

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 140 of 2002****Reserved on 10-8-2018****Decided on 6-9-2018**

- State Bank of India, A Body corporate constituted under State Bank of India Act, 1955 through Branch Manager, State Bank of India, Branch Kumhari, Dist. Durg (CG).

---- Appellant**Versus**

1. Radheshyam Sahu aged about 43 years, s/o Shri Pardeshram Sahu.
2. Maksudan Sahu, aged about 32 years, s/o. Shri Pardeshram Sahu.
3. Tulram Sahu, aged about 41 years s/o. Shri Pardeshram Sahu.
All are residents of Bhanpuri, Bilaspur road, Raipur, through Gopal Patra Bhandar, Bhanpuri, Bilaspur Road, Raipur (CG).
4. Gopal Sahu, s/o. Shri Pardeshram Sahu. R/o. Village Bhinauri, Tahsil Berla, Dist. Durg (CG).
5. Sundar Lal Sahu, s/o. Shri Rahipal Sahu, r/o. Village Bhathagaon, PO Mathpurena, Tahsil and Dist. Raipur (CG).

---- Respondents

For appellant	:	Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Shashi Bhushan Tiwari, Advocate.
For respondents	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. The appellant has preferred this appeal under Section 96 of Code of Civil Procedure 1908 against the judgment and decree dated 19-7-2002 passed by the Additional District Judge,

Bemetara, Civil District Durg (CG) in Civil Suit No.4-B/2001 wherein the said court dismissed the suit filed by the appellant/plaintiff for recovery of amount to the tune of Rs.2,68,333.33 paisa (round off Rs.2,68,333/-) with interest @ 12.5% per annum with half yearly rest rate.

2. As per case of the appellant/plaintiff, respondents No. 1 to 5 applied for loan for purchasing Tractor and Trolley on 25-1-1990. Respondents No. 1 to 3 have been sanctioned loan while respondents No. 4 and 5 were sureties for the loan amount. The respondents have executed revival letters on 10-12-1992, 10-11-1995 and 31-8-1998. When they did not repay the loan amount, suit was filed and the trial Court dismissed the suit on the ground that the revival letters have not been duly proved.
3. Learned counsel appearing for the appellant submits as under:
 - i) In written statement (para 8) respondents have admitted the signature on revival letters but denied execution of said documents on the dates shown therein. As such, execution of document is admitted and it can be read without formal proof.
 - ii) Learned trial Court should have marked exhibits on the said documents and should have read the documents.
 - iii) Respondents have not entered into witness box to

prove their contention as to whether all the documents of revival were signed by them or not.

- iv) The trial Court should have drawn adverse inference against the respondents on the basis of Ex.P/44, the final notice sent to them before the institution of the suit incorporating therein the fact of execution of revival letters as pleaded.
 - v) Respondents have clearly admitted their liability to repay the loan, therefore, the finding of the trial Court is liable to be reversed.
4. I have heard learned counsel for the appellant and perused the record in which judgment and decree passed by the court below.
5. As per written statement (para 8), it is admitted by the respondents that they have signed in many documents one by one in the Bank, but no one entered into witness box to say that they have not signed in revival letters in the year 1995 and on 31-8-1998. Revival letters of the year 1995 and 1998 are on record and it was the duty of the counsel to get it exhibited while recording the evidence. While respondents have admitted signature in many documents, they have not rebutted revival letters upon entering into witness box before the trial Court. If any fault on the part of the counsel of the Bank is there in not exhibiting revival letters, the bank will not suffer for lapse of their representative.

6. Considering all these facts, this court is of the view that the trial court while passing the judgment/decreed, has not considered the above facts and thereby the said judgment is not sustainable. therefore, the matter requires reconsideration by the trial court.
7. Accordingly, the appeal is allowed and the judgment/decreed passed by the trial court is set aside. Now, the matter is remanded back to the trial court for hearing the parties afresh and after hearing the parties, the trial court will adjudicate the matter afresh.
8. Both the parties are directed to appear before the trial court on 9th October, 2018 for further proceedings.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju