

MHIGH COURT FORM NO. (J)2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT: Dibrugarh

**IN THE COURT OF THE MUNSIFF NO.2 AT
DIBRUGARH**

PRESENT: Smti. Rituparna Sarmah, AJS

Monday, on the 13th day of December, 2021.

Money Suit No. 29/20

IDBI BANK LIMITED

A Company registered under the Companies Act, 1956 (1 of 1956) and a banking company within the meaning Of Section 5(c) of the Banking Regulation Act, 1949 (10 of 1949) and having its Regd Office at IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai-400005 and Branch Office at HS Road, Dibrugarh

.....PLAINTIFF

-Versus-

Sri Ananta Sonowal

S/O Sri Punaram Sonowal

Resident of Jokai Bon Kachari Gaon, P.O. Bon Gaon-
786003 Barbaruah Dist-Dibrugarh : Assam

..... DEFENDANT

.....

1. Advocate for the plaintiff: Mr. Jainuddin Ahmed
2. None appeared for the defendant.

.....
This suit coming on for final hearing on 26th day of November, 2021 and having stood for consideration to this 13th day of December 2021, the court delivered the following Judgment:-

JUDGMENT

1. This is a suit for recovery of an amount of Rs.55,470.00/- (Rupees Fifty Five Thousand Four Hundred and Seventy) from the defendant.
2. **PLAINTIFF'S CASE:** The plaintiff's case is in brief is that the plaintiff is a Company registered under the Companies Act, 1956 (1 of 1956) and a banking company within the meaning Of Section 5(c) of the Banking Regulation Act, 1949 (10 of 1949) and having its Regd Office at IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai-400005 and Branch Office at HS Road, Dibrugarh.
3. That the defendant being in need of financial assistance applied for a loan of Rs.50,000/-(Rupees Fifty Thousand) by a loan application dated 18.12.14 under KCC scheme at the plaintiff branch at Dibrugarh. That, considering the said loan application the plaintiff's bank sanctioned a term Loan of Rs.50,000/-(Rupees Fifty Thousand) by a

Sanction letter dated 30.01.15, subject to acceptance of the terms and condition of the said sanction letter. That the defendant in order to avail the said loan facility in token of acceptance of the terms and conditions of the sanctioned letter executed "Demand Promissory Note" for Rs.50,000/-(Rupees Fifty Thousand) "Deed of Hypothecation" dated 30.01.15 agreeing to repay the loan amount as per the terms of agreement thereof.

4. Though the defendant accordingly avail the said loan amount but thereafter failed to make the payment as per the terms and conditions of the loan agreement in spite of Balance Confirmation on 31.03.17 and in spite of receipt of demand letter dated 10.07.18. That in spite repeated request and demand by the plaintiff and even in spite of received the demand letter failed to pay the loan amount with interest. That after adjustment of all amount drawn by the defendant and after accrual of interest from time to time, all charges thereon inclusive of interest up to 30.06.19 a total sum of Rs.55,470/-(Rupees Fifty Five Thousand Four Hundred and Seventy) in the said loan account has become an outstanding and the payment of which the defendant is liable to pay to the plaintiff. Hence, the plaintiff has filed the instant suit.
5. Summons issued to the defendant returned after due service, but the defendant was absent without step. As

such, the suit was proceeded ex-parte against the defendant.

6. During trial, the plaintiff examined one witness and the defendant having remained absent, did not avail the opportunity to cross examine the witness of the other side. 7 (seven) numbers of documents have been produced by the plaintiff in order to substantiate its case.

POINTS FOR DETERMINATION

7. As there is no WS in the instant suit hence no issues are framed. However, for the sake of proper adjudication of the case, I have formulated the following points of determination for just decision of the case.

1. Whether the suit is maintainable in its present form?
2. Whether the defendant availed any loan from the plaintiff bank by executing relevant documents?
3. Whether the defendant failed and neglected to repay the loan amount in accordance with terms and conditions?
4. Whether the plaintiff is entitled to the relief as prayed for and if so, to what extent?

DISCUSSION, DECISIONS & REASON THEREOF

8. I have heard Mr. Jainuddin Ahmed, Id. counsel appearing

for the plaintiff and have gone through the case record. Upon considering the pleading of the plaintiff, submissions made by the learned counsel for the plaintiff and also after delving into evidences adduced by the plaintiff; my findings and reasons are as follows:

9. **Point of determination no. 1 :** The instant suit relates to the determination of a civil right and enforcement thereof. There is no express or implied bar to the cognizance of the instant suit. Thus in view of section 9 of the Code of Civil Procedure I find and hold that the instant suit is very well maintainable in law and facts. Further, there is a cause of action for this instant suit and the suit is not barred by limitation. Accordingly, this point is decided in favour of the plaintiff.
10. Now for proper adjudication of the matter in hand, the point of determination no. 2 & 3 are taken up together.

