

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 9<sup>th</sup> day of December, 2022**

**Title Suit No. 106/2020**

**PUNJAB & SIND BANK**

Tezpur Branch

P.O.- Tezpur

Mouza- Bhairabpad,

District- Sonitpur, Assam

**---Plaintiff**

**-versus-**

**1. Smti. Labanya Deka Tamuli**

W/o- Shri Ashok Tamuli

Village- Deurigaon

P.O.- Ketekibari

Mouza- Bhairabpad

District- Sonitpur, Assam

**2. Shri Kunal Tamuli**

S/o- Shri Ashok Tamuli

Village- Deurigaon

P.O.- Ketekibari

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**CASE NO: T.S. 106/2020**

Mouza- Bhairabpad  
District- Sonitpur, Assam

**---Defendants**

This is a suit came up for final hearing on 11.11.2022, in presence of following Advocates:

Counsel for Plaintiff : Shri S.K. Acharya

Counsel for Defendants : None

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

### **EX-PARTE JUDGMENT**

#### **Plaintiff's case in brief:**

- 1.** This is a suit for realization of money.
- 2.** That, That the Plaintiff Punjab & Sind Bank, a body corporate Constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1969 and 1970, having its Central Office at Rajendra Place, New Delhi, carrying on Banking Business through diverse branches and in particular a Branch at Tezpur, P.O.: Tezpur Mouza: Bhairabpad. District: Sonitpur, known as Tezpur Branch.
- 3.** That at all material times, the Defendant No.1, Smti. Labanya Deka Tamuli was a customer and constituent of the Plaintiff Bank at its Tezpur Branch, and was a permanent resident of Village: Deurigaon. P.O.: Ketekibari, District: Sonitpur (Assam), within the jurisdiction of this Court.

4. That the Govt. of Assam, Office of the District Animal Husbandry and Veterinary Officer, on 20-09-2017 submitted a Loan Proposal of Diary Farming of the Defendant No.1 and the Plaintiff having considering the Loan Proposal of Diary Farming, the Agricultural Term Loan accommodation for carrying on the business of Diary Firm by the Defendant No.1, the Plaintiff Bank, at its Tezpur Branch sanctioned for a Agricultural Term Loan of Rs. 2,70,000.00 only to the Borrower- Defendant No.1 Smti. Labanya Deka Tamuli vide its Sanction Letter dated 27-09-2017 under the terms and conditions laid down therein and agreed to be complied with in writing by the Borrower- Defendant No.1 Smti. Labanya Deka Tamuli, the Plaintiff Bank on 27-09-2017 lent and advanced a Agricultural Term Loan for Rs. 2,70,000.00 only with interest @.2% over/below prevailing the Marginal Cost for Lending rate minimum 10.55 per annum with monthly rests (Subject to rise and fall in Punjab & Sind Bank Advance Rate/Base Rate) with other charges to the Defendant No. 1 for carrying on the business of Diary Firm under bank finance by the Defendant No.1 and disbursed the same on 27-09-2017 at its Tezpur Branch under the terms and conditions of the diverse loan instruments and the loan was disbursed to the Defendant No. 1 according to the disbursement program furnished under the Sanction Letter dated 27-09-2017.

5. That as per the terms and conditions of the said Agricultural Term Loan the entire loan lent and advanced was payable by the Borrower- Defendant No. 1 by 60 monthly installments Rs. 6,100.00 per month, the first installment commencing from December, 2017 as gestation period with due with interest @.2% over/below prevailing the Marginal Cost for Lending rate minimum 10.55% Per annum with monthly rests (Subject to rise and fall in Punjab & Sind Bank Advance Rate/Base Rate) with other charges and costs. The terms and conditions of the loan also contained amongst others, that the said 3 Nos. Jersey Cows shall be hypothecated to the Plaintiff Bank against the aforesaid loan as Primary Security and shall be insured from time to time by comprehensive Insurance Policy with Bank Clause, and further to always keep the Hypothecated 3 Nos. Jersey Cows as per agreement; it is further provided that for non compliance of any of the terms and conditions of the loan or non payment of the due monthly installments in time the Plaintiff would have the right forthwith to determine the Borrower-Defendant No. 1's privilege to repay the loan by monthly installments and the whole balance of the said loan unpaid at the date of such default shall immediately thereupon become payable to the Plaintiff and will be entitled to call back the enforce outstanding dues and to enforce all other rights created in this behalf.

