

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHURDA

PRESENT : Sri Raj Kishore Lenka,

Senior Civil Judge, Khurda

Date of conclusion of Argument: 14.02.2014

Date of pronouncement of Judgment: 17.02.2014

Civil Suit No. 301/ 2009

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. Shree Bijaya Kumar Sahoo, aged about 47 years, S/o- Late Bhramarbar Sahoo, at- Thakurpada, P.O.- Pubusahi, P.S./Dist- Khordha.
2. Bhramarbar Sahoo, aged about 70 years, S/o- Late Krushna Sahoo, At- Thakurpada, P.O.- Pubusahi, P.S./Dist- Khordha.

..... Defendants.

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Counsels for the plaintiff :

Sri Sitakanta Mishra, Advocate
Khorda.

Counsels for the defendant

Shri B. C. Mohanty, Advocate
and associates. Khorda
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JUDGMENT

The plaintiff has filed this suit for recovery of unpaid loan amount from the defendants amounting Rs. 3,38,997.43 Paise by the time of filing of the suit.

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, who is a permanent resident of Village: Thakurapada approached and applied to the plaintiff's branch on 26.10.2005 to grant him a financial accommodation of Rs. 4,00,000/- only for enhancement of his motor part business at Pitapalli, under the name and style "NARAYANI MOTORS". The defendant No. 2 offered himself as the guarantor. The plaintiff after considering the viability of the proposal agreed to grant him the loan to the said extent of Rs. 4,00,000/- by way of cash credit and as such 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 shall repay the aforesaid cash credit limit of Rs. 4, 00,000/- on demand of the bank with interest @ Rs. 11 per cent per annum with monthly rests. As per the terms and conditions defendant No. 2 deposited and delivered the documents of title relating to the immovable properties described under schedule A property of the plaintiff. Accordingly a term loan Account No. 01660061354 was opened in the name of his business unity 'Narayani Motors' for operating the transaction of the aforesaid loan and the said loan account was converted to computerized account No.

11276649618 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. The plaintiff 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. 3,38,997.43 paisa with accrued interest as on 29.02.2008. 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 27.10.2005 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 20.12.2008 when the advocate notice was issued to the defendants calling for the payment of the outstanding due amount.

3. After institution of the suit the defendants appeared and submitted their joint written statement.

The defendants in their written statement put question mark on the maintainability of the suit as well as the cause of action. The specific case of the defendants is that the facts raised before the court by the plaintiff is untrue and

misconceived both by law and facts and the same is barred by limitation. It is specifically contended that the suit amount as mentioned in the plaint is false and the plaintiff has suppressed the truth. It is the case of the defendants that while defendant No. 1 was sustaining loss in his business, called by the plaintiff bank on 27.01.2009, and he was directed to depose a sum of Rs. 3,24,000/- as per the order of the Lok-Adalat of the bank. Accordingly the defendant No. 1 has paid Rs. 1,75,000/- to the plaintiff institution in three occasions, but he could not able to pay the rest amount. The defendants also contended that he is ready to pay the rest amount on installments if he is exempted from paying the interest. The defendant lastly averred that the suit on the above reasons is liable to be dismissed.

04. In view of the above rival contentions, the following issues have been settled for an 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. 3,38,997.43 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 schedule properties?"
- vi. Whether the plaintiff is entitled to any other relief?

05. In order to prove its case the plaintiff has only examined one Dhirendra Bihari, Deputy Manager, SBI, Khordha 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-26.10.2005 is marked as Ext.1, the loan sanctioned letter dated-27.10.2005 as Ext.2, the memorandum of term of agreement and hypothecation as Ext. 3, the agreement of guarantee as Ext. 4, the revival letter dated 12.02.2008 as Ext. 5, the advocate notice to defendants along with postal acknowledgment and money receipt as Ext. 6 & the loan Accounts statement of defendant No.1 is marked as Ext. 7.

6. Similarly the D.W. - 1 (Def. - 1) also admitted the money receipts in respect of his deposit against the loan amount dated 23.01.2009, 27.01.2009 & 31.05.2010 as Ext. A, A/1 & A/2 respectively. He has also admitted the letter of C.M., SBI, Khorda, in Ref. No. PB- 1922 as Ext. B and another letter dated 27.01.2009 as Ext. C.

Issue Nos. IV & V

7. The plaintiff institution came with a case for realization of a amount of Rs. 3,38,997.43 paisa from the defendant No. 1. It is the case of the plaintiff that the defendant No. 1 has obtained loan of Rs. 4,00,000/- from the plaintiff institution on 26.10.2005, 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; except the claim amount, hence the same needs no repetition. 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. In addition to the same he has again contended that due to default on the part of the defendant, the plaintiff determined the said agreement of hypothecation and guarantee, called on the defendants to pay the entire outstanding loan with interest outstanding against them. The defendants on 12.02.2008 acknowledge their liability in written. The plaintiff sent legal notice to the defendants, but had no effect. P.W. 1 in his examination in chief again contended that in the loan account of defendant No. 1, a sum of Rs. Rs.2,65,958,43 paisa as on 29.02.2008 is outstanding against defendant No. 1.

8. Here it should be remembered that the amount claimed in the plaint and the outstanding amount mentioned to be due against the defendant No. 1 as per the evidence in chief of P.W. 1 are different and most importantly less amount

has been claimed from the defendant No. 1 as per the evidence in chief of P.W. 1 without assigning any reason to that effect. But during cross examination, P.W.1 in his reply has stated that he can't say if as per the decision of the SBI, Khordha Branch the Regional Office of SBI issued a letter to the defendant No. 1 on 27.01.2009 and if the defendant No. 1 prior to institution of the suit has paid Rs. 1, 75,000/- in three separate occasions against the outstanding loan amount over which the present suit has been filed.

9. It is now become quite necessary on the part of the court to go through the evidence of D.W. 1 to ascertain the truth behind. D.W. 1 in his evidence in chief has deposed that prior to institution of the case he has paid a sum of Rs. 1,75,000/- to the plaintiff institution. He again deposed that he has paid Rs. 36,000/- on 23.01.2009, another Rs, 1,14,000/- on 27.01.2009 and again Rs. 25,000/- on 31.05.2010. In support of the same he produced the money receipt which has been marked as Ext. A, A/1 & A/2 respectively. The said facts remain unchallenged. Now the question arises whether the amount claimed by the plaintiff in the plaint is proper and whether the plaintiff after institution of the case can accept the amount without giving any information to the court. The surprising fact of this case is that prior to institution of the suit the plaintiff paid Rs. 1,50,000/- to the plaintiff institution, but the plaintiff without deducting the said amount from the earlier outstanding due filed the present suit by claiming a total amount of Rs. 3,28,997.43 paisa from the defendants. This amount is apparently wrong and as such the claim amount of the plaintiff as per the plaint is abundantly false. The same can also be ascertained

from the account statement which has been marked as Ext-7 by the plaintiff. The plaintiff is a financial institution and before instituting a case against a party demanding outstanding amount, he should claim the actual money outstanding against the loanee as per the provision U/o- 7 rule 2 of CPC. To that effect the present suit appears to be defective and as such the cause of action as raised by the plaintiff is not proper. It is the admitted case that payment against the outstanding due has been made by the defendant No. 1 prior to institution of the suit. The same was also deducted from the loan account of defendant No. 1 as per the statement of account (Ext-7). But, the surprising case is that the cause of action and the amount claimed in the suit is completely different. Therefore the evidence adduced from the side of the plaintiff does not support its own case regarding the amount claimed in the plaint. The plaint appears to be filed hurriedly and without going through the relevant documents. This being the whole circumstances, it would be beneficial for the plaintiff institution to amend the facts of the case as per the provision of law to present the actual fact against the defendants. Here the counsel for the plaintiff has stated that the suit amount being the public money, the plaintiff institution cannot refused to receive the same and as such the act of the plaintiff by receiving the amount is neither illegal nor violates any provision of law.

10. This court is also agree with the very contention of the learned counsel for the plaintiff that the suit amount is the public money and the plaintiff institution should not have any hesitation to receive the same subsequent after the institution of the case. But, as much as instituting a case against a party is

concerned, it is the legal obligation of the plaintiff to bring all the material facts on which the pleading relies for his claim. In the present case if all the subsequent developments could have been brought to the notice of the court, the cause of action would be different and the amount claimed in the suit shall also be something different. This can be rectified by adopting fair procedure by the plaintiff as per the law and even after accepting the amount option can also be offered to the defendant for repayment of amount in the subsequent dates by postponing the proceeding. The matter can be referred to the "LOK ADALAT" But the plaintiff preferred to proceed with the incorrect facts and wrong claim, knowing that if the case be decreed, the same will cause serious prejudice to the defendants and also leads to abuse the process of the court. Here the problem is that this court has no scope to calculate as to how much amount has been received towards principle loan amount and towards the interest and as well as the rate of interest calculated therein with quarterly rest if any or any liberal approach has been adopted by the plaintiff in the Bank Lok Adalat. Therefore, without ascertaining the exact cause of the plaintiff's case and the proper outstanding amount pending against the defendant No. 1, this court cannot adjudicate the matter properly. Therefore, before proceeding into the case the plaintiff has to bring all the facts before the court for an useful adjudication. It is again asserted that the Deputy Manager of the concern branch in his evidence in chief has not also mentioned the subsequent developments as took place after institution of the suit. Therefore, the claim of the plaintiff regarding outstanding due amount and the cause of action mentioned

therein 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. Therefore, it is the opinion of this court that the plaintiff has come to the court with misleading facts and as such he is not entitled for any relief as sought for.

Issue Nos. I, II, III and VI

11. 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 27.10.2005, when the defendants accepted the sanction letter by executing the agreement on 20.12.2008, when the advocate notice was issued to him. The said cause of action definitely follows the loan amount pending against the defendant No-1, but here, as noted in the above issues, the amount called for from the defendants through the lawyers notice is incorrect as prior to institution of the suit the some outstanding loan amount was 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 defendant No. 1 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 not maintainable in the present form. 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.

Advocate's fee is at contested scale.

Senior Civil Judge ,Khurda

The order is typed to my dictation, corrected by me and pronounced in the open court this the 17th day of February, 2014 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 Dhirendra Bihari.

List of the witnesses examined on behalf of the defendants.

D.W.1 Bijay Kumar Sahoo.

List of documents admitted on behalf of the plaintiff.

Ext.1 Loan application dt. 26.10.05.
Ext.1/a Signature of defendant No. 1 on Ext. 1.
Ext.1/b Signature of defendant No. 2 on Ext. 1.
Ext. 2 Loan sanction letter dt. 27.10.05.
Ext. 2/a Signature of Branch Manager Lingaraj Ratha 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 hypothecation.
Ext. 3/a Signature of Defendant No. 1 on Ext.3.

- Ext.4 Guaranteed agreement.
Ext. 4/a Signature of Defendant No. 2 on Ext. 4.
Ext. 5 Revival Letter dated 10.02.08.
Ext. 5/a Signature of Defendant No. 1 on Ext. 5.
Ext. 5/b Signature of Defendant No. 2 on Ext. 5.
Ext.6 Lawyer notice.
Ext.7 Statement accounts.
Ext. 7/a Signature of Branch Manager Lingaraj Ratha on Ext. 7.

List of documents admitted on behalf of the defendants.

- Ext.A Money receipt dt. 23.01.09.
Ext. A/1 Money receipt dt. 27.01.09.
Ext. A/2 Money receipt dt. 31.05.10.
Ext. B Letter of C.M., SBI, Khordha in Ref. No. PB 19/22.
Ext. C Letter of B.M., SBI, Khordha in L. No. 52 dt. 27.01.09.

Senior civil Judge, Khurda.