

**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. 147/418 of 2012/2010

Oriental Bank of Commerce, a body of corporate constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, having its head office At-Harsha Bhawan, 'E' Block, Cannought Place, New Delhi-110001 and one of its branches amongst other places at B.D.A. Complex, "Akash Shobha" Building, Jawaharlal Nehru Marg, Bhubaneswar-751001, through its general power of attorney Holders and Chief Manager.

..... Plaintiff

-Versus-

1. Sri Dasarathi Sahoo, aged about 46 years,
S/o. Late Batakrushna Sahoo, At-Barimund,
PO-Barithengarh, PS. Badchana, Dist: Jajpur,
At present working as Sr. Trackman,
S.E., Dhenkanal, Office of the Sr. D.P.O.,
East Coast Railway, Khurda Road, Khurda.
2. Sri Dussan Dehury, aged about-not known,
S/o. K. Dehury, Vill-Barimula,
PO-Barithengarh, Dist : Jajpur,
3. East Coast Railway, represented through its
General Manager, At/PO/PS : Chandrasekharpur,
Bhubaneswar, Dist : Khurda.
4. East Coast Railway represented through
Senior Divisional Personal Officer,
E.Co. Railway, Khurda Road, Dist. Khurda.

.....Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s. M.K.Mishra & Associates

For Defendants No.1 & 2 : None.

For Defendant No.3 & 4 : M/s.A.K. Mohanty, Advocate

DATE OF ARGUMENT: 07.11.2013

DATE OF JUDGMENT: 12.11.2013

J U D G M E N T

This is a suit for realisation of Rs. 3,60,808/- (Rupees three lakhs sixty thousand eight hundred eight).

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

The Defendant No.1 applied for a housing loan to the plaintiff Bank for repairing his house on dated 28.09.2004. Accordingly, the defendant No.1 has executed the term loan agreement vide Ext.12 for said loan as per the terms and conditions. The defendant No.1 also agreed to repay the loan amount in 120 equal monthly installments of Rs.3,640/- (Rupees Three thousand six hundred forty) per month and penal interest @ 2% per annum in case of default. The defendant No.2 has executed an agreement of guarantee with plaintiff for the said loan and undertaken to take the total liability of the defendant No.1. The defendant No. 4 also submitted undertaking regarding deposit of loan amount from the salary of defendant No.1. The plaintiff Bank after due consideration of the defendant No.1's service, salary slip, date of retirement and length of service sanctioned an amount of Rs. 3,00,000/- (Rupees Three lakhs) in favour of the defendant No.1.

It is the further case of the plaintiff that after availing such loan, the defendant No.1 has defaulted in paying the installments. Due to such non-payment, the plaintiff bank issued notice U/s. 80 CPC which was duly served on defendant No.3 and 4. In spite of the said notice, neither the defendant No.1 & 2 nor the defendant No.3 & 4 pay any heed for repayment of loan for which the plaintiff bank has filed the present suit with a prayer that the defendants No.1 to 4 are jointly and severally liable to pay the outstanding dues of Rs. 3,60,808/- (Rupees Three lakhs sixty thousand eight hundred eight) along with pendente lite and future interest with mandatory injunction. Hence, the suit.

3. The Defendants No. 1 and 2 are set exparte vide order dated 30.11.2010.

4. The contesting Defendants No.3 and 4 have filed their joint written statement stating inter alia that the suit is not maintainable, there is no cause of action and bad for mis-joinder of necessary parties. It is pleaded that the suit is hit under the provision of Section 80 CPC and the defendant No.1 was not an employee under the defendant No.4. These defendants have no official knowledge about tendering of documents and sanctioning of loan to defendant No.1. These defendants have also no official nexus and responsibility to withhold the terminal benefits under the retirement scheme of the defendant No.1. It is further pleaded that the alleged undertaking filed by the defendant No.1 is a forged one. Moreover the Divisional Office, East Coast Railway has circulated the Railway Board's letter to the banks about fabrication of the documents by the loanees at the time of availing the loan. The defendant No. 3 and 4 are unnecessarily impleaded as parties to the suit. Therefore, the defendant No.3 and 4 are not at all responsible to repay the outstanding loan dues of the defendant No.1 since they have not executed any agreement and affidavit in favour of the defendant No.1 and prayed for dismissal of the suit.

5. Basing on the plaint averments and written statement, following issues are settled:

I S S U E S

1. Whether the suit is maintainable ?
2. Whether there is any cause of action to file the suit ?
3. Whether the Plaintiff is entitled to get recovery for an amount of Rs. 3,60,808/- (Rupees Three lakhs sixty thousand eight hundred eight) with @ 9% per annum from defendant No. 1 and 2?
4. Whether the Defendants No.1 to 4 are liable jointly and severally for that?
5. Is there any mandatory injunction required against the defendant No.3 and 4 ?
6. To what other relief(s), the Plaintiff is entitled ?

6. The Plaintiff to substantiate his claim has examined Sri Deepak Kumar Gupta as P.W.1 and relied upon Exts. 1 to 19 in support of their case. The Defendants No. 3 and 4 have not examined any witness on their behalf but only took part in the cross examination.

FINDINGS

ISSUE NO.3, 4 & 5 :

7. These issues are interlinked and interdependent to each other and need common evidence for discussion for which these issues have been taken up together. Plaintiff has filed the suit for realisation of an amount of Rs. 3,60,808/- (Rupees Three lakhs sixty thousand eight hundred eight) against the Defendants. It appears in the evidence of P.W.1 that he has fully corroborated the plaint story as averred. He proves all the documents from Ext.1 to 18 including the statement of account regarding loan outstanding dues as aforesaid vide Ext.19. In his cross examination has stated that not a single exhibit reveals that the defendant No.3 and 4 stood as a guarantor. He has no knowledge whether the defendant No.1 has retired, terminated, discontinued from the service or dead. He has not contacted personally to defendant No.3 and 4 as to get the information about the employment or the loan liability of defendant No.1. There is no postal registration receipt available as to sending of any letter issued in the name of defendant No.3 before filing of the case. Ext.18 does not bear the signature of defendant No.3.

8. Admittedly, the Defendant No.1 has availed a loan of Rs. 3,00,000/- (Rupees three lakhs) on dated 29.09.2004 by executing term loan agreement vide Ext.12 and a deed of guarantee vide Ext.13 by defendant No.2. It is pleaded that the authority will deduct the monthly installments of Rs. 3,640/- (Rupees three thousand six hundred forty) from his salary and credit to Plaintiff Bank. It is also pleaded that Defendant No.1 did not pay the installments regularly on the repeated demands of plaintiff bank for which this case has been filed for realisation of Rs. 3,60,808/- (Rupees Three lakhs sixty

thousand eight hundred eight). Since the evidence of P.W.1 has not been challenged by defendants No. 1 and 2 and they are become set exparte, it can be safely said that both the defendants No.1 and 2 are jointly and severally liable for making such payment of dues of the plaintiff.

9. Besides that as admitted by P.W.1 in his cross examination that defendant No.3 and 4 are not the guarantor of defendant No.1 for repayment of loan amount as the employer. It is also stated by P.W.1 that the plaintiff bank has not contacted personally to defendant No.3 and 4 as to get the information about the employment or the loan liability of defendant No.1. It is the first and foremost duty of the plaintiff bank that before sanctioning the loan, there should be a proper verification of issuance of Ext.2 and 3 and from whom it was obtained. More so, it is further duty of P.W.1 to verify the authenticity of the said Ext.2 and 3 while sanctioning the loan and documentation. In absence of such worthy and credible evidence from the side of the plaintiff Bank it can be safely said that the defendant No.3 and 4 are no way connected and liable as alleged by the plaintiff Bank. Nothing substantial has been elicited from the evidence of P.W.1 to make liable of defendant No. 3 and 4. More so, the person sought to be liable should have a direct interest as distinguished from a commercial interest in the subject matter of litigation. In the present case it cannot be stated that the defendant No.3 and 4 have direct interest in the subject matter of litigation. In view of the aforesaid principle, it can be rightly said that the defendant No.3 and 4 are no way liable jointly and severally as alleged. So, these issues are answered accordingly.

ISSUE NO. 1, 2 & 6

10. These issues are formal in nature, need no elaboration. In the discussion, supra, the Plaintiff has got cause of action to file the present suit against the Defendant No. 1 and 2. So the suit is maintainable in the eye of law. There is no other evidence with regard to any other relief. So these issues are answered accordingly.

Hence, it is ordered.

ORDER

The suit be and the same is dismissed on contest against the Defendants No.3 and 4 and decreed on ex parte against the Defendants No.1 and 2 with cost. The plaintiff is entitled to get Rs. 3,60,808/- (Rupees Three lakhs sixty thousand eight hundred eight) along with P.I. and F.I. @ 9% per annum. The Defendants No. 1 and 2 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 the 12th 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 : Deepak Kumar Gupta

LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

- Ext.1 : Loan application form dated 28.09.2004.
- Ext.2 : Salary certificate.
- Ext.3 : Undertaking given by defendant No.4
- Ext.4 : Affidavit dated 27.09.2004
- Ext.5 : Information sheet submitted by defendant No.2.
- Ext.6 : Declaration form submitted by defendant No.1.
- Ext.7 : Common agreement dated 29.09.2004
- Ext.8 : Test consent clause dated 28.09.2004
- Ext.9 : Draft consent clause dated 28.09.2004
- Ext.10 : Process note filed by defendant No.1.
- Ext.11 : Loan Sanction letter dated 29.09.2004
- Ext.12 : Term loan Agreement dated 29.09.2004
- Ext.13 : Agreement of guarantee dated 29.09.2004.
- Ext.14 : Transfer voucher dated 29.09.2004
- Ext.14/a: Signature of defendant No.1
- Ext.15 : Promissory note dated 29.09.2004
- Ext.16 : Balance security conformation dated 31.07.2007.
- Ext.17 : Postal receipt received by defendant No.4
- Ext.18 & 18/a: Acknowledgement card.
- Ext.19 : Statement of account

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF DEFENDANTS:

N I L

2nd Addl. Senior. Civil Judge
Bhubaneswar.