6. That in consideration of lending and advancing the said Term Loan for Rs. 2.70,000.00 only to the Borrower-Defendant No.1 Smti. Labanya Deka Tamuli, by the Plaintiff, the Borrower-Defendant No.1 Smti. Labanya Deka Tamuli, by executing the Certificate of Execution of Documents, dated 25-09-17. Consent clause, dated 25-09-2017, Demand Promissory Note for Rs 2,70,000/-, dated 25-09-2017. Revised Clauses pertaining to Rate of Interest, Letter dated 25-09-2017, Letter as to payment of monthly installment of Rs.6100, dated 25-09-2017, Agreement of Hypothecation of Live stocks, dated 25-09-2017, Undertaking signed by the Defendant No.1. Loan disbursement Memo/Branch compliance Certificate dated 30-09-2017, Proforma for Credit Report, dated 25-09-2017, in favour of the Plaintiff promised and undertook to repay and liquidate all outstanding dues under the Agricultural Term Loan with interest @.2% over/below prevailing the Marginal Cost for Lending rate minimum 10.55% Per annum with monthly rests(Subject to rise and fall in Punjab & Sind Bank Advance Rate/ Base Rate) with other charges and costs to the Plaintiff by stipulated monthly installment, and hypothecated with the Plaintiff the 3 Nos. Jersey Cows, described in the schedule below that would be purchased by the Bank's financial assistance as Primary Security against the said Agricultural Term Loan and undertook to always keep the Hypothecated 3 Nos. Jersey Cows duly insured at his cost as per agreement. That as per terms and conditions of loan the enhanced rate of

interest @2% per annum will be charged over and above the rate mentioned above in case of any default committed by the Defendant No.1 in respect of the conditions mentioned in the terms and condition of loan.

**7.** That Shri Kunal Tamuli, son of Shri Ashok Tamuli, Defendant No.2, in consideration of the Plaintiff advancing the above Agricultural Term Loan in the name of Defendant No.1, by executing the Consent Clause Executed by the Guarantor, dated 25-09-2017, Undertaking signed by the Defendant No.2, dated 25- 09-2017, Certificate of Execution of Documents, dated 25-09-17. Consent clause dated 25-09-2017, further Undertaking signed by the Guarantor-Defendant No. 2, dated 25-09-2017 and stood guarantor for the said borrower-Defendant No. 1 binding himself and his heirs & successors liable for due repayment and full liquidation of the outstanding dues under the said Agricultural Term Loan A/c with due interest and other charges to Plaintiff as continuing guarantee.

**8.** That pursuant to above an Agricultural Term Loan A/c was opened in the name of the Borrower-Defendant No. 1 Smti. Labanya Deka Tamuli, with the Plaintiff Bank at its Tezpur Branch, and the same was being operated by the Borrower- Defendant No. 1. The Agricultural Term Loan A/c was an open, mutual and current A/c and being duly and regularly kept and maintained by the Plaintiff in its usual and ordinary course of banking business.

**9.** That of late the operation of the said Agricultural Term Loan A/c became sticky and the Defendant willfully neglected to repay the outstanding loan amount and the Plaintiff finding no other way on 31-12-2018 declared the above Agricultural Term Loan A/c as Non performing assets as per bank's norms.

**10.** That Borrower-Defendant No. 1 Smti. Labanya Deka Tamuli, had been earning money from the said business of Dairy Firm, consisting of 3 Nos. Jersey Cows purchased at the cost of Rs. 1,80,000/- with the financial assistance of the Plaintiff, and the said amount is debited in the loan account of the Defendant No. 1 on 03-10-2017 and also deposited some amounts in the Term Loan A/C from time to time (though irregular) in the Agricultural Term Loan A/C, which were duly credited in the said Agricultural Term Loan A/C No. 10092020160646. The Plaintiff duly debited the loan advanced and interest accrued and other charges sustained in the said Agricultural Term Loan A/C.

