

Form no. (J) 2

Heading of Judgment in original suit/ case

**In the original court of the Munsiff No. 4, Kamrup,  
Guwahati**

**Present** :- Mrs. Achma Rahman, AJS

**Dated** :- 19<sup>th</sup> of September, 2011

**MONEY SUIT NO. :- 134 / 2011**

Canara Bank

...Plaintiff /  
Petitioner

Versus

1. Sri Moheswar Das
2. Sri Uken Boro.

.....Defendants/  
Opposite parties

3. Additional Superintendent of  
Police

Profoma Defandant

This suit/ case coming on for final hearing on 16.09.2010 in the presence of:-

Miss A Dev, Advocate for the plaintiff

And None for the defendants

And having stood for consideration to this day, the court delivered the following judgment.

**JUDGEMENT**

The plaintiff has instituted this suit against the defendants for recovery of Rs. 57,733/- (Rupees Fifty Seven thousand Seven hundred Thirty Three) only with further interest @ 16.5% compounded monthly from 02-04-11 to 07-04-11 and from 08-04-11 i.e from the date of filing of the suit till realization of the decretal amount. The Plaintiff's case in brief is that plaintiff is a Nationalized Bank, constituted under Banking Companies (Acquisition & Transfer of Undertaking) Act 1970, with its central office at Bangalore and many other branch throughout the country including the branch at Sikh Temple, Panbazar, Guwahati -1 known as Sikh Temple Branch.

That the defendant No. 1 Sri Moheswar Das, an employee of the office of the Deputy Superintendent of Police, Panbazar, Guwahati took a loan amounting to Rs.29,000/- (Rupees Twenty Nine Thousand ) only on the terms and condition that the loan should be repaid by monthly installment of Rs. 800/- only in 48 equal instalment with interest at the rate of 14% per annum compounded quarterly for value received which has been revised from time to time and now it is fixed at 14.5% and in case of default the defendants are liable to pay overdue interest at the rate of 2%. Defendant no. 2 Sri Uken Boro a colleague of defendant no. 1 stood as Co-obligant for due repayment of loan of defendant no. 1. Defendant No. 3 was the Deputy Superintendent of Police, Gauhati City, Panbazar. Defendant no. 1 has authorized defendant No 3 to deduct the installment out of his salary.

The defendant no.1 & 2 have defaulted in repayment of loan amount of in spite of various letter/ notices of demand sent by the plaintiff bank.

The summons were served upon the defendants but defendant no 2 failed to appear and contest the suit and defendant no 1 & 3 though appeared but thereafter defaulted for which the suit proceeded ex-parte against the defendants.

The plaintiff bank in support of their case filed evidence on Affidavit of PW-1, Sri Ankun Sharma and exhibited as may as 18 documents in support of their case.

Plaintiff has exhibited the following documents in support of the suit.

**Exhibit No. 1:-** Loan application of the defendant no. 1.

**Exhibit No. 2:-** Sanction Memorandum.

**Exhibit No. 3** Delivery letter to DPN dated 23.12.2002.

**Exhibit No. 4:-**Pronote dates 23.12.2002..

**Exhibit No. 5:-** Declaration regarding canbudget loan account.

**Exhibit No.6:-** Irraevocable mandate for deduction from salary.

**Exhibit No. 7:-** Salary statement of defendant no. 1.

**Exhibit No. 8:-** Acknowledgment of Debt and Security dated 04.09.2008.

**Exhibit No. 9:-** Notice dtd 11-01-2007 issued to defendant no 1.

**Exhibit No. 10:-** Advocate's notice

**Exhibit No. 11 & 12 :-** Postal receipt dated 13.10.2007-.

**Exhibit No.13 :-** Acknowledgment of Debt and Security dated 17.06.2008

**Exhibit No. 14:-** Advocate's notice dtd 11-03-11

**Exhibit No. 15 & 16 :- :-** Postal receipt.

**Exhibit No. 17 :-** A/D Card.

**Exhibit No. 18 :-** Statement of account.

\_ As there is no written statement in the suit and hence no issues are framed, but in order to arrive at a definite finding as regards the matter in issue, I have formulated the following points for determination.

**POINTS FOR DETERMINATION :-**

1. Whether the plaintiff advanced a loan of Rs. 29,000/- (Rupees Twenty Nine Thousand) only to defendant No 1 ?
2. Whether the defendant No. 2 stood as co-obligant of defendant no. 1 in respect of re-payment of the aforesaid loan ?
3. Whether the defendant no. 1 and 2 defaulted in repayment of the loan ?
4. Whether the plaintiff is entitled to a decree as prayed for ?

**DISCUSSION, DECISION AND REASONS THEREOF :-**

**Point No. 1 and 2 :-**

Let me discuss the relevant portion of the evidence on record to decide these points.

PW-1 Sri ANKUN sharma in his evidence stated that the defendant no. 1 applied to the plaintiff bank for a loan of Rs. 29,000/- (Rupees Twenty Nine Thousand) only which was sanctioned by the plaintiff bank on 23.12.2002. Loan application and delivery letter to DPN dated 23.12.2002 are exhibited as Exhibit No. 1 and 3 respectively. Wherein Exhibit No. 1 (i) , 3(i) and 3(ii) are the signatures of the defendant no. 1 and Exhibit 1(ii), 3(iii) and 3(iv) are the signatures of defendant no 2.

