

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT ON ORIGINAL APPEAL

District : Sonitpur

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri M. Kalita,**

Monday the 30th day of April 2012.

Title Suit NO. 24 of 2009

United Commercial Bank

Panchmile Branch,

District Sonipur (Assam) Plaintiff.

-versus -

1. Md. Noisur Rahman,
S/O Abdul Hasim,
Village – Koroiani Nepali,
P.O. Panchmile,
District Sonitpur (Assam).

2. Md. Aaur Rahman,
Village – Koroiani Nepali,
P.O. Panchmile,
District Sonitpur (Assam) Defendants.

This appeal coming on for final hearing or having been
heard on 30th April, 2011.

Mr. S.C. Acharyya,

Advocate. For the Plaintiff

Mr. T.K. Maitra,

Advocate. For the defendants.

And having stood for consideration this day, the 30th
April,2012 the Court delivered the following Judgment :-

J U D G M E N T

1. This is a suit for recovery of money advanced by way of term loan against hypothecation of goods with interest and other charges. The suit is valued at Rs. 5,83,174/- for the purpose of Court fee and jurisdiction of the Court.

2. Briefly, the plaintiff's case is that the plaintiff, Panchmile Branch of United Commercial Bank granted an advance a sum of Rs. 5,00,000/- to the defendant No.1 on 24-05-06 by way of term loan for the purpose of business on the basis of application dt. 24-05-2006 submitted by defendant No.1 for granting such term loan. At that time the defendant No.1 executed an agreement relating to the term loan for Rs. 5,00,000/-, an agreement of hypothecation of goods in favour of the plaintiff with all terms and conditions that the loan would be repaid with interest @ 11% with monthly rests in 60 equal monthly instalments. The defendant No.1 also hypothecated the stock-in-trade which was specifically described in the schedule of the plaint. At the time the defendant No.2 stood as guarantor for the borrower defendant No.1 in favour of the plaintiff by executing a Deed of Guarantee dt. 24-05-06 to secure due repayment of term loan and outstanding balance due and thereby binding himself and his legal heirs jointly and severally and co-extensively liable with the

defendant No.1 for due repayment of the loan. For that purpose one term loan account was opened in the name of the defendant No.1 by plaintiff Bank which has been regularly and duly kept by the plaintiff bank.

Though the defendant No.1 initially deposited some amount of money in the said term loan in writing and signed by him on 30-06-06 but huge amount has been left by him as due in the said term loan account by violating the terms and conditions of the loan agreement.

The plaintiff's further case is that though the plaintiff bank made repeated demand and issue reminder but defendant No.1 failed and neglected to liquidate the plaintiff's outstanding balance. Moreover, the defendant No.1 confirmed the correctness of balance by acknowledging his liability to repay the outstanding debts by signing the letter of confirmation dt. 04-07-08 but he has failed to repay the said outstanding balance. After calculating on agreed monthly rests, an amount of Rs. 5,54,860/- stood as outstanding balance due on 28-09-06 as per plaintiff's book of account and accrued interest thereafter from 01-07-06 to 31-12-2008 stood at Rs. 1,28,314/-. So, the total amount stood as dues was Rs. 5,83,174/- for which the defendants are jointly and severally liable to pay to the plaintiff with interest @ 11% with monthly rests together all other

charges and costs of the suit.

The cause of action of the suit arose on and from 24-05-06, 28-09-07, 04-07-08 and thereafter at Panchmile within the jurisdiction of this Court. So, the plaintiff has prayed

(a) for a decree for the sum of Rs. 5,83,174/- against the defendants jointly and severally;

(b) for a decree of future interest @ 14% with monthly rests on decretal sum from 01-01-2009 till realisation.

(c) for a decree of declaration of plaintiff first charge and lien over the hypothecated goods, and

(d) for the cost of the suit, any other relief or reliefs for which the plaintiff is entitled.

3. After receiving the summons, the defendants have contested the suit by filing written statement on the grounds that the suit is not maintainable and tenable under section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Internal Act of 2002 and there is no cause of action arose and on and from 24-05-06, 28-09-07, 04-07-08 and thereafter as stated in the plaintiff.

The defendants have admitted that one term loan was advanced for Rs. 5,00,000/- to the defendant No.1 for the purpose of business against hypothecation of goods and stock-in-tade and

security against the loan and at the time defendant No.2 stood as guarantor for the defendant No.1 in respect of the said loan by way of personal guarantee by executing a deed of guarantee. The plaintiff's claim regarding the future interest @ 14% is not warranted and tenable under law and equity. The defendants' further contention is that though the defendant No.1 paid a substantial amount to the bank on 30-06-2006 but after that period he suffered severe set back in his business of supplying sands, gravels, bricks and many of his dues remained unpaid from such customers of the defendant No.1, for which his term loan became sticky for no fault of him.

