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Money Suit No.395/2009

HIGH COURT FORM No.(J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District...Kamrup

In the Court of Munsiff No.3, Guwahati

Present :- Mrs Audri Bhattacharyya

Tuesday, the 3rd Day of May, 2011

Money Suit NO.395 OF 2009

Shri Abhijit BorgohainPlaintiff(s)/Petitioner(s)

-Versus-

Shri Naba Kumar Buragohain.....Defendant(s)/Opp. Party(ies)

Money Suit No.395/2009

Give dated or dates This Suit/Case coming on for final

hearing on 18-04-2011 in the presence of

Mr.Rupjyoti Bordoloi.}

Shri Pankaj Pratim Dutta}..... Advocate(s) for Plaintiff.

None }.....Advocate(s) for Defendant.

and having stood for consideration to this day the Court

delivered the following judgment:

JUGDMENT

This is a suit for realization of loan amount. The suit has been filed by Shri Abhijit Borgohain against the defendant Shri Naba Kr. Buragohain.

The brief facts of the plaintiff's suit is that the defendant Shri Naba Kr. Buragohain on 15-06-2001 had approached the Plaintiff at his Guwahati residence for a personal Loan of Rs. 1,15,000/- to meet his financial crisis and untold hardship with a promise to return the same as and when the Plaintiff asked for it .Considering the long good relationship with the defendant, the Plaintiff handed over the said amount to the defendant in cash by collecting the same from various sources.

The defendant again on 09-04-2007 approached the plaintiff to provide him another amount of Rs. 6000/- for the purpose of his treatment and further promised to repay this amount with the earlier amount of Rs. 1,15,000/- within 30th April, 2007. The said amount of Rs. 6000/- was paid to the defendant in cash. As the defendant did not repay the Loan amount within the month of April, 2007, the Plaintiff personally approached the defendant in his residence . On such request on 08-06-2007, the defendant promised to repay the loan amount within 31-12-2007 and also executed one undertaking in favour of the Plaintiff in presence of witnesses to that effect. The defendant inspite of his promise failed to repay the loan amount of Rs. 1,21,000/- and out of apprehension that the plaintiff would be deprived of his money, the instant suit was filed. It is therefore prayed by the Plaintiff

that decree may be passed in favour of the Plaintiff for realization of the Loan amount of Rs. 1,21,000/- along with interest @ 18% from the date of taking of the Loan till realization and cost of the suit.

The defendant contested the suit by filling written statement wherein it is stated that the defendant never took a Loan of Rs. 1,15,000/- from the Plaintiff . The Defendant also denied that he approached the Plaintiff for a sum of Rs. 6000/- as Loan on 09-04-2007 only with a promise to repay this amount along with earlier amount within 30-04-2007 . The defendant further stated in his written statement that the Plaintiff took the signature of the defendant on a blank paper and subsequently wrote the contents in the blank paper to squeeze the defendant. The defendant only admitted that he received only Rs. 6000/- from the Plaintiff in the year 2007 and the plaintiff obtained the signature of the defendant in a blank paper on revenue stamp. The defendant prays to dismiss the suit with cost.

Upon pleadings, the following issues were framed:-

- 1) Whether the suit is barred by Limitation?
- 2) Whether on 15-06-2001 the defendant took a sum of Rs. 1,15,000/- (Rupees One Lakh Fifteen Thousand as loan from the Plaintiff?
- 3) Whether on 09-04-2007 the defendant took a sun of Rs. 6,000 (Rupees Six Thousand) as loan from the Plaintiff?
- 4) Whether the Plaintiff is entitled to realize a sum of Rs. 1,21,000/- from the defendant?
- 5) Whether the Plaintiff is entitled to get relief as prayed for?
- 6) To what relief is the Plaintiff entitled to?

During the course of hearing, evidence on affidavit of 5 (five) Pws were submitted. But defendant side did not come up to cross examine the Plaintiff Witnesses. The defendant side did not adduce any evidence.

DISCUSSIONS, DECISION, AND REASONS THEREOF:

I have carefully examined the evidence and perused the documents. The defendant side though filed written statement, did not take part in cross examination , nor adduced evidence in their support. My decision on the above issues are as follows:-

ISSUE NO. 1

PW1, Shri Abhijit Borgohain deposed in his evidence on affidavit that the Plaintiff personally approached the defendant in his residence and requested him to repay the loan amount. On such request on 08-06-2007, the defendant promised to repay the loan amount within 31-12-2007 and also executed one undertaking in favour of the Plaintiff in presence of witnesses to that effect.

PW-1 submitted the Photocopy of the undertaking/handnote dated 08-06-07as **Exhibit 1** and **Exhibit 1(1)** is the signature of defendant.

The suit was filed on 18-06-09, which is within 3 years from the date of the said undertaking/handnote.

In view of the above, the suit is filed within the period of limitation. The said issue is decided in negative.

ISSUE NO. 2

PW1, Shri Abhijit Borgohain stated in his evidence on affidavit that Shri Naba Kr. Buragohain on 15-06-2001 had approached the Plaintiff at his Guwahati residence for a personal Loan of Rs. 1,15,000/- to meet his financial crisis and untold hardship with a promise to return the same as and when the Plaintiff asked for it .Considering the long good relationship with the defendant, the Plaintiff handed over the said amount to the defendant in cash by collecting the same from various sources.

In this respect the PW1 exhibited one document, **EXHIBIT 1** , which is the undertaking/Hand note dated 08-06-07, whereby the defendant acknowledged the taking of loan in total of Rs. Rs.1,21,000/- .

