

Form No. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT

District: Jorhat

IN THE COURT OF MUNSIFF NO.1, JORHAT*Present:* Shri Jaspal Singh, AJS.Saturday, the 3rd day of September, 2011.**Money Suit No. 9 of 2010**Canara Bank.....*Plaintiff**versus*

1. Shri Ajoy Prasad Khound

2. Shri Hemen Changkakoti.....*Defendants*

This suit coming on for final hearing on 29.11.2010, 05.02.2011 and 19.08.2011 in presence of –

Advocate for the Plaintiff: Smt. B. Changmai

Advocate for the Defendant No.1: Shri Purushottam Didwania

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

J U D G M E N T

1. The case of the plaintiff, in brief, is that the defendant no.1 on 19.02.2004 applied to the plaintiff Bank for grant of personal loan of Rs.90,000/- under the category of Can Budget and the defendant no.2 also signed in the application form as co-obligant/guarantor of the defendant no.1. The plaintiff Bank, on 22.03.2004, sanctioned a loan of Rs.90,000/- to the defendant no.1. The loan was repayable in 48 equated monthly instalments @ Rs.2410/-. As per terms and conditions of the sanctioning letter dated 22.03.2004, both the defendants executed Demand Promissory Note (DPN), Take Delivery Letter to DPN and also submitted their Salary

Certificate, Irrevocable Mandate for Deduction of Loan Amount from Salary, and also Letter addressed to the plaintiff Bank by their salary disbursement officer.

2. The defendant no.1 availed the loan from the very day of inception but failed to repay the loan amount in accordance with terms and conditions of the Bank. The said account of the defendant no.1 became irregular from February, 2006, and in spite of request the defendant no.1 failed or neglected to regularize the said account. The defendants no. 1 and 2, however, confirmed and acknowledged their indebtedness on 19.03.2007 and in the acknowledgement they confirmed and acknowledged that a sum of Rs.59,917/- exclusive of interest from 01.10.2006 is due and outstanding against the loan account of the defendant no.1.

3. After repeated requests when the defendant no.1 failed to regularize his loan account, the plaintiff Bank finally issued registered notice to the defendant no.1 on 21.02.09 and also addressed a letter to the Deputy Commissioner, Jorhat, requesting for kind help in recovery of the over-due loan of the defendant no.1 who is an employee under Deputy Commissioner's establishment but all efforts made by the plaintiff Bank went in vain. The defendant no.1 did not respond to the notice issued to him.

4. The defendant no.1 deliberately withheld the payment which he is legally liable to pay to the plaintiff Bank. So, both defendant no.1 and defendant no.2 (as co-obligant) are jointly and severally liable to pay the outstanding amount. The plaintiff Bank has, therefore,

instituted the instant suit praying *inter alia* for a decree for recovery of Rs.92,007/- with interest, *pendente lite* and future, @ 17% per annum till full and final recovery of the amount against both the defendants jointly and severally.

5. The defendant no.1 contested this suit by filing a written statement but the case as against the defendant no.2 proceeded *ex parte*. The defendant no.1 has averred in his written statement *inter alia* that: (1) the suit is barred by the law of limitation; (2) the suit is bad for non-joinder of necessary parties as the disbursing officer of the defendant no.1 ought to have been impleaded as a necessary party; and (3) the defendant no.1 never acknowledged his liability on 19.03.2007.

6. On the basis of the pleadings, the following issues were framed in this suit:

ISSUES

Issue No.1: Whether there is any cause of action for the suit?

Issue No.2: Whether the suit is barred by limitation?

Issue No.3: Whether the defendant no.1 acknowledged his liability on 19.03.2007?

Issue No.4: Whether the plaintiff is entitled to recover Rs.92,007/- from the defendants?

Issue No.5: Whether the plaintiff is entitled to get interest @ 17% p.a. from the date of filing of the suit until full and final recovery of the decretal amount?

Issue No.6: To what other relief(s) are the parties entitled?

7. The plaintiff examined Shri Jitendra Nath Deori (PW1), the Manager of the plaintiff Bank, Jorhat Branch, in support of its case. The defendant no.1, on the other hand, declined to examine any witness.

DISCUSSION, DECISION AND REASONS THEREFOR

8. I have gone through the pleadings of the parties and the evidence tendered on record, and heard both the parties at length.

