

HIGH COURT FORM NO. (J)2

HEADING OF JUDGMENT IN ORIGINAL SUIT

DISTRICT:- TINSUKIA

IN THE ORIGINAL COURT OF THE CIVIL JUDGE, TINSUKIA

Present :- A. Khanal, A.J.S.

Wednesday, the 18th day of November, 2020

Money Suit No. 52 of 2017

State Bank of India,

a statutory body constituted under the State Bank of India Act, 1955, having its corporate Centre at Madam Cama Road, Nariman Point, Mumbai and having one of its local Head Office at G.S. Road, Dispur, Guwahati and amongst other places a Branch at Rupai Siding, P.O. Rupai Siding, District-Tinsukia, Assam.

...Plaintiff.

-VERSUS-

Sri Bubu Borah,

S/o. Dhaneswar Borah,

R/o. No.1 Challenguri, P.O. Kakopathar- 786152,

(Currently R/O. Kachijan Chariali, P.O. Kakopathar)

District-Tinsukia, Assam.

...Defendant.

This suit coming for final hearing on **18.11.2020** in presence of :-

Mr. M.S. Alley

Ld. Advocate for the plaintiff.

None appeared for the defendant.

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

J U D G M E N T

1. This is a suit for recovery of Rs. 2,50,860/- with future interest along with the cost of the suit and the suit is valued at Rs. 2,50,860/- and Court fee of Rs.3,976/- has been paid thereon.

The plaintiff's case in brief is as follows:-

2. That the plaintiff is a body corporate constituted under the State Bank of India Act, 1955 having its corporate centre at Madam Cama Road, Nariman Point, Mumbai and having one of its local Head Office at G.S. Road, Dispur, Guwahati and amongst other places a Branch at Rupai Siding, P.O. Rupai Siding, District-Tinsukia, Assam, known as Rupai Siding Branch being represented by its Branch Manager.

3. That the defendant applied for a loan of Rs.4,75,000/- only under PMEGP in respect of establishing a Mini Modern Rice Mill before the plaintiff bank through the Director, State Office Khadi & VI Commission, Guwahati and considering the same, the plaintiff bank on 27.01.2015 sanctioned a Composite Term Loan of Rs.3,80,000/- only in his favour duly approved by the KVIC.

4. That the defendant thereafter availed/transacted the said loan facility from his Account No. 34800667802 maintained at the plaintiff bank. Furthermore, the aforesaid loan was primarily secured by hypothecation of assets of the said business unit of the defendant created out of bank finance.

5. That the said loan was repayable on demand with interest due thereon initially @13.40% p.a. initially, subject to change as per RBI guidelines issued from time to time.

6. That to secure the due repayment of loan with accrued interest and other charges, the defendant on 16.03.2015 executed an arrangement letter (SME 1), agreement of loan-cum-hypothecation (SME-2), Letter of Undertaking by the Borrower (Annexure E) along with other related documents in favour of the plaintiff bank.

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7. That after availing the aforesaid loan, the defendant was irregular while maintaining his loan account and accordingly, the outstanding dues with accrued interest thereon payable to the plaintiff bank went on increasing day by day.

8. That finding the loan account seriously irregular and unsatisfactory, the plaintiff bank served several demand cum call up Notice on different dates and finally on 03.08.2016 but without any positive response from the defendant. The plaintiff Bank also served a Legal Notice on 07.09.2017 under registered with A/D post but the defendant did not give any response.

9. That since the defendant has failed and neglected to liquidate the amount to the plaintiff Bank, the instant suit has been filed for recovery of Rs.2,50,860/- only inclusive of accrued interest up to 28.08.2017 (i.e. balance outstanding of Rs.2,20,061/- + accrued interest of Rs.30,799/-) and cost of the suit with future interest @ 12.90% p.a. w.e.f. 29.08.2017 till final realization from the defendant to which he is liable to pay.

10. Hence, the instant suit praying for the following reliefs:-

- (a) Judgment and decree against the defendant for Rs. 2,50,860/- with future interest @ 12.90% p.a. w.e.f. 29.08.2017 till final realization of the decretal amount.
- (b) Cost of the suit and
- (c) Any other relief to which the plaintiff is found to be entitled under the law of equity and justice.

Service of process:-

11. That on institution of the suit, several summons were issued and finally summons were issued in substituted manner through newspaper publication but inspite of that, the attendance of the defendant could not be procured and as such the suit proceeded ex-parte against him.

