

**Form No. (J) 2**

**HEADING OF JUDGMENT IN ORIGINAL SUIT**

**District: Morigaon**

**IN THE COURT OF MUNSIFF NO. I, MORIGAON**

**Present: A Shravan, AJS**

**Monday, the 13<sup>th</sup> day of March, 2019**

**Money Suit No. 03/2018**

**Canara Bank,  
Jagiroad Branch**

.....**Plaintiff**

**-Versus-**

**1. Sri Premananda Borah  
S/o Late Laboram Borah**

**2. Sheikh Abdul Rahim  
S/o Sheikh Abdul Khadar**

.....**Defendant**

This suit coming on for final hearing on 25.02.19 in presence of –

Sri J C Bhuyan, Ld. Counsel .....for the plaintiffs

None .....for the defendant

And having stood for consideration to this day, the Court delivers the following judgment:

### **JUDGMENT**

1. This is a suit for recovery of money to the tune of Rs. 1, 83, 812.36 /- from the defendant with interest, costs and other reliefs.

### **CASE OF THE PLAINTIFF**

2. The instant suit has been filed by the plaintiff bank for realisation of Rs.1, 83, 812.36/- along with interest accrued thereon.
3. The case of the plaintiff in brief is that the plaintiff is a body corporate constituted under the Banking companies Acquisition and Transfer of Undertaking Act, 1970 with its Head Office at 112, J.C Road, Bangalore-560002 carrying on banking business at different branches having amongst others a Branch at Jagirod in the District of Morigaon, Assam, represented by its Manager/Authorised Officer.
4. The Defendant No.1 & 2 are the Borrower for personal loan under retail lending scheme (Canara Budget) residing at H.P.C Colony, P.O: Kagaj Nagar, P.S Jagirod, Morigaon, and PIN- 782413. The Defendants, by loan application dated 14.03.2015 applied for loan accommodation from the Plaintiff's Bank under the Scheme of Plaintiff's Bank to meet emergent needs. Considering the needs and requirements of the defendant, the Plaintiff Bank granted and sanctioned loan for Rs. 3, 00, 000/- on 14.03.2015 on terms and conditions amongst others that loan amount will carry interest @ 14.20 % per annum subject to revision from time to time as per Bank's rules. The defendants agreed to all the terms and conditions of sanctioning letter dated 14.03.2015. The Defendants agreed to repay the loan amount in 36 EMIs @ Rs. 10, 300/- per month.
5. At the request of the Defendants, the Plaintiff Bank disbursed the whole amount of Rs. 3, 00, 000/- on 14.03.2015. However, the Defendants, failed fulfil the terms and conditions of the loan. They failed to maintain their account regularly and also

defaulted in paying the installments and interest thereon. Even after repeated personal approach, requests through letters and persuasion of the Plaintiff Bank, the Defendant failed and neglected to regularise their loan A/c No. 1436626000309 as well as to deposit the instalments on regular basis.

6. The recorded liability as on 27.02.2018 (inclusive of interest debited up to 27.02.2018) stood at Rs. 1, 83, 812.36/- (Principal Amount= Rs. 1, 65, 571.36 + Interest=Rs. 18, 241/-).
7. The Plaintiff further claims the amount from the Defendants with future interest from 28.02.2018 to the date of payment.
8. The Defendants executed the following documents with the Plaintiff Bank:
  - I. Application Form dated 14.03.2015;
  - II. Certificate of compliance of terms and conditions dated 20.03.2015
  - III. TDL to DPN dated 20.03.2015
  - IV. Pro-note dated 20.03.2015
9. The Plaintiff has prayed for the following reliefs:
  - a. realisation of Rs, 1, 83, 812.36 with costs and future interest on contractual rate;
  - b. preliminary decree giving some time to the defendants to pay the money and if he fails to pay, draw up final decree for realisation of money;
  - c. any other relief or reliefs to which the plaintiff is entitled in law and equity.

### **CASE OF THE DEFENDANT**

10. Having received summons from the Court on 17.03.2018, the defendant No.1 appeared through his engaged counsel, however, even after the grant of sufficient opportunities, he failed to file written statement and accordingly, the suit was ordered to proceed *ex parte* against the defendant. The Plaintiff, on the other

hand, failed to take steps against the defendant No.2, even after granting of several opportunities and finally the suit was dismissed as against defendant No. 2.

