

**HIGH 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**

**Tuesday, on the 14<sup>th</sup> day of December, 2021.**

**Money Suit No. 63/18**

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 Pankaj Singh

S/O Sri Ashok Singh

Resident of Jokai Hanchara Gaon, Tal Jokai, P.O. Jokai

Dist-Dibrugarh : Assam

..... DEFENDANT

.....

1. Advocate for the plaintiff: Mr. Jainuddin Ahmed
2. Advocate for the defendant: Mr. Biswajit Singha

.....  
This suit coming on for final hearing on 25<sup>th</sup> day of November, 2021 and having stood for consideration to this 14<sup>th</sup> day of December 2021, the court delivered the following Judgment:-

### **JUDGMENT**

1. This is a suit for recovery of an amount of Rs.64,755.00/- (Rupees Sixty Four Thousand Seven Hundred and Fifty Five) 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 21.09.13 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 18.10.13, 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 a Demand Promissory Note and Hypothecation agreement dated 18.10.13 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 31.12.15 and in spite of receipt of demand letter dated 09.12.16. 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 01.10.17 a total sum of Rs. Rs.64,755/-(Rupees Sixty Four Thousand Seven Hundred and Fifty Five) 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. On receipt of the plaint, the same was registered as M.S 63 OF 18 and summon was issued to the defendant. On

receiving the summon the defendant appeared and filed the written statement. However after filing the written statement, the defendant remained unrepresented. As such vide order dated 03.11.21 the suit 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.

### **ISSUES**

7. Upon the rival pleadings, following issues are framed for just decision of the case.
  1. Whether there is a cause of action for the suit?
  2. Whether the suit is barred by limitation?
  3. Whether the defendant availed a loan of Rs. 50,000/- from the plaintiff bank in due manner?
  4. Whether the defendant in spite of balance confirmation on 31.12.15 and in spite of receipt of demand letter dated 09.12.16 failed to make the payment thereof as per terms and condition of the loan agreement?
  5. Whether the plaintiff is entitled to the relief as prayed for and for any other relief or reliefs?

**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. **Issue no. 1** : The question before me is whether the plaint discloses the cause of action or not. The expression "cause of action" has not been defined in the Court. However it has received judicial interpretation in numerous occasions.
10. Generally cause of action is a "bundle of essential facts which is necessary for the plaintiff to prove before he can succeed" or which gives the plaintiff a right to relief against the defendant. It consists of material facts which are imperative for the plaintiff to allege and prove. However cause of action will not include facts which may be proved by evidence (reliance has been placed on the decision pronounced by Hon'ble Supreme Court in ***Ganesh Trading Co. v. Moji Ram, reported in AIR 1978 SC 484***).
11. Coming to the case in hand, the plaintiff bank in its plaint has averred that the defendant has taken a loan of Rs. 50,000/- (Rupees Fifty Thousand) but has not repaid the same as per the terms and condition of the loan agreement

in spite of the repeated request and even after receipt of demand notice and in spite of having balance confirmation. It clearly appears that the plaintiff has bundle of facts necessary to be proved in order to succeed in his suit. In that view of the matter, there is cause for this action. Accordingly, this issue is decided in favor of the plaintiff.

12. **Issue no 2:**

Let us first visit the provision of law in this regard. Article 19 of the Limitation Act, 1963 states that limitation period for filing a suit for money payable for money lent is three years from the date when the loan is made.

Again, section 18 of the said Act states that Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

In the instant case, from the materials on record it appears that the defendant had duly signed the balance confirmation letter on 31.12.15 thereby acknowledged his liability with the plaintiff's bank for the purpose of section 18 of the Limitation Act and the suit was filed on 05.06.18 i.e. within three years from signing the balance confirmation. It clearly appears that the suit was filed

within the limitation period.

It is held that the suit is not barred by Law of Limitation.

As such, Issue no 2 is decided in favour of the plaintiff.

13. Now for proper adjudication of the matter in hand, issue no 3& 4 are taken up together.

14. **Issue no. 3& 4:**

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 21.09.13, 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) is the signature of the defendant. Exhibit-2 is the sanction letter dated 18.10.13. Exhibit-2(1) is the signature of the Manager and Exhibit-2(2) to 2(7) 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 and deed of hypothecation dated 18.10.13 i.e Exhibit-3 & Exhibit-4. Exhibit-3(1) to Exhibit-3(2) and Exhibit-4(1) to 4(22) are the signatures of the defendant.

15. 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 dated 09.12.16 and even after execution of balance confirmation dated 31.12.15; the defendant failed to pay the loan amount. Exhibit-5 is the balance confirmation and Exhibit-5(1) is the signature of the defendant. Exhibit-6 is the demand letter and Exhibit-6(1) is the signature of the Manager.

16. 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 01.10.17 a total sum of Rs.64,755/- (Rupees Sixty Four Thousand Seven Hundred and Fifty Five) 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.
17. 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.64,755/- (Rupees Sixty Four Thousand Seven Hundred and Fifty Five) inclusive of interest up to 01.10.17.
18. As stated above, the defendant remained unrepresented after filing of W.S and thereby failed to cross-examine the P.W. 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 issue nos. 3 & 4 are decided in favour of the plaintiff.

19. **Issue no. 5:**

In light of the discussions made herein above the plaintiff is entitled to recover a sum of Rs.64,755/-(Rupees Sixty Four Thousand Seven Hundred and Fifty Five) inclusive of interest up to 01.10.17 at the contractual rate of interest. In addition to that the plaintiff is entitled to the cost of the suit.

**ORDER**

20. The suit is decreed ex-parte with costs. The plaintiff Bank is entitled to recover, from the defendant, an amount of Rs.64,755/-(Rupees Sixty Four Thousand Seven Hundred and Fifty Five ) with the interest *pendente lite* from 02.10.17 till recovery of the loan amount at the contractual rate of interest.
21. Cost of the suit to be calculated in accordance with law.
22. Prepare a decree accordingly.

The judgment is delivered and pronounced by me in the

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open Court today given under my hand and seal of this court on this 14<sup>th</sup> 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 21.09.13.  
Ext. 1(1) : Signature of the Defendant.  
Ext.2 : Letter of Intent/Sanction Letter dated  
18.10.13.  
Ext.2(1) : Signature of the Manager.  
Ext.2(2) to 2(7) : Signatures of the defendants.  
Ext.3 : Demand Promissory Note  
Ext.3(1) to 3(2) : Signatures of the defendant.  
Ext.4 : Deed of Hypothecation.  
Ext.4(1) to 4(22) : 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 :**

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Nil

**IV. Defendant's Exhibits :**

Nil

Typed by me.

**(SMTI. RITUPARNA SARMAH)**

**Munsiff No. 2, Dibrugarh**