

Assam Schedule VII, Form No. 132.

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT.

District :- Bongaigaon.

IN THE COURT OF CIVIL JUDGE :::: BONGAIGAON.

**Present :- Smti M.C.Bordoloi,
Civil Judge,
Bongaigaon.**

**Saturday, the 17th day of June, 2017.
Money Suit No. 10 of 2013.**

1. M/S Krypton Reliance Kommunikation

A Proprietorship firm

Being Represented by its: Proprietor

Smt. Anita Das

W/O Dr. N. C. Das

R/O B.T. Road, Near Hotel

Kanishka, Bongaigaon

P.O, P.S & Dist – Bongaigaon, Assam

Being Represented by the Authorized

Constituted Attorney Holder

Sri Achinta Das

S/O Dr. N. C. Das

R/O B.T. Road, Near Hotel

Kanishka, Bongaigaon

P.O, P.S & Dist – Bongaigaon, Assam

Plaintiffs.

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(2)

Versus

1. Sri Subankar Majumder
S/O Sri Dipu Majumder
C/O Sri Anil Das
R/O Bongaigaon Town
Main Road, W/No.- 5
P.O, P.S & Dist – Bongaigaon, Assam

Defendant.

The suit coming for final hearing on 28.04.2017, 26.5.2017.

(I) Given date or dates
in the presence of

Mr. Samir Kr. Sarkar,

Advocate for plaintiff

Mr. Manik Kalita,

Advocate for Defendant

and having stood for consideration to this on the 17th day
of June, 2017 the Court delivered the following Judgment:

Money Suit 10/2013.

::: J U D G M E N T :::

1. This is a suit for realization of a sum of Rs. 2,34,493/-
(Rs. Two lakhs, thirty four thousand four hundred and ninety three only).
2. The plaintiff's case as set out in the plaint is given briefly
hereinunder :

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3. That the plaintiff is a proprietorship firm, its sole proprietor being Anita Das. Plaintiff firm has filed the instant suit through the constituted attorney of the proprietor of the firm against the defendant who was allegedly a sales executive of the plaintiff firm. It is the plaintiff's case that it deals in the business of selling Mobile Sim Cards etc and the defendant used to take recharge vouchers / cards from the plaintiff's firm to be distributed and sold to various agents and customers and that the said defendant took recharge vouchers to the tune of Rs. 1,51,505/- (Rs. One lakh fifty one thousand five hundred and five) only and easy recharge value to the tune of Rs. 69,715/- (Rs. Sixty nine thousand seven hundred and fifteen) thereby taking goods valued at Rs. 2,21,220/- (Rs. Two lakhs twenty one thousand two hundred and twenty only) from the office of the plaintiff firm without making any payment and thereafter fled away from the jurisdiction of the district of Bongaigaon, in which connection an ejahar have been lodged against the present defendant.

The plaintiff avers that due to non-payment of the total outstanding amount of Rs. 2,21,220/- (Rs. Two lakhs twenty one thousand two hundred and twenty only), the firm sustained financial loss. It is alleged that the defendant when was required to make payment / refund of the total outstanding amount on 11.8.2013, refused to do so, under which circumstances the plaintiff firm has been compelled to file the instant suit for realization of Rs. 2,34,493/- (Rs. Two lakhs, thirty four thousand four hundred and ninety three only), which is inclusive of interest @ of 18% per annum from the month of April 2013 till the date of filing of the instant suit. The plaintiff also prays for further interest @ of 18% on the decretal amount and costs of the suit.

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4. The defendant entered appearance pursuant to summons and filed his written statement. The defendant raised the pleas of non-maintainability, absence of cause of action, under valuation, bar of limitation etc. The defendant denying his status as a Distributor Sales Representative in the plaintiff firm, or an employee under the plaintiff firm averred that the plaintiff had filed the suit and lodged an ejarah against him out of previous grudge to harass him. The defendant denied having taken recharge cards / vouchers or easy recharge vouchers from the plaintiff's firm and further denied having misappropriated Rs. 2,21,220/- (Rs. Two lakhs twenty one thousand two hundred and twenty), as alleged. The defendant prays for dismissal of the plaintiff's suit with costs.

