

**TITLE SUIT NO. 01/2019**

**High Court Form No. (J) 2.**

Heading of Judgment in Original Suit

District: DIBRUGARH

**IN THE COURT OF THE MUNSIF NO.3, DIBRUGARH**

**Present: SMTI. SANSKRITA KHANIKAR, AJS.**

**MUNSIF No.3, DIBRUGARH.**

Thursday, 16<sup>th</sup> day of December, 2021.

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**Union Bank of India.....Plaintiff**

**-vs-**

**Sri Biswajit Das.....Defendant**

This suit coming on for final hearing on 03-12-2021 in the presence of:-

Advocate for the Plaintiff : Learned Sri Ridip Konwar

Advocate for the defendant : None

And having stood for consideration to this day, the Court delivered the following judgment:

**JUDGMENT**

1. In brief, the case of the plaintiff is that the defendant being in need of financial assistance, applied for a loan of Rs. 1,90,000/- by a loan application dated 25-10-2017 for establishment of small business enterprise under the Pradhan Mantri Mudra Yojana. That after considering the requirement of the defendant, the plaintiff bank sanctioned a term Loan of Rs. 1,90,000/-. Subsequently, the defendant in consideration of the loan amount and in token of his acceptance of the terms of the loan, duly signed and executed a promissory note, hypothecation agreement, general term loan agreement, letter of continuity, letter of confirmation, interest agreement etc. in favour of the plaintiff on 27-10-2017. The defendant thereby agreed to pay on demand the said sum with interest @ 9.10% per annum with monthly rests or at such other rates as may be charged from time to time as per instruction and guidelines of the Reserve Bank of India. The defendant was to be liable to make good the loss or any other cost to the plaintiff bank. Defendant was to be responsible for due repayment of the loan amount with accrued interest to the plaintiff

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bank as per schedule. The defendant undertook to repay the said loan amount in 83 (eighty-three) equal monthly instalments of Rs. 2289/- (Rupees Two Thousand Two Hundred Eighty Nine) only plus interest per month. The tenure of the loan was 7 years. After receiving the financial assistance, from the plaintiff bank, the defendant was very irregular in payment of monthly instalments to the plaintiff bank. The plaintiff bank sent several notices and made several communications and reminders to the defendant asking for regularisation of the said loan account but the defendant did not bother to take any positive step. Ultimately, the loan account of the defendant turned NPA on 31-10-2018. On 20-11-2018, the plaintiff bank also issued a recall notice upon the defendant asking for repayment of outstanding balance and intimating further that failing which legal action would be followed, but, the defendant did not take any steps to repay the outstanding balance due and payable to the plaintiff bank. The plaintiff avers that the defendant has, thus, violated the agreed terms and conditions of the loan agreement with the plaintiff bank, neglected and wilfully defaulted to repay the loan in time with its accrued interest and thus, the term loan account of the defendant

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has become irregular and unsatisfactory since long with continuous debit balance. The defendant also executed the Debit Confirmation Balance Letter on 31-10-2018. After adjustments of all amount drawn by the defendant and after accrual of interests from time to time, all charges thereon etc. a sum of Rs. 1,75,944.11/- with interest upto 20-11-2018 has become due and outstanding in the said loan account maintained by the plaintiff bank in the name of the defendant as per the account kept in regular course of business and the payment of which he is liable to pay to the plaintiff. As per the hypothecation, the plaintiff bank is having its first charge over the hypothecated assets, articles, properties etc. The plaintiff has also filed the Statements of Accounts of the defendant, duly certified by the Manager of the plaintiff bank.

2. Hence the plaintiff has filed this suit against the defendant for realisation of the loan amount along with other reliefs as mentioned in the plaint itself.
3. Upon issuance of summons to the defendant, the defendant did not appear in spite of due service upon him and thus the suit proceeded ex- parte against the defendant.

4. During trial, the plaintiff examined one witness namely Sri Rakesh Boruah, being the serving Branch Manager of State Bank of India, Tiloi Nagar Branch, Dibrugarh as PW-1 and has exhibited some documents in support of his claim. It is necessary, at this juncture, to mention that the Defendant has no written statement on record controverting the claim of the Plaintiff. Also, the defendant having remained absent, did not avail the opportunity to cross examine the witness of the other side. I have heard the contentions and the submissions put forth by the learned counsel for the plaintiff.

Perused the case record in its entirety.

