

**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. 216/589 of 2010/2009

State Bank of India, represented by its City Case
Officer at Stressed Assets Resolution Centre,
Rasulgarh, Bhubaneswar, Dist-Khurda.

..... Plaintiff

-Versus-

1. Brushaketu Mallick, aged 34 years,
S/o. Late Brahmananda Mallick,
Works for gain as Handling Worker,
O/o. District Manager, Food Corporation of India,
40, Kharvelnagar, Unit-3, Bhubaneswar,
Residing at L-62, G.G.P. Colony,
Rasulgarh, Bhubaneswar,
Permanent residence of At-Galadhari,
Via-Balikuda, Dist: Jagatsinghpur.
2. Chief Labour Inspector,
Drawing and Disbursing Officer,
Food Corporation of India,
Divisional Office, Bhubaneswar.

.....Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s. N. Pattnaik & Associates

For Defendant No.1 : None

For Defendant No.2: : M/s. B.K. Mohanty (B) & Associates

DATE OF ARGUMENT: 29.04.2014

DATE OF JUDGMENT: 01.05.2014

J U D G M E N T

This is a suit for realisation of Rs.49,312/- (Rupees Forty
nine thousand three hundred twelve).

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

The Defendant No.1 approached to the plaintiff Bank on dated 04.12.2000 for financial accommodation by way of personal loan/flood loan for repair of house. The plaintiff after due consideration of the application made by the defendant No.1 on dated 08.12.2000 sanctioned a personal loan of Rs. 50,000/- (Rupees Fifty thousand). The defendant No.1 submitted irrevocable letter of authority for the said loan. Thereafter, the Defendant No.1 executed personal loan agreement on dated 08.12.2000 to pay the loan amount and interest by 60 equated monthly installments of Rs.1,130/- (Rupees one thousand one hundred thirty) each per month commencing repayment from January, 2001 as per the interest schedule fixed by the bank.

The Defendant No.2 being the Drawing and Disbursing Officer has issued an irrevocable letter of authority vide Ext. 5 in favour of the plaintiff. After availing the loan the defendant No.1 did not pay the installments regularly then the defendant No.1 on dated 24.11.2003 and 22.11.2006 has executed letters of revival acknowledging his liability to the plaintiff and thereby revalidated the security document. The plaintiff bank has issued Regd. demand notice on dated 07.05.2009 for repayment of outstanding dues but they failed and neglected to pay the same. Finally, the plaintiff issued advocate notice to Defendants on dated 06.04.2009 but the Defendants did not pay any heed to it. Thereafter, the plaintiff issued 80 CPC notice to the defendant No.2 on dated 08.04.2009. In this process, the plaintiff prayed that both the defendants are liable to pay the outstanding dues of Rs. 49,312/- (Rupees Forty nine thousand three hundred twelve) with interest @12.75% per annum from the defendants. Hence, the suit.

3. The Defendant No. 1 is set exparte vide order dated 10.01.011. The defendant No.2 without filing the written statement contested the suit.

4. To substantiate his claim, the plaintiff has examined its City Case Officer, Sri Ananta Prasad Palo as P.W.1 and relied upon Exts. 1 to 10 in support of his stand. The Defendant No.2 has not examined any witness on his behalf but only took part in the cross examination of P.W.1.

5. Plaintiff has filed the suit for realisation of an amount of Rs. 49,312/- (Rupees Forty nine thousand three hundred twelve) along with pendente lite and future interest @ 12.75% per annum against the Defendants. P.W.1 the City Case Officer in his evidence has fully corroborated the plaint story as averred. He proves Ext.1, the loan application form, sanction letter vide Ext.2, personal loan agreement vide Ext.3, Authorisation letter vide Ext.4, Irrevocable letter of authority vide Ext.5, revival letter dated 24.11.2003 vide Ext.6, revival letter dated 22.11.2006 vide Ext.7, demand notice vide Ext.8, Notice U/s.80 CPC vide Ext.9 and statement of account regarding loan outstanding dues as aforesaid vide Ext.10. In his cross examination P.W.1 has stated that they are giving priority to recover the loan amount from the loanee. He has no direct knowledge about the sanction of loan to the loanee but he can say from the document. Defendant No.2 is not the loanee in this case. The bank has given the loan to the employee basing upon the undertaking of the DDO. They have not produced any document before the court that the procedures of recovery of loan from the defendant i.e. issuing letter, visit to his office etc. except this case. The loanee is now serving in the same department where he was earlier working. The defendant No.2 might have recovered the loan amount from the salary of the

loanee. Except statement of account he has not filed any document that the DDO has not recovered any loan amount from the salary of the loanee.

6. Admittedly, the Defendant No.1 (Brushaketu Mallick) availed a loan of Rs. 50,000/- (Rupees Fifty thousand) from the plaintiff bank by executing personal loan agreement vide Ext.3. The Defendant No.2 has also executed one irrevocable letter of authority vide Ext.5 in favour of the plaintiff bank and the authority will deduct the monthly installments of Rs. 1,130/- (Rupees one thousand one hundred thirty) from his salary and credit to Plaintiff Bank. It is 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. 49,312/- (Rupees Forty nine thousand three hundred twelve). Therefore, defendant No.1 is liable to pay claim amount with interest of the plaintiff bank. As regards to the DDO defendant No.2 P.W.1 has not whispered a single word connecting defendant No.2 towards his liability regarding repayment of loan amount. Rather he admits DDO has not recovered any loan amount from the loanee's salary account. When defendant No.2 has not deduct the loan amount, it is the duty of plaintiff bank to make correspondence to DDO for such inaction basing upon Ext.5. In absence of such positive averment it cannot be said that defendant No.2 is liable to pay the amount. That apart, there is no transaction between the bank and the DDO regarding repayment of loan. In absence of such worthy and credible evidence from the side of the plaintiff Bank it can be safely said that the defendant No.2 is not negligent in defaulting payment of loan amount towards the plaintiff bank by defendant No.1. Therefore, the defendant No.2 is no way liable for such default

made by the defendant No.1. Rather, the defendant No.1 being the principal borrower is liable to pay the aforesaid amount with interest to the plaintiff bank.

Hence, it is ordered.

ORDER

The suit be and the same is dismissed on contest against the Defendant No.2 and decreed exparte against defendant No.1 with cost. The plaintiff is entitled to get Rs. 49,312/- (Rupees Forty nine thousand three hundred twelve) along with P.I. and F.I. @ 12.75% per annum. The Defendant No. 1 is 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 1st day of May, 2014 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 Ananta Prasad Palo

LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON
BEHALF OF PLAINTIFF:

- Ext.1 : Loan application form
- Ext.1/a: Signature of defendant No.1 on Ext.1.
- Ext.2 : Sanction letter
- Ext.2/a: Signature of defendant No.1 on Ext.2.
- Ext.3 : Loan agreement
- Ext.3/a: Signature of defendant No.1 on Ext.3
- Ext.4 : Authorisation letter
- Ext.5 : Irrevocable letter of authority
- Ext.5/a: Signature of defendant No.2 on Ext.5.
- Ext.6 : Revival letter dated 24.11.2003
- Ext.7 : Revival letter dated 22.11.2006
- Ext.8 : Demand notice
- Ext.9 : Notice U/s. 80 CPC
- Ext.9/a: Postal receipt
- Ext.10 : Statement of account

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON
BEHALF OF DEFENDANTS:

N I L

2nd Addl. Senior. Civil Judge
Bhubaneswar.