

**Misc. (J) Case No.102 of 99**

Present : **Shri C. Das,**  
 District Judge,  
 Tinsukia

Assam Financial Corporation,  
 Head office - Md. Shah Road, Paltanbazar,  
 Guwahati, having its regional office at  
 Tinsukia, Assam

..... Applicant

- Versus -

1. On the death of Joga Narayan Baruah,  
 1(1). Sri Bitupan Baruah; 1(2). Sri Udayan Baruah.
2. On the death of Jatin Sharma Acharjee,  
 2(1). Sri Pabitra Acharjee; 2(2) Sri Pabin Acharjee

..... Opp. Parties

**O R D E R**

Date: 05.05.2022

1. The applicant Assam Financial Corporation, filed this petition u/s 31 of the State Financial Corporation Act, 1951( in short; AFC) praying for:

(a) An order for the sale of the properties mortgaged/ hypothecated in favour of the applicant and described in the schedule A & B in the petition and for realization of the dues by attachment and sale of the personal properties of the opposite parties jointly and severally in the event of sale proceeds of the properties described in the schedule A & B are not adequate to recover the said dues and for;

(b) An order for payment of the sale proceeds towards protento satisfaction of the applicant's dues of Rs.1,56,341.07paise, calculated up to 30.9.98 together with interest at the rate of 12.5% per annum compounded half yearly from 1.10.98 till realization of the dues and all cost of this proceeding and for;

(c) An order of attachment and ad-interim injunction restraining the opposite parties from transferring or removing the properties as described in schedule A & B herein and for;

(d) Any order or further relief to which the applicant is found entitled to under the law and equity.

2. It is stated inter-alias by the applicant that the opposite party No.1 is carrying on transport business in the state of Assam and is the sole proprietor and as such, deems to be an industrial concerned, who approached the applicant for a loan of Rs.3,65,000/- to purchase one new Ashok-Leyland, Cheetha, passenger chassis and for construction of deluxe type coach thereon vide his application dated 14<sup>th</sup> December, 1981. The applicant accordingly, agreed to sanction of Rs.3,40,000/- on

furnishing of documents for securing the due payment of the said loan. A deed of mortgage dated 20<sup>th</sup> January, 1984 registered, hypothecating the new Ashok-Leyland-Cheetha described in the schedule 'B' to this petition and an irrevocable power of attorney in favour of the applicant and in addition, a demand promissory note for Rs.3,40,000/- in favour of the applicant, promising to repay the said sum with interest @ 12.5% to 13.5% p.a., within the period of 52 monthly installments as mentioned in the mortgage deed. An affidavit sworn by Sri Jatin Sharma Acharjee, the guarantor/ the opposite party No.2 and in addition, he created equitable mortgage in favour of the applicant. In consideration of documents so submitted by the opposite parties, an amount of Rs.3,40,000/- was sanctioned, out of which Rs.2,99,999.92paise was paid. However, the opposite parties have failed to repay the loan amount in the manner as stipulated and despite demands. Hence, the applicant has filed this petition u/s 31 of State Financial Corporation Act 1951, with the prayer as stated above.

3. On the basis of such prayer of the applicant, this court vide order dated 1.9.99, passed an interim order, debarring the opposite parties from parting with and/ or transferring the attached property without permission of the court. By the said order, the opposite parties were asked also, to show cause if any, as to why interim order of attachment of property should not be made absolute.

4. After receipt of the said show cause, the opposite parties submitted written reply. They specifically raised objection on rate of interest, which was agreed upon and the rate of interest charged by the applicant. It is contended inter-alias by the opposite parties that it is a fact that the opposite party No.1 approached the applicant for a loan and accordingly, an amount of Rs.3,40,000/- was sanctioned. Thus, on that basis, agreement was signed and mortgage deed was executed. But the applicant released Rs.2,99,999/- only and not agreed amount. An amount of Rs.800/- was deposited by the loanee but it was not reflected in the statement of account. After execution of various documents, an amount of Rs.29,000/- was paid by the loanee but it was neither repaid nor reflected in the loan account. It is stated by the opposite parties that total loan amount was released only to Rs.2,70,999.92 paise while the opposite party No.2 deposited Rs.8,64,191.11paise but the applicant had shown only Rs.5,85,755.15paise as deposited by the loanee and out of said amount, Rs.4,38,726.40paise only has been shown as payment against arrear dues and Rs.1,47,028.75paise against interest as per statement of account, submitted by the applicant. The opposite parties stated that the loanee paid more than what was due and in-spite of that, the applicant has shown the outstanding amount as claimed in the petition.

