

Form No.(J)2
HEADING OF JUDGMENT IN ORIGINAL SUIT

District-----Nalbari

IN THE COURT OF CIVIL JUDGE :::::::::::::::NALBARI

Present : Himakshi Thakuria Buragohain
Civil Judge
Nalbari.

Friday, the 30th day of November, 2018

MONEY SUIT NO : 15/17

Sri Bubul Barman -----Plaintiff

- VS -

Sri Rajesh Bharali -----Defendant

The suit is coming on for final hearing on 20/11/2018 in presence of:-

Advocate for the Plaintiff:- Sri Pankaj Sarma

Advocate for the Defendant :- Sri Khitish Barman

And having stood for consideration to this day, the court delivered the following Judgment:-

J U D G M E N T

1. This is a suit for recovery & realization of amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) only.

2. The fact of the Plaintiff's case in brief is that the plaintiff is the owner of a restaurant named "Bhagya Hotel" situated at Bar-Masjid Chowk, Nalbari. As he defendant is familiar to the plaintiff for many years, he showed interest in hotel business and asked the plaintiff to lend money. As the plaintiff already intended to switch over his business, he agreed to lend money to the defendant for his business. On 14/10/2016 the defendant borrowed a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) from the plaintiff by executing a Hand-Note and agreed to pay back the first installment of the debt in cash of Rs. 80,000/- (Rupees Eighty Thousand) on 18/01/2017; the second installment in cash of Rs.85,000/- (Rupees Eighty five thousand only) on 20/03/2017 and the third installment in cash of Rs. 85,000/- (Rupees Eighty Five Thousand only) on 13/04/2017. The defendant failed to keep his promise and did not pay any installment to the plaintiff on any of the date promised in the Hand-Note. Though the plaintiff started making repeated demands in person and over phone to the defendant for recovery of the debt, the defendant tried to evade from his liability towards the plaintiff. Later, the father of the plaintiff went to the defendant's home on 10/07/2017 and asked the defendant to repay the debt to the plaintiff immediately . But the defendant did not pay any heed to it. Finally on 28/07/2017 the plaintiff visited the defendant's house to ask for his money, but the defendant showed arrogant behavior and asked the plaintiff to sue him for the money. Eventually the plaintiff sent a pleader-notice to the defendant through his Advocate on 29/07/2017 demanding his money back within 15 days of receipt of the pleader-notice. But inspite of that the defendant did not pay a single penny to the plaintiff. Hence, this suit is filed for realization of the debt from the defendant.

3. On receiving the summons the defendant appeared and contested the suit by filing written statement. In his statement the defendant denied the

averments made by the plaintiff in the plaint. The defendant pleaded that, the suit is pure imagination without true cause of action. The defendant stated that he is not aware about the disease and treatment of plaintiff. The defendant also denied his friendship with the plaintiff as there is difference in age. The defendant stated that the signature in the hand note is not his and the same is a forged one. The defendant also mentioned that he is a poor person and he can never imagine taking 2 ½ lakhs as loan and no one will lend him such money after knowing his poor status. According to the defendant if such a hand note was prepared by calling a 'Mahari' from the court, why there was no witness there in the hand-note. Hence the defendant prays to dismiss the suit.

4. On perusal of the pleadings following issues were framed--

- i) Whether the suit is maintainable in its present form ?
- ii) Whether the defendant on 14.10.2016 borrowed a sum of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) only from the plaintiff by executing a hand note ?
- iii) Whether the defendant has failed to repay the loan to the plaintiff ?
- iv) Whether the plaintiff is entitled to any relief as prayed for ?
- (v) To what other relief/ reliefs the parties entitled to ?

(DISCUSSION, DECISION AND REASONS THEREOF)

5. In support of the case the plaintiff has exhibited 3(three) documents only and has examined 3(three) witness. Defendant has neither exhibited any documents nor has examined any witness.

6. I have heard the argument of learned counsel of the plaintiff and the defendants and have discussed the issues as follows--

7. **ISSUE NO. (i) :**

“Whether the suit is maintainable in its present form ?”