11. I have heard the learned counsel for the plaintiff, and have carefully perused the records of the instant suit.

12. Upon such hearing and perusal, I have framed the under-mentioned points for determination:

**POINT(S) FOR DETERMINATION:**

- i. Whether the suit is filed within the period of limitation?*
- ii. Whether the defendant No.1, on 14.03.2015, obtained a loan of Rs. 3, 00, 000/- at the rate of interest of 14.20 % per annum from the plaintiff Bank and agreed to repay the loan amount in 36 EMIs @ Rs. 10, 300 per month ?*
- iii. If so, whether the defendant No.1 failed to repay part of the said loan of to the plaintiff as per the terms and conditions despite demands being made by it?*
- iv. Whether an amount of Rs. 1, 83, 812.36/- (inclusive of Principal and interest) is due to the defendant as on 27.02.2018 to be paid to the Plaintiff Bank?*
- v. To what other relief/reliefs the plaintiff is entitled?*

13. During proceeding, the plaintiff examined one witness and exhibited 20 (Twenty) documents.

14. I have heard argument of the Ld. Counsel for the plaintiff. None argued the case for the defendant. I have carefully perused the evidence on record and the documents exhibited.

**DISCUSSION, DECISION AND RESON THEREOF:**

**POINT OF DETERMINATION NO. (I): Whether the suit is filed within the period of limitation?**

15. The limitation act provides that the period of limitation for a suit for recovery of money loaned is three years from the date when the loan was made. The loan in this case was made on 20.03.2015 and the suit has been filed on 03.03.2018. Thus, it is abundantly clear that the suit has been filed well within the period of limitation.

**16. Thus, the aforesaid point stand decided in the affirmative and in favour of the plaintiff.**

**POINT OF DETERMINATION NO. (I): Whether the defendant No.1, on 14.03.2015, obtained a loan of Rs. 3, 00, 000/- at the rate of interest of 14.20 % per annum from the plaintiff Bank and agreed to repay the loan amount in 36 EMIs @ Rs. 10, 300 per month ?**

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**POINT OF DETERMINATION NO. (II): If so, whether the defendant No.1 failed to repay part of the said loan of to the plaintiff as per the terms and conditions despite demands being made by it?**

17. For the sake of convenience and brevity, I shall discuss and decide the point of determination No. (i) and (ii) together.

18. In support of its case, the Manager of the Plaintiff Bank, Sri Vikash Ranjan, adduced his evidence-in-affidavit as PW-1. His evidence-in-affidavit is near

verbatim reproduction of the plaint in material particulars and the same is not reproduced for the sake of brevity.

19. The PW-1 has exhibited the Loan Application dated 14.03.2015 of Defendant No.1 as Ext-1. It reveals that the Defendant No.1, as applicant applied for a loan of Rs. 3, 00, 000/- from the Plaintiff Bank @ 14.20 % per annum and also agreed to repay the same in 36 EMIs @ Rs. 10, 300/- per month, to which, defendant No.2, Sheikh Abdul Rahim stood as guarantor. PW-1 has also exhibited the signature of the Defendant No.1 as Ext-1(a). Ext-2 is the Specimen signature card dated 20.03.2015. Ext-2(a) is the signature of the borrower/defendant No1 and Ext-2(b) is the signature of the then Bank Manager. Ext-3 is the Certificate of Compliance of Terms and Conditions dated 20.03.2015. Ext-4 is the Certificate of Hindustan Paper Corporation Limited dated 11.03.2015, certifying the Defendant No.1 to be working with the said corporation. Ext-5 is the Irrevocable Mandate for Deduction from Salary, executed by the Defendant No.1, wherein he admitted that he had been sanctioned an amount of Rs. 3, 00, 000/- from the Canara Bank, Jagirod Barnch and authorising the DGM (Finance) to deduct a sum of Rs. 7, 000/- from his salary commencing from March, 2015 and to remit the amount so deducted to Canara Bank, Jagirod Branch. Ext-5 (a) is the signature of the Defendant No.1. Ext-6 is the TDL to DPN dated 22.03.2015, which reveals that the Defendant No.1 agreed to repay the loan in 36 monthly installments @ Rs. 10, 300/- @ 14.20% per annum and also to a penal rate of interest of 2 % per annum in case of default. Ext-6 (a) is the signature of the Defendant No.1. Ext-7 is the Pronote dated 20.03.2015 and Ext-7 (a) is the signature of the Defendant No.1. Ext-8 is the Notice to the Defendant dated 30.01.2018. Ext-9 is the certified copy of the computerised statement of Accounts of the Defendant No.1 under the seal and signature of the Senior Manager, Canara Bank, Jagirod Branch.