5. Further, the opposite party No.1 Joga Narayan Baruah submitted additional show cause wherein, it is stated inter-alias

that the applicant Corporation sanctioned an amount of Rs.3.40lakhs vide their sanction letter No.LP/1499/81-82/2462 dated 22.9.83 and communicated the same to the opposite party No.1 with terms and conditions. The opposite parties accepted the said terms and conditions mentioned in the said sanctioned letter and executed some documents and secured the said loan by executing mortgage deed, deposited Rs.29,000/- being 15% of the chassis. It is contended that the applicant failed to release the said amount of Rs.3.40lakhs as per contract and hence, they not legally entitled to accept that the opposite party would forfeit the other terms. That later on, the applicant had paid an amount of Rs.1,63,293.92 on 20.3.84 paid to M/s. Walford Transport, Rs.88,350/- paid to M/s. Utkal Automobiles on 18.7.84. The applicant had shown to have paid another sum of Rs.48,350/- to the opposite party No.1 on 7.12.84 out of which the applicant had deducted Rs.15,233.90paise and the opposite party never permitted to deduct interest at source and to adjust the same, against interest. The applicant had shown to have paid Rs.2,99,999.92paise out of which the opposite party had paid Rs.800/- on 22.12.81, Rs.29,000/- on 14.2.84 and Rs.15,233.90paise on 7.12.84 (shown to have deposited *suomoto* by the applicant against interest) totaling to Rs.45,033.90paise. It is stated that the opposite parties have never executed any document against the said amount of Rs.2,99,999.92paise and the terms and conditions set forth in the documents executed against the original sanction amount of

Rs.3.40lakhs can not be regarded as terms and conditions of the later sanctioned. Disbursed alleged amount of Rs.2,99,999.92paise and in fact, there are no terms and conditions for repayment of the alleged amount of Rs.2,99,999.92paise. The applicant had asked the opposite party No.1 for joint discussion about the repayment of arrear dues in various occasions. On 10.2.92 also there had a joint discussion between the Managing Director of the applicant and the opposite party No.1 and in the said meeting, it was agreed upon between the parties that the opposite party No.1 will clear-up the arrear dues of Rs.1lakh in two installments of Rs.50,000/- each, one is payable in February,1992 and the next one in March,1992. Accordingly, the applicant vide the letter No. AFC/TSK/L-H/Review/2525 dated 27.2.92, acknowledged the receipt of the cheque for an amount of Rs.50,000/- for February,1992 and requested the opposite party No.1 to pay the balance amount of Rs.50,000/- as per commitment. The opposite party No.1 paid the entire arrear dues as agreed between the parties in the meeting dated 10.2.92 against which the applicant had issued receipt for both the amounts vide Book No.171 Sl. No.93 dated 28.2.92 and Book No.171 Sl. No.126 dated 7.3.92 and thereby, the entire loan amount had been settled. It is stated that in spite of payment of the entire arrear dues, the applicant illegally dragged the account showing arrear dues at Rs.1,10,833.77paise as on 31.3.92 vide their statement of accounts dated 20.1.97. The opposite party No.1 paid various amounts from time to time but all the amounts were not shown

in the statement of account maintained by the applicant. Even then, the opposite party No.1 agreed to repay the entire arrear dues of Rs.1.00lakh in the above noted joint meeting held on 10.2.92 and paid the entire amount in two installments as agreed upon between the parties. Hence, the applicant has no authority to carry out the said loan account after payment of entire arrear dues on 28.2.92 and 7.3.92. But the applicant compelled to pay various amounts even after payment of entire arrear dues on 7.3.92 and after that date the opposite party had to pay the following amounts :-