5. Upon perusal of pleadings, the following issues had been framed for adjudication vide order dated 13.11.2014..

I S S U E S

- (i) Whether the suit is maintainable in its present form ?
- (ii) Whether there is any cause of action for the suit ?
- (iii) Whether the suit is under valued ?
- (iv) Whether the suit is barred by limitation ?
- (v) Whether defendant was a distributor sales representatives/sales executives in the plaintiff's firm ?

Contd...




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(vi) Whether the defendants acquired recharge card vouchers to the tune of Rs. 1,51,505/- and easy recharge card to the tune of Rs. 69,715/- from the office and counter of the plaintiff's firm as alleged ?

(vii) Whether defendant is liable for payment of Rs. 2,34,493/- to the plaintiff firm ?

(viii) Whether the plaintiff is entitled to a decree as prayed for ?

(ix) To what other relief(s), the plaintiff may be entitled to ?

6. The plaintiff in order to prove his case examined one witness, and also exhibited some documents. Defendant side also examined two witnesses and adduced documentary evidences. Both sides cross examined each others witnesses.

7. My decision on the above issues framed for adjudication alongwith reasons is given hereinunder:

Discussion ,Decisions and Reasons therefor:

8. **Issue No 1:**

Issue No 1 relates to the question of maintainability of the suit in the present form.

Plaintiff has filed the instant suit as a proprietorship

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concern with its sole proprietor being Anita Das, through the constituted attorney of the proprietor against the defendant alleging mis-appropriation of money by the defendant. Plaintiff fixes the defendant's liability to the tune of Rs. 2,21,220/- (Rs. Two lakhs twenty one thousand two hundred and twenty only), which the defendant allegedly refused to pay.

The instant suit is one for recovery of money due to the plaintiff. The Civil Court is the appropriate forum for seeking the aforesaid relief. Defendant has failed to show as to how the suit is otherwise rendered not maintainable in the facts aforesaid in law. Accordingly, in the above circumstances, I am constrained to hold that the plaintiff suit is maintainable in the present form.

The issue is decided in the affirmative, in favour of the plaintiff.

9.

Issue No 2 :

Issue no.2 relates to the question of presence of cause of action for the suit.

Plaintiff has filed the instant suit against the defendant alleging inter-alia that the defendant had taken recharge vouchers, and easy recharge cards to the tune of Rs. 2,21,220/- (Rs. Two lakhs twenty one thousand two hundred and twenty), on credit and thereafter failed to make payment against the said purchase or even failed to return the same and instead had fled from the jurisdiction of the district of Bongaigaon compelling the plaintiff to institute the present suit for recovery of the said money and for

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interest thereon.

On the other hand, defendant denied having received any recharge cards vouchers from the plaintiff's office and denied any liability towards the plaintiff firm.

The rivals claims and contentions of the parties discloses a cause for maintaining a suit.

Whether the plaintiff succeeds in establishing the cause of action or not will be addressed in the length of the judgment.

The issue is decided in the affirmative in favour of the plaintiff.

10.

Issue No 3 :

Issue No 3 relates to the question of under valuation.

Defendant besides raising the plea of under valuation in his written statement has not averred as to what ought to have been the valuation proper.

Plaintiff has sought for recovery of Rs. 2,34,493/- (Rs. Two lakhs, thirty four thousand four hundred and ninety three only) in the instant suit and had paid ad-valoram fee to the tune of Rs. 3850/-.

In suits for recovery of money the payment of Court fee is governed by Section 7(i) of the Court Fees Act 1870. The plaintiff is to pay ad-valoram fee on the amount of money claimed. Accordingly in the present

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suit, plaintiff had paid ad-valorem fee proper, on the amount claimed. Therefore the plea of the defendant cannot sustain.