**11.** That though the said business of Dairy Firm, consisting of 3 Nos. Jersey Cows of the Borrower-Defendant No.1 Smti. Labanya Deka Tamuli, was/is in good running condition, from the very beginning the Borrower-Defendant No.1, was very irregular in depositing the due installment/money in the Agricultural Term Loan A/C and paid some amount in the Agricultural Term Loan A/C which were duly credited therein, and all the disbursements and accrued interest and other charges were duly debited in

the Term Loan A/C, but the Defendants by violating the terms and conditions of the loan and the diverse loan instruments failed and neglected to repay and liquidate the outstanding dues under the Agricultural Term Loan A/C and to take proper steps for due repayment and liquidation of the outstanding dues under the Agricultural Term Loan A/C to the Plaintiff by violating the terms and conditions of the loan and the diverse loan instruments.

**12.** That the Plaintiff thereafter on several occasion requested the Borrower- Defendant No.1 Smti. Labanya Deka Tamuli, for early liquidation of the balance outstanding in the Agricultural Term Loan A/C by him. But he failed and neglected to repay the outstanding dues although the Borrower Defendant No.1 Smti. Labanya Deka Tamuli, has sufficient means to repay the loan, but he has willfully avoided to repay the huge balance outstanding of the said loan A/C to the Plaintiff.

**13.** That of late the operation of the said Agricultural Term Loan A/C by the Borrower Defendant No.1, became highly sticky and highly irregular and the Defendant No.1 Smti. Labanya Deka Tamuli, failed and neglected to regularize the operation thereof and to repay and liquidate the outstanding dues, therefore, the Plaintiff Bank made time to time requests and demands on the Defendant No.1 & 2 vide Demand Letters dated 10-09-2020 to liquidate the outstanding dues within 7 days, but in vain.



**14.** That despite Plaintiff's letter of Demands dated 10-09-2020 and several requests made to the Defendant No. 1 & 2 failed and neglected to regularize the operation of the Agricultural Term Loan A/C and to repay and liquidate the Plaintiff's dues under the Agricultural Term Loan A/C with due interest and other charges by utterly violating all the terms and conditions of the loan and diverse loan instruments causing wrongful loss to the Plaintiff Bank, hence this Suit.

**15.** That as per the Books of Accounts of the Bank as on 31-08-2020 the sum of Rs. 1,66,631.97 Ps only as outstanding in the said Agricultural Term Loan A/C applying interest from 27-09-2017 to 30-11-2018 and the unapplied interest thereon from 31-12-2018 to 31-08-2020 accrued at Rs. 46,662.00 only, total outstanding dues upto 31-08-2020 become Rs. 2,13,293.97 Ps only under the Agricultural Term Loan A/C and the Defendants are liable to pay the sum of Rs. 2,13,293.97 Ps only under the Agricultural Term Loan A/C with further interest thereon with other charges from 01-09-2020 and cost of Suit to the Plaintiff under law and equity. The Plaintiff has filed the true copy of the Statement of Agricultural Term Loan A/C and the Statement of unapplied interest (31-12-2018 to 31-08-2020) duly certified under Banker's Books of Evidence Act herewith.

**16.** That under the Terms of contract entered into between the Parties and under law the stipulated interest

calculated with monthly rests merged with the Principal sum due and the entire sum of Rs. 2,13,293.97 Ps only claimed in the Suit has become the Principal sum due and payable as such under law.

**17.** That under the above facts and circumstances cause of action for the Suit arose on and from 27-09-2017, 30-09-2017, 03-10-2017, 10-09-2020, 30-11-2018, 31-12-2018, 31-08-2020 and thereafter at Tezpur within the jurisdiction of this Hon'ble Court.

**18.** That the Plaintiff therefore prays:-

(a) that the Suit be decreed for recovery of Rs. 2,13,293.97 Ps only against the Defendants;

(b) that interest @ 10.55% P.A. be decreed on the decretal sum from 01-09-2020 till realization against the Defendants;

(c) that all costs of the Suit be decreed against the Defendants;

(d) that the Suit be decreed for declaration of the Plaintiff's First Charge and lien over the Hypothecated Goods described in the Schedule below with Sale thereof towards protanto satisfaction of the decretal dues;

(e) that the Suit be decreed for enforcement of Guarantee against the Defendants;

(f) that Personal Decree against the Defendants may also be passed;

(g) that all other relief or reliefs may be granted to the Plaintiff as the Court may deem fit and proper.

**19.** The summons were duly served to defendants and they were appeared but they have not filed the written statement and accordingly, vide order dated 02.03.2022, the defendants were proceeded ex-parte.

