

**HIGH COURT FORM NO. (J) 2.**

**HEADING OF JUDGMENT IN ORIGINAL SUIT.**

**IN THE COURT OF MUNSIFF NO. 3 AT GUWAHATI.**

**DISTRICT-KAMRUP**

**Money Suit Case No. 112/2010**

**Present:**

***Naguib Ahmed, A.J.S.***  
***(M.Sc-Agriculture, LL.B)***  
***Munsiff No.3, Guwahati.***

***17<sup>th</sup> day of August, 2012***

**Canara Bank**

**Branch Office-Sikh Temple**

**Guwahati, Assam.....: Plaintiff(s)**

***-Versus-***

**1. Sri. Senatomba Singh.**

**S.O: Late Naba Kishore Singha.**

**R.O: Jatia**

**Kahilipara Road, Guwahati**

**District: Kamrup (M), Assam**

**2. Sri. Jogen Chandra Borah.**

**S.O: Late Durlove Chandra Borah.**

**R.O: Jatia**

**Kahilipara Road, Guwahati**

**District: Kamrup (M), Assam**

**3. Deputy Suprintendent of Police**

**Special Branch Kahilipara, Guwahati.**

**P.I.N: 781019**

**District – Kamrup (M), Assam.....: Defendant(s)**

**This suit coming on for final hearing on 08.08.2012 in the presence of:-**

1. **Sri. Vikram Kumar Dewan**
2. **Sri. Vishal Kumar Dewan**
3. **Ms. Manisha Bindra** : **Advocate for the plaintiff(s).**

**And**

2. **None** : **Advocate for the defendant(s).**

and having stood for consideration to this day, the court delivered the following Judgments.

## **JUDGEMENT**

*(A Suit for realization of money advanced as loan)*

1. ***Plaintiff's case:*** The plaintiff is a nationalized bank a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970 having its head office at Bangalore and branches throughout the country including one at Sikh Temple, Guwahati. The defendant Senatomba Singh is one of the customer of the plaintiff bank and he applied to plaintiff Bank for loan of Rs. 45,000/- (Forty Five Thousands) only on 02.12.2002 for personal use. The plaintiff bank sanction the loan of Rs. 45,000/- (Forty Five Thousands) only to the defendant. The plaintiff bank charged interest @14% per annum compounded monthly for value received. Incase of default the defendant is liable to pay overdue interest @2%. An account was opened in the name of the defendant bearing A/C No. 1841. The defendant was to repay the loan at the rate of Rs. 1290/- (One Thousand Two Hundred And Ninety) only per month in 48 (Forty Eight) equal monthly installments with effect from January 2003.
2. The Defendant No.2 is the co-obligant for due repayment of loan of Defendant No.1.
3. The proforma Defendant No.3 is the Deputy Superintendent of Police, Special Branch Kahipara, Guwahati. That an irrevocable mandate was executed by Defendant No.1 to proforma Defendant No.3 for payment of due

installment of Rs. 1290/- (One Thousand Two Hundred And Ninety) only per month by deducting from his salary every month to the plaintiff bank to the credit of subject loan account and in the event of Defendant No.1 ceasing to be in the service of department during the continuation of the subject loan the Defendant No.1 authorized the proforma Defendant No.3 to deduct out of the terminal benefits payable to him and remit to the plaintiff bank in the credit of his loan account for repayment of entire outstanding balances with up-to date interest. This mandate was confirmed by proforma Defendant No.3.

4. The Defendant No.1 availed the loan amount. The plaintiff bank is entitled to a sum of Rs. 59,724/- (Fifty Nine Thousands Seven Hundred and Twenty Four) only with interest as on 30.09.2005. The Defendant No.1 and Defendant No.2 are further entitled to pay the unapplied interest on the aforesaid amount at the stipulated rate from 01.10.2005 amounting to Rs. 36,420/- (Thirty Six Thousand Four Hundred And Twenty) only. The plaintiff bank is further entitled to interest at existing rate from 11.07.2009 till the date of realization of the decreeted amount in full. In the premises the Defendant No.1 and Defendant No.2 are jointly and severally liable to pay to the plaintiff bank a sum of Rs. 96,144/- (Ninety Six Thousand One Hundred Forty Four) only. The defendants have not paid the said amount or any part there of inspite of repeated requests. The plaintiff hence filed the suit for recovery of Rs. 96,144/- (Ninety Six Thousand One Hundred Forty Four) only from Defendant No.1 and 2.

5. Thereafter summons were issued to the defendants.

6. **Plaintiff's prayer:** The plaintiff has therefore filed the suit with the following prayers:-

1. A decree for realization and recovery of decreeted amount.
2. For recovery and realization of Rs. 96,144/- (Ninety Six Thousand One Hundred Forty Four) only from Defendant No.1 and Defendant No.2.
3. For future interest at the rate of 16.5 % per annum compounded monthly w.e.f 11.07.2009 till recovery.
4. For penden-lite interest.
5. Attachment of Salary before judgment.

6. Appointment of receiver.
7. Cost of the suit.
8. Decree for any other relief/ reliefs to which the plaintiff is entitled to under law and equity.

7. **Defendant No.1's version:**

The Defendant No.1 through his written statement admitted some claims of the plaintiff which are not inconsistent with the record. However he stated that he had deposited the sum of Rs. 15,000/- (Fifteen Thousand) only on 21.06.2011 and also deposited another amount of Rs. 4,000/- (Four Thousand) only on 30.06.2011.

8. **Issues:**

Upon perusal of the pleadings and considering other materials on record the following issues were accordingly framed.

1. Whether the plaintiff bank is entitled to an amount of Rs. 96,144/- (Ninety Six Thousand One Hundred Forty Four) only from the Defendant No.1 and Defendant no.2?
2. Whether the plaintiff is entitled to any other reliefs?

9. **Witnesses:**

In the instant suit the plaintiff examined 1 (one) witness and exhibited some documents. The defendant examined none. The plaintiff filed evidence of ***PW-1 Ankur Sharma*** the officer and Attorney holder of the plaintiff bank.

10. **Discussion, Decision and Reasons thereof:**

I have also heard arguments advanced by the learned counsel for the plaintiff. None argued for the defendants.

11. **Issue no.1 and 2:**

For the convenience of discussion and appreciation of evidence both the issues are taken together.

The plaintiff filed evidence of ***PW-1 Ankur Sharma*** the officer and attorney holder of the plaintiff bank. In his examination-in-chief PW-1 mostly reiterated the plaintiff story.

The following documents were exhibited by the plaintiff bank.

- Exhibit-1** : Loan application dated 02.12.2002.  
**Exhibit-2** : Sanctioned Memorandum.  
**Exhibit-3** : Promissory note date 11.12.2002.  
**Exhibit-4** : Take delivery letter to DPN dated 11.12.2002.  
**Exhibit-5** : Undertaking letter by Defendant No.1.  
**Exhibit-6** : “Can budget” loan dated 02.12.2002.  
**Exhibit-7** : Irrevocable mandate for deduction of salary.

The plaintiff also exhibited some other documents. However these are not relevant in the present circumstances of the case.

The PW-1 was not even cross-examined by the defendants. I have also heard the learned counsel for the plaintiff bank. There is no discrepancy in the evidence advanced by PW-1. However there is no reason to disbelieve the pleadings of the plaintiff. The documents exhibited by plaintiff are duly proved. The suit is filed within time. After going through all the evidence on record the court find that the plaintiff has been able to prove its case. The evidence of the plaintiff remains unrebutted. The written Statement of Defendant No.1 doesn't rebut the claims of the plaintiff.

Hence these issues are decided in affirmative and goes in favour of the plaintiff.

12.

## **ORDER**

In the conclusion the suit is decreed with cost.

Defendant No. 1 and Defendant No.2 are jointly and severally liable to make repayment of the loan amount of Rs. 96,144/- (Ninety Six Thousand One Hundred Forty Four) only and interest at the contractual rate, till payment is made.

Prepare decree accordingly.

Given under my hand and seal of the court on *17<sup>th</sup> day of August 2012.*

*Naguib Ahmed*

**APPENDIX**

**Plaintiff's Witnesses**

PW-1: Sri. Ankur Sharma

- Exhibit-1 : Loan application dated 02.12.2002.  
Exhibit-2 : Sanctioned Memorandum.  
Exhibit-3 : Promissory note date 11.12.2002.  
Exhibit-4 : Take delivery letter to DPN dated 11.12.2002.  
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Exhibit-7 : Irrevocable mandate for deduction of salary.

**Defendants Witnesses:**

None

*Naguib Ahmed  
Munsiff No.-3, Guwahati,  
Kamrup*