The issue is decided in the affirmative in favour of the plaintiff.

11.

Issue No 4 :

Issue no. 4 relates to the question of bar of limitation.

Defendant in their written statement has raised the plea that the plaintiff's suit was barred by limitation, without specifically averring as to how it was time barred. This issue has also not been pressed during the time of argument. Nevertheless it is addressed herein.

Plaintiff has filed the instant suit alleging that the defendant had on 13.3.2013 took recharge cards vouchers from the plaintiff's office to the tune of Rs. 1,51,505/- and easy recharge value to the tune of Rs. 69,715/- thereby taking vouchers valued at Rs. 2,21,220/- in total from the plaintiff's office / counter, and that the defendant failed to make any payment against the aforesaid goods.

It is averred that defendant was allowed to take such recharge vouchers as he was a Distributor Sales Representative (DSR in short hereinafter) or Sales Executive under the plaintiff firm since the month of January 2011. Plaintiff has filed the present suit for recovery of the aforesaid money on 19.8.2013.

The suit is accordingly one for recovery of money for

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price of goods sold and delivered, where no fixed period of credit is agreed upon. The instant suit would be accordingly governed by Article 14 of the Limitation Act 1963, which provides for a period of 3 years to be computed from the date of delivery of goods. Plaintiff herein has alleged the taking of goods / vouchers by the defendant on 13.3.2013. The present suit for recovery of the money against such goods, that is the recharge vouchers, being filed in the year 2013, is filed within 3 years. The suit is well within time apparently.

The issue is decided in the negative in favour of the plaintiff.

12.

Issue No 5 and 6:

Issue No. 5 and 6 are the pivots on which the entire case of the plaintiff rests. Hence the two issues are taken up for consideration together to avoid repetition in the discussions, for the sake of brevity.

Issue No 5 relates to the question whether the defendant was a distributor sales representative (DSR in short hereinafter) or sales executive in the plaintiff firm. While issue No. 6 relates to the question whether the defendant acquired recharge cards, vouchers to the tune of Rs. 1,51,505/- and easy recharge cards to the tune of Rs. 69,715/- from the office and counter of the plaintiff firm.

PW 1 the plaintiff in his evidence-in-affidavit averred that he is the constituted attorney of the proprietor of the plaintiff firm and he being the manager of the firm is acquainted with the day to day affairs of the

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said firm. PW 1 averred that defendant was a DSR in the plaintiff's firm since the month of January 2011 and that defendant used to sell easy recharge or recharge cards of Reliance Telecom Limited taking the same from the office and counter of the plaintiff firm to various agents and customers.

PW 1 stated that the defendant on 13.3.2013 took recharge card vouchers from the plaintiff's office valued at Rs. 1,51,505 and easy recharge value to the tune of Rs. 69,715/- on credit and failed to make payment against the credit amount and instead fled from the jurisdiction of Bongaigaon district. PW 1 exhibited the original power of attorney as Ext 1, the signature of the executant of Ext 1 as Ext 1(1) to Ext 1(4).

PW 1 also exhibited Ext 2 being the bio-data of the defendant and Ext 3 being a copy of accounts containing 85 pages.

In his cross-examination PW 1 disclosed that he had not submitted any document in respect of his status as a Manager in the plaintiff firm in the instant case nor he had submitted any documents or certificate in respect of the defendant being a DSR under the plaintiff firm. PW 1 also admitted that he had not submitted any receipts, cash memo etc in respect of his purchase of recharge cards from Reliance Telecom Limited in the instant case. PW 1 further admitted not having submitted any documents in respect of the defendant taking away recharge cards, sim cards etc from the plaintiff's office, PW1 also revealed that he had not submitted any ledger book in respect of the accounts maintained at the plaintiff firm. PW 1 disclosed further the Ext 3 is an account book but clarified that the defendant had taken recharge card from the

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plaintiff firm vide Ext 3, and admitted the absence of any signature of the defendant in Ext 3.

