

**IN THE COURT OF 2ND ADDL. SENIOR CIVIL JUDGE,
BHUBANESWAR, DISTRICT-KHURDA.**

PRESENT:- **Shri S.K. Pattanaik, M.A., LL.,M,**
2nd Addl. Senior Civil Judge, Bhubaneswar.

M.S. NO. 192/1914 of 2012/2011

Bank of India, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970 having its Head Office at Star House, C-5, G-Block Bandra-Kurla Complex, Bandra (East), Mumbai-400 051 and a Branch Office amongst other places at 68(P), Rasulgarh, Bhubaneswar-10 known as Chandaka Industrial Complex Branch represented by its Senior Branch Manager.

..... Plaintiff

-Versus-

1. M/s. Unique Foot Wear,
Proprietor :-Pravat Kumar Dalai, age-47 years,
S/o. Late Harihar Dalai,
At : Durga Prasad, Near Petrol Pump,
PO/Dist : Nayagarh-752069.
2. Iswar Chandra Biswal, age-58 years,
S/o. Satyabadi Biswal,
Residing At Plot No.8(P),
Acharya Vihar, Bhubaneswar-13.

.....Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s. B.K. Sahu, Advocate

For Defendants : M/s. S.C. Dash & Associates.

DATE OF ARGUMENT: 06.11.2013

DATE OF JUDGMENT: 08.11.2013

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J U D G M E N T

This is a suit for realisation of Rs.2,43,142/- (Rupees Two lakhs forty three thousand one hundred forty two).

2. Plaintiff's case in brief is as follows :-

The Defendant No.1 was required for the business of trading/purchase of foot wear in the name and style of M/s. Unique Foot Wear approached to the plaintiff Bank on dated 05.08.2000 for cash credit facility amounting to Rs. 1,50,000/- (Rupees One lakh fifty thousand). Further stated that the plaintiff Bank after duly considering the application made by the Defendant No.1 as well as complying all the process/formalities, the plaintiff bank agreed to grant an advance with the above Cash Credit Loan for the business in favour of the Defendant No.1 and the terms and conditions thereof accepted by him. Further stated that the Defendant No.2 joined in the aforesaid request of the Defendant No.1 and undertook to execute a guarantee in favour of the plaintiff for due repayment of the said advance.

Further case of the plaintiff is that in order to avail the said Cash Credit Loan, the defendant No.1 on dated 05.08.2000 executed a Demand Promissory Note for Rs. 1,50,000 (Rupees One lakh fifty thousand) in favour of the plaintiff with an interest 12% per annum and a bearer letter dated 05.08.2000 and a letter of lien and set off dated 05.08.2000 and continuing security bond dated 05.08.2000. The Defendant No.1 on dated 05.08.2000 executed agreement for hypothecation of tangible moveable property to secure the loan of Cash Credit and as well as to repay the loan amounting of Rs. 1, 50,000/- (Rupees One lakh fifty thousand). The defendant No.2 also executed a deed of guarantee in favour of the plaintiff on dated 05.08.2000 and guaranteed in his personal capacity for the due repayment of Rs. 1,50,000/- together with interest and all costs, charges and expenses. After obtaining the aforesaid securities documents the plaintiff has advanced money to the defendant No.1 in their cash credit account up to facility of Rs. 1,50,000/- (Rupees One lakh fifty thousand) for the purpose of business and on receipt of the advance the defendant No.1 got benefited out of it and became liable to repay the same as agreed in the agreement together with costs and charges etc. The defendants by their letter of acknowledgement dated 25.01.2003, 03.01.2006 and 30.12.2008 acknowledged to pay

outstanding amount in the loan account and further acknowledged that all the aforesaid security documents are in full force and effect. After availing of the said advance the Defendant No.1 failed to operate the said cash credit account in accordance with agreed terms and also failed to pay the interest thereon. The plaintiff by letter dated 26.02.2008 requested the defendants to clear up the outstanding amount in their cash credit account but the defendants neglected and failed to pay the same. So, the plaintiff bank served legal notice on 22.10.2011 for repayment of the bank dues but till date the defendants did not comply the same. Finding no other alternative, the plaintiff bank has filed this suit for realisation of Rs. 2,43,142/- (Rupees Two lakhs forty three thousand one hundred forty two) together with pendente lite and future interest at the rate of 15% per annum till realisation. Hence, the suit.