The defendants have also stated that the plaintiff bank has not duly, regularly and faithfully kept and maintained the term loan account, in its usual and ordinary course of banking business as stated in the plaint. Moreover, the defendant No.1 has not acknowledged in writing to repay the so called outstanding by signing of letter of confirmation dated 04-07-08 as claimed by the plaintiff bank. Hence, the plaintiff bank can not avail any right for extension of fresh period of limitation for which the suit is barred by limitation. The plaintiff bank has not calculated properly, so, the plaintiff's claim of Rs. 1,28,314 is not tenable and not recoverable under law.

On the other hand, Books of Account even regularly kept in course of business, shall not alone be sufficient evidence to charge any person without liability, without corroborative and admissible documents as per provision of section 34 of the Evidence Act. As such, the defendants are not liable for the claim of Rs. 5,83,174/-, for future interest @ 14% along with the cost of the suit as claimed in the suit. Therefore, the defendants have prayed for dismissal of the suit.

4. After considering the contents of the plaint and the written statement and also upon hearing the submission of learned counsel of both sides, the following issues are framed :-

1. Whether there is cause of action for the plaintiff to file the suit?
2. Whether the suit is maintainable in its present form?
3. Whether the defendants are jointly and severally liable to pay Rs. 5,83,174/- to the plaintiff bank as outstanding balance for the term loan granted and sanctioned by th plaintiff bank in favour of defendant No.1 ?
4. Whether the plaintiff is entitled for a decree as prayed for?

5. To what relief / relives the parties are entitled ?

5. The plaintiff has examined one PW who is the Branch Manager of U.Co. Bank, Panchmile Branch in support of the plaintiff's case. He has also proved 6 Nos of documents as exhibit.

The exhibits are as follows :

Ext. 1 – the loan application submitted by the defendant No.1.

Ext. 2 – the agreement relating to the term loan dated 24-05-08.

Ext. 3 – Agreement of hypothecated goods executed by defendant No. 1

Ext. 4 - Agreement of Guarantee.

Ext. 5 - Balance confirmation letter dt. 04-07-08.

Ext. 6 - Certified copy of statement of account standing in the name of defendant No.

1.

On the other hand, though the defendant No.1 has submitted the evidence-in-affidavit but he has failed to appear before the court for cross-examination. Hence, his evidence has been expunged due to absence of his cross-examination.

6. Now, I like to discuss the issues one by one for deciding the suit.

Issue No.1.

7. In regards to the issue No.1 regarding cause of action, it is found from the meticulous examination of the materials on record that one term loan was advanced to the defendant No.1 on 24-05-06 on the basis of an application submitted by the defendant No.1. The PW 1 has also stated in his evidence that the said term loan was advanced of Rs. 5,00,000/- to the defendant No.1 and he has proved the application submitted by the defendant NO.1 vide Ext.1. Thereafter, after calculating the interest upon monthly rests the total amount became due of Rs. 5,83,174/- as on 31-12-08 and the balance confirmation was acknowledged by the defendant No. 1 on 04-07-08. The PW 1 has also proved the said balance confirmation letter as Ext. 5. So, it is found crystal clear that the defendant No.1 availed the term loan from the plaintiff bank and he acknowledged the balance confirmation by signing the same on 04-07-08 and for that loan the defendant No. 2 became guarantor by binding himself jointly and severally liable for repayment of the loan.

The contention raised by the plaintiff in the plaint has been adequately corroborated by the evidence of PW 1 in regards to

the cause of action that arose on 24-05-06 and thereafter till 04-07-08. On the other hand, though the defendants have contended in the written statement that no cause of action has arose for the plaintiff to file the suit but such contention has not been adequately substantiated either by oral or documentary evidence. Hence, the contention raised by defendants in this regard has not acceptable.

On the basis of above discussions, it is found that the plaintiff has cause of action for filing the suit against the defendants for failure of the defendants to repay the loan amount along with the interest. Hence, this issue is decided on affirmative.

Issue No.2.

7. In regards to the issue No.2, the defendants have contended that the suit is not maintainable in its present form because, it is not maintainable and tenable as per provision of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Internal Act of 2002. As the Civil Court has no jurisdiction to entertain but, the defendants have failed to substantiate such contention by producing such sufficient materials because, no supportive evidence has been adduced by the defendants in this regard. Unless the contention is established and proved by the supportive evidence, it is quite unsafe to rely on the contention.

