

Form no. (J) 2

Heading of Judgment in original suit/ case

**In the original court of the Munsiff No. 5, Kamrup,  
Guwahati**

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

**Dated** :- 5<sup>th</sup> of September, 2011

**MONEY SUIT NO. :- 122 / 2008**

Central Bank of India

....Plaintiff /  
Petitioner

Versus

1. Sri Subhas Deka
2. Sri Tapash Das

.....Defendants/  
Opposite parties

This suit/ case coming on for final hearing on 05.06.2010 in the presence  
of:-

Sri B.N. Thakuria, 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. 50,226/- (Rupees Fifty Thousand two hundred twenty six) only with further  
interest @ 13% P.A. from the date of filing of the suit till realization of the

decreetal 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 Chandermukhi Nariman Point, Bombay - 400021 and many other branch throughout the country including the branch at Panbazar known as Pan Market Branch.

That the defendant No. 1 Sri Subhas Deka, resident of Rukmini Gaon, Tangara Satra, Guwahati - 22 on 02.03.2005 took a loan amounting to Rs.55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only on the terms and condition that the loan should be repaid by monthly installment of Rs. 1492/- only with interest at the rate of 13% P.A . Defendant No 2, Sri Tapash Das stood as guarantor of the aforesaid loan by executing one letter of guarantee dated 02.03.2005, being the employer of defendant no. 1, Labour Commission, Assam, Guwahati undertook to deduct the installment amounting to Rs. 1492/- per month and to pay the same to the plaintiff monthly till the full realization of the loan amount.

That the defendant no.1 defaulted in repayment of the loan amount. Neither the defendant nor his employer the Labour Commissioner, Assam deposited/ remitted any monthly installment to the plaintiff bank inspite of plaintiffs repeated request. Plaintiff bank served pleader notice through their advocate on 09.03.2007 but no positive response has been received. Plaintiff has also issued reminder dated 04.01.2008 requesting the defendant for payment of outstanding dues of the loan amount.

The summons were served upon the defendants, but they failed to appear and contest the suit and as such the suit proceeded ex-parte against the defendants.

The plaintiff in support of their case filed evidence on affidavit on PW-1 Sri Mukut Sarma, Branch Manager of Pan Market Branch and exhibited as many as 11 (eleven) documents in support of their suit.

Plaintiff has exhibited the following document in support of their case:-  
**Exhibit No. 1:-** Loan application of the defendant no. 1.

**Exhibit No. 2:-** Guarantors consent letter.

**Exhibit No. 3:-** Authorisation letter to the employer by the employee i.e. defendant no.1.

**Exhibit No. 4:-** Letter of undertaking by Deputy Labour Commissioner.

**Exhibit No. 5:-** Sanction letter No. BO:PANPBL: DLG: 1963 dated 02.03.2005 of Central Bank of India.

**Exhibit No.6:-** D.P. Note of Rs. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only.

**Exhibit No. 7:-** Letter of waiver.

**Exhibit No. 8:-** Letter of Guarantee.

**Exhibit No. 9:-** Legal notice to Defendant no.1.

**Exhibit No. 10:-** Reminder of demand notice.

**Exhibit No. 11:-** Statement of account for loan account.

As there is no written statement in the suit and hence no issues are framed, but in order to arrive at a definite findings 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. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only to defendant no. 1 ?
2. Whether the defendant No. 2 stood as guarantor 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.

Sri Mukut Kumar Sarma, the PW-1 deposed that on 26.10.04 the defendant no. 1 applied to the plaintiff bank along with the guarantors consent letter for

grant of a loan of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) only. PW-1 has exhibited the loan agreement as Exhibit No. 1 and guarantors consent letter as Exhibit No. 2 wherein Exhibit No. 1 (1) and Exhibit No. 2 (1) are the signatures of the defendant no. 1 and 2 respectively. He has further stated that being satisfied with the request of the defendant, plaintiff bank sanctioned the term loan of Rs. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only by issuing sanction letter no. BO:PANPBL: DLG: 1963 dated 02.03.2005. PW-1 has exhibited the sanction letter as Exhibit No. 5 where Exhibit No. 5(1) is the signature of the Branch Manager Sri Lakhi Nandan Sonowal.

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 also 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. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only to the defendant no. 1 and the defendant no.2 standing as guarantor 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 availed the loan of Rs. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only by exhibiting D.P. Note and one letter of waiver. The D.P. Note and the letter of waiver are exhibited as Exhibit No. 6 and 7 wherein exhibit No. 6 (1) and 7 (1) are signatures of defendant no.1.

PW-1 has further contended that defendant no.1 has not deposited his monthly installment and his employer the Labour Commissioner, Assam,

Guwahati has also not remitted any installment deducting the same from the salary of defendant no.1 and thereby violated the terms and conditions of the loan agreement inspite of repeated request of the plaintiff bank.

PW-1 has also exhibited copy of pleaders notice demanding the outstanding amount of Rs. 49,797/- (Rupees Forty Nine Thousand Seven Hundred Ninety Seven) only with future interest from 01.03.2007 as Exhibit No. 9 wherein 9 (1) is the signature of advocate/ plaintiff.

PW-1 has further stated that they had issued reminder letter dated 04.01.2008 to the defendant no.1 and the same is exhibited as exhibit no. 10 wherein Exhibit - 10 (1) is the signature of the Branch Manager. The statement of account for the loan account is exhibited as Exhibit No. 11 wherein Exhibit 11 (1) is the signature of the Branch Manager Surendra Nath Baishya.

There is nothing on the record to disbelieve the contention of the plaint as the statements made by PW-1 tally with plaint 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. 55,590/- (Rupees Fifty Five Thousand Five Hundred and Ninety) only by executing the loan agreement and the defendant no.2 was the guarantor 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. 50,226/- with future interest of @ 13% P.A. from the date of filing 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 and decisions, 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. 50,226/- (Rupees Fifty thousand two hundred twenty six) only to the plaintiff and further directed to pay interest @ 13% P.A on the aforesaid principal decretal amount of Rs. 50,226/- from 01.03.2008 till the full and final realization of the suit.

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 5<sup>th</sup> day of September, 2011 at Kamrup, Guwahati.

**Munsiff No. 5, Kamrup, Guwahati**

**APPENDIX**

1. Witness for the plaintiff :- PW-1 - Sri Mukut Sarma
2. Witness for the defendant:- Nil
3. Exhibits for the plaintiff :-

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

**Exhibit No. 2:-** Guarantors consent letter.

**Exhibit No. 3:-**Authorisation letter to the employer by the employee i.e. defendant no.1.

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4. Exhibits for the defendant :- Nil

**Munsiff No. 5, Kamrup, Guwahati**