**20.** During trial, the plaintiff examined one witness i.e. Shri Neeraj singh as PW-1 and exhibited 16 no's Numbers of documents in order to substantiate its case. I have heard the contentions and the submissions put forth by the learned counsel for the plaintiff and perused the evidence on record in its entirety.

**21.** Since written statement was not filed, no formal issues were framed but in order to arrive at a decision I encountered one crucial point for determination

**Whether the plaintiff is entitled to a decree as prayed for?**

**DISCUSSION DECISION AND REASONS THEREOF:**

**22.** The plaintiff, in order to prove its case, led plaintiff's evidence and got examined Shri Neeraj Singh as PW-1, who has filed his evidence by way of affidavit, wherein, he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the following documents:-

**Exhibit No. 1** is the Loan Proposal of Diary Farming, from the Office of the District Animal Husbandry and Veterinary Officer

**Exhibit No.1/1** is the signature of the District Animal Husbandry and Veterinary Officer

**Exhibit No. 2** is the Loan Sanction Letter by the Plaintiff to the Defendant No.1

**Exhibit No. 2/1** is the signature of the then Branch Manager Sri Sankar Dayal Das of the Plaintiff Bank

**Exhibit No. 2/2** is the signature of the Defendant No.1

**Exhibit No. 3** is the Pre Sanction Visit Report of the Defendant No. 1 by the Plaintiff Bank

**Exhibit No. 3/1** is the signature of the then Branch Manager, of the Plaintiff Bank

**Exhibit No. 3/2** is the signature of the Accountant of the Plaintiff Bank

**Exhibit No. 4** is the Interview cum Appraisal form

**Exhibit No. 4/1** is the signature of the then Branch Manager, of the Plaintiff Bank

**Exhibit No. 4/2** is the signature of the Defendant No. 1

**Exhibit No. 4/3** is the signature of the then Branch Manager, of the Plaintiff Bank

**Exhibit No. 4/4** is the signature of the Defendant No. 1

**Exhibit No. 5** is the Consent Clause executed by the Defendant No. 1

**Exhibit No. 5/1** is the signature of the Defendant No. 1

**Exhibit No. 6** is the Demand Promissory Note by the Defendant No. 1

**Exhibit No. 6/1 and 6/2** are the signatures of the Defendant No. 1

**Exhibit No. 7 and 8** are the letters of assurance by the Defendant No. 1 to the plaintiff

**Exhibit No. 7/1 and 8/1** are the signatures of the Defendant No. 1

**Exhibit No. 9** is the Agreement for Hypothecation of Live stock executed by the Defendant No. 1

**Exhibit No. 9/1 to 9/5** are the signatures of the Defendant No. 1

**Exhibit No. 10** is the Consent Clause executed by the Guarantor-Defendant No. 2

**Exhibit No. 10/1** is the signature of the Defendant No. 2

**Exhibit No. 11** is the Undertaking executed by the Guarantor-Defendant No. 2

**Exhibit No. 11/1 and 11/3** are the signatures of the Defendant No. 2

**Exhibit No. 12** is the Loan Disbursement memo/Branch Compliance Certificate by the Plaintiff and the Defendant No. 1

**Exhibit No. 12/1** is the signature of the Defendant No. 1

**Exhibit No. 12/2** is the signature of the then Branch Manager Sri Sankar Dayal Das

**Exhibit No. 13** is the Demand Notice to the Defendant No. 1 of the Plaintiff Bank.

**Exhibit No. 13/1** is the signature of the Branch Manager of Plaintiff Bank.

**Exhibit No. 14** is the Letter of authorisation issued by the Zonal Manager, Guwahati in favour of the Branch Manager, Tezpur Branch

**Exhibit No. 14/1** is the signature of the Zonal Manager, Guwahati of the Plaintiff Bank

**Exhibit No. 15** is the certified copy of the Statement of Agricultural Term Loan A/c

**Exhibit No. 15/1** is the signature of Branch Manager

**Exhibit No. 16** is the certified copy of the statement of unapplied interest

**Exhibit No. 16/1** is the signature of the Branch Manager of the Plaintiff Bank

**23.** A perusal of the aforesaid exhibits reveal that the plaintiff bank sanctioned a Agricultural Term Loan of Rs.2,70,000/- to the defendant No.1. There is nothing on record to suggest that the said exhibits are not executed by the defendant No.1 or to suggest that PW1 is not truthful. In view of the above, it is held that the plaintiff bank sanctioned Agricultural term loan of Rs.2,70,000/- to the defendant No.1.