5. After hearing the plaintiff and on perusal of case record, for convenience in adjudicating the suit, the following points for determination have been framed:

- (1) Whether the plaintiff is entitled to the decree as prayed for?

- (2) To what other relief or reliefs is the plaintiff entitled to?

**DECISIONS AND REASONS THEREOF:**

**6. POINTS FOR DETERMINATION NO. 1 & 2:**

PW.1 Sri Mrinal Kar, being the present Branch Manager/Principal Officer, Union Bank of India, Milan Nagar Branch, Dibrugarh and he represents the plaintiff bank in the instant suit. He deposed that the bank has filed the suit against the defendant for recovery of money with interest and cost. Having gone through the documentary evidence and oral evidence adduced by the plaintiff side it is found that the plaintiff as PW-1 in his evidence in affidavit reiterated whatever he has stated in the plaint.

In support of the plaintiff's claim, the plaintiff has exhibited 11 (eleven) nos. of documents which are as follows:

**Exhibit-1:** Loan application form

**Exhibit-2:** Sanction Advise of the plaintiff bank

**Exhibit-3:** Promissory Note (SD 21 I)

**Exhibit-4:** General Term Loan Agreement (SD-18)

**Exhibit-5:** Hypothecation (goods) agreement (SD-03)

**Exhibit-6:** Letter of Continuity (AD-09)

**Exhibit-7:** Letter of Confirmation (SD-23A)

**Exhibit-8:** Interest Agreement for MCLR loans (SD-24)

**Exhibit-9:** Debit Balance Confirmation (SD-22)

**Exhibit 10:** Demand Notice/Recall Notice issued by the plaintiff bank

**Exhibit-11:** Statement of Borrower Account duly certified by the Principal Officer of the Plaintiff Bank from 01-10-2018 to 20-11-2018.

7. Even though the suit was proceeded ex-parte against the defendant, he has been at liberty to cross-examine the plaintiff witness on the points of law to demolish the plaintiff claims and to challenge the genuineness of the documents exhibited by the plaintiff side. Hence, there is nothing to disbelieve the documentary evidence adduced by the plaintiff in support of her case. Moreover, the evidence in affidavit submitted by the plaintiff witness remains uncontroverted and unrebutted as the defendant inspite of getting sufficient opportunities did not contest the suit. As the genuineness of the exhibits as well as the claims of the plaintiff remained undisputed, the averments made in the plaint are deemed to be true. In the absence of anything contrary on the record to the plaintiff's claims, the

facts stated by the plaintiff witness on oath in his evidence is deemed to be true. By examining the plaintiff witness and by exhibiting the documents, the plaintiff has substantiated his claims.

From the above discussions, it is abundantly clear that the plaintiff is entitled to get the decree as prayed for.

**ORDER**

**8.** In the result, the suit is decreed ex-parte with costs. The plaintiff is hereby granted with the following reliefs:

**i.** It is hereby declared that plaintiff is entitled to recover the outstanding of loan amount of **Rs:- 1,75,944.11/- (Rupees One Lakh Seventy Five Thousand Nine Hundred Forty Four and Eleven Paise)** only with interest from the defendant.

**ii.** The defendant is directed to pay the plaintiff **Rs:- 1,75,944.11/- (Rupees One Lakh Seventy Five Thousand Nine Hundred Forty Four and Eleven Paise)** only along with future interest @ 13% per annum from 01-11-2018 till the date of realisation of the decretal amount.

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**iii.** Declaration of the plaintiff bank's charge on the hypothecated assets and articles.

**iv.** Attachment of hypothecated assets and articles for realisation of the dues under the decree.

**v.** Attachment of the personal properties of the defendant for realisation of the decretal amount with interest thereon as he stood as personal guarantor to secure the loan.

**vi.** Cost of the suit.

**9.** Let a decree be drawn up accordingly.

The judgment is delivered and pronounced by me in the open court today.

Given under my hand and seal of this Court on the 16<sup>th</sup> day of December, 2021.

Typed by: Self

Sanskrita Khanikar

Munsiff No.3, Dibrugarh

**APPENDIX**

**Plaintiff Witness:** Sri Mrinal Kar

**Defendant's Witness:** Nil

**Plaintiff Exhibits:**

Exhibit-1: Loan application form

Exhibit-2: Sanction Advise of the plaintiff bank

Exhibit-3: Promissory Note (SD 21 I)

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**Defendant Exhibits:** Nil

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Sanskrita Khanikar  
Munsiff No.3, Dibrugarh