Now perusal of Ext 3 discloses that same is a copy pertaining to some calculations and it nowhere discloses that vide Ext 3 recharge card, vouchers or easy vouchers have been given to the defendant on credit. There is no certificate in respect of Ext 3 by the person preparing Ext 3. Ext 3 is inadmissible, same not being proved by the author of the same and is accordingly excluded.

Admittedly plaintiff has not submitted any documents in support of his purchase of the easy recharge vouchers etc from Reliance Telecom. Again delivery of the alleged recharge vouchers to the defendant on credit for distribution to various agents, has also not been proved by cogent documentary evidence. Plaintiff has failed to adduce the evidence of any under agent who could have testified in respect of their obtaining easy recharge vouchers from the defendant. In fact, there is no document on record to show that the defendant worked as a DSR under the plaintiff firm. Ext 2 which is bio-data do not indicate the employment of the defendant under the plaintiff firm. At best for the production of Ext 2 from the possession of the plaintiff, it could be inferred that defendant had submitted bio-data for obtaining work at the plaintiff firm but whether the defendant was appointed under the plaintiff firm do not come to the fore on perusal of Ext 2. Had the defendant being a DSR or Sales Executive under the plaintiff firm, a copy of appointment letter would be existing, which the plaintiff could have exhibited, to show that the defendant was an employee at the firm. The failure of the plaintiff to adduce any evidence

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in respect of defendant's employment, leads this Court to the inevitable conclusion that defendant was not a sales executive under the plaintiff firm. The alleged taking of recharge voucher, easy voucher also could not be proved by the plaintiff successfully.

The issues are decided in the negative, against the plaintiff.

13.

Issue No 7, 8 and 9 :

Issue No 7,8 and 9 being inter-related are addressed together for the sake of convenience.

Issue No. 7 relates to the question whether the defendant is liable to make payment of Rs. 2,34,493/- to the plaintiff firm while issue No. 8 and 9 relates to the questions whether the plaintiffs are entitled to a decree or any other reliefs in the suit.

In view of the discussions made and decisions arrived at in issue Nos. 5 and 6, I am constrained, to hold that plaintiff is not entitled to a decree for recovery of the money as claimed.

The issues are decided in the negative in favour of the plaintiff.

ORDER

14.

In the light of the foregoing discussions, plaintiff's suit stands dismissed on contests with costs.

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Prepare a decree accordingly.

Given under my hand and seal of this Court on this 17th day of June, 2017 at Bongaigaon.

M.C. Bordoloi
17/6/17
Civil Judge,
Bongaigaon

M.C. Bordoloi
(Smti .M.C.Bordoloi) 17/6/17

Civil Judge **Civil Judge,**
Bongaigaon **Bongaigaon**

Dictated and corrected by me

M.C. Bordoloi
(Smti .M.C.Bordoloi) 17/6/17

Civil Judge **Civil Judge,**
Bongaigaon. **Bongaigaon**

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APPENDIX

Plaintiff's witness:

PW1- Sri Achinta Das.

Plaintiff's exhibits:

Ext 1 - Original deed of power of attorney.

Ext 1(1) to Ext 1(4) – Signatures of Smt. Anita Das.

Ext 1(5) to Ext 1(8) – Signatures of Notary.

Ext 1(9) and Ext 1(10) – Signatures of witnesses.

Ext 2 – Original Bio Data.

Ext 2(1) – Signature of defendant.

Ext 3 – Original Book of account.

Defendant's witness:

DW 1 – Sri Subankar Mazumder.

DW 2 – Sri Gautam Karmakar.

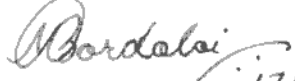
Defendant's exhibits:

Nil.

Court witness :

Nil.


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