

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. 368/2010

Present:

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

7th day of August, 2012

Canara Bank

Branch Office-Sikh Temple Branch

Panbazaar, Guwahati-1,

District – Kamrup (M) Assam.....: Plaintiff(s)

-Versus-

1. Sri. Parbati Basfore.

D.O: Late Hiraman Basfore.

R.O: Railway Quarter No. 110/F

P.O: Amingaon, Guwahati, Assam.

2. Sri. Joy Kumar Paswan.

S.O: Late Ramasis Paswan.

R.O: Railway Quarter No. 418/B

Bamunimaidan, Guwahati-21, Assam.

**3. Deputy Medical Officer
N.F Railway, Maligaon
Guwahati-11.**

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

**This suit coming on for final hearing on 23.07.2012 in the
presence of:-**

1. Sri. M.K Bora

Sri. Aparna Devi : 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
(Suit for recovery of money)

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 various other branches throughout the country including one at Sikh Temple, Panbazar, Guwahati-1 in the district of Kamrup, Assam. That the borrower Late Hiranman Basfore, father of Defendant No. 1 is working in the office of H & MI, N.F Railways, Amingaon Guwahati and he applied to plaintiff Bank for loan of Rs. 60,000/- (Sixty Thousand) only on 27.07.2005 for personal use. The plaintiff bank sanction the loan of Rs. 60,000/- (Sixty Thousands) only to the borrower Late Hiranman Basfore on 18.08.2005. The plaintiff bank charged interest @11.85% per annum compounded quarterly

for value received. The interest rate has been revised presently by Reserve Bank of India and it is now fixed at 14.5% and in case of default the defendants are liable to pay overdue interest @2%. An account was opened in the name of the borrower Late Hiranman Basfore bearing CB A/C No. 4677. The borrower Late Hiranman Basfore was to repay the loan at the rate of Rs. 1580/- (One Thousand Five Hundred Eighty) only per month in 48 (Forty Eight) equal monthly installments with effect from September 2005. In consideration of the amount sanctioned the borrower Late Hiranman Basfore executed Pronote and take delivery letter to DPN on 18.08.2005 in favour of the plaintiff bank. The borrower Late Hiranman Basfore also executed irrevocable mandate for deduction from salary.

2. The Defendant No.2 is the colleague of borrower Late Hiranman Basfore and also employee in the office of the Sr. DMO/ Polyclinic, N.F Railway, New-Guwahati who stood as co-obligant for due repayment of loan of borrower Late Hiranman Basfore.
3. The proforma Defendant No.3 is the Deputy Medical Officer, N.F Railway, Maligaon, Guwahati. It is further stated by the plaintiff that they have not claimed any relief against the proforma Defendant No.3 and the said Defendant No.3 is impleaded in the suit so that the suit can be adjudicated and decided in presence of the said proforma Defendant No.3. That an irrevocable mandate was executed by borrower Late Hiranman Basfore to proforma Defendant No.3 for payment of due installment of Rs. 1580/- (One Thousand Five Hundred Eighty) 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 borrower Late Hiranman Basfore ceasing to be in the service of department during the continuation of the subject loan the borrower Late Hiranman Basfore 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 borrower Late Hiranman Basfore availed the loan amount and paid some of the installment amount. The borrower Late Hiranman Basfore died on 17.05.2007 at Guwahati, leaving behind the Defendant No.1 as his heir and legal representative. The Defendant No. 1 being the legal heir of

the borrower Late Hiranman Basfore is liable to pay the due amount of the loan taken by borrower Late Hiranman Basfore from the plaintiff bank. On 02.06.2009 the plaintiff issued letter to Sr. DMO Central Hospital Maligaon requesting to remit the due amount of the borrower Late Hiranman Basfore to the plaintiff bank out of his terminal benefits, but the concerned authority failed to do so. On 12.07.2008 the Defendant No. 1 by executing acknowledgement of debt and security from the legal heirs of borrower acknowledged that a sum of Rs. 37,487/- (Thirty Seven Thousand Four Hundred Eighty Seven) only exclusive of interest is due to the plaintiff bank. Again on 12.07.2008 the Defendant No.2 by executing acknowledgement of debt and security from the legal heirs of borrower acknowledged that a sum of Rs. 37,487/- (Thirty Seven Thousand Four Hundred Eighty Seven) only exclusive of interest is due to the plaintiff bank. That the defendants failed to pay the loan amount. The advocate of the plaintiff bank issued notice by registered post on 02.02.2010 to Defendant No.1 with a copy to Defendant No.2 asking them to make payment of Rs. 48,381/- (Forty-Eight Thousand Three Hundred Eighty One) only with all interest within 10 (Ten) days from the date of the receipt of the notice. The defendants did not paid the said amount. All the transactions made by Defendant No.1 has entered into the Plaintiff's Books of Accounts kept in regular course of business. As per account a sum of Rs. 44,574/- (Forty-Four Thousand Five Hundred Seventy Four) only is found due on 17.04.2010. The Defendant No.1 and Defendant No.2 are jointly and severally liable to pay the said amount with interest accrued thereon. 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. 44,574/- (Forty-Four Thousand Five Hundred Seventy Four) only from Defendant No.1 and Defendant No.2. And they are jointly and severally liable to pay the balance amount with interest at the rate of 16.5% per annum compounded quarterly on Rs. 44,574/- (Forty-Four Thousand Five Hundred Seventy Four) only from 18.04.2010 to 22.04.2010 and from 23.04.2010 i.e. the date of institution of the suit till realization of the amount.

5. Thereafter summons were issued to the defendants. Defendants did not appear to contest the suit and hence the suit proceeded ex parte against the defendants

6. The plaintiff filed evidence of *PW-1 Ankur Sarma* the Bank Officer and Attorney holder of the plaintiff bank.

The following documents were exhibited by the plaintiff bank.

Exhibit-1 : Loan application dated 27.07.2005.

Exhibit-2 : Sanction Memorandum 18.08.2005.

Exhibit-3 : Take delivery letter to DPN dated 18.08.2005

Exhibit-4 : Pronote dated 18.08.2005

Exhibit-5 : Irrevocable mandate from deduction from salary.

Exhibit-6 : Salary Certificate of Borrower.

Exhibit-7 : Acknowledgement of Debt and Security date
12.07.2008.

Exhibit-8 : Acknowledgement of Debt and Security date
from the Legal Heirs of borrower, co-obligant
12.07.2008.

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

7. I have also heard the learned counsel for the plaintiff bank. There is no discrepancy in the evidence advanced by PW-1. The defendants did not contest and the suit proceeded ex-parte against the defendants. 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 it's case.

8. **ORDER**

The suit is decreed ex-parte with cost.

The Defendant No.1 and Defendant No. 2 are jointly and severely liable to pay Rs. 44,574/- (Forty-Four Thousand Five Hundred Seventy

Four) only with cost and rate of interest at the contractual rate w.e.f the date of filing of the suit until repayment.

Prepare decree accordingly. The case is disposed of ex-parte.

Given under my hand and seal of this court on *7th day of August 2012.*

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

APPENDIX

Plaintiff's Witnesses

PW- 1: Sri. Ankur Sarma.

- Exhibit-1 : Loan application dated 27.07.2005.
- Exhibit-2 : Sanction Memorandum 18.08.2005.
- Exhibit-3 : Take delivery letter to DPN dated 18.08.2005
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Defendant's Witnesses

None

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