IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.661 of 1993

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Central Bank of India, a body corporate constituent under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having its central office at Chandramukhi, Nariman Points, Bombay-400021 and a branch inter alia at Sasaram, P.O. and P.S. Sasaram, District-Rohtas (Plaintiff in the court below).

... ... Appellant.

Versus

1. Awadh Bihari Rai, son of Late Haridwar Rai, resident of village-P.O. Pipara, P.S. Kargahar, District-Rohtas, at present Mohalla-Company Sarai, Sasaram, P.O. and P.S. Sasaram, District-Rohtas.
2. Smt. Saraswati Pathak, Wife of Tyagi Kashinath Pathak, resident of village-Susina, P.S. Kargahar, District-Rohtas.
3. Jugeshwar Rai, son of Yamuna Rai, resident of village-Pipara, P.S. Kargahar, District-Rohtas (Sasaram).

(Defendants in the court below)

... ... Respondents.

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Appearance :

For the Appellant : Mr. Ajay Kumar Sinha, Advocate.
For the Respondents : Mr. R.S. Pradhan, Senior Advocate.
Mr. Jainandan Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date : 16-08-2018

Heard learned counsel for the appellant and the learned senior counsel for the respondents.

2. This First Appeal has been preferred by the plaintiff against the Judgment dated 21.05.1993 and decree dated 28.05.1993 passed by the court of the Sub Judge-III, Sasaram, in Mortgage Suit No.77 of 1989, whereby the Sub Judge-III, Sasaram, decreed the suit of the plaintiff with cost for a sum of Rs.2,96,908.05/- against the defendant no.1 with pendente lite interest at the rate of 12½ per annum with direction to pay total amount of decree in 45 quarterly installments with further direction that the first installment would be started in the first week of August, 1993, and in case of default of any installment by more than three months, the entire amount of decree will be payable by the defendant no.1 and the plaintiff would be entitled to recover the same through process of the court at the cost of the defendant/respondent no.1.

3. In brief, the case is that the defendant no.1 had taken laon of Rs.1,61,000/- from the plaintiff Central Bank of India to purchase the truck, furnishing guarantee by the defendant nos.2 and 3 and also executing the paper of hypothecating truck and mortgaging the landed property with the terms and conditions that in case of default of payment of installment of the loan amount, the Bank would be entitled to realize the loan amount by selling the hypothecated truck and mortgaged property. The defendant no.1 failed to pay the installment of loan amount in terms of the agreement. Thereafter, the plaintiff Central Bank of India filed the Mortgage Suit No.77 of 1989 for decree of Rs.2,96,908.05/- with pendente lite interest with further prayer to realize the loan amount by the sale of hypothecated truck and mortgaged property.

The defendant no.1 appeared and filed an application on 20.05.1993, admitting the loan amount with a prayer to pay the loan amount in installments.

4. After hearing the learned counsel for the parties, the learned Sub Judge-III, Sassaram, passed the impugned Judgment and Decree, as indicated above.

5. Learned counsel appearing for the appellant submits that the plaintiff-appellant Bank is aggrieved only by fixing the 45 quarterly installments by the trial court, which will cover too much time. Except that, no any infirmity or illegality has been pointed out by the learned counsel for the plaintiff-appellant.

6. In the impugned Judgment and Decree, it is indicated that if the defendant no.1 will fail to pay any installment for more than three months, the entire amount of the decree shall immediately be payable by the defendant/respondent no.1 and the plaintiff would be entitled to recover the amount of decree through the process of the court at the cost of the defendant no.1. As such, I find no illegality and infirmity in the impugned Judgment and Decree.

7. Accordingly, this first appeal is dismissed but no order as to cost.

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2018.
Transmission Date	28.08.2018.