

HIGH COURT FORM NO. (J)2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT: Dibrugarh

IN THE COURT OF THE MUNSIFF NO.1 AT DIBRUGARHPRESENT: S.J. Deb,
Munsiff No.1, Dibrugarh.Monday, 20th Day of December, 2021.Money Suit No. 28/2019**BANK OF BARODA**

(A Govt. of India Undertaking) a banking Company
Duly constituted under Banking Companies
(Acquisition and transfer of undertakings) Act, 1980
Carrying on business of Banking and
Having its Head Office/ Regd. Office at Mandavi,
Baroda (Gujrat) and Branch Office situated at many places of
India
Including one at Sunny Court, R.K.B. Road, Dibrugarh, P.O.-
Dibrugarh- 786001
District Dibrugarh, Assam through its Senior Branch Manager,
Sri Ramendra Goswami, aged about 36 years,

.....PLAINTIFF

-Versus-

Sri Brojen Das

S/o- Bineshwar Das,
Resident of Jokai Ban Gaon,
P.O. Jokai- 786003, P.S- Barbaruah.
District : Dibrugarh, Assam

.....DEFENDANT

This suit coming on for final hearing on 06.12.2021 , in
presence of:-

1. Mr. Bikas Agarwalla..... Learned Advocate for the plaintiff.
2. None for the defendant

And having stood for consideration to this on 20th day of
December, 2021, the court delivered the following Judgment:



20/12/21
Munsiff No. 1
Dibrugarh


J U D G M E N T

1. This is a suit for recovery of money with interest and cost of the suit.

2. **Plaintiff's case:**

The concise facts leading to the filing of this instant suit as revealed upon the averment of the plaint is that the plaintiff is a nationalised bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act , 1980 and having its registered office at Mandavi, Baroda(Gujrat) and branch office at Sunny Court, R.K.B Road, Dibrugarh. It is submitted that the defendant in need of financial assistance for the cultivation of crop of bettevine applied for a loan under KCC scheme at the plaintiff's branch for Rs. 50,000/- on 10.10.2011 and vide sanction letter dated 22.11.2011 Rs. 14,000/- was sanctioned to him as loan amount. It is averred that the defendant executed a deed of hypothecation agreeing to repay the loan amount as per the agreement. In spite of repeated demand letter, the defendant failed to make payment as per the terms and conditions of the loan agreement. The plaintiff contended that, in spite of execution of letter of acknowledgment of debt, the defendant failed to pay a total sum of Rs. 23,491/- which has become due after accrual of interests from time to time in addition with charges thereon up to 08.02.2019 in A/c No. 30410500000041 with interest upto 31.03.2018 as per details in the respective statement of account.

3. That, since 01.04.2018 interest was not applied on the said account on being classified as non-performing assets as per RBI directions and also in terms of bank policy so as not to inflate profits through application of interest in sticky accounts. However, the plaintiff bank is entitled to the same. Hence, plaintiff bank has prayed for the following reliefs :-


20/12/21
Munsiff No. 1
Dibrugarh





- a. Recovery of the sum of Rs.23,491/-
- b. Arrear, pendente-lite and future interest @ 8.65 % per annum w.e.f. 01.04.2018 till recovery thereof.
- c. For the attachment and sale of properties for recovery of the decretal dues.
- d. Costs of the suit.
- e. Any other relief/s to which the plaintiff is or found entitled in law and equity.

4. Upon issuance of summons to the defendant, the defendant did not appear in spite of receiving the summons, hence the suit proceeded ex-parte against him vide order dated 25.04.2019.

Peremptory Hearing

5. At the peremptory hearing, the plaintiff examined one witness and adduce 9 (Nine) numbers of documents and which are marked as the plaintiff's documents.
6. On considering the pleadings of the plaintiff, submissions made by the learned counsel for the plaintiff and also after delving into oral as well as documentary evidences adduced by the plaintiff my findings and reasons on the above framed issues is as follows:

“Whether the plaintiff is entitled to a decree for recovery and realization of Rs. 23,491/- only with pendente-lite and future interests from the date of decree till realization at the contractual rate?”

DISCUSSION, DECISION AND REASONS FOR THE DECISIONS

THEREOF:

7. PW.1 Sri Tarun Dutta, the Chief Branch Manager of plaintiff bank stated that he was well acquainted with the facts and

20/12/21
Munsiff No. 1
Dibrugarh



circumstances of the case. He stated that on 10.10.2011 the defendant in need of financial assistance for agricultural purpose applied for Baroda Kishan Credit Card facility to the extent of Rs.50,000/- and submitted some necessary documents like certificate from Agril Development Officer, Photo identity card, land holding certificate, scale of finance, certificate from Gaonburah and Forest Beat Officer etc. to avail the loan facility and accordingly an Agricultural Term Loan of Rs.14,000/- was sanctioned by the plaintiff on 22.11.2011 with interest @ 7 % for a period of 36 months which was subjected to other conditions including additional interest @ 2% for violation of terms and conditions. On 22.11.2011, the defendant executed and submitted D.P Note for Rs.14,000/-, Hypothecation Agreement, Letter of Continuing Security and Declaration-cum-Undertaking cum Authority in consideration of the sanctioned loan. After completion of all formalities, the plaintiff bank opened Baroda Kishan Credit Card (BKCC) account, bearing A/c. No. 30410500000041, in the name of the defendant. After availing the loan, the defendant did not regularize his bank account in compliance with the terms and conditions of the agreement and in spite of signing Letter of Acknowledgement of Debt dated 09.08.2014 and 09.08.2016 . Thus, the debit balance accrued to Rs.11,976.25/- as on 08.02.2019 in A/c. No. 30410500000041 with interest up to 31.03.2018 as per the statement of account. The defendant also did not perform/observe various terms and conditions of the agreement and made default on every counts in spite of demands and persuasion etc.

- 8. Now, as the defendant did not cross examine the plaintiff witness, as such the deposition made by the PW remained undisputed and taken to be admitted, however the crucial facts to be determined is that whether the statements made by the plaintiff is sufficiently corroborated by the evidences and the supporting document submitted in this behalf or not?**

20/12/21
Munsiff No. 1
Dibrugarh



"On perusal of the documents submitted by the plaintiff it is revealed that the defendant has taken a loan of Rs.14,000/- (Rupees Fourteen Thousand) only from the plaintiff as revealed from the content of Agreement relating to loan as Sanction Letter Exhibit-2, Demand promissory Note Exhibit-3 and hypothecation Exhibit-4, Acknowledgement of Debt Exhibit 8 & 9."

9. The defendant did not appear to contest the suit and thus the assertions and allegations made by the plaintiff stands uncontroverted and there appears nothing on record to disbelieve the averments and evidence of the plaintiff. Rather it is presume that the defendant has admitted the contentions of the plaintiff side on absence of any written statement.
10. Considering all the above discussions of the preceding issue, it can be concluded that the plaintiff is entitled to the relief/ decree as prayed for by it.
11. Hence on the basis of the aforesaid discussion it is opined that defendant took loan of Rs.14,000/- (Rupees Fourteen Thousand) from plaintiff and defendant defaulted in repayment of the loan amount even after repeated demand made by the plaintiff to the defendant.
12. As such it is found that plaintiff is entitled to get recovery and realization of Rs.23,491/- (Rupees Twenty Three Thousand Four Ninety One) only with pendente-lite and future interests from the date of decree till realization at the contractual rate.

Thus, issue is answered in affirmative and in favour of the plaintiff.

20/12/24
Munsiff No. 1
Dibrugarh

ORDER


13. The suit of the plaintiff is decreed ex-parte with costs. The plaintiff is hereby granted with the following reliefs:



- i. It is hereby declared that the plaintiff is entitled to recover the sum of *Rs.23,491/- (Rupees Twenty Three Thousand Four Ninety One)* with arrear pendente-lite and future interest @ 8.65 % per annum w.e.f. 01.04.2018 till recovery thereof.
- ii. For the attachment and sale of properties for recovery of the decretal dues.
- iii. Costs of the suit.

14. Prepare a decree accordingly within prescribed time.

15. Given under my hand and seal of this court on the 20th day of December, 2021.


20/12/21
Munsiff No. 1,
Dibrugarh

APPENDIX

I. Plaintiff's Witness:

PW1- Sri Tarun Dutta

II. Plaintiff's Exhibits :

- A. Ext.1: Loan application
 B. Ext-1(1) and 1(2) are signature of defendant.
 C. Ext.2: Sanction Letter
 D. Ext 2(1): Signature of Defendant.
 E. Ext.2(2): Signature of then Branch Manager.
 F. Ext.3: D.P Note.
 G. Ext-3(1) and 3(2) are signatures of defendant.
 H. Ext.4: the Agreement of Hypothecation for Agriculture Advances.
 I. Ext-4(1) to 4(8) are signatures of defendant.
 J. Ext.5: Letter of Continuing Security.
 K. Ext.5(1) and 5(2) are the signatures of defendant.
 L. Ext.6: Declaration cum Undertaking-cum-Authority.
 M. Ext-6(1) to 6(4)) are the signatures of defendant.
 N. Ext.7: certified true extracts of statement of account of A/c No. 30410500000041 of the defendant.
 O. Ext-7(1) to 7(3) are the signatures of Sri Ramendra Goswami, the former Sr. Branch Manager of the plaintiff Bank.
 P. Ext.8 & 9: Letter of Acknowledgement.
 Q. Ext.8(1) and 8(2) are the signatures of defendant.
 R. Ext.9(1) and 9(2) are the signatures of defendant.

III. Defendant's witnesses :

Nil

IV. Defendant's exhibits :

Nil


 20/12/21
 Munsiff No. 1
 Dibrugarh

**Munsiff No. 1
Dibrugarh.**