Decision on Issue No.1 with reasons

9. The plaintiff Bank has instituted this suit for recovery of loan amount with interest. The averments made in the plaint as well as the documents annexed therewith clearly indicate that there is definitely some cause of action for this suit. This issue is answered accordingly.

Decision on Issue No.3 with reasons

10. PW1 has deposed in his evidence on affidavit *inter alia* that on 19.03.2007 the defendants confirmed and acknowledged their indebtedness by signing on the Acknowledgement of Debt and Security (Ext.10). They confirmed and acknowledged that a sum of Rs.59,917/- exclusive of interest from 01.10.2006 was due and outstanding against the loan account of the defendant no.1. However, in his written statement, the defendant no.1 has stated that he never acknowledged his liability on 19.03.2007. In his cross-examination, PW1 has denied the suggestion put by the learned counsel for the defendant no.1 that Exts. 10(a) and 10(b) are not the signatures of the defendant no.1 in Ext.10. He has also stated in his

cross-examination that the addresses of the witnesses have not been shown in Ext.10. He has also denied the suggestions put by the learned counsel for the defendant no.1 that the handwritings in Ext.10 are of different persons and that Ext.10 is a false document.

11. It is trite law that facts admitted need not be proved. Therefore, had the defendant no.1 admitted the contents/execution of Ext.10 by not disputing the writings and signatures therein during the cross-examination of PW1, Ext.10 would have been proved right away. But the same is not the case here. The learned counsel for the defendant no.1 has questioned the execution of Ext.10 in the cross-examination of PW1. When the contents of a document are not admitted, burden is always on the party relying on the document to prove the contents thereof. So, it was for the plaintiff to prove the execution of Ext.10 and the contents thereof. One of the prominent modes of proof of handwriting/signature in a document is to examine the person or persons in whose presence the document was written or signed, or the person or persons acquainted with the handwriting or signature of the person alleged to have signed or written the document. From the body of Ext.10, it appears that two persons had allegedly signed the same as witnesses, one of whom happens to be S.S. Acharjee and the name of another is illegible. The plaintiff has not examined those two witnesses in this case to prove the contents/execution of Ext.10. Had their addresses been shown in Ext.10, this Court would have summoned and examined them as Court witnesses.

12. This apart, Ext.10, on close scrutiny, discloses the following shortcomings, I would say:

First, it appears to be written (filled up) by different persons and even in different inks. For example, in the space provided at the top for filling up the name of borrower/co-obligant, the names of the defendant no.1 and defendant no.2 appear to be written by different persons and with different pens. But it is certain that the names are not written by the defendants themselves, for, their so-called signatures at the bottom are in different inks, different to the inks used at the top.

Secondly, the space/gap provided in the following line appearing at the end of the body of Ext.1 is not found to have been filled up:

“I/We also confirm that the last acknowledgement of debt/security was executed by me/us on.....”

13. In the premises, I have no hesitation in arriving at a conclusion that the plaintiff has failed to establish that the defendant no.1 acknowledged his liability on 19.03.2007. Accordingly, this issue is answered in the negative.

Decision on Issue No.2 with reasons

14. It is an admitted case of both the parties that the defendant no.1 availed a personal loan of Rs.90,000/- from the plaintiff Bank and the loan was sanctioned by the plaintiff Bank on the basis of a promissory note (Ext.3) and Take Delivery Letter to Demand Promissory Note (Ext.4) containing the terms of repayment. It is also not in dispute that the loan was not discharged, as the defendant no.1 committed default in payment of instalments as

agreed to between the parties. The relief claimed by the plaintiff Bank is resisted by the defendant no.1 on ground *inter alia* that the suit is barred by limitation.

15. Admittedly, the loan arrangement made between the parties to the suit is that the loan amount with interest should be paid in 48 monthly instalments of Rs.2410/-. The monthly instalment was fixed in such a way that the instalment would comprise a portion of the principal as well as the interest. The loan was advanced on 22.03.2004. The first instalment was payable in the month of April, 2004 and the last instalment was payable in the month of March, 2008. Admittedly, the defendant no.1 promptly paid the monthly instalments upto January, 2006. Thereafter, he did not pay any instalment. So the instalments for the months of February 2006 to March 2008 were outstanding dues.