11. **Point of determination no. 2 & 3:**

P.W-1 Sri Angshuman Das is the Assistant General Manager and Branch Head. In his evidence-in-chief in affidavit, he has reiterated the averments made in the plaint. He has also exhibited 7 numbers of documents in support of his averments. From Exhibit-1 i.e the loan application dated 18.12.14, it appears that the defendant had applied for a loan of Rs. 50,000/-(Rupees Fifty Thousand) from the Plaintiff bank and Exhibit-1(1) to 1(3) is the signature of the defendant. Exhibit-2 is the sanction letter dated 30.01.15. Exhibit-2(1) is the signature of the

Manager and Exhibit-2(2) to 2(5) are signatures of the defendant. From Exhibit-2, it appears that after due consideration the plaintiff bank had sanctioned the said amount in favour of the defendant. That the defendant in order to avail the loan facility and in token of acceptance of the terms and condition of the sanctioned letter executed Demand Promissory Note dated 30.01.15 i.e Exhibit-3 and Exhibit-3(1) is the signature of the defendant and Hypothecation cum loan agreement dated 30.01.15 i.e. Exhibit-4 and Exhibit-4(1) to 4(18) are the signatures of the defendant.

P.W-1 further deposed that the defendant had failed to keep up the commitment undertaken with the plaintiff in regard to the repayment of the loan. That in spite of receipt of demand letter and even after execution of balance confirmation dated 31.03.17; the defendant failed to pay the loan amount. Exhibit-6 is the demand letter and Exhibit-6(1) is the signature of the manager and Exhibit-6(1) is the signature of the Manager. Exhibit-5 is the balance confirmation and Exhibit-5(1) is the signature of the defendant. As such after adjustments of all amount drawn by the defendant and after accrual of interest from time to time, inclusive of interest up to 30.06.19 a total sum of Rs.55,470/- (Rupees Fifty Five Thousand Four Hundred and Seventy) has become due and outstanding in the loan account of the defendant as per the statement of accounts. Exhibit-7 is the certified copy of statement

and Exhibit-7(1) is the signature of the Manager.

Thus, from all documentary evidence as well as from the oral evidence of the witness it is clear that the defendant took loan amount of Rs. 50,000/-(Rupees Fifty Thousand) only from the plaintiff bank but failed and neglected to repay an amount of Rs.55,470/-(Rupees Fifty Five Thousand Four Hundred and Seventy) inclusive of interest up to 30.06.19.

12. As stated above, the defendant did not turn up in spite of receiving summons. Thus the evidence adduced by P.W.1 and the documents exhibited by him has remained unchallenged. It also appears that the documents have been produced from proper custody and proved in due manner. Hence I do not find anything to disbelieve the evidence and the documents produced and exhibited by the plaintiff.

Hence, the point of determination no 2 & 3 are decided in favour of the plaintiff.

13. **Point of determination no. 4:**

In light of the discussions made herein above the plaintiff is entitled to recover a sum of Rs.55,470/-(Rupees Fifty Five Thousand Four Hundred and Seventy) inclusive of interest up to 30.06.19 at the contractual rate of interest. In addition to that the plaintiff is entitled to the cost of the suit.

ORDER

14. The suit is decreed ex-parte with costs. The plaintiff Bank is entitled to recover, from the defendant, an amount of Rs.55,470/- (Rupees Fifty Five Thousand Four Hundred and Seventy) with the interest *pendente lite* from 01.07.19 till recovery of the loan amount at the contractual rate of interest.
15. Cost of the suit to be calculated in accordance with law.
16. Prepare a decree accordingly.

Accordingly, the suit is disposed of ex-parte.

The judgment is delivered and pronounced by me in the open Court today given under my hand and seal of this court on this the 13th day of December, 2021.

Typed by me.

(SMTI. RITUPARNA SARMAH)
Munsiff No. 2, Dibrugarh

APPENDIX

I . Plaintiff's Witness:

PW1: Sri Angshuman Das

II. Plaintiff's Exhibits :

- Ext.1 : Loan application dated 18.12.14
Ext. 1(1) to 1(3) : Signature of the Defendant.
Ext.2 : Letter of Intent/Sanction Letter dated
30.01.15.
Ext.2(1) : Signature of the Manager.
Ext.2(2) to 2(5) : Signatures of the defendants.
Ext.3 : Demand Promissory Note
Ext.3(1) : Signatures of the defendant.
Ext.4 : Deed of Hypothecation.
Ext.4(1) to 4(18) : Signatures of the defendant.
Ext.5 : Balance confirmation.
Ext.5(1) : Signature of the defendant.
Ext-6 : Demand letter
Ext-6(1) : Signature of the Manager.
Ext-7 : Certified copy of statement.
Ext-7(1) : Signature of the Manager

III. Defendant's Witnesses :

Nil

IV. Defendant's Exhibits :

Nil

M.S 29/20

Typed by me.

(SMTI. RITUPARNA SARMAH)

Munsiff No. 2, Dibrugarh