There is no specific pleading that the suit is not maintainable in its

present form or in the manner which it should have been filed. The plaintiff has claimed for realization of Rs.2,50,000/-(Rupees Two Lakhs Fifty Thousand) only from the defendant. I find nothing to hold that the suit is not maintainable in its present form.

Accordingly this issue is decided in the affirmative.

ISSUE NO (ii)

“Whether the defendant on 14.10.2016 borrowed a sum of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) only from the plaintiff by executing a hand note ?”

In his pleading the plaintiff has averred that on 14-10-16 the defendant borrowed a sum of Rs.2,50,000/- from the plaintiff by executing a Hand Note and agreed to pay back the first installment of the debt in cash of Rs.80,000/- on 18-01-17, the second installment in cash of Rs.85,000/- on 20-03-17 and the third installment in cash of Rs. 85, 000/- on 13-04-17.

The plaintiff has exhibited the said hand note as Exhibit-1. The defendant in his written statement has denied the execution of the alleged hand note. Now on perusal of Exhibit-1 we find that except the signature of the scribe and the executor there are no signatures of any other witnesses.

Suklal Choudhury was the scribe as well as the witness in the deed. Now on going through the evidence of PW-3, Suklal Choudhury we find him stating that on 14-10-2016 while he was working in his office in the afternoon, one Manoj Barman came to him and told him that he has to draft a hand note as one boy wants to borrow money from his elder brother. PW-3 also admitted that Exhibit-1 is written by him and the entire transaction of Rs.2,50,000/- was made in front of him and the defendant had also put his signature in front of him.

The defendant at the time of cross-examination the PWs could not shake their credibility. Apart from that the defendant has also not adduced any evidence to prove the plea taken by him.

In view of the above evidence and materials on record it appears that the defendant had borrowed a sum of Rs.2,50,000/- only from the plaintiff by executing Exhibit-1.

Accordingly this issue is decided in the affirmative and in favor of the plaintiff.

ISSUE NO (iii)

“Whether the defendant has failed to repay the loan to the plaintiff ?”

The plaintiff has stated in his pleading that inspite of repeated demands and even after issuance of advocates notice the defendant failed to repay back the money to the plaintiff.

PW-1 in his cross-examination stated that he had sent his father and younger brother to ask for the money borrowed from him by the defendant. PW-2 who is the younger brother of the plaintiff also corroborated with the evidence of PW-1 in his cross-examination. Apart from that PW-2 clearly stated in his cross-examination that when he along with his father went to ask the defendant for the money, the latter denied their claim.

A perusal of Exhibit-3 which is the demand notice sent on behalf of the plaintiff also makes it clear that the defendant had defaulted in making the payment of the borrowed sum to the plaintiff.

Accordingly, issue no.3 is decided in the affirmative and in favor of the plaintiff.

ISSUE NO (iv) & (v)

“Whether the plaintiff is entitled to any relief as prayed for ?”

AND

“To what other relief/ reliefs the parties entitled to ?”

In view of the findings in issue no.1 to 3, the plaintiff is entitled to receive a sum of Rs.2,50,000/- from the defendant.

There is nothing in the record to disbelieve the evidence adduced by the plaintiff. The conduct of the defendant apparently shows that he has neglected to repay the loan amount with an interest as promised. The case of the plaintiff is prima facie proved.

O R D E R

8. In the result, the suit is decreed with cost.

The Plaintiff is entitled to receive a sum Rs.2,50,000/- from the defendant.

The defendant is directed to pay the decreed amount to the plaintiff within six months from the date of this order.

Prepare a decree accordingly.

Given under my hand and seal of this court on this the 30th day of November/2018.

Civil Judge
Nalbari

Dictated & Corrected by me

Civil Judge,
Nalbari

A P P E N D I X

1. Plaintiff witnesses :

PW-1 : Bubul Barman,

PW-2 : Manoj Barman,

PW-3 : Suklal Choudhury.

2. Defendant witnesses : Nil

3. Plaintiff's exhibits :

a) Exhibit-1 : Hand Note,

b) Exhibit-1(1) : Signature of PW-1,

c) Exhibit-1(2) : Signature of the Scribe PW-3,

d) Exhibit-2 : Office copy of the Pleader-Notice,

e) Exhibit-3 : Postal register receipt.

4. Defendant's exhibit : Nil.

Nalbari