16. As per Article 36 of the Schedule to the Limitation Act, 1963, the period of limitation for suit for recovery of money advanced on a promissory-note or bond payable by instalments is three years and the period begins on the expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.

17. The suit was filed on 16.03.2010. I have already concluded in my decision on Issue No.3 that the plaintiff has failed to establish that the defendant no.1 acknowledged his liability on 19.03.2007. Therefore, the suit claim for the instalments that fell due upto March 2007 shall be affected by the bar of limitation. So far as the instalments that fell due from April 2007 till the end of

the agreed period of repayment, i.e. March 2008, the claim of the plaintiff is not barred by limitation because the claim is made within three years from the date on which they fell due. The total amount payable for twelve instalments from April 2007 to March 2008 at the rate of Rs.2410/- per instalment comes to Rs.28,920/-. The claim of the plaintiff to the above said extent alone stands unaffected by the bar of limitation. So far as the rest of the claim is concerned, it clearly stands barred by limitation. Therefore, I arrive at a conclusion that the claim of the plaintiff to an extent of Rs.28,920/- alone shall be sustained and that the prayer of the plaintiff in respect of the remaining portion of the claim has got to be disallowed as the same is barred by limitation. This issue is decided accordingly.

Decision on Issue No.4 with reasons

18. The issue in question is as to whether the plaintiff is entitled to recover Rs.92,007/- from the defendants. I have concluded in my discussion on Issue No.3 that the claim of the plaintiff to an extent of Rs.28,920/- alone shall be sustained and that the prayer of the plaintiff in respect of the remaining portion of the claim has got to be disallowed as the same is barred by limitation. Therefore, the plaintiff is entitled to recover an amount of Rs.28,920/- from the defendants. This issue is answered accordingly.

Decision on Issue No.5 with reasons

19. The issue in question is as to whether the plaintiff is entitled to get interest @ 17% p.a. from the date of filing of the suit until full and final recovery of the decretal

amount. In view of my decision on Issue No.3, the plaintiff is entitled to recover an amount of Rs.28,920/- from the defendants. The contractual rate of interest as per the sanctioning letter (Ext.2) and promissory note (Ext.3) was 13% p.a. Therefore, by application of the provision of Section 34 of the Code of Civil Procedure, the plaintiff is entitled to recover, in addition to the said amount of Rs.28,920/-, interest thereon at the rate of 13% p.a. from the date of the suit to the date of the decree, and also further interest thereon at the rate of 13% p.a. from the date of the decree till realization. This issue is answered accordingly.

Decision on Issue No.6 with reasons

20. Apart from the relief(s) as mentioned in the foregoing issues, the plaintiff Bank is also entitled to the costs of this suit. This issue is answered accordingly.

ORDER

The suit is partly decreed on contest with costs. The plaintiff Bank is entitled to recover, from the defendants, an amount of Rs.28,920/- along with interest thereon @ 13% p.a. with effect from the date of this suit till the date of the decree, and further interest thereon @ 13% p.a. from the date of the decree till realization.

Prepare a decree accordingly.

Given under my hand and the seal of this Court on this the 3rd day of September, 2011 at Jorhat.

APPENDIX

Witness examined by the Plaintiff:

Shri Jitendra Nath Deori (PW1)

Documents exhibited by the Plaintiff:

1. Loan Application (Ext.1)
2. Sanction Letter (Ext.2)
3. D.P. Note (Ext.3)
4. Take Delivery Letter (Ext.4)
5. Salary Certificate (Ext.5)
6. Irrevocable Mandate (Ext.6)
7. Letter addressed to the plaintiff (Ext.7)
8. Particulars of co-obligant (Ext.8)
9. Letter executed by the defendants (Ext.9)
10. Acknowledgement of Debt (Ext.10)
11. Acceptance of loan by defendants (Ext.11)
12. Letter addressed to D.C., Jorhat (Ext.12)
13. Demand Notice (Ext.13)
14. Certified copy of Statement of A/C (Ext.14)
15. Undertaking letter (Ext.15)
16. Specimen Signature Card (Ext.16)
17. Credit Report (Ext.17)
18. Letter executed by the defendant No.2 (Ext.18)

Witness examined by the Defendants:

None

Documents exhibited by the Defendants:

None

(SHRI JASPAL SINGH)

Munsiff No.1:: Jorhat