IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.9 of 1991

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Against the judgment and decree dated 30.08.1990 decree sealed and signed on 14.09.1990 passed in Money Suit No. 79 of 1983 / 30 of 1989 by Sri H. Narayan, the then Subordinate Judge IV, Biharsharif, Nalanda.

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State Bank of India, Incorporated under the State Bank of India Act, 1955 having its registered head office at Nariman Point Bombay-1 and having its one of the Branches at Mohalla-Gaumaruddinganj Town and P.O. Biharsharif, District- Nalanda known as State Bank of India Agricultural Development Branch, Biharsharif, District- Nalanda………………………….... .... Appellant

Versus

1. Nunumati Devi D/o Gaya Singh
2. Sundri Devi D/o Gaya Singh
3. Shri Rambalak Singh S/o Late Ramdhan Singh
4. Shri Brijnandan Singh S/o Rajo Singh
5. Shri Ram Ashray Singh S/o Alakhdeo Singh
6. Shri Inderdeo Singh S/o Mathura Prasad
7. Shri Ram Singh S/o Bindeshwar Singh

All R/o village- Bedauli, P.S.- Asthawan, P.O.- Barbigha, District- Nalanda…………………………………………………..... .... Respondents

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Appearance :

For the Appellant : Mr. Rakesh Kumar Singh, Advocate

For the Respondents: Mr. Rahul Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date: 09-11-2016

Present appeal has been preferred against the judgment and decree dated 30.08.1990 decree sealed and signed on 14.09.1990 passed in Money Suit No. 79 of 1983 / 30 of 1989 by Sri H. Narayan, the then Subordinate Judge IV, Biharsharif, Nalanda whereby and whereunder the suit was decreed for a sum of Rs. 12,800/- with the stipulated rate of interest pendentilite and future till realization with proportionate cost. The plaintiff is the appellant and the defendants are the respondents.

2. The Money Suit was filed for realization of Rs. 82,905.54/- from the defendants with interest pendentilite and future. The case of the plaintiff, briefly stated, is that the plaintiff Bank sponsored loan scheme to help agriculturists. Defendants no. 1, 2 and 3 being agriculturists were in need of money for purchasing a tractor with its implements for agricultural operation. They approached the plaintiff Bank jointly for loan and for that filed application dated 26.03.1976. After proper inquiry the plaintiff agreed to advance the loan by way of agricultural term loan to the limit of Rs. 44,800/- only with interest at the rate of 11 % per annum subject to revised rate of interest directed by the Reserve Bank of India. The defendants no. 1 to 3 entered into the agreement and furnished guarantors who are defendants no. 4 to 6. Accordingly, agriculture term loan to the extent of Rs. 44,800/- was sanctioned on 30.04.1976. The defendants executed various documents and agreed to re-pay the loan in 14 equal half yearly installments of Rs. 3200/- only with interest, first of which fell due on 01.12.1976 and last installment was on 01.06.1983. The defendants no. 1 to 3 received the amount in draft dated 06.05.1976 and payment was made to the Bihar State Agro Industries Development Corporation Limited, Patna for Tractor and Rs. 10,297.96/- was given for purchase of trailor and Rs. 1721.12/- for pully and Belt. All the three bank drafts for purchase of tractor, trailor, pully and belt were given on 06.05.1976 and 10.05.1976 out of which Rs. 52,694.35/- which was the total cash of the aforesaid articles, Rs. 7,909/- was the margin money of defendants. The defendants no. 1 to 3 benefitted from the aforesaid loan and as such they were liable for the payment of the same but the defendants no. 1 to 3 defaulted jointly in re-paying dues, did not deposit the due amount of installments even on demand as agreed upon. The defendants hypothecated the tractor with trailor and its implement in favour of the plaintiff by security. Detail description is given in schedule no. 1 of the plaint. In spite of oral and written demands the defendants failed to repay the due amount along interest. On accounting and after deducting the amount already paid by the defendants, Rs. 82,905.54/- on 21.03.1983 was found due against the defendants. The details of the account is annexure-A of the plaint. As the defendants no. 4 to 6 stood as guarantors for the payment of the loan, in case of default, hence, the guarantors were jointly and severely liable for the repayment of the outstanding amount of loan with interest. By amendment of the plaint balance confirmation and letter of revival letter dated 03.04.1982 and 20.11.1982 was introduced in paragraph 13 of the plaint showing the acknowledgment of the due amount of the loan outstanding against the defendants. The amendment was brought vide order dated 05.08.1986. The cause of action for the suit arose on 06.05.1976 and 10.05.1976 on which day the aforesaid amount was disbursed to the defendants no. 1 to 3 and also on 22.06.1982 on which day the legal notice was served and on 22.03.1983 the last date of verbal demands and also on the due date of failure to deposit the due installment as agreed on 03.04.1982 and on 30.11.1982 when balance confirmation and letter of revival were executed.

3. Written statement has been filed on behalf of defendants no. 2, 3 and defendants no. 4 to 6 separately. It has been contended that the suit is barred by law of limitation, bad for misjoinder of necessary parties, the defendants never took any loan, never executed any documents, the documents of the bank bearing the signatures and endorsements are forged and fabricated. They never approached the bank for loan, they have denied the loan application dated 26.03.1976. They also denied the documents executed by them in favour of bank in token of the loan granted to them. The documents purported to have been written did not bear the signature of the defendants. The contents of the documents were not read over and explained to the defendants. The settlement of account furnished by the bank is exorbitantly wrong. The defendants did not execute any balance confirmation and letter of revival dated 30.04.1982 and 03.01.1982 for acknowledging the amount of loan outstanding against them. The document stated above purporting to bear the signatures of these defendants are false and fabricated. Those were created for saving the limitation of time barred loan. Even if the case of the plaintiff is taken to be correct, the loan was time barred and it was not recoverable from the defendants. The defendants no. 4 to 6 have filed written statement supporting the case of defendants no. 2 and 3. They have denied that they have acknowledged about the loan taken by borrowers defendants. The denial of execution of documents in favour of bank is correct.

4. Learned Sub-Judge framed the following issues on recast:-

(1) Has the plaintiff got any cause of action for the suit ?

(2) Is the suit as framed maintainable ?

(3) Is the suit barred by law of limitation ?

(4) Was the plaintiff entitled to recover the entire amount from the defendants with interest, with stipulated rate of interest ?

(5) Any other relief to which the plaintiff may be entitled ?

5. Learned Sub-Judge took up the issues no. 3 and 4 together and hold that the amount claimed by plaintiff prior to 01.08.1981 is barred by limitation. The plaintiff bank is entitled to recover the installments payable on 01.12.1981, 01.06.1982 and 01.12.1982 and 01.06.1983 at the rate of Rs. 3200/- plus interest and decided the issues accordingly. Issue no. 2 was decided in favour of the plaintiff holding that the suit is maintainable in its present form and there is no defect in framing of suit. Issues no. 1 and 5 were also decided together holding that the plaintiff has valid cause of action for the suit and the plaintiff is entitled a part of relief claimed by him.

6. The plaintiff being aggrieved and dissatisfied with the judgment and decree has preferred this appeal challenging the legality, correctness and propriety of the same on the ground that the judgment and decree under appeal in part is bad both in law and on facts. The learned court below should have decreed the suit in full with interest pendentilite and future at the contractual rate of interest between the parties. The learned court below erred in holding that the installments payable since 01.06.1978 to 01.06.1981 was barred by limitation and therefore, disallowed the claim to that extent. The learned court below erred in law by refusing to rely on the payments made by the defendants towards the liquidation of the dues vide Ext. 10 series which finds mention in the statement of accounts (Ext. 1 A) which is maintained in normal course of business. Learned court below erred in law by holding that the recovery of installment dues payable prior to June, 1981 has become barred in law. He should have accepted the documents of balance confirmation and the revival letters admitting dues of the bank vide Ext. 7, 7A and 8 signed by the defendants on 30.04.1982 and 03.04.1982 respectively. The learned court below should have held that the suit being filed on

