

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.**

Thursday, the 23rd November, 2017.

Money Suit No. 4 of 2015.



1. Sri. Bittu Ghosh,
S/O. - Late Manoranjan Ghosh,
R/O – Vill Kharija Dolaigaon,
Paulpara.
P.O, PS and Dist. - Bongaigaon (Assam)

.....Plaintiff.

Versus

1. Sri Ganesh Ch. Rajbongshi,
S/O – Late Girish Ch. Rajbongshi,
Permanent Resident of
Tatipara, Guwahati Airport,
P.O. - Guwahati Airport,
P.S. - Ajra, Guwahati -17,
Dist – Kamrup (Metro), Assam.


23/11/17
**Civil Judge,
Bongaigaon**

Contd...

(2)

Temporary Resident of
New Colony, Rly. Qtr. No. 440/E
P.O., P.S. & Dist – Bongaigaon,
Pin – 783380 (Assam).

Office Address at
Sri Ganesh Ch. Rajbongshi,
S/O Late Girish Ch. Rajbongshi,
C/O SSE/BRIDGE/BNGN
Near Bongaigaon Railway Station
P.S & Dist Bongaigaon, Assam.

.....Defendant.

The suit coming for final hearing on 23.10.2017.

(I) Given date or dates
in the presence of

Mr. Amarjit Ray,

Advocate for plaintiff

Mr. B. Mahato (power withdrawn subsequently)

Advocate for Defendant.

and having stood for consideration to this on the 23rd
day of November, 2017 the Court delivered the following Judgment:

Money Suit 4/2015.

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

1.

This is a suit for recovery of money

Contd...




(3)

2. The plaintiff's case as unfurled in the plaint, is narrated briefly hereinunder :

Plaintiff's Case :

3. That the plaintiff and the defendant were acquaintances and that defendant approached the plaintiff for a loan of Rs. 3,00,000/- (Rs. Three lakhs) to tide over a financial exigency and accordingly the defendant by arranging the aforesaid money from friends and family members, lent a sum of Rs. 3,00,000/- (Rs. Three lakhs) to the defendant on 24.2.2014, whereupon defendant executed a 'promissory note' assuring to return the aforesaid amount after a period of 3 (three) months from the date of execution of the 'promissory note'.

It is the plaintiff's case that on expiry of the period of 3 (three) months, when the plaintiff approached the defendant for return of the amount given as loan, the defendant prayed for some time and eventually refused to make good his liability. It is further averred that the plaintiff sent a pleader's notices dated 4.8.2014 and 5.8.2014, receiving which the defendant assured the plaintiff to return the money after arranging a departmental loan. It is alleged that despite securing the loan from the department, the defendant refused to return the borrowed amount compelling the plaintiff to institute the suit for recovery of Rs. 3,00,000/- (Rs. Three lakhs) alongwith interest @ 12% per annum from the date of loan, future interest till realization of the amount alongwith costs of the suit.


23/11/17
Civil Judge,
Bongaigaon

4.

Defendant's Plea :

The defendant entered appearance pursuant to summons

Contd...



(4)

and filed his written statement. In his written statement the defendant raised the pleas of non-maintainability, absence of cause of action etc. The defendant denied having approached the plaintiff at any point of time for loan of the alleged amount and averred that the alleged promissory note is a forged document, prepared with the help of Ananda Barman and Basudev Ghosh for the plaintiff's wrongful gain.

The defendant prays for dismissal of the plaintiff's suit with costs.

5. Upon perusal of the pleadings 7 numbers of issues were framed for adjudication, vide order dated 21.3.2016 which are given below:

I S S U E S

- 1) *Whether there is a cause of action for the suit ?*
- 2) *Whether the suit is maintainable in the present form ?*
- 3) *Whether the plaintiff lent a sum of Rs. 3,00,000/- (Rs. Three lakhs) to the defendant on 24.2.2014 and whether the defendant on receipt of the said loan executed a demand promissory note ?*
- 4) *Whether the instant suit is within time ?*
- 5) *Whether the alleged promissory note dated 24.2.2014 purportedly executed by the defendant is a forged document ?*
- 6) *Whether the plaintiff is entitled to recover Rs.*

Contd....

AB
23/11/17
Civil Judge,
Bongaigaon



(5)

3,00,000/- (Rs. Three lakhs) alongwith interest @ 12% p.a. from the defendant ?

7) To what other relief/reliefs the plaintiff may be entitled to ?

6. Plaintiff in order to prove his case, examined 1 witness and also exhibited some documents. The defendant remained conspicuous by his absence. The learned representing counsel also sought to withdraw the power executed in his favour by the defendant for want of necessary instructions. Accordingly, Court notice was issued to the defendant and the defendant despite receipt of Court notice, failed to respond or to re-engage any counsel. Accordingly, leave for withdrawal of power to learned counsel B. Mahato was allowed. Suit vide order dated 12.1.2017 proceeded in absence of the defendant.

7. Heard the learned counsels of both sides.

8. My decision on the issues so framed alongwith reasons is given hereinunder:


Discussion ,Decisions and Reasons therefor:

9. **Issue No 1:**

Issue No. 1 relates to the question of presence of cause of action for the suit.

Plaintiff has filed the instant suit for recovery a sum of Rs. 3,00,000/- (Rs. Three lakhs), which he had allegedly lent to the defendant on 24.2.2014, alongwith interest thereon.

Contd....


23/11/17
Civil Judge,
Bongaigaon



(6)

The defendant, on the other hand, denied having taken any amount of loan from the plaintiff and also denied having any relation with the plaintiff.

The rival claims and contentions of the parties discloses a cause of action for the suit.