3. The Defendants without filing their written statement contested the suit.

4. To substantiate his claim, the plaintiff has examined one Tridib Kumar Das as P.W.1 and relied upon Exts. 1 to 13 in support of his stand. The Defendants have not examined any witness on their behalf but only took part in the cross examination.

5. Plaintiff has filed the suit for realisation of an amount of Rs.2,43,142/- (Rupees Two lakhs forty three thousand one hundred forty two) P.W.1 (Tridib Kumar Das), the Manager (Credit) in his evidence he has fully corroborated the plaint story as averred. He proves Ext.1, the loan application form, Demand promissory note vide Ext.2, bearer letter dated 05.08.2000 vide Ext.3, Continuity security bond vide Ext.4, letter of lien and set off vide Ext.5, hypothecation of tangible movable property vide Ext.6, deed of guarantee vide Ext.7, acknowledgement of debts vide Ext. 8, 9 and 10, bank's reminder vide Ext.11, Advocate note vide Ext.12 and statement of account regarding loan outstanding dues as aforesaid vide Ext.13. In cross-examination he has stated that the loanee has approached the bank for further loan

and no amount was sanctioned to the loanee as regards to the further loan.

6. Admittedly, the Defendant No.1 availed the cash credit loan for his business amounting to Rs. 1,50,000/- (Rupees one lakh fifty thousand) from the plaintiff bank. The bank by executing documents from Exts. 1 to 13 has well established his claim against the Defendants who have to pay an outstanding dues of Rs. 2,43,142/- (Rupees two lakhs forty three thousand one hundred forty two). The defendants cross examined the plaintiff but nothing substantial has been elicited to disbelieve the fact of the plaintiff. Further the defendants have not placed any materials to substantiate the claim made by the plaintiff. Since the defendant No.1 availed the loan from the bank on the guarantee of defendant No.2 and did not pay the same as stipulated, in the result the defendants are jointly and severally liable to pay the loan outstanding amount to the plaintiff bank along with pendente lite and future interest @ 15% per annum.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against the defendants with cost. The plaintiff is entitled to get an amount of Rs. 2,43,142/- (Rupees two lakhs forty three thousand one hundred forty two) along with P.I. and F.I. @ 15% per annum. The Defendants are directed to pay the above decretal amount within three months hence, failing which the plaintiff is at liberty to realize the same in due process of law.

Lawyer's fee at contested scale.

2nd Addl. Senior Civil Judge,
Bhubaneswar

Judgment is typed out to my dictation, corrected and pronounced in open court, on this 8th day of November, 2013 under the signature and seal of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESS EXAMINED FOR THE PLAINTIFF:

P.W.1 : Sri Tridib Kumar Das

LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

- Ext.1 : Loan Application form dated 05.08.2000.
- Ext.2 : Demand Promissory note dated 05.08.2000.
- Ext.3 : The bearer letter dated 05.08.2000
- Ext.4 : Continuity security bond dated 05.08.2000.
- Ext.5 : Letter of lien and set off dated 05.08.2000.
- Ext.6 : Hypothecation of tangible movable property dated 05.08.2000.
- Ext.7 : Deed of guarantee dated 05.08.2000.
- Ext.8 : Acknowledgement of debt dated 25.01.2003
- Ext.9 : Acknowledgement of debt dated 03.01.2006
- Ext.10 : Acknowledgement of debt dated 30.12.2008
- Ext.11 : Bank's reminder dated 26.02.2008
- Ext.12 : Advocate notice.
- Ext.12/a & 12/b: Postal receipts.
- Ext.12/c & 12/d : A.Ds.
- Ext.13 : Statement of account.

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF DEFENDANTS:

N I L

2nd Addl. Senior. Civil Judge
Bhubaneswar.