01.08.1983 is within the period of limitation and further should have decreed the suit in full. Learned court below erred in appreciating the true spirit and scope of Section 25 (3) of the Contract Act. The court below should have held that the fresh period of limitation started with effect from the date of Ext. 7 and 8. The part of decree under appeal being otherwise bad in law and is fit to be set aside.

7. On the other hand, on behalf of respondents it is submitted that the judgment and decree under appeal is fit to be affirmed and there is no need of interference by this Court. Learned court below has rightly decreed the suit in part and rightly held that the other claim of the plaintiff is time barred. Ext. 10 series has rightly been not relied upon. The defendants have challenged Ext. 10 series as forged and fabricated and further Exts. 7 and 8 have also not been relied being forged and fabricated piece of document. The judgment and decree is neither bad in law nor on facts and, as such, this appeal is meritless and is fit to be dismissed.

8. On the basis of rival contentions of the parties the point for consideration in this appeal are as follows:

(i) Whether the suit is barred by law of limitation ?

(ii) Whether the plaintiff was entitled to recover the entire amount from the defendants with interest ?

9. In the written statement the defendants have denied regarding taking loan for purchasing tractor but during evidence it has become admitted fact that Ram Balak Singh defendant no. 2 and Gaya Singh defendant no. 1 took loan from the bank for purchasing tractor. Ram Balak Singh defendant no. 2 has been examined as PW 3. He has stated that he took loan from bank for purchasing tractor. His nephew Brijnandan Singh defendant no. 3 was also with him. They approached the bank for loan, the documentation for securing loan was executed by them, they had deposited margin money to the extent of Rs. 7,909/- and then the loan amount was advanced to them through bank draft. The first draft was for Rs. 40,677/- and second draft was for Rs. 10257/-. The loan amount advanced to them was repayable in 14 six monthly installments. He deposited money in the year 1977 to the extent of Rs. 4500/- and in the year 1979 Rs. 5,000/-. These entries find place in the pass book marked Ext. A. He has denied any payment made in the year 1982 through pay-in-slip Ext. 10, 10A and 10 B. He has stated that he did not make any payment of Rs. 500/- on 17.04.1982. Rs. 300/- on 17.08.1982. He has denied his signatures on pay-in-slip as forged. He has also denied the execution of the letters of balance confirmation marked as Ext. 7 and 7/A. The revival letters marked as Ext. 8 and Ext. 8/A have also been described as forged and anti-dated. DW 4 Prakash Narayan Singh has stated that no bank officer went in 1982 for realization of loan in the village. The plaintiff has examined only one witness Chamari Sao (PW 2) who is the field officer in agriculture department State Bank of India. He was posted in Biharsharif since last two months. No documentation was done in his presence. He has formally proved the document of the bank which is the basis of the suit of the plaintiff. He has stated that defendants no. 1, 2, and 3 filed loan application in the bank for purchasing of tractor and trailor. The loan application form and sanction order is Ext. 2. The hypothecation letter executed by the borrower is Ext. 3. The letters showing terms and condition of the loan advanced is marked as Ext. 4. He has stated that the defendants no. 4 to 6 are guarantors. The letter of guarantee was executed by guarantors was marked as Ext. 5. The blank portion of guarantee form was filled up by the bank officers. The authority letter written by Brijnandan Singh is Ext. 6. After execution of the aforesaid documents the loan was advanced through bank draft dated 01.12.1976. Bishundeo Prasad (PW 1) has proved the statement of accounts which is the basis of the suit of the plaintiff marked as Ext. 1. PW 2 has stated that the installment was to be paid in six monthly installments starting from 01.12.1976 to 01.06.1983. He has stated that the last installment was deposited in the month of December, 1982 for sum of Rs. 150/- through pay-in-slip marked as Ext. 10. Ext. 10/A is the pay-in-slip dated 15.09.1982 for Rs. 100/- Ext. 10/B is the pay-in-slip dated