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

10. **Issue No. 2 :**

Issue No. 2 relates to the question of maintainability of the suit in its present form.

Plaintiff has instituted the suit for recovery of money.

Defendant has raised the plea of non-maintainability of the suit, but has failed to aver as to how the suit has been rendered non-maintainable. The Civil Court is the appropriate forum for maintaining a suit for recovery of money. Further this Court's pecuniary jurisdiction is beyond Rs. 2,00,000/- (Rs. Two lakhs). This suit being one filed for recovery of Rs. 3,00,000/- (Rs. Three lakhs) is therefore appropriately filed in this Court.


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

11. **Issue No. 4 :**

Issue no. 4 relates to the question whether the suit is within time.

The plaintiff has sought for recovery of a sum of money lent on 24.2.2014, by way of filing the instant suit on 28.5.2015.

Contd....


23/11/17
Civil Judge,
Bongaigaon



(7)

Article 19 of the Limitation Act 1963 will find attraction herein, which provides for a period of 3 years as the period of limitation for maintaining a suit for recovery of money, payable for money lent, period to be reckoned from the date when the loan was made. In the instant suit the alleged loan was made on 24.2.2014 and the suit is filed on 28.5.2015. The suit is apparently within time.

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

12. **Issue Nos. 3 and 5 :**

Issue nos. 3 and 5 are addressed together for the sake of convenience and to avoid repetition in the discussion of evidence and for the sake of brevity.

Issue no. 3 relates to the question whether the plaintiff lent the sum of Rs. 3,00,000/- (Rs. Three lakhs) to the defendant on 24.2.2014 and whether the defendant on receipt of the said loan executed a promissory note.


While **Issue No. 5** relates to the question whether the alleged promissory note dated 24.2.2014 is a forged document.

It is the plaintiff's case that he had lent a sum of Rs. 3,00,000/- (Rs. Three lakhs) to the defendant on 24.2.2014 and that the defendant receiving the said loan had executed a demand promissory note.

Plaintiff as PW1 filed his evidence-in-affidavit reiterating his pleaded case.

In support of his case PW1 exhibited Ext 1 being the

Contd....


23/11/17
Civil Judge,
Bongaigaon



(8)

demand promissory note and Ext 2 being a legal notice.

The defendant having remained absent failed to challenge the plaintiff's evidence. That Ext 1 is a fraudulent document could not be proved by the defendant by leading cogent evidence. Mere stating that Ext 1 is a fraudulent document would not suffice.

PW1 has exhibited the signature of the defendant as Ext 1(1) to Ext 1 (3) and that of the witnesses Ananda Barman and Basudev Ghosh as Ex 1(4) and Ext 1(5) respectively. The signature of the defendant on Ext1 remained unchallenged. Execution of Ext1 has been successfully proved by PW1. On perusal of Ext 1, it is seen that the defendant had acknowledged the receipt of sum of Rs. 3,00,000/- (Rs. Three lakhs) from the plaintiff for his personal needs and requirement assuring to return back the same within 3 (three) months.

Accordingly Ext 1 goes on to show, that defendant have taken a sum of Rs. 3,00,000/- (Rs. Three lakhs) from the plaintiff on 24.2.2014 and had executed a demand promissory note in presence of witnesses. Ext1 could not be said to be forged in absence of any convincing evidence.

Issue No. 3 is decided in the affirmative in favour of the plaintiff.

While Issue No. 5 is decided in the negative in favour of the plaintiff.


13.

Issue Nos. 6 and 7 :

Issue Nos. 6 and 7 being inter-related are addressed together for the sake of convenience.

In view of the discussions and decisions made in Issue

Contd....


23/11/17

Civil Judge,
Bongaigaon



(9)

Nos. 1, 2, 3, 4 and 5, I am constrained to hold that plaintiff is entitled to recover Rs. 3,00,000/- (Rs. Three lakhs) alongwith interest @ 6% per annum from the defendant from the date of filing of the suit till realization. Plaintiff is also entitled to costs of suit.

The issues are decided in favour of the plaintiff accordingly.

14.

ORDER

In the light of the foregoing discussions, plaintiff's suit is decreed on minimal contest with costs.

Plaintiff is entitled to recover Rs. 3,00,000/- (Rs. Three lakhs) alongwith interest @ 6% per annum from the date of filing of the suit till realization alongwith costs of the suit, from the defendant.

Prepare a decree accordingly.

Given under my hand and seal of this Court on the 23rd day of November, 2017.

Bordoloi
23/11/17
Civil Judge,
Bongaigaon

Bordoloi
23/11/17
(Smti .M.C.Bordoloi)
Civil Judge
Bongaigaon
Civil Judge,
Bongaigaon

Dictated and corrected by me

Bordoloi
23/11/17
(Smti .M.C.Bordoloi)
Civil Judge
Bongaigaon.
Civil Judge,
Bongaigaon



Contd....

(10)
APPENDIX

Plaintiff's witness:

PW1- Sri Bittu Ghosh.

Plaintiff's exhibits:

Ext 1 - Demand promissory note.

Ext 1(1) to Ext 1(3) – Signatures of the defendant.

Ext 1(4) and Ext 1(5) – Signatures of witnesses.

Ext 2 – Legal notice

Ext 2(1) to Ext 2(2) – Signatures of advocate Amarjit Roy.

Ext 3 and Ext 4 - Postal information receipt. (not admitted)

Defendant's witness:

Nil.

Defendant's exhibits:

Nil.

Court witness:

Nil

M
23/11/17
Civil Judge,
Bongaigaon



Bordoloi
(Smti M.C. Bordoloi) 23/11/17
Civil Judge
Bongaigaon
Civil Judge,
Bongaigaon