On the other hand, it is found that the plaintiff has filed this suit for recovery of money that advanced by way of loan which is tenable by law.

So, in view of the above fact, I am of the considered opinion that the suit is maintainable in its present form and accordingly, this issue is decided in affirmative.

Issue No.3.

8. In regards to the issue No.3, it is found from the meticulous examination of materials on record that the term loan was initially advanced by the plaintiff to the defendant No.1 for Rs. 5,00,000/- with a condition of calculation of interest on monthly rests @ 11% with the condition of repayment of loan in 60 instalments. The defendant No. 2 stood as guarantor by executing the Deed of Guarantee by binding himself for jointly and severally for repayment of the loan amount. The defendants have admitted such fact in the written statement. The PW 1 has also contended in his evidence that a term loan of Rs. 5,00,000/- was advanced to the defendant No.1 for which the defendant No.2 became the guarantor. Though the defendant No.1 deposited some repayment on 30-06-06 but after calculating on agreed monthly interest on the basis of monthly rests an amount of Rs. 1,28,314/- stood as interest accrued thereafter from 01-07-06 to 31-12-2008 and total amount stood as dues was

Rs. 5,83,174/- for which the defendants are jointly and severally liable.

On appreciation of evidence of PW 1, it is also found that the PW 1 has denied the fact that the interest was calculated wrongly and it was not properly calculated on monthly rests as suggested by the defendant in the cross-examination of PW 1.

On examination of materials on record, it is also found that the defendants mainly challenged the balance of the term loan account because the balance confirmation was not properly proved as stated in the plaint. But on appreciation of evidence, it is found that the plaintiff has proved with reliable and corroborative evidence that interest rate was calculated on the basis of agreed rate of interest and on the basis of monthly rests and it was properly reflected in the term loan account that an amount of Rs. 1,28,314/- became the interest accrued from 01-07-06 to 31-12-08 and total amount is Rs. 5,83,174/- due for which the defendants are jointly and severally liable.

On the other hand though the defendants have challenged the correctness of balance confirmation letter but the defendants have failed to prove such contention by reliable supportive evidence, hence, the contention raised by the defendants

is not acceptable in this regard.

As the plaintiff has proved with sufficient and corroborative oral and documentary evidence that an amount of Rs. 5,83,174 became dues as on 31-12-08 for which the defendants are jointly and severally liable. So, it is found that the defendants are jointly and severally liable to pay Rs. 5,83,174/- to the plaintiff bank as outstanding balance for the term loan advance by the plaintiff bank in favour of the defendant No.1. On the other hand, the defendants have failed to prove the contention that the balance confirmation was not acknowledged by the defendants and the interest was not calculated properly.

From the above discussions, I am of the opinion that the defendants are jointly and severally liable to pay RS. 5,83,174/- to the plaintiff bank as outstanding balance and accordingly, this issue is also decided in affirmative.

Issue No.4.

9. In regards to the issue No.4, it is found from the discussions stated above that the defendants are jointly and severally liable to pay Rs. 5,83,174/- to the plaintiff bank as outstanding balance. So, it is found that the plaintiff is entitled to the

decree as prayed by the plaintiff bank for recovery of Rs. 5,83,174/- from the defendants jointly or severally.

Issue No.5.

10. In regards to the Issue No. 5, it is found after considering the facts and circumstances of the case and considering the relevant provisions of law, I find that the plaintiff is entitled for a decree for realisation of future interest since the date of filing of the suit @ 6% till the realisation.

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

O R D E R

11. In the result the suit is decreed on contest with costs with following reliefs:-

(a) for recovery of sum of Rs.5,83,174/- from the defendants jointly and severally;

(b) for future interest at the rate of 6% per annum on the decretal amount from 01-01-2009 till realisation;

(c) by declaring the plaintiff first charges and lien over the hypothecated goods and for sale thereof for satisfaction of the decretal amount if required for realisation of decretal amount; and

(d) for realisation of remaining amount jointly or severally from defendants if the sale proceed becomes insufficient to satisfy the decretal amount.

12. Prepare the decree according.

13. Judgment is given under my hand and seal of this Court on this 30th day of April 2011.

(M. Kalita)
Civil Judge, Sonitpur,
Tezpur

Dictated and corrected by me,

(M. Kalita)
Civil Judge, Sonitpur,
Tezpur

Transcribed by me.

(R. Hazarika)
Steno