17.08.1982 for Rs. 300/-. He has stated that Ramayan Prasad Sharma has written the receipts of payment marked as Ext. 10, 10/A and 10/B. The installment fixed by the bank was Rs. 3,200/- six monthly plus interest. The balance confirmation was also taken by the borrower Ram Balak Singh and Gaya Singh who signed over the same which were marked as Ext. 7 and 7/A. Two revival letters were filled up by H. K. Singh and Ram Balak Singh which have been marked as Ext. 8 and 8/A. He has stated that both the borrowers have signed over the same. He has stated that claim of Rs. 82,905.54 is true. During cross-examination also he has stated vide paragraph 11 that on revival letters and the balance confirmation there is signature of borrowers. In paragraph 12 he has denied that Ext. 7 and 7/A, 8 and 8/A were prepared in the bank and signature of borrowers is forged. From perusal of Ext. 7 and 7/A it reveals that there is signature of Gaya Singh and Ram Balak Singh. On perusal of Ext. 8 and 8/A it also reveal that there is signature of Gaya Singh and Ram Balak Singh. Ext. 9 is Debit letter over which there are signatures of Ram Balak Singh, Gaya Singh and Brijnandan Singh. Ext. 10 is cash credit account pay-in-slip by which Rs. 150/- was deposited by Ram Balak Singh and Gaya Singh. These deposits were made during field collection. Ext. 10/A is dated 15/16.09.1982. It is also a field collection and by this Rs. 150/- was deposited and over this there is signature of Ram Balak Singh. Ext. 10/B is dated 17/18.08.1982 and by this

Rs. 300/- was deposited during field collection and there is signature of Ram Balak Singh. Thus, from those documents it reveals that Ext. 10, 10/A and 10/B are not forged and fabricated documents rather it bears the signature of borrowers. Ext. 7 and 7/A, 8 and 8/A are also not forged document and those bear the signature of borrowers. The last payment made of Rs. 150/- is dated 01.12.1982 and on this pay-in-slip there is signature of Ram Balak Singh and Gaya Singh both. It is true that entry of these amounts is not entered in Passbook but due to that reason it cannot be said that these are forged and fabricated documents. The learned court below has wrongly not taken into consideration the amended portion of the plaint and due to that he has come to wrong conclusion. By way of amendment there is specific plea regarding the balance confirmation and letters of revival but the learned court below has taken otherwise. The suit was filed on 01.08.1983 for sum of Rs. 82,905.54/- as per statement of accounts Ext. 1/A and, as such the suit is within three years from the date of last payment and it cannot be said to be time barred. Learned court below has wrongly held Ext. 10, 10/A and 10/B as forged document and has wrongly held that the rest claim of the plaintiff is time barred. The learned court below has taken wrong approach in deciding issue no. 3 and 4 and wrongly held that rest of the claim of the plaintiff is time barred. Thus, this point is decided in favour of the appellant and against the respondents and it is held that the suit of the plaintiff is not time barred.

10. Point No. 2:- As it has already been held that the suit of the plaintiff is not time barred and, as such, the plaintiff is held entitled to recover the entire amount from the defendants with interest as agreed and accordingly, it is held that the plaintiff is entitled for sum of Rs. 82,905.54/- as per the statement of accounts Ext. 1/A with agreed interest. Accordingly, this point is decided in favour of the appellant and against the respondents.

11. In the result, this appeal is allowed on contest but under the circumstances without costs.

(Jitendra Mohan Sharma, J)

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