at all. The fact regarding taking of loan of Rs. 1,40,000/- on 08-10-04 and Rs. 1,20,000/- on 12-10-04 are completely false and baseless. The defendant also never executed any loan agreement in writing on a non judicial stamp paper as stated in the plaint. The plaintiff being an agent of GIC / LIC approached the defendant to insure her residential building and for that purpose the plaintiff obtained some signatures on the Policy application form. But the defendant never put any signature on the non-judicial stamp paper or any other paper except Policy application forms. The signatures of the defendant were written in distinct letter and such type of signatures can easily be copied by literate and intelligent person. As she has not received any loan from the plaintiff so repayment of loan does not arise at all. As the suit is completely false, malafide and vexatious so, the plaintiff is liable to pay an amount of RS. 3000/- as compensatory cost as per provisions of section 35(A) of the CPC. So, she has prayed for dismissing the suit with a compensatory cost of Rs. 3000/- along with the cost of the suit in favour of the defendant under the facts and circumstances stated by him in the written statement.

5. Upon consideration of content of the pleadings and also upon hearing both sides the following issues are framed :-

- 1.** Whether the suit is maintainable ?
- 2.** Whether there is any cause of action for the suit ?

3. Whether the defendant received an amount of Rs. 1,40,000/- on 08-10-04 and Rs. 1,20,000/- on 12-10-04 as loan from the plaintiff?
4. Whether the plaintiff is entitled to recover the said amount of loan from the defendant ?
5. Whether the plaintiff is entitled to the relief's claimed by her her?

6. During the course of hearing, the plaintiff has examined as many as three PWs including herself and proved 3 kinds of documents in support of her case. On the other hand, the defendant has not adduced any evidence nor examine any witness in support of her case.

Witness examined by the plaintiff as follows :-

1. PW 1 - Smti Boby Deka (plaintiff)
2. PW 2 - Sri Kaushik Bora,
3. PW 3 - Sri Durlav Hazarika.

The documents exhibited by plaintiff are as follows :-

1. Ext. 1 & 2 - Money receipts
2. Ext. 3 - Unregistered writing
dt.15.11.04.

7. During the course of final hearing, the learned counsel of both sides have submitted lengthy argument. So, on the backdrop of the material fact appears in the case record and in the submissions of learned counsel, the issued are discussed one by one for coming to final decision of the suit. For convenient discussion, I like to discuss the issue No. 3 first.

Issue No. 3.

8. Whether the defendant received an amount of Rs. 1,40,000/- on 08-10-04 and Rs. 1,20,000/- on 12-10-04 as loan

from the plaintiff ?

In regards to this issue, the plea of plaintiff as appears in the plaint and in her evidence that as the plaintiff was well acquainted with the defendant and the defendant was in urgent need of money so she advanced a loan amounting to Rs. 2,60,000/- as per request of defendant in two instalments. The first instalment of Rs. 1,40,000/- was advanced on 08-10-04 and second instalment of RS. 1,20,000/- was advanced on 12-10-04. The money was advanced to the defendant by the plaintiff at her own residence situated at Suryapur, Biswanath Charali and after taking the said loan, the defendant issued the acknowledgment receipt by signing on 08-10-04 and 12-10-04 respectively. The defendant also executed a writing document on non-judicial stamp paper in favour of the plaintiff on 15-11-04 in presence of witnesses in connection with the advancement of loan amount of Rs. 2,60,000/- by binding herself to repay the loan within one year from the date of execution of writing document. She also agreed to pay the interest in case of default of payment within the stipulated period.

In the evidence, the plaintiff has also exhibited the money receipts issued on 08-10-04 and on 12-10-04 as Exhibit 1 and Exhibit 2 in support of her plea. She has further exhibited the said writing document as Ext. 3 which was executed in presence of one Durlav Hazarika. The plaintiff has further contended in the plaint as well as in the evidence that as the defendant has failed to comply with the terms and conditions of the written document, so she had to serve a notice on the defendant on 10-02-07 and after receiving demand notice the defendant replied the notice by denying the fact regarding receipt of loan from the plaintiff. The defendant also denied any execution of any writing.

In the cross-examination though the defendant put some questions to the plaintiff in regards to the signing of money receipt and execution of written document but no such contradictory

fact has been revealed.

PW 2 Sri Kaushik Bora, one of the witness of Ext.3 has stated that as requested by the plaintiff, he came to the residence of plaintiff on 15-11-04 and he signed as witness of the said document (written document on non-judicial stamp paper). He has further stated that in his presence both plaintiff and defendant also put their signatures. But the document was written by one petition writer Durlav Hazarika. On that day, money receipt was shown to him which was given earlier by the defendant.

In the cross-examination, PW 2 has admitted that the Ext.3 was not written in his present. He signed on later date but at the time of putting his signature he along with plaintiff and defendant and the petition writer Durlav Hazarika were present at the residence of plaintiff. No monetary transaction was made on that day.

PW 3, the petition writer Durlav Hazarika has stated that on 15-11-04 he went to the residence of the plaintiff for writing the document as the plaintiff had herself purchased 10 rupees non-judicial stamp paper. At that time two money receipts were shown by plaintiff regarding the receipt of Rs. 2,60,000/- by defendant and the defendant also admitted the fact regarding the receipt of he said money by her and both parties signed in the document in his presence. He has proved his signature as writer as Ext.3(3).