**24.** In addition to what has been stated above, the defendant has not contested the claim of the plaintiff by filing written statement, neither they have cross-examined the witness of the plaintiff. It is well settled that if a pleading is not denied by the defendants, then the same has been deemed to be admitted. In the facts of this case as the defendant has not filed any written statement, as such the pleading of the plaintiff is deemed to be admitted. It is held that the plaintiff Bank advanced a loan of Rs.2,70,000/- to the defendant.

**25.** The plaintiff has pleaded that the defendant No.1 has defaulted in the repayment of the loan and a balance of Rs.2,13,293.97/- inclusive of interest is outstanding in the loan account. PW1 has exhibited the Demand Notice as Exhibits.13, the statement of the accounts as Ext. Nos.15 and the certified copy of the statement accrued interest of the said loan account as exhibit-16. And there is nothing on record to doubt or disbelieve the evidence of PW1.

**26.** Even though the suit proceeded ex-parte against the defendant, they were at liberty to cross-examine the plaintiff's witness on the points of law, to demolish the plaintiff's claim and to challenge the genuineness of the exhibit, but the defendant neither turned up nor challenged the genuineness of the exhibits of the plaintiff side. Hence, there is nothing on the record to disbelieve the documentary evidence adduced by the plaintiff in support of their case. Moreover, the evidence-in-chief submitted by the plaintiff's witness remained undisputed and unrebutted as the defendant in spite of getting sufficient opportunities did not contest the suit. As the genuineness of the exhibit as well as the claims of the plaintiff remained undisputed, it is deemed to be true. In absence of anything contrary on the record to the plaintiff's claims, the fact stated by the plaintiff's witness on oath in her evidence is deemed to be true.

**27.** In the facts of the case as the defendants have not filed any written statement, as such the pleading of the plaintiff is deemed to be admitted. It is therefore held that the defendant has defaulted in the repayment of the loan and the plaintiff is entitled to recover Rs.2,13,293.97/- as on the date of the institution of the suit from the defendant.

**28.** The plaintiff has prayed for recovery of Rs.2,13,293.97/- with future interest @ 10.55% p.a. on the decretal amount from the 01.09.2020 till recovery. However interest @ 10% p.a. on the decretal amount would suffice.

**29.** In view of the decision in the point for determination, the plaintiff is entitled to recovery of Rs.2,13,293.97/- with future interest @ 10% p.a. as the aforesaid loan transaction was a commercial transaction and the defendant has not disputed the claim of the plaintiff by filing written statement.

**30.** From the above discussions, it is abundantly clear that the plaintiff is entitled to get the decree as prayed for. In addition to what has been stated above, the plaintiff is entitled to the cost of the suit from the defendant.



**ORDER**

**31.** In the result, the suit of the plaintiff is decreed and entitled of the following reliefs:-

(a) that the Suit be decreed for recovery of Rs. 2,13,293.97 Ps only against the Defendants;

(b) that interest @ 10% P.A. be decreed on the decretal sum from 01-09-2020 till realization against the Defendants;

(c) that all costs of the Suit be decreed against the Defendants;

(d) that the Suit be decreed for declaration of the Plaintiff's First Charge and lien over the Hypothecated Goods described in the Schedule below with Sale thereof towards protanto satisfaction of the decretal dues;

(e) that the Suit be decreed for enforcement of Guarantee against the Defendants;

(f) that Personal Decree against the Defendants may also be passed;

**32.** Prepare a decree accordingly within 15 days from today.

**33.** Judgment is pronounced in open court.

Given under my hand and seal of this court on this 9<sup>th</sup> December, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur

**APPENDIX**

**Plaintiff's Witnesses:**

PW-1 : Shri Neeraj Singh

**Plaintiff's Exhibits:**

**Exhibit No. 1** is the Loan Proposal of Diary Farming, from the Office of the District Animal Husbandry and Veterinary Officer

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**Exhibit No. 15/1** is the signature of Branch Manager

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**Exhibit No. 16/1** is the signature of the Branch Manager of the Plaintiff Bank

**Defendants Witnesses:**

None

**Defendants Exhibits**

NIL

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur