

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHURDA

PRESENT : Sri Raj Kishore Lenka,

Senior Civil Judge, Khurda

Date of conclusion of Argument: 13.12.2013

Date of pronouncement of Judgment: 21.12.2013

Civil Suit No. 150/2008

State Bank of India, a Statutory body constituted under the State Bank of India Act 1955 and having its local head office at Pt. Jawaharlal Nehru Marg, Bhubaneswar and a Branch office among other places at Khurda, Po/P.S: Khurda, District- Khurda represented by its Branch Manager who is the Principal officer, At/P.O./ P.S. and District-Khurda.

.....Plaintiff.

-Versus-

1. Manas Ranjan Pattnaik, aged about 51 years, S/o- Late Kanhu Charan Pattnaik, At/P.O.- Pichukuli, P.S.- Bolagarh, Dist- Khordha.
2. Rabinarayan Patasani, aged about 57 years, S/o- Late Bamadev Patasani, At/P.O.- Narangarh, P.S./Dist- Khordha.

..... Defendants.

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Counsels for the plaintiff :

Sri Sitakanta Mishra, Advocate
Khorda.

Counsels for the defendant No-1 :

Shri. K.N Roy, Advocate
and associates. Khorda

Counsels for the defendant No-2

Ex-Parte.

JUDGMENT

The plaintiff has filed this suit for recovery of unpaid loan amount from the defendants.

02. The plaintiff case is that the plaintiff is a Banking company constituted under the State Bank of India Act.1955 having its Branch at Khurda Town. The defendant No.1 has taken a house building loan from the plaintiff's institution and defendant No. 2 stood as the guarantor. The specific case of the plaintiff is that the defendant No.1 being a permanent resident of Village: Pichukuli approached and applied to the plaintiff's branch on 27.01.2004 to grant him a financial accommodation by way of house building loan of Rs. 2,00,000/- only for construction of his house. The defendant No. 2 offered himself as the guarantor. The plaintiff considering the viability of the proposal agreed to grant him the loan to the said extent of Rs. 2,00,000/- for the purpose of constructing his house. The aforesaid sanction of loan with terms and conditions was intimated and tendered to the defendant No.1 and his guarantor, who agreed with all the terms and conditions of such advance and signed on the sanction letter as token of their consent. As per the said terms and conditions the defendant No. 1 has to pay the said loan amount of Rs.2,00,000/- in equated monthly installments of Rs. 2,620/- each along with interest @ Rs. 2.25 % per annum with quarterly rests. He opened a term loan Account No.01593052318 for operating the transaction of the aforesaid loan in the plaintiff's Bank. He also executed a deed of hypothecation and undertaking in

favour of the plaintiff to repay the above loan and further agreed to the terms and conditions set forth therein. The defendant No.2 was bound himself liable jointly and severally to repay the loan with interest under the aforesaid deed of hypothecation on the default of payment by defendant No.1. In consideration to the aforesaid loan granted to the defendant No.1 by the plaintiff and as security of the said loan, the defendant No. 1 delivered and deposited the documents of title relating to the immovable properties fully described in schedule "A" property appended at the bottom of the plaint, and created an equitable mortgage over the said landed properties in favour of the plaintiff on 06.02.2004 with the plaintiff's branch at Khurda . The aforesaid title deed accompanying with documents are listed in Schedule 'B' given below this plaint. The plaintiff's further case is that, accordingly the loan is also secured by the equitable mortgage against the properties in Schedule 'A" of the plaint. The defendants No. 2 remained as surety for the said loan and executed separate deeds of guarantee in favour of the plaintiff and made liable himself to the outstanding dues in respect of the above loan to the plaintiff jointly and severally. The plaintiffs further contended that the defendant no-1 availed the entire loan amount but as he could not repay the dues, and thereby breached the terms and conditions of the loan by not repaying loan dues despite repeated demands made by the plaintiff. So, the outstanding dues against the said loan became Rs. 2,37,246.65 paisa with accrued interest as on 01.05.2007. The plaintiff has to say that since the defendants did not repay the loan amount the present case was instituted for recovery of the same from the defendants who are jointly

and severally liable to pay the same. The cause of action for the suit arose on 06.02.2004 when the defendants accepted the sanction letter issued from the plaintiffs bank and on all subsequent dates as shown in the Statement of Account and on 09.02.2006 when the advocate notice was issued to the defendants calling for the payment of the due amount.

3. After institution of the suit the defendant No. 1 appeared and submitted his written statement. The defendant No. 2 did not participate in the proceeding and as such the suit against him set ex-parte on 20.09.2011.

The defendant No. 1 in his written statement put question mark on the maintainability of the suit as well as the cause of action. The specific case of the defendant No.1 is that the facts rose before the court by the plaintiff is untrue and misconceived both by law and facts. The plaintiff have not acknowledged any liability to the defendants and the defendant No. 1 has never expressed his intention to create any equitable mortgage. The further case of the defendant No. 1 is that he has been making payment of loan due to the plaintiff and as per his knowledge he has paid Rs. 50,000 on 27.03.2008 and another Rs. 50,000/- on 15.09.2008 and another Rs. 50,000/- on 13.01.2010 and Rs. 30,000/- on 13.10.2011. The account statement obtained by the defendant from the plaintiff branch reveals an outstanding amount of Rs. 70,000/- and some odd as on 13.10.2011. It is lastly contended by the above defendant that due to his poor financial condition he was

unable to refund the amount and in the mean time he has refunded a lot and as such the suit is not maintainable and liable to be dismissed.

04. In view of the above rival contentions, the following issues have been settled for useful adjudication.

ISSUES

- i. Whether the suit is maintainable?
- ii. Whether the plaintiff has any cause of action in instituting this suit?
- iii. Whether the suit is barred by limitation?
- iv. Whether the defendants are jointly and severally liable to pay a sum of Rs. 2,37,246.65 paisa along with P.I. and F.I. at the contractual rate from the date of filing of the suit till realization to the plaintiff Bank?
- v. Whether the plaintiff is entitled to a preliminary mortgage decree in respect of the "A, B & C" schedule properties?
- vi. Whether the plaintiff is entitled to any other relief?

05. In order to prove its case the plaintiff has examined one Chitaranjan Mahana, Deputy Manager, SBI, Rajsunakhala Branch as P.W. 1. On the other hand the defendant examined himself as D.W. 1.

Several documents have been admitted in the evidence from the side of the plaintiff which are as follows:-

The Loan application form dated-27.01.2004 is marked as Ext.1, the loan sanctioned letter dated-06.02.2004 as Ext.2, the memorandum of term of agreement as Ext. 3, the agreement of guarantee as Ext. 4, the acknowledgment letter to defendant No. 1 on 30.03.2007 as Ext. 5, the advocate notice to defendant No. 1 as Ext. 6 & the loan Accounts statement of defendant No.1 is marked as Ext. 7.

Issue Nos. IV & V

06. The plaintiff came with a case for realization of a amount of Rs. 2,37,246.65 paisa from the defendant No. 1. It is the case of the plaintiff that the defendant No. 1 has obtained loan of Rs. 2,00,000/- from the plaintiff institution on 27.01.2004, but he defaulted for payment of the same. P.W-1 in order to substantiate the basic facts involving in the suit matter, in his evidence in chief narrated the exact version as impleaded in the suit. He has specifically stated that the plaintiff is a Banking Company constituted under the State Bank of India Act, 1955 having its Branch at Khurda Town. The defendant No.1 is a man of the village- Pichukuli, who has applied for loan on 27.01.2004 for construction of his house. The defendant Nos. 2 offered himself as guarantor for the repayment of loan amount with interest if the borrower failed to repay the loan amount. The plaintiff considering the viability of the proposal agreed to grant term loan to the said extent of Rs. 2,00,000/- to enable the defendant No-1 to construct his house. The

aforesaid sanction of loan with terms and conditions was intimated and tendered to the defendant No.1 and his guarantors, who agreed with all the terms and conditions of such advance. On the same day the defendant No.1 executed a Demand Promissory Note in favour of the plaintiff to repay the same the aforesaid term loan of Rs. 2,00,000/- in equitable installments of Rs. 2,620/- along with interest @ 2.25% per annum with quarterly rests. He opened a term loan Account No.01593052318 for operating the transaction of the aforesaid loan in the Bank. The defendant No.2 bound himself liable jointly and also severally to repay the loan with interest under the aforesaid terms and conditions on the default of payment of defendant No.1. In consideration to the aforesaid loan granted to the defendant No.1 by the plaintiff and as security of the said loan, the defendant No. 1 delivered and deposited the documents of the suit property. with the plaintiff's branch at Khurda and created an equitable mortgage over the said landed properties in favour of the plaintiff. The defendants No. 2 remained as surety for the said loan and executed separate deeds of guarantee in favour of the plaintiff and made liable themselves to the outstanding dues in respect of the above loan to the plaintiff jointly and severally. P.W-1 furthered deposed that the defendant No-1 availed the entire loan amount but as he could not repay the dues, he has breached the terms and conditions of the loan by not repaying loan dues despite repeated demands made by the plaintiff.

P.W.1 in support of the above contentions admitted the loan application form submitted by the plaintiff before the plaintiff institution to be Ext.1,

the sanction order to be Ext.2 and the signatures of the Branch manager, who has sanctioned the loan to be Ext. 2/a and the memorandum of the terms of agreement as Ext. 3 and 4.

7. During cross examination, P.W.1 in his reply has stated that defendant No. 1 has already paid some amount against the loan incurred by him basing on which the present case has been filed and that only Rs. 30,000/- is pending against the loan of the defendant No. 1 as on 13.10.2011 as the principal amount. He further stated that he has gone through the record relating to the loan account in the office around 6 month back.

08. It is now became quite necessary on the part of the court to say that after institution of the case the defendant has paid a substantial amount to the plaintiff institution and only Rs. 30,000/- is pending. To that effect D.W. 1 in his examination chief has stated that he has paid Rs. 50,000/- on 27.03.2008, another Rs, 50,000/- on 15.09.2008 and again Rs. 50,000/- on 13.01.2010 and lastly Rs. 30,000/- on 13.11.2011. In support of the same he produced the money receipt which has been marked as Ext. A, B, C & D respectively. The said fact remain unchallenged. Now the question arises whether the plaintiff after institution of the suit can accept the amount without giving any information to the court? If the pleading and evidence from the side of the plaintiff is taken into count the same appears to be completely baseless and false. If the payment of the loan amount after institution of the case is within the knowledge of the plaintiff, it is his obligation

to inform the same to the court during pendency of the suit and if not the Deputy Branch Manager of the concerned Branch should depose his evidence by mentioning the actual facts and circumstances which is not within the knowledge of the court. Therefore, claiming and outstanding amount of Rs. 2,37,246.65 paisa is apparently wrong and baseless. The plaintiff institution after receiving the outstanding amount cannot claim for repayment of the same again from the defendant No. 1. In that way the evidence from the side of the plaintiff is misleading and appears to be baseless and false.

09. Coming to the next question it appears that the suit was filed on 11.08.2008 claiming Rs. 2,37,246.65 paisa from the defendant No. 1. But, the surprising fact is that prior to institution of the suit Rs. 50,000/- was received by the plaintiff institution on 27.03.2008. This fact has also been suppressed by the plaintiff institution while presenting the suit. That being the factual admitted position of the case, it is impossible for the court to visualize the actual amount pending against the loan account of defendant NO. 1 including or excluding the interest. Therefore, it is the opinion of this court that the plaintiff has come to the court with a misleading facts and as such he is not entitled for any relief are sought for.

Issue Nos. I, II, III and VI

10. So far as the maintainability of the suit is concerned, it may be noted that the plaintiff mentioned the cause of action to be dated 06.02.2004, when the defendants accepted the sanction letter by executing the agreement of

hypothecation and guarantee and on 09.02.2008, when the term loan for the last time was called for by the advocate in notice. The said cause of action definitely follows the loan amount pending against the defendant, but here, as noted in the above issues, the amount called for from the defendants through the lawyers notice is baseless and false as prior to institution of the suit the loan amount has been received from the defendant No. 1 and accordingly it can be presumed that the loan account of defendant No. 1 has been revived accordingly and regularized. Similarly, the plaintiff has already received the loan amount from the plaintiff institution in four consecutive terms without acknowledging the same to the court and the evidence advanced therein appears to be baseless and false. Therefore, the plaintiff has no cause of action against the defendants to file the suit. Therefore the suit is maintainable. Hence it is ordered.

ORDER

The suit of the plaintiff be and the same is dismissed on contest against the defendant No. 1, while ex-parte against the defendant No. 2 but in the circumstances without any cost.

Senior Civil Judge ,Khurda

The order is typed to my dictation, corrected by me and pronounced in the open court this the 21st day of December, 2013 under the hand and seal of the court.

Senior civil Judge, Khurda.

List of the witnesses examined on behalf of the plaintiff.

P.W.1 Chitaranjan Mahana.

List of the witnesses examined on behalf of the defendants.

D.W.1 Manas Ranjan Pattnaik.

List of documents admitted on behalf of the plaintiff.

Ext.1 Loan application dt. 27.01.04.
Ext.1/a Signature of applicant on Ext. 1.
Ext. 2 Loan sanction letter dt. 06.02.2004.
Ext. 2/a Signature of Branch Manager Bimal Ch. Das on Ext.2.
Ext. 2/b Signature of Defendant No. 1 on Ext.2.
Ext. 2/c Signature of Defendant No. 2 on Ext.2.
Ext.3 Memorandum of terms on agreement.
Ext. 3/a Signature of Defendant No. 1 on Ext.3.
Ext.4 Guaranteed agreement executed for defendant No. 2.
Ext. 4/a Signature of Defendant No. 2 on Ext.2.
Ext.5 Acknowledgment letter of Defendant No. 1 dt. 30.03.07.
Ext.6 Lawyer notice.
Ext.7 Statement accounts.
Ext. 7/a Signature of Branch Manager Bimal Ch. Das on Ext.7.

List of documents admitted on behalf of the defendants.

Ext.A Money receipt of Rs. 50,000/- dt. 27.03.2008.
Ext. B Money receipt of Rs. 30,000/- dt. 13.09.2008.
Ext. C Money receipt of Rs. 50,000/- dt. 13.01.2010.
Ext. D Money receipt of Rs. 30,000/- dt. 13.10.2013.