PW2, Shri Sasanka Borah deposed in his evidence on affidavit that both the parties were known to him and the plaintiff was his colleague. The plaintiff on 15-06-2001 approached him asking for Rs. 20,000/- to give the same to Shri Naba Kr. Buragohain, who was in need of money and PW2 handed over Rs. 20,000/- to the plaintiff in his residence at Kailash Nagar, Beltola, Guwahati-8. Thereafter the Plaintiff handed over the said amount of Rs. 20,000/- along with another Rs. 95,000/- to the defendant in the presence of PW2 and the father of the plaintiff.

PW3, Shri Bhaskarjit Borgohain deposed that the defendant approached the plaintiff, who is his brother, for Rs. 6,000/- for the purpose of his treatment and the plaintiff paid the said amount of Rs. 6,000/- to the defendant. The defendant had promised the plaintiff to repay the said amount along with the earlier loan amount of Rs. 1,15,000/- within 30th April, 2007.

PW4, Shri Dimbeswar Borgohain, who is the father of the plaintiff stated in his evidence that the plaintiff approached him for financial assistance of Rs. 80,000/- to give the same to the defendant, who was in need of money amounting to Rs. 1,15,000/-. The Plaintiff somehow managed to arrange Rs. 35,000/- and considering the good relationship between the plaintiff and the defendant, PW4 gave the said amount of Rs. 80,000/- to the plaintiff who in turn gave the same along with another 35,000/- to the defendant in his presence and in the presence of Shri Sasanka Borah.

PW5, Shri Ratul Borah deposed that the defendant had executed an undertaking in presence of plaintiff, himself and two other friends namely Shri Bijoy Das and Shri Amiya Saikia and acknowledged receipt of Rs. 1,21,000/- in total in two different occasions from the plaintiff as loan. The said undertaking was written by the plaintiff as per instruction of the defendant in front of him and other two witnesses. He stated that he also saw the defendant put his signature over the affixed Revenue stamps immediately in their presence. He exhibited the following document:

Exhibit 1 is the undertaking dated 08-06-2007.

Exhibit 1(1) is the signature of the defendant, Naba Kr. Buragohain.

Exhi 1(2) and 1(4) are the signatures of Shri Bijoy Das and Shri Amiya Saikia.

Exhibit 1(3) is his signature as witness.

Moreover the defendant did not deny in his written statement that the signature on the promissory note was not his signature. In fact, it is admitted by the defendant in his written statement that he signed over revenue stamp paper. What the defendant stated in his written statement is that he received only Rs. 6000/- from the Plaintiff in the year 2007 and the plaintiff obtained the signature of the defendant in a blank paper on revenue stamp and later on wrote the contents in the blank paper with a view to squeeze the amount from the defendant.

In this respect the defendant did not adduce any evidence to support his contention nor cross examined the witnesses of the plaintiff side . As such the whole evidence adduced on behalf of the plaintiff remained unrebutted throughout.

In view of the above discussion, this issue is decided in affirmative.

ISSUE NO. 3

The defendant stated in his written statement that he received only Rs. 6000/- from the Plaintiff in the year 2007 and the plaintiff obtained the signature of the defendant in a blank paper on revenue stamp.

Pw1, Shri Abhijit Borgohain stated in his evidence on affidavit that the defendant on 09-04-2007 approached the plaintiff to provide him another amount of Rs. 6000/- for the purpose of his treatment and further promised to repay this amount with the earlier amount of Rs. 1,15,000/- within 30th April, 2007. The said amount of Rs. 6000/- was paid to the defendant in cash. On 08-06-2007, the defendant promised to repay the loan amount within 31-12-2007 and also executed one undertaking in favour of the Plaintiff in presence of witnesses to that effect.

PW1 exhibited one document, **EXHIBIT 1**, which is the undertaking/Hand note dated 08-06-07.

PW3, Shri Bhaskarjit Borgohain supported the evidence of the pw1.

In view of the above discussion, this issue is decided in affirmative.

ISSUE NO. 4

In light of the discussion and decision arrived at issue no. 3 and 4, I am of the considered opinion that the Plaintiff is entitled to realize a sum of Rs. 121,000/- from the defendant.

Hence this issue is decided in affirmative.

ISSUE NO. 5

The plaintiff prayed for realization of Rs. 1,15,000/- along with the interest @ 18% per annum on the principal amount from the date of

taking loan and future interest @ 18% on principal from the date of filling of the suit till date of realization. along with the cost.

I have gone through the Exhibit 1 in this respect. There is no rate of interest mentioned in the said handnote/undertaking on the basis of which the Plaintiff has based his claim.

In absence of any rate of interest mentioned therein, the plaintiff is entitled to a decree for the realization of the principal money along with the cost of the suit only .

ISSUE no. 6

The plaintiff is entitled to the relief as ordered below.

ORDER

The suit is decreed on contest with cost.

The plaintiff will realize a sum of Rs.1,21000/-(Rupees one Lakh Twenty One Thousand) from the defendant along with the cost of the suit

Prepare decree accordingly.

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

Mrs Audri Bhattacharyya,
Munsiff No.3,Kamrup

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ANNEXURE

Name of witness:-

- i) **PW1, Shri Abhijit Borgohain**
- ii) **PW2, Shri Sasanka Borah**
- iii) **PW3, Shri Bhaskarjit Borgohain**
- iv) **PW4, Shri Dimbeswar Borgohain**
- v) **PW5, Shri Ratul Borah**

List of document exhibited:-

EXHIBIT 1 , which is the undertaking/Hand note dated 08-06-07