

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 09 OF 2010

DEFENDANT-APPELLANTS :

1. United Bank of India,
16, Old Court House Street,
Kolkata – 700001.

**2. The Dy. General Manager &
Zonal Manager Guwahati Zone,**
United Bank of India,
G.S.Road, Ulubari,
Guwahati-781001,
Assam.

3. The Regional Manager,
United Bank of India,
Tripura Region, Durgabari Road,
P.O. Agartala,
Dist.-Tripura West.

4. The Branch Manager,
United Bank of India,
Battala Branch, P.O. Agartala,
Dist.-West Tripura.

5. Sri Dilip Kumar Deb,
Chief Officer and E.O.,
United Bank of India,
Zonal Office, G.S.Road,
Ulubari, Guwahati-781001,
Assam.

BY ADVOCATES :

Mr.D.R.Choudhury ,
Mr.D.Deb,
Mr.S.Sarkar,

- *VS* -

PLAINTIFF-RESPONDENTS :

Sri Biman Talukder,
S/O. Late Brajendra Kr. Talukder,
General Clerk, U.B.I, Jirania Branch,
P.O. & P.S.-Jirania,
Dist.-West Tripura.

BY ADVOCATE :

Mr.D.K. Biswas,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & delivery
of Judgment & order : **12.08.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. D. R. Choudhury, assisted
by learned counsel, Mr. D. Deb for the appellants.

2. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 preferred against judgment and decree dated 29.10.2009 passed by the learned Additional District Judge, Court No.4, West Tripura, Agartala in Title Appeal No.39 of 2002, whereunder the judgment and decree dated 20.06.2002 passed by learned Civil Judge, Junior Division, Court No.1, Agartala, West Tripura in Title Suit No.60 of 2002 has been affirmed.

3. The second appeal is filed against concurrent findings of two Courts below.

4. The respondent as plaintiff instituted Title Suit No.60 of 2000 seeking declaration and consequential relief and prayed for the following reliefs:-

"In the above circumstances it is most humbly prayed that your honour would be kind enough to issue summons to the defendants and after hearing the parties:-

- (a) Pass a decree declaring that the Enquiry proceeding headed by defendant No.6 on the charges of misconduct issued on 20.12.1996 is perverse, motivated, partisan and so illegal and the report is based on no evidence prompted by ill will and malice;***
- (b) Pass a decree declaring that the punishment imposed by the defendant No.3 by his order dated 04.07.1998 and further order dated, 01.08.1998 issued by the Branch Manager and the Appellate order passed by Asstt. General Manager on 10.11.1999 are motivated, pre-decided, illegal and as such void and without any consequence;***
- (c) Pass orders as to cost and any other order or orders as may be deemed fit and proper for ends of justice:"***

5. It is the case of the plaintiff that he is an employee, a clerical staff of appellants-Bank, and he obtained a house loan of Rs.1.5 Lakh from the Bank for construction of house on a plot of land at Mouja-Badharghat. The Bank released the loan amount in four phases according to the scheme. He has constructed his house, but could not follow the exact specification, which was submitted at the time of sanction of the loan for inadequacy of fund since the cost of materials was increased. A disciplinary proceeding was initiated against him by the appellants-Bank and in the disciplinary proceeding he was found guilty of misconduct and punishment was imposed. By filing the suit he challenged the disciplinary proceeding and the consequential order of punishment.

6. The respondents contested the suit by filing written statement contending that the plaintiff being an award staff of

the Bank did not follow the instructions/guidelines of sanction of the loan and thereby violated the terms of loan, which was enquired and found correct. The disciplinary proceeding was, therefore, drawn against him and after due enquiry he was found guilty of misconduct and accordingly, punishment imposed. There was nothing wrong in the action taken by the defendants against the plaintiff and hence, the defendants prayed for dismissal of the suit.

7. The trial Court considering the pleadings of the parties formulated five issues, namely :-

"I. Is the suit maintainable in law?