In the cross-examination PW 3 has stated that during the execution of the document no monetary transaction was made by both the parties. The date of purchase of the stamp paper was not mentioned in the stamp paper and the name of the purchaser was also not mentioned.

9. After going through the exhibited documents and on appreciation of evidence of PWs, it is found that the plaintiff has

proved these three documents in support of her contention raised in the plaint. The plaintiff has also further examined one witness of the document and the writer of the document (Ext.3) to prove the content of the document. Moreover, the defendant has failed to bring major contradictions or infirmities during the cross-examination of PWs. Hence, the evidence of PWs is found coherent, reliable and cogent. So, it is found that the plaintiff has proved her contention regarding the advance of loan to the defendant on 08-1-04 and 12-10-04 by supporting or oral evidence. I do not find any ground or infirmities to disbelieve the evidence of PWs. On the other hand, though the defendant has denied the fact regarding the taking loan amount on two different dates and regarding the execution of written document but she has failed to substantiate her such denial by any documentary as well as oral evidence. Because the defendant has not adduced the evidence.

10. During the course of final hearing the learned counsel for the plaintiff side has led me to the decision of the Hon'ble Apex Court in case of **Man Kaur (dead) by LRS Vs. Hartar Singh Sangha reported in (2010) 10 Supreme Court Cases 512** regarding the adverse presumption when party does not appear in witness box to state his own case in reference to the provision of sections 101, 106, 145 and 114 of Indian Evidence Act. In para 14 of the Judgment it was observed as :

" 14. In Vidhyadhar v. Manikrao this Court reiterated the following well recognized legal position : (SCC pp.583-84, para 17)

17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct"

So, in view of the observation made by the Hon'ble Apex Court in above noted Judgment and also in view of the material fact appears in the case record, I am of the considered opinion that the plaintiff has proved with sufficient and reliable documentary as well as oral evidence that she advanced an amount of Rs. 2,60,000/- in two instalments on different dates i.e. on 08-10-04 and 12-10-04 and accordingly, the defendant received the said amount by acknowledging the receipt of money with giving two money receipts (Ext.1 and 2) and also by executing the written document on subsequent dates in presence of witnesses. So, for the reasons stated above, this issue is decided in affirmative.

Issue Nos. 1.

11. Whether the suit is maintainable ?

In regards to this issue, the defendant has contended that the suit is not maintainable and tenable under law and equity. But on meticulous examination of materials on record, it is found that the defendant has failed to establish the contention specifically by producing the reliable materials. On the other hand, it is found that the plaintiff has instituted the suit for recovery of money. So, considering the materials on record, I am of the considered opinion that the suit is found maintainable and accordingly, this issue is decided in affirmative.

Issue No. 2.

12. Whether there is any cause of action for the suit ?

In regards to this issue, it has been contended by the plaintiff that the cause of action arose on 8-10-04, 12-10-04, 15-11-04, 15-11-05 because the defendant received the money on 08-10-

04 and 12-10-04. The defendant also executed the written document on 15-11-04 and the defendant failed to pay the money within one year as per terms and agreement of the written document i.e. on 15-11-05. The plaintiff has also supported the said contention by producing reliable documentary as well as oral evidence. On the other hand, though the defendant has taken the plea that there is no cause of action for the suit but she has failed to substantiate her plea by sufficient reliable evidence. So, the plea raised by the defendant is found not maintainable and for this reason, this issue is decided in affirmative.

Issue No. 4.

13. Whether the plaintiff is entitled to recover the said amount of loan from the defendant ?

In regards to this issue, it has already been found from the discussion of Issue No.3 that the plaintiff has proved with reliable evidence that the defendant received an amount of Rs. 2,60,000/- as loan from the plaintiff. So, the plaintiff is entitled to recover the said amount from the defendant. Accordingly, this issue is also decided in affirmative.

Issue No. 5.

14. Whether the plaintiff is entitled to the relief's claimed by her ?

In regards to this issue, it has been pleaded by the plaintiff in the plaint as well as evidence that the defendant executed the written agreement binding herself to pay the interest along with the Principal amount in case of default of payment of the loan within one year from the date of execution of the document. But no such amount was fixed which would be paid as interest on

the principal amount. So, considering the facts and circumstances of the case and also considering the interest of both parties, I am of the opinion that the defendant has to pay the interest @ 6% on the decretal amount only from the date of institution of the suit till to the realisation of the amount as it is not specifically mentioned regarding the exact amount of interest which would be paid for default of payment. So, I find that the claim of interest of Rs. 25,133/- is not justified.

Considering the facts and circumstances of the case, I am of the opinion that the suit is required to be decreed with cost.

O R D E R

15. The suit is decreed on contest with cost for recovery of Rs. 2,60,000/- as principal amount along with the future interest @ 6% from the date of institution of the suit till to the realisation of the principal amount and with cost.

Prepare decree accordingly.

16. Given under my hand and seal of this court, I have signed and delivered this judgment on this 14th day of August, 2012.

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur

Dictated and corrected
by me .

(M. Kalita)
Civil Judge,
Sonitpur, Tezpur.

Typed by me

R. Hazarika
steno