PW-1 also exhibited a prenote executed by both defendant no. 1 and 2 promising to pay Canara Bank of Rs. 29,000/- with interest .

The irrevocable mandate executed by defendant no. 1 to the Deputy Superintendent of Police, Gauhati City, Panbazar has been exhibited as Exhibit No. 6, wherein Exhibit No. 6 (i) is the signature of the defendant no 1.

From the above discussion I am of the considered opinion that plaintiff bank advance the loan amounting to Rs. 29,000/- to the defendant no. 1 and defendant no. 2 stood as co-obligent for the repayment of the aforesaid loan amount. On careful perusal of the deposition as well as the exhibits referred above, I have found no discrepancy between the plaintiff case and the available evidence on record. Moreover, the statement of the plaintiff as appeared in the plaint and in the evidence referred above have neither been contested by filing written statement nor been cross examined by the defendant side. It is the principles of law, that if a proceeding is not denied by the other side, then the same is deemed to be admitted. In the instant case also, the defendant has not denied the statement of evidence of the plaintiff side and as such the statement of evidence to the effect of advancing a loan of Rs. 29,000/- (Rupees Twenty Nine Thousand ) only to the defendant no. 1 and the defendant no.2 standing as co-obligant of defendant no. 1 are deemed to have been admitted.

Hence point no. 1 and 2 are decided in positive way and in favour of the plaintiff.

**Point no. 3:-**

PW -1 has stated that the defendant no. 1 failed to repay the loan installment inspite of repeated demand made by the plaintiff. Plaintiff bank issued notice on 11.01.2007 to defendant no.1 and again issued Advocate notice on 13-10-07 with a copy to defendant no. 2 asking for repayment of due amount. The said notices are exhibited as Exhibit no 9 & 10. The postal receipts of sending exhibit no 10 are exhibited as Exhibit no 11 & 12. On 07.12.2005 defendant no. 1 and 2 acknowledged the debt by executing acknowledgment of debt and security of Rs. 27,781/- which is exhibited as Exhibit No. 8 wherein 8(i) and 8 (ii) are signatures of defendant no. 1 & 2 respectively. Acknowledgment of debt and security of Rs. 30,087/-dated 17-06-08 executed by defendant no. 1 & 2 is exhibited as Exhibit No. 13 wherein 13(i) and 13 (ii) are signatures of defendant no. 1 & 2 respectively. There is nothing on the record to disbelieve the contention of the plaintiff as the statements made by PW-1 tally with plaintiff and are supported by documentary evidences i.e. the exhibits referred above.

Moreover, the aforesaid contentions of the plaintiff were neither challenged by the defendant by filing written statement nor they have cross examined PW-1. As the pleadings is not denied by the defendant and hence the same is deemed to be admitted.

Hence, the above discussion builds confidence on me to hold that the defendant had defaulted in payment of the loan amount referred above. Point no.3 is accordingly decided in positive and against the defendants.

**Point no. 4 :-**

While deciding issue no. 1 and 2 it is decided that the defendant no. 1 took the loan of Rs. 29,000/- (Rupees Twenty Nine Thousand) only

by executing the loan agreement and the defendant no.2 was the co-obligant for repayment of the loan in question.

In issue no. 3 it was decided that the defendants have defaulted in repayment of the installment of the aforesaid loan. In view of the decisions of point no. 1, 2 and 3, I am of the considered opinion that the plaintiff is entitled to the recovery of Rs. 57,733/- with future interest of @ 16.5% compounded monthly on Rs. 57,733/- from 02-04-11 to 07-04-11 and from the date of institution of the suit till realization of the decretal amount against the defendants jointly and severally.

In addition to what has been stated above the plaintiff is entitled to the cost of the suit from defendant no. 1 and 2, whereas the defendants are not entitled to any relief.

Therefore, point No. 4 is decided in favour of the plaintiff.

## **ORDER**

In view of the above discussions, the suit of the plaintiff is decreed ex-parte with costs. It is hereby decreed and directed that the defendant no. 1 and 2 are jointly and severally liable to pay the amount of Rs. 57,733/- (Rupees Fifty Seven thousand Seven Hundred and Thirty Three) only to the plaintiff and further directed to pay interest @ 16.5% compounded quarterly on Rs. 57,733/- from 02-04-11 to 07-04-11 and from the date of institution of the suit till realization of the decretal amount

It is further directed that the defendant no. 1 and 2 are also jointly and severally are liable to pay the costs of the suit to the plaintiff.

Prepare the decree accordingly.

Given under the hand and seal of this court on this the 19<sup>th</sup> day of September, 2011 at Kamrup, Guwahati.

**Munsiff No. 4, Kamrup, Guwahati**

**APPENDIX**

1. Witness for the plaintiff :- PW-1 – Sri Ankun sharma.
2. Witness for the defendant:- Nil
3. Exhibits for the plaintiff :-

**Exhibit No. 1:-** Loan application of the defendant no. 1.

**Exhibit No. 2:-** Sanction Memorandum.

**Exhibit No. 3** Delivery letter to DPN dated 23.12.2002.

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4. Exhibits for the defendant :- Nil

**Munsiff No. 4, Kamrup, Guwahati**