20. From the evidence of the PW-1 and the documents exhibited by him, there remains no quarrel as to the fact that the Defendant No.1 namely, Sri Premananda Borah approached the Plaintiff Bank for a loan of Rs. 3, 00, 000/- @ 14.20 % interest per annum, under the scheme of *Canara Budget* with the condition to repay the same in 36 instalments per month at the rate of Rs. 10, 300/-. The evidence of the PW-

1 show that the plaintiff made personal requests and persuasion to the defendant for payment of the aforesaid loan which is supported by Notice dated 30.01.2018 produced as Ext-8. But despite such demands being made, the defendant defaulted in repayment of part of the loan as per the terms and conditions consented to by him. The evidence so adduced by the plaintiff remained un rebutted and uncontroverted, inasmuch as the defendant did not contest the suit.

21. Consequently, I am clearly of the opinion that the plaintiff by leading cogent and credible evidence has proved that the defendant on obtained a loan of Rs. 3, 00, 000/- at the rate of interest of 14.20% per annum from the plaintiff Bank and agreed to repay the loan amount in 36 EMIs @ Rs. 10, 300 per month and he failed to repay part of the said loan to the plaintiff as per the terms and conditions consented to by him also despite demands being by him.

**22. Thus, both the aforesaid points stand decided in the affirmative and in favour of the plaintiff.**

**POINT OF DETERMINATION NO. (III): Whether an amount of Rs. 1, 83, 812.36/- (inclusive of Principal and interest) is due to the defendant as on 27.02.2018 to be paid to the Plaintiff Bank?**

23. From the certified copy of the computerised statement of Accounts of the Defendant No.1 under the seal and signature of the Senior Manager, Canara Bank, Jagirod Branch, it is abundantly clear that the total outstanding amount, inclusive of Principal amount at the rate of interest of 14.20 % per annum, stood at Rs. 1, 83, 812.36/- as on 27.02.2018 and thus, the plaintiff is held to be entitled to a decree for recovery of a sum of Rs. 1, 83, 812.36/- from the defendant with the following reliefs:

- a) interest at the contractual rate per annum on the due principal amount from the date of this order till the realization of the same.
- c) cost of the suit.

**ORDER**

13. Resultantly, the plaintiff's suit stands decreed *ex-parte* with costs with the following reliefs:

***a) a decree for recovery of a sum of Rs. 1, 83, 812.36 /- from the defendant.***

***b) interest at the contractual rate per annum on the due principal amount from the date of this order till the realization of the same.***

***c) Costs of the suit.***

14. Prepare a decree accordingly.

15. The suit is disposed of accordingly.

Given under my hand and seal of this court on this 13<sup>th</sup> day of March, 2019.

Typed by me:-

A Shravan  
Munsiff No. 1, Morigaon.

## **APPENDIX**

### **Plaintiff's Witnesses:**

PW-1. Sri Vikash Ranjan. (Branch Manager, Canara Bank, Jagiroad Branch)

### **Defendant's Witnesses:**

None

### **Plaintiff's Exhibits:**

- Ext.1 - Loan Application, dated 14.03.2015.
- Ext.1(a) - Signature of Borrower.
- Ext.2 - Specimen Signature Card, dated 20.03.2015.
- Ext.2(a) - Signature of Borrower.
- Ext.2(b) - Signature of Bank Manager.
- Ext.3 - Certificate of compliance of Terms and Conditions, dated 20.03.2015.
- Ext.4 - Certificate from HPC Authority, dated 11.03.2015.
- Ext.4(a) - Signature of HPC Authority
- Ext.5 - Irrevocable mandate from deduction from Salary, dated 20.03.2015.
- Ext.5(a) - Signature of Borrower.
- Ext.6 - TDL to DPN, dated 22.03.2015.
- Ext.6(a) - Signature of Borrower.
- Ext.7 - Pronote, dated 20.03.2015.
- Ext.7(a) - Signature of Borrower.
- Ext.8 - Notice to defendant, dated 30.01.2018.
- Ext.9 - Statement of Computerized Account, dated 27.02.2018.

### **Defendant's Exhibits:**

Nil.

**Munsiff No.1,  
Morigaon**