

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

**MONEY SUIT NO. :- 320 / 2008**

N.E.R.F.S Ltd.

....Plaintiff /  
Petitioner

Versus

1. Sri Tapan Kr. Das
2. Mr. Mohendra Mohan Das.

.....Defendants/  
Opposite parties

This suit/ case coming on for final hearing on 19.09.2010 in the presence of:-

Akbar Ali Ahmed, Mofidul Haque and Forida Rahman Advocate  
for the plaintiff

And

Dr. P.C. Mazumder and Naba Kr. Haloi and M. Deka Advocate 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. 36,900/- (Rupees Thirty Six thousand Nine hundred ) only with further interest @ 14.5% per annum 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 Private Limited Company, constituted and registered under Companies Act, 1956 , having its Head office at G-14 New Krishna Park, New Delhi and branch office at Star Enclave, G.N.B Road, Panbazar, Guwahati -1 and is carrying non-banking financial business.

That the defendant No. 1 Sri Tapan Kumar Das, took a loan amounting to Rs.1,00,000/- (Rupees one lakh ) only on the terms and condition that the loan should be repaid by monthly installment of Rs. 2835/- with interest at the rate of 14.5%

The defendant no.1 has defaulted in repayment of loan amount and defendant no 2, being the guarantor, also did not took any initiative for payment of the loan amount. The defendants in spite of request and notice have failed to repay the loan and hence the suit.

The summons were served upon the defendants and defendants appeared and filed W/S but thereafter defaulted. They have neither cross examined the witness of the plaintiff nor adduced any evidence in defence, hence my ld. Predecessor has proceeded the suit.

In the written statement the defendants have admitted the taking of the loan and contended that as against the principal amount of Rs 1,00,000/- (Rupees one lakh ) they have already paid Rs. 1,17,875/- (Rupees one lakh seventeen thousand eight hundred and seventy five) only. Thereafter they requested the plaintiff to liquidate the remaining outstanding liabilities. They have denied any communication made by the plaintiff in respect of demanding the outstanding loan amount.

The plaintiff in support of their case filed evidence on Affidavit of PW-1, Sri Rothangkhum Sugte and exhibited as many as 6 documents

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

**Exhibit No. 1 :- True Affidavit.**

**Exhibit No. 2:- True Affidavit of the guarantor.**

**Exhibit No. 3 :-** Loan acknowledgement receipt.

**Exhibit No. 4:-** Balance Sheet.

**Exhibit No. 5:-** Money Receipt.

**Exhibit No.6:-** Declaration.

On the basis of pleadings submitted by rival parties, following issues are framed :-

### **ISSUES**

1. Whether the suit is maintainable ?
2. Whether there is any cause of action for the suit ?
3. Whether the plaintiff is entitled to the decree for realization of Rs. 36,900/- (Rupees thirty six thousand and nine hundred) only from the defendant with interest thereon ?
4. To what relief/relief(s) the parties are entitled to ?

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

#### **Issue No 1 & 2 :-**

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

PW-1 Sri Rothangkhum Sugte in his evidence stated that the defendant no. 1 Sri Tapan Kumar Das applied to the plaintiff company for a loan of Rs. 100,000/- ( Rupees one lakh) only which was sanctioned by the plaintiff company . Defendant No 2 Mr Mohendra Mohan Das Stood as guarantor of the aforesaid loan .Defendaant No 1 availed the

loan sanctioned by the plaintiff company and executed a true affidavit which is exhibited as exhibit -1 wherein exhibit 1(i) is the signature of the managing director and exhibit 1(ii) and 1(iii) are signatures of defendant no 1. PW-1 further exhibited as exhibit 2 the true affidavit sworn by defendant no 2, wherein ext-2(i), 2(ii), 2(iii) are signatures of managing director, defendant no-1 and defendant No-2 respectively. Ext 6 is the declaration made by defendant no 1.

In view of the aforesaid discussion it is seen that defendant no -1 availed loan amounting to rupees one lacs wherein defendant no 2 stood as guarantor. Defendants themselves admitted in their W.S that after repayment of Rs 1,17,875 they stopped further payment only on the sole ground that they have repaid a substantial portion and they had requested the plaintiff to liquidate the loan amount.

I have found that both defendant no 1 & 2 by executing affidavit acknowledged their liability to repay the personal loan of Rs 100,000 with an interest of Rs 14.5% and have also bind themselves to follow the other terms & stipulations and thereafter they can't deny their liability of repayment on the ground that they have repaid a substantial portion.

In view of the aforesaid discussion, I am of considered opinion that the suit is maintainable and there is cause of action for the suit.

Therefore, issue No 1 & 2 are decided in positive and in favour of the plaintiff.

**Issue no 3 –** P.W 1 in his evidence stated that as per stipulation defendants are liable to liquidate the loan amount with 14.5% interest within five years w.e.f 8.1.04 to 8.12.08, the defendants defaulted from 9.9.07 and are liable to pay Rs 36,900 as on date of filing of the suit with other charges.

It is seen that defendants has acknowledged the loan thereafter they can't deviate from the same. Although the defendants in their W.S. denied to accept themselves as defaulter but they had not made any endeavour to rebut the same either by adducing evidence or by cross-examining plaintiff's witness and the evidence of the plaintiff side remains unchallenged for which there are no reason to disbelieve the aforesaid evidence.

Hence in my opinion the plaintiff is entitled to a decree for realization of Rs 36,900 with interest thereon.

#### **Issue No 4 -**

While deciding issue no 1 & 2, it is decided that the suit is maintainable and there is cause of action for the suit. In issue no 3, it is decided that the plaintiff is entitled for a decree of Rs 36,900 with interest thereon. In view of decisions arrived in issue no 1,2 & 3, I am of the considered opinion that the plaintiff is entitled to realize Rs 36,900 only from defendant No 1&2 with further interest @ 14.5% from the date of filing of the suit till its realization.

#### **ORDER**

In view of the above discussion, the suit of the plaintiff is decreed on contest with cost . It is hereby decreed and directed that the defendant no 1 & 2 are jointly and severally liable to pay the amount of Rs 36,900 ( Rupees Thirty Six Thousand Nine Hundred ) only to the plaintiff and further directed to pay interest @ 14.5 % from the date of filing of suit till realization of the decretal amount.

It is further directed that defendant no 1 & 2 are also jointly and severally 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 26<sup>th</sup> day of September 2011 at Kamrup, Guwahati .\_\_\_\_\_

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

**APPENDIX**

1. Witness for the plaintiff :- PW-1 Sri Rothangkhum Sugte.

2. Witness for the defendant:- Nil

3. Exhibits for the plaintiff :-

**Exhibit No. 1:-True Affidavit.**

**Exhibit No 2 :-True Affidavit of the guarantor.**

**Exhibit No. 3 :-** Loan acknowledgement receipt.

**Exhibit No. 4:-** Balance Sheet.

**Exhibit No. 5:-** Money Receipt.

**Exhibit No.6:-** Declaration.

4. Exhibits for the defendant :- Nil

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