Ex-parte evidence adduced by the plaintiff side:-

12. That the plaintiff Bank submitted the evidence-on-affidavit (in chief) of Sri Bhoresh Patir, Manager as P.W.1. The plaintiff side also marked and exhibited the Loan Application Form as Ext-1, wherein Ext.1(1) is the signature of the
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defendant; Sanction Note for the loan as Ext-2, wherein Ext.-2(1) is the signature of the then Sanctioning Officer/Manager of Plaintiff Bank; Letter of Arrangement (SME-1) dated 16.03.2015 as Ext.-3, wherein Ext.3(1) to Ext.3(6) are the signatures of the defendant/Manager of the plaintiff Bank; Agreement of loan-cum-hypothecation (SME-2) dated 16.03.2015 as Ext-4, wherein Ext.4(1) to Ext.4(12) are the signatures of the defendant; Letter of Undertaking (Annexure-E) as Ext-5, wherein Ext.5(1) & Ext.5(2) are the signatures of the borrower/defendant; Demand Notices dated 08.01.2016 and 03.08.2016 as Ext-6 and Ext.7; Legal Notice dated 07.09.2017 as Ext-8, wherein Ext.-8(1) is the signature of the Advocate; Information of notional interest in respect of A/C No.34800667802 as Ext-9, wherein Ext.-9(1) is the signature of the Manager of the plaintiff bank; Statement of Account in respect of Account No.34800667802 as Ext.-10, wherein Ext.-10(1) is the certificate and signature of Manager of the plaintiff Bank.

Discussion, Decision and Reasons thereof:-

13. Now, considering the ex parte argument and having perused the case record, my discussions and decision with reasons thereof are as follows:-

14. Now, the plaintiff Bank through the un-rebutted testimony of P.W.1 and exhibited documents, like loan application form (Ext.1), Sanction Note (Ext.2), the letter of arrangement (Ext.3) as well as the other documents could prove the fact that a Loan of Rs.3,80,000/- was sanctioned in favour of the defendant to start a business under the PMEGP scheme by the plaintiff Bank.

15. It is also proved by the plaintiff Bank through the un-rebutted testimony of P.W.1 along with the exhibited documents, including the statement of loan account of the defendant (Ext.10) that a loan Account No. 34800667802 was opened in the name of the defendant with regard to the said loan advanced to him and now (as found from Ext.9 and 10), the total outstanding dues including interest up to 28.08.2017 is around Rs.2,50,860/- to be payable by the defendant to the plaintiff Bank.

16. It is also found from the un-rebutted testimony of P.W.1 and documents exhibited that though some amount of loan has been repaid by the defendant to the plaintiff Bank but after adjustment and necessary deductions the said outstanding dues of Rs.2,50,860/- are still required to be payable by the

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defendant to the plaintiff Bank.

17. Hence, from the above discussions, it is found that the plaintiff Bank could prove that they are entitled to recover the said outstanding dues totalling to Rs.2,50,860/- till 28.08.2017 and thereafter, they are also entitled to recover future interest @ 12.90% p.a. w.e.f. 29.08.2017 till the realization from the defendant.

18. Furthermore, since the plaintiff Bank is a public sector Bank and as public money is also involved, they are also entitled to recover the cost of the suit from the defendant.

19. In addition to the above, it is also found that the instant suit is within the period of limitation and the plaintiff Bank is thus entitled to the reliefs and the suit needs to be decreed.

ORDER

20. Now, considering the above discussions and decisions arrived in the foregoing paragraphs, the suit is accordingly decreed ex parte with cost and the plaintiff is granted the following reliefs:-

- (i) A decree for recovery of Rs.2,50,860/- with future interest @ 12.90% p.a. w.e.f. 29.08.2017 till final realization of the decretal amount from the defendant; and
- (ii) Also, cost of the suit is granted to the plaintiff Bank to be recoverable from the defendant.

21. Prepare a decree accordingly within a period of one week.

22. Pronounced by me on this open Court, this 18th day of November, 2020 (Wednesday) under my hand and seal of this Court.

Dictated and corrected by me:-

(A. Khanal)

Civil Judge, Tinsukia

(A. Khanal)

Civil Judge, Tinsukia

Typed by :-

(Kalyan Dey)
Stenographer

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APPENDIX**A. Plaintiff's Witness:-**

P.W.1- Sri Bhobesh Patir (Manager of the plaintiff Bank).

B. Defendant's Witness:-

NIL.

C. Plaintiff's Exhibits:

Ext-1: Loan Application Form;
Ext.1(1): Signature of the defendant;
Ext-2: Sanction Note for the loan;
Ext.-2(1): Signature of the then Sanctioning Officer/Manager of Plaintiff Bank;
Ext.-3: Letter of Arrangement (SME-1) dated 16.03.2015;
Ext.3(1) to Ext.3(6): Signatures of the defendant/Manager of the plaintiff Bank;
Ext-4: Agreement of loan-cum-hypothecation (SME-2) dated 16.03.2015;
Ext.4(1) to Ext.4(12) : Signatures of the defendant;
Ext-5: Letter of Undertaking (Annexure-E);
Ext.5(1) & Ext.5(2): Signatures of the borrower/defendant;
Ext-6 & Ext.7: Demand Notices dated 08.01.2016 and 03.08.2016;
Ext-8: Legal Notice dated 07.09.2017;
Ext.-8(1): Signature of the Advocate;
Ext-9: Information of notional interest in respect of A/C No.34800667802;
Ext.-9(1): Signature of the Manager of the plaintiff bank;
Ext.-10: Statement of Account in respect of Account No.34800667802; and
Ext.-10(1): Certificate and signature of Manager of the plaintiff Bank.

Dictated and corrected by me:-

(A. Khanal)

Civil Judge, Tinsukia

(A. Khanal)

Civil Judge, Tinsukia

Typed by :-

(Kalyan Dey)
Stenographer