IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.122 of 1999

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.01.1999 and 30.01.1999 respectively passed by the learned District Judge, Keonjhar in Money Appeal No.2 of 1993 confirming the judgment and decree dated 23.01.1993 and 03.02.1993 respectively passed by the learned Civil Judge, Senior Division, Keonjhar in M.S. No.29 of 1992.

State Bank of India .... ***Appellant***

-versus-

Sankarshan Rout & Another .... ***Respondents***

Appeared in this case by Hybrid Arrangement (Virtual/Physical Mode):

For Appellant - Mr.P.V.Ramdas (Advocate)

For Respondents -

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 25.07.2022 : Date of Judgment:01.08.2022

D.Dash,J. The Appellant-Bank, has filed this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), in assailing the judgment and decree dated 20.01.1999 and 30.01.1999 respectively passed by the learned District Judge, Keonjhar in Money Appeal No.2 of 1993. By the same, the Appeal filed by the present Appellant, being the unsuccessful Plaintiff under section 96 of the Code has been dismissed and thereby the judgment and decree dated 23.01.1993 and 03.02.1993 respectively passed by the learned Civil

Judge, Senior Division, Keonjhar in M.S. No.29 of 1992 have been confirmed. Thus the suit for realization of a sum of Rs.11,440/- from the Respondents (Defendants) with pendentelite and future interest @ 11.5% per annum with quarterly rests, has been dismissed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that the Defendant No.1 had applied for grant of loan of Rs.10,000/- in order to carry his business activity. On receipt of the application, the Plaintiff-Bank sanctioned a sum of Rs.10,000/- towards the loan in favour of Defendant No.1 and accordingly, the Defendant No.1 executed a Demand Promissory Note for a sum of Rs.10,000/- and the Defendant No.2, who is the guarantor of Defendant No.1 has endorsed the said Demand Promissory Note in favour of the Plaintiff and as such the Plaintiff-Bank became the holder of the Demand Promissory Note in due course. The Defendant No.2 is said to have stood as a guarantor for smooth repayment of the loan dues by Defendant No.1. The Defendant No.1 is said to have executed an agreement of hypothecation and Defendant No.2 is said to have executed the deed of guarantee. The Plaintiff-