II. Is the punishment imposed upon the plaintiff by the defendant No.3 vide his order dated 4/7/98 and further order dated 1/8/98 issued by the defendant No.4 illegal and void?

III. Is the appellate order passed by the Assistant General Manager on 10/11/99 against the plaintiff illegal and void?

IV. Is the plaintiff entitled to the decree as prayed for?

V. To what other reliefs the parties are entitled?"

8. Both side adduced oral and documentary evidence and the trial Court considering the pleadings and evidence decided the issues in favour of the plaintiff and decreed the suit as prayed by the plaintiff.

9. Aggrieved, the defendants preferred Title Appeal No.39 of 2002 in the Court of learned District Judge, West Tripura, Agartala and the learned Additional District Judge, Court

No.4, West Tripura, Agartala by judgment dated 29.10.2009 dismissed the appeal and hence, this second appeal.

10. In the Memo of appeal the following substantial questions of law have been suggested on behalf of the appellants:-

"A) Whether the Judgment and Decree of the courts below are based on no evidence?

B) Whether the Ld. Courts below mis-interpreted the report of the Sub-Divisional Officer, Bishalgarh(Exbt.19) and committed wrong dis-believing the same as evidence?

C) Whether both the Courts below committed wrong and illegalities in passing the Judgment and Decree in favour of the plaintiff Respondent without dismissing the suit of the Plaintiff Respondent where he admitted the charge against him about non-utilization of house building loan amount by stating in his evidence that he made no pucca building construction and only made tin shed hut with pucca viti on his land without following approved plan on which the Bank sanctioned the house building loan amount?

D) Whether both the Courts below acted out of jurisdiction in deciding the case where the disputes between the Plaintiff Respondent and Defendant Appellants are industrial disputes?"

11. Learned counsel, Mr. Choudhury empathetically argued that there is a bipartite agreement between the management and the employees of the Bank and as per that bipartite agreement any dispute concerning the employees and the Bank Management should be referred to the Industrial Disputes Tribunal and the Civil Court has no jurisdiction. It is mentioned in the pleadings that there was a bipartite agreement, but there is nothing in the pleadings that as per any terms of the bipartite agreement, any dispute between the workman and the management has to be referred to the Industrial Tribunal and

that the Civil Court's jurisdiction has been totally ousted or that Civil Court cannot entertain any such suit concerning dispute between the management and its employees. No such issue was also formulated that in view of any particular term of agreement a civil suit is not maintainable. Only one issue, i.e., Issue No.1, was formulated that 'Is the suit maintainable in law'? But so far as the decision of the Court is concerned, it is found that at the time of hearing neither the plaintiff nor the defendants pressed on that issue. So, the maintainability of the suit was not challenged by the defendants before the trial Court at the initial stage.

12. The second point raised by learned counsel, Mr. Choudhury is that as per the bipartite agreement, non-execution of the work by the employee in terms of the sanction of loan was a misconduct so far the terms of the agreement has specified.

13. May be that the non-performance of any terms of contract constitute a misconduct, but that has to be clearly stated in the pleadings and evidence to be led. Both the trial Court as well as the appellate Court considered the pleadings as well as the evidence on record. I cannot agree with the submission of learned counsel, Mr. Choudhury that in a second appeal this Court has to examine and re-appreciate the evidence on record unless it is quite apparently found that there is perversity in the appreciation of evidence.

14. The substantial questions of law, which have been suggested in the Memo of appeal, do not at all constitute a question of law far from a substantial question of law. Both the trial Court and the appellate Court concurrently arrived at a finding and in a second appeal the High Court should not ordinarily interfere in the concurrent finding of the Courts below unless it is found to be totally perverse or that there is a clear substantial question of law which has not been decided and which has to be decided by this Court based on the pleadings, evidence and other materials on record.

15. Every suit has to get an end. Where two Courts below have decided and arrived at a concurrent finding, in the absence of any substantial question of law, I do not want to admit the appeal and accordingly, the second appeal stands dismissed.

JUDGE