

MS 05/19
Md. Majum Ali
vs
Mr. Nirod Baishya

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIFF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 19th day of Feb, 2020

Money suit: 05/2019

Md. Majum AliPlaintiff

Versus

Mr. Nirod BaishyaDefendant

This suit/ case coming on for final hearing on the 19th day of February, 2020 in the presence of:

Mr. Naba Kr. Dutta, Kamalendra Talukdar --- Advocates for the Plaintiff

None -----Advocate for the Defendant

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

JUDGMENT

MS 05/19

Ms. Mazum Ali

vs

Mr. Nirad Baishya

This is a suit initiated for recovery of an amount of Rs. 1,00,000/- (Rupees one lac) from the defendant. The facts as stated by the plaintiff in the plaint as follows:

1. The plaintiff and defendant having friendly relation since few years back, the defendant requested the plaintiff to lend him an amount of Rs. 1,00,000/- (Rupees one lac) for his personal purpose. The plaintiff initially expressed his inability to lend the said amount, but on consistent request of defendant, the plaintiff agreed to lend the said amount. The plaintiff gave the said amount of Rs. 1,00,000/- (Rupees one lac) to the defendant with a condition that the defendant will repay the said amount within six months. After completion of six months, when defendant did not make any repayment, the plaintiff tried to meet the defendant, but latter avoided him. Later in the month of September, 2018 the defendant met the plaintiff and handed over a cheque vide no. 025779 dated 15.9.18, Assam Gramin Vikash Bank, Bongaon Branch amounting of Rs. 1,00,000/- (Rupees one lac) as repayment of borrowed amount. Plaintiff when deposited the cheque on 28.9.18 with his bank named Punjab National Bank, the said cheque was returned unpaid due to insufficiency of fund and same was intimated to the plaintiff from his banker on 1.10.18. The plaintiff let the defendant know about the happenings to which he asked the plaintiff to deposit the said cheque as and when asked for. Again the plaintiff as per instruction deposited the said cheque on 31.10.18, but the cheque was returned unpaid due to insufficiency of fund and intimation was given to him on 2.11.18. Similarly on 10.12.18 when he deposited the same, the same was returned unpaid on the same ground. The plaintiff then informed the defendant about the dishonour of the cheque on 15.9.18, but he avoided him. Having no alternative the plaintiff sent a demand notice through Advocate on 14.1.19 for payment of the cheque amount within 15 days from receipt of the said notice and the said notice was received by defendant on 21.1.19. The defendant then promised the plaintiff to pay the debt amount within 2 months and requested him not to file any case. But after expiry of 2 months the defendant did not pay the debt amount. Hence the suit.

2. Pursuant to service of summon defendant failed to appear before this court, hence case proceed ex-parte against him. During trial plaintiff examined 3 witnesses and the defendant having remain absent did not avail opportunity to cross

examine the said witnesses. Plaintiff has also exhibited documents to establish his claim.

3. Since the suit proceeded ex-parte, no formal issues were framed but in order to arrive at just decision the following points of determination are framed :

- Whether the defendant had taken an amount of Rs. 1,00,000/- (Rupees one lac) from the plaintiff and subsequently defaulted in paying the same?
- Whether the plaintiff is entitled to the decree as prayed for?

1. Both above points are clubbed together for the sake of convenience.

2. It is well settled that the plaintiff has to prove his own case and stand on his own leg. Merely because the defendant remained absent and has not filed w/s does not entitle the plaintiff to the decree. Plaintiff as Pw 1 reiterated the same in evidence on affidavit as in the plaint. To substantiate his claim plaintiff has exhibited the cheque no. 025779 as exhibit 1 showing that the defendant has issued the cheque in his favour and also furnished bank deposit slip dtd. 28.9.18 as Ext. 2. He has also furnished the return memo from the bank as Ext. 3 which shows the cheque was returned due to insufficiency of fund. He has also exhibited deposited slip dtd. 31.9.18, 10.12.18 as Ext. 4 and 6 respectively and return memo as ex 5 and 7 which shows that he has deposited the cheque on the said dates and same were remain unpaid due to insufficiency of fund as revealed in Ext. 5 and 7. Legal notice sent to the defendant dtd. 12.1.19 exhibited as Ext. 8 reveals the legal notice was sent by him and same was received by the defendant on 21.9.10 as revealed in Ext. 10. Pw 2 and Pw 3 also corroborated the same. Though their version remained untested at the alter of cross examination but in absence of anything contrary, plaintiff's suit can be taken into consideration by preponderance of probability. Situated thus, there is nothing on record to disprove the evidence of the plaintiff. As such plaintiff is entitled to the decree as prayed for.

6. In view of above discussions, it can be held that defendant has taken a loan of Rs. 1,00,000/- (Rupees one lac) from the plaintiff and subsequently defaulted in paying the same. Hence, plaintiff is entitled to the decree as prayed for.

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ORDER

Plaintiff's suit is decreed ex-parte with cost. Plaintiff is entitled to recovery of Rs. 1,00,000/- (Rupees one lac) from the defendant along with interest @ 12% per annum from 16.10.17 until the full and final recovery of the decretal amount.

Prepare a preliminary decree accordingly.

Given under my hand and seal of this court on this 19th day of February, 2020.

Munsiff No. 1

Nalbari

Appendix

Plaintiff's Witness

1. PW 1 – Majum Ali
2. PW 2 – Umesh Talukdar
3. PW 3 – Kutubuddin Ahmed

Plaintiff's Exhibits

1. Exhibit 1 – Cheque No. 025779 dtd. 15.9.18 issued by the defendant to the plaintiff.
2. Exhibit 2 – Deposited slip dtd. 28.9.18
3. Exhibit 3 – Returned Memo dtd. 1.10.18 from the Assam Gramin Vikash Bank
4. Exhibit 4 – Deposited form dtd. 31.10.18
5. Exhibit 5 – Returned Memo dtd. 2.11.18 from the Assam Gramin Vikash Bank
6. Exhibit 6 – Deposited form dtd. 10.12.18
7. Exhibit 7 – Returned Memo dtd. 13.12.18 from the Assam Gramin Vikash Bank
8. Exhibit 8 – Demand notice to the defendant from the advocate of the deponent.

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9. Exhibit 9 – Postal receipt dtd. 14.1.18.

10. Exhibit 10 – Track consignment of post office.

Defendant's witness and Exhibits

Nil

Munsiff No. 1

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