Rs.10,000/-	receipt book No.173	Sl. No.143	dated 30.9.92
Rs.50,000/-	receipt book No.191	-do-	93 dated 31.3.93
Rs.60,000/-	receipt book No.248	-do-	30 dated 16.10.93
Rs.9,048/-	receipt book No. ----		dated 18.10.93
Rs.9,846.55	----	---	dated 18.10.93
<u>Rs.41,105.15</u>	----	--	<u>dated 18.10.93</u>
Total Rs.1,80,000/-			

6. It is stated that the applicant failed to show the following amounts deposited prior to 31.3.92 -

Rs.800/-	book No.2	Sl. No.200	dated 22.12.81
Rs.29,000/-	book No.9	Sl. No.119	dated 14.2.84
Rs.14,000/-	Book No.67	Sl. No.150	dated 5.11.88
Rs.30,000/-	Cheque No.CCBS-5677439		dated 12.7.90
Rs.30,000/-	cheque	favouring MD/AFC,	cheque honoured,
<u>Total - Rs.1,03,800/-</u>			

7. Further, the applicant also, charged interest in a higher rate than the stipulated rate of interest @ 12.5% p.a. and also, levied penal interest @ 4% p.a. and interest tax @ 3% on the gross amount of interest, though there is no condition for payment of penal interest and interest tax etc. That apart, the applicant also, showed payments in a later date than the actual date of payment and thereby, the opposite party No.1 is subjected to pay interest showing the payments in a later date. Moreover, for the applicant also, levied interest, interest tax and penal interest on the total amount of Rs.2,13,800/- paid by the opposite party, but omitted to show payment. Hence, the applicant realized total amount of Rs.1,03,800/- + Rs.1,80,000/- = Rs.2,83,800/- + interest illegally levied by the applicant without showing the same in statement of accounts. The opposite party paid some other amounts also, but for want of counter-foil of cheque-book and pass-book etc., these amounts could not be verified and could be claimed repayment. The opposite party wrote a letter to the Managing Director of the applicant in the year,1998, stating *inter-alias* that he had paid total amount of Rs.9,21,945/- which is more than triple of the loan and stated that he is not in a position to pay further amount as the concerned vehicle has been completely burned and damaged by Naga Rebels at Merapani on 4.6.85. The entire claim of the applicant made in the above case is false or vexatious. The receipts issued by the applicant against payments made by the opposite party No.1 clearly proves that

the applicant knowing fully well made the false claim against the opposite parties and for their illegal and vexatious claim, the applicant is liable to pay adequate compensation as per law apart from the repayment of the excess amount with interest thereon @ 18% p.a. and also, the interest, penal interest and interest tax levied illegally showing non-payment of a huge amount and also, by levying interest on various amounts showing payments in a later dates than the actual date of payments. Therefore, it is prayed to dismiss the claim of the applicant with further directing the applicant to return the excess amount of Rs.2,83,000/- + illegally levied interest, penal interest and interest tax showing non-payment of a huge amount and also, showing payments in a later dates than the actual date of payments, with interest @ 18% p.a. from the date of deposit of the respective amounts till payment and also, to pass an order directing the applicant to pay adequate compensation as per law and also, to relinquish the mortgaged property and/or pass any other order or orders alternatively allow the opposite party to claim suit for realization of the excess amount with interest thereon against the applicant in a proper court condoning delay, if any, for filing the suit.

8. The applicant submitted the papers including the original ledger that was maintained in respect of loan taken by the opposite party No.1; Joga Narayan Baruah. The applicant initially did not adduce any evidence.

9. However, the opposite parties examined one witness namely; Ghana Kanta Baruah, who is father of loanee, Joga Narayan Baruah, since deceased. The witness stated inter-alias that he represented his son and is acquainted with all facts of the matter as he made all transactions with the applicant. In support of the case of his son, the witness stated further that an amount of Rs.29,000/- was paid by the loanee as margin money but it was not adjusted in the loan account by the applicant. He submitted several receipts of loan payment installments deposited into the office of the applicant vide Ext.A, B, C, D and E(1) to E(19). He further alleged that Rs.800/- was paid to the applicant at the time of filing of application and Rs.29,000/- vide Ext.1 was not reflected in the statement of account.

10. In the cross-examination, the witness of the opposite parties stated that letter vide Ext.1 was received by his loanee son and he cannot say if the amount of Rs.29,000/- was accepted as contribution by the loanee. He admitted that an amount of Rs.50,000/- was paid on 31.3.99 by cheque but the cheque was bounced and a criminal case was filed against his loanee son.

11. After considering the entire aspect of the applicant and various pleas of the opposite parties, this court dismissed the petition of the applicant on 17.7.2000 on the ground that the applicant shall recast on wrong calculation of interest on the

loan amount of Rs.2,70,999/- after adjustment of Rs.29,000/- so deposited by the loanee and to come afresh with a petition.

12. Against the dismissal order dated 17.7.2000, the applicant preferred an appeal u/s 32(9) of State Financial Corporation Act 1951, before Hon'ble Gauhati High Court and accordingly, vide judgment and order dated 21.11.2007, set aside the impugned order of this court with direction to this court to ascertain and quantify the amount due and payable to the applicant on the basis of admitted facts and then, pass appropriate order and for that if required, such evidence may be obtained as permissible in law while parties were given liberty to adduce such further or other evidence as may be permissible in law. With the above direction, the Hon'ble High Court remanded the case to this court.

13. In the meantime, both the opposite parties died and their legal heirs were brought on record. But after receipt of notice, the legal heirs of both the opposite parties remained absent. Hence, the case is proceeded in their absence. But they must enter into the shoes of their predecessor-in-interests in the transactions with the applicant.

14. This time the applicant adduced evidence-in-affidavit of one witness namely; Sofiqul Hussain, Branch Manager/Officer-in-charge of the applicant office at Tinsukia. He deposed inter-alia that the opposite party No.1 was carrying on transport

business in Assam, was a sole proprietor thereof and as such, is deemed to be an industrial concerned as defined u/s 2(c) of the State Financial Corporation Act, 1951 ( in short; the Act). It is stated by witness that vide application dated 14.12.1981, the opposite party No.1 approached the applicant corporation for granting a loan of Rs.3.65lakhs for purchase of one new Ashok-Leyland, Cheetah A.L.P.S.V. half 210" W.B. passenger chassis and for construction of deluxe type coach thereon and furnished the following relevant documents for securing the due repayment of said loan : a) A deed of mortgage dated 20.1.1984, mortgaging land and building described in the schedule and hypothecated one new Ashok-Leyland Cheetah described in the schedule "B" hereto below; b) Irrevocable power of attorney in favour of the applicant dated 20.1.1984 being registered deed No.21/1984 of Tinsukia Sub-Registry; c) An on demand promissory note, dated 20.1.1984 for the sum of Rs.3.40lakhs only in favour of the applicant promising to repay the said sum with interest at the rate of 12.50% or 13.50% per annum within the period of 52 monthly installments as mentioned in the mortgage deed dated 20.1.1984; d) A trust receipt dated 14.2.1984; e) an affidavit sworn by Jatin Sharma Acharjee, the guarantor before the Magistrate at Dibrugarh dated 16.11.1983.

15. It is stated that on consideration of the applicant, executing the said loan to the opposite party No.1, the opposite party No.2 stood surety as guarantor for the said loan,

guarantying repayment of the same with interest, in the manners stipulated. Further, to secure the said loan, the opposite party No.2 created an equitable mortgage of the properties described in the schedule hereto below by depositing the following title deeds:- a) the deed of indenture dated 5.6.1970, being registered deed No.1576/1970 of Sub-Registry office, Dibrugarh; b) jamabandi, relating to land measuring 46B-0K-10L, covered by tea periodic patta No.2, Dag No.106 of Pengery Tea Estate No.93, Mouza- Buridihing of 1977-78; c) a certificate dated 16.12.83 issued by the then Sub-Deputy Collector, Margherita; d) a non-encumbrance certificate dated 19.12.83 in respect of the land covered by P.P. No.1 (old), 2(new), Dag No.51(old)/ 106(new) grant No.93/18/19 relating to land measuring 6B-1K-14L of Pengery Bazaar under Mouza-Buridihing.

16. The terms and conditions of the said loan have been incorporated in the documents referred to above. Some essential conditions of the loan were as follows:

- i) Repayment– The borrowers shall repayment to the applicant/ corporation the principal amount of Rs.3,40,000/- only in 52 installments of Rs.7,000/- for 20 months; Rs.6,500/- only for 16 months; Rs.6,000/- only for 16 months commencing from the 5<sup>th</sup> month after disbursement of the loan;
- ii) The interest should be charged on the outstanding in the amount @ 12.50% p.a. as such, other higher rates as may be enforced computed on the said sum of Rs.3,40,000/- only and

to be subsequently advanced as aforesaid from the debts on which respective installments, comprising the said principal amount of the sum shall have lent and advanced by the applicant Corporation to the opposite parties provided the opposite parties hereby undertake to pay higher rate of interest @ 13.50% p.a. if re-finance is not made available from the Industrial Development Bank of India to the Corporation on the said principal sum or the balance thereof, such interest to be payable by monthly installments in each year and such payments to be made on the 20<sup>th</sup> day of each month. The repayment of the said amount will start from the 5<sup>th</sup> month after the disbursement of the loan and will in case and so long as the said principal sum or any part thereof shall remain unpaid to the applicant Corporation, interest on the said principal sum or so much thereof as shall for the time being remain unpaid at the same rate aforesaid by the monthly payments, herein be provided;

iii) in the event of non payment of the dues by the opposite party No.1 on due date, the borrower shall pay an additional interest @ 1.5% p.a. from the date of default occurring on the amount due by the borrower, provided that the borrower intends and have always intended that stipulation in this clause for payment of additional interest @ 1.5% p.a. over and above, the stipulated interest on 12.50% or 13.50% p.a. in case of default in punctual payment of installments of principal and interest in part of the primary contract between the borrower and the corporation and not as stipulation by any of penalty. In

case of default, the borrower will have to pay interest @ 12.50% plus usual rebate of 2% plus default rate of 1.5% i.e. 16% or 13% plus usual rebate of 2% default rate of 1.55 i.e. 17.5%;

iv) on demand being made by the Corporation/ applicant, the borrower shall forthwith pay balance outstanding and owing to the Corporation or under or in respect of the said loan accounts inclusive of interest, costs, charges and other expenses.

17. According to the applicant, on execution of the aforesaid documents and on completion of formalities, the applicant disbursed a sum of Rs.2,99,999.92paise only in between March,1984 to December,1984. With the said amount, the opposite party No.1 purchased the vehicle Ashok-Leyland bearing registration No.ART-1212 and more fully described in the schedule hereto and hypothecated the same in favour of the applicant. The opposite party No.1/ borrower mortgagor as herein before appearing the guarantor/ opposite party No.2 above named, agreed with the Corporation that in the event of mortgage money fell due by reason and remained unpaid for the reason of any or more of the conditions and covenants detailed in the mortgage deed, the Corporation shall be entitled to recover the same from the opposite party No.2/ guarantor personally and from their properties jointly and severally, notwithstanding the remedies which the Corporation may have against the mortgagor/ borrower and properties hereby mortgaged or otherwise, by virtue of the mortgage deed.

Having failed by the opposite party No.1 to repay the said loan in the manner stipulated, the Corporation made several demands on the opposite party No.1 to repay the loan through the then Manager (Legal) served notice dated 02.11.1998 under reference No.L/A A.F.C./H.O./Legal/L-907/5116, recalling the said loan and demanding payment of the entire dues within 15 days from the date of receipt of the notice. The said notice was sent to the opposite party No.1 & 2 by post under registered A/D cover.

18. It is stated that in spite of service of the said notice and personal contacts, the opposite parties failed to repay the dues in the said account and total sum of Rs.1,56,341.07paise calculated up to 30.9.1998 became due and outstanding from the opposite parties in the said account as per particulars of claims set forth below.

STATEMENT OF ACCOUNT AS ON 31.5.2020

Amount sanctioned ( date 16.9.1983)...	Rs.3,40,000/-
Amount disbursed (3/84 to 12/84).....	Rs.2,99,999.92p.
Principal paid .....	Rs.2,31,127.50p.
Principal default (4/87 to 3/88) .....	Rs.68,872/-
Interest default (as on 31.5.2020)....	Rs.5,40,133.58 p.
<u>Interest Tax .....</u>	<u>Rs.4,190/-</u>
Balance outstanding .....	Rs.6,13,195.58p

19. Hence, the witness prays that an order of sale of the properties mortgaged/ hypothecated in favour of the applicant and described in the Schedule- A & B hereto and for realization of the dues by attachment and sale of the personal properties of the opposite parties jointly or from their legal heirs severally in the event of the sale proceeds of the properties described in the Schedule- A & B are not adequate to recover the said dues and for an order for payment of the sale proceeds towards protento satisfaction of the applicant's dues of Rs.1,56,341.07paise calculated up to 30.9.1998 together with interest at the rate of 12.50% p.a. compounded half yearly from 01.10.98 to till realization of the dues and all costs of this proceeding.

SCHEDULE "A" REFERRED TO ABOVE

All that pieces or parcels of land measuring about 2 bighas out of 6 bighas -1 kathas- 14 Lessas, covered by P.P. No.1(old)/2(new), Dag No.51(old)/106(new) grant No.93 of 1918-19 of village- Pengeree Bazar, Mouza- Burdihing in the district of Tinsukia of State of Assam, standing in the name of Jatin Sarma Acharjee (guarantor) together with the Assam Type House standing thereon comprising 6 rooms, kitchen, bathroom, latrine with front and back verandah built with Asbestos Sheets roof, concrete walls, concrete floor owned by Jatin Sarma Acharjee together with all other house, out houses building structures etc., now standing thereon or affixed thereto in the aforesaid land and all others that may be built or erected affixed

during the continuance of this security and all lowers yards water, water course etc., during the continuance of this security.

SCHEDULE "B" REFERRED TO ABOVE

One new Ashok-Leyland Cheetah ALPSV 1/ 5 210" WB passenger Chassis with 370 engines, 6 nos., tyre make- Leyland bearing Engine No.ALEG- 25013 & Chassis No.ALEG- 165498 and registration No.ART-1212.

20. I have heard learned counsel for the applicant and perused the materials on record along with written argument submitted by the applicant. In the written argument, the applicant placed same facts as it appeared in the pleadings and evidence.

21. Apparently, the evidence of the witness of the applicant supports and corroborates the contentions made in the application. There is no rebuttal of the evidence of the said witness. So, far as the claim of the applicant is concerned, it appears that no document of the applicant is marked by sign. Several documents filed by the witness of the applicant but failed to specify the claim as per record over the defaulted amount as per record with the claim of the opposite parties.

22. Furthermore, learned counsel for the applicant submitted another calculation sheet of monitory transactions/ loan payments between the applicant Corporation with the

borrowers. It discloses that total disbursement of loan was Rs.2,99,999.92paise. The interest rate was @14.5% with default interest rate was @ 2% only. The calculation of the applicant for disbursement and payments in respect of Joga Narayan Baruah vide a/c No.907, is arrived at on following basis ;

<u>20/03/84</u> - Disbursement to the party - (for chassis)	-	Rs.1,63,293.92p
<u>31/03/84</u> - Intt. for the half yearly ended - 31.03.84 (for 12 days)	-	Rs.620.10p
<u>18/07/84</u> – Disbursement for cabin & body -	-	Rs.88,353/-
<u>29/09/84</u> - Intt. for September,1984	-	Rs.14,613.80p
<u>07/12/84</u> - Disbursement for cabin & body -	-	Rs.48,353/-
<u>07/12/84</u> - By intt amount recd. for Mar, 84 & September,84	-	Rs.15,233.90p
<u>30/03/85</u> -To intt for Mar,85 (Oct,84 to Mar,85)	-	Rs.20,952.40p
<u>30/09/85</u> -To intt for Sep,85 (April,85 to September,85)	-	Rs.23,493.70p
<u>31/03/86</u> - To intt for Mar,86 (Oct,85 to March,86)	-	Rs.25,075.65p
<u>30/09/86</u> – To intt for Sep,86 (April,86 to September,86)	-	Rs.27,049/-
<u>23/03/87</u> - By payment of arrear intt	-	Rs.50,000/-
<u>27/03/87</u> - By payment of arrear intt	-	Rs.32,900/-
<u>31/03/87</u> – To intt for Mar,87(Oct,86 to Mar,87)	-	Rs.24,262.30p
<u>23/09/87</u> – By payment of arrear dues(intt)-	-	Rs.23,000/-

- 02/12/87- By payment of arrear dues(intt)- Rs.10,000/-
- 09/12/87- By payment of arrear dues(intt) – Rs.20,000/-
- 14/12/87 – By payment of arrear dues(intt – Rs.50,000/-  
& principal)
- 01/02/88 – By payment of arrear dues(pricl)- Rs.35,600/-
- 31/03/88– To intt for Mar,88 (Oct,87 to - Rs.20,162.60p  
Mar,88)
- 04/05/88– By amount received (interest) - Rs.17,301.25p
- 27/08/88- By payment of arrear dues(intt & - Rs.30,000/-  
pricl)
- 14/09/88 – By payment of arrear dues(pricl)- Rs.15,000/-
- 30/09/88–To intt for Sep,88(April,88 to - Rs.15,774.70p  
Sep,88)
- 31/03/89 – To intt for Mar,89 (Oct,88 to – Rs.14,274.40p  
Mar,89)
- 24/08/89- By payment of arrear dues (intt)- Rs.30,000/-
- 30/09/89 – To intt for 30.09.89(April,89 to – Rs.14,658.25p  
March'89)
- 22/01/90- By arrear dues received(intt & - Rs.20,000/-  
pricl)
- 22/01/90- By arrear dues received(principal) –Rs.6,810/-
- 31/03/90- To intt for Mar,90(Oct,89 to - Rs.13,117.75p  
Mar,90)
- 09/08/90- By payment of arrear dues(intt & – Rs.30,000/-  
principal)
- 13/09/90- To ch. No.567439 returned(bounced)-Rs.30,000/-
- 30/09/90- To intt for Sep,90(April,90 to - Rs.13,273.15p

Sep,1990)		
<u>31/03/91</u> -	To intt for Mar,91(Oct,90 to March, 1991)	- Rs.14,160.45p
<u>10/04/91</u> -	By payment of intt (against bounce cheque)	-Rs.30,000/-
<u>30/09/91</u> -	To intt for Sep,91(Apr,91 to Sep,91)	- Rs.15,013.85p
<u>23/03/92</u> -	By payment of dues(intt & pricl.)	- Rs.50,000/-
<u>31/03/92</u> -	By payment of dues (principal)	- Rs.50,000/-
<u>31/03/92</u> -	To intt for Mar,92(Oct,91 to Mar,1992)	- Rs.15,806.25p
<u>30/09/92</u> -	To intt for Sep,92 (Apr,92 to September,1992)	- Rs.9,143.80p
<u>20/11/92</u> -	By payment of dues (interest)	- Rs.10,000/-
<u>31/03/93</u> -	To intt for Mar,93 (Oct,92 to March,1993)	- Rs.9,048.30p
<u>30/09/93</u> -	To intt for Sep,93 (April,93 to September,1993)	- Rs.9,846.55p
<u>17/11/93</u> -	By payment of intt dues Mar,93	- Rs.9,048.30p
<u>17/11/93</u> -	By payment of intt dues Sep,93-	Rs.9,846.55p
<u>17/11/93</u> -	By payment of dues (intt & pricl)-	Rs.41,105.15p
<u>31/03/94</u> -	To intt for Mar,94( Oct,93 to March,1994)	- Rs.6,127.55p

23. From the above calculation of the applicant, it appears that certain amounts have been deposited by the borrower to clear the loan balance. However, the balance increased day by

day due to failure of deposit and regular clearance of dues. Apart from the ledger account No.907 in the name of the opposite party; Joga Narayan Baruah, discloses that

<b><u>01.04.1992- To balance</u></b>	<b>= Rs.1,10,833.77p</b>
+ 30.09.1992- To intt. for Sep,1992	= Rs.9,143.80p
	= Rs.1,19,977.57p
-20.11.1992- By payment of dues- Rs.10,000/-	=
Rs.1,09,977.57p	
+31.03.1993- To intt, for March,1993	-Rs.9,048.30p
=Rs.1,19,025.87p	
<b><u>31.03.1993- By balance</u></b>	<b>= Rs.1,19,025.87p</b>
<b><u>01.04.1993- To balance</u></b>	<b>= Rs.1,19,025.87p</b>
+30.09.1993- To intt, for September,1993	=
Rs.9,846.55p	= Rs.1,28,872.42p
- 17.11.1993- By payment of intt, dues Mar,93	=
Rs.9,048.30p	
	= Rs.1,19,824.12p
-17.11.1993- By payment of intt, dues Sep,93	=
Rs.9,846.55p	= Rs.1,09,977.57p
-17.11.1993- By payment of dues	= Rs.41,105.15p
	= Rs.68,872.42p
+31.03.1994- To intt, for 31.03.1994	= Rs.6,127.55p
	= Rs.74,999.97p
<b><u>01.04.1994- To balance</u></b>	<b>= Rs.74,999.97p</b>
+ 30.09.1994- To intt, for Sep,1994	= Rs.6,204.45p
	= Rs.81,204.42p
+ 31.03.1995- To intt, for Mar,1995	= Rs.6,680.95p

	= Rs.87,885.37p
<b><u>31.03.1995- To balance</u></b>	<b>= Rs.87,885.37p</b>
+ 30.09.1995- To intt, for Sep,1995	= Rs.7,270.40p
	= Rs.95,155.77p
+ 30.03.1996- To intt, for Mar,1996	= Rs.7,850.35p
<b><u>01.04.1996- To balance</u></b>	<b>= Rs.1,03,006.12p</b>
+ 30.09.1996- To intt, for Sep,1996	= Rs.8,498/-
	= Rs.1,11,504.12p
+ 31.03.1997- To intt, for Mar,1997	= Rs.9,173.90p
<b><u>01.04.1997- To balance</u></b>	<b>= Rs.1,20,678.02p</b>
+ 30.09.1997- To intt, for Sep,1997	= Rs.9,983.20p
	= Rs.1,30,661.22p
+ 31.03.1998- To intt, for Mar,1998	= Rs.10,750/-
<b><u>31.03.1998- To balance</u></b>	<b>= Rs.1,41,411.22p</b>
+ 30.09.1998- To intt, for Sep,1998	= Rs.11,698/-
	<b>= <u>Rs.1,53,109.22p</u></b>

24. Thus, the calculation of interest on the balance unpaid by the opposite parties shows ever increase of balance amount which remained for payment to the applicant as on 30.09.1998 with interest @ 12.5% p.a., compounded half yearly from 01.10.98. The above calculation of the interest on the principal amount as agreed upon by the opposite parties as well as, the evidence and materials on record, is remained un rebutted and unchallenged. Hence, in absence of any proof otherwise, it appears that the opposite parties are liable to pay the amount as calculated above to the applicant with the interest agreed

upon between the parties. The opposite parties completely failed to pay the amount of loan with interest as agreed upon to the applicant in terms of agreement entered into. Accordingly, the petition of the applicant is allowed with following reliefs :-

i. Sale of the properties mortgaged/hypothecated in favour of the applicant and described in the Schedule-A & B to the petition and for realization of the dues by attachment and sale of the personal properties of the opposite parties jointly and severally in the event of sale properties described in the Schedule-A & B are not adequate to recover the said dues;

ii. Payment of the sale proceeds towards protento satisfaction of the applicant's dues of Rs.1,56,341.07paise calculated up to 30.09.1998 together with interest @ 12.5% per annum compounded half yearly from 01.10.98 till realization of the dues with cost of litigation.

25 Accordingly, the instant petition of the applicant stands disposed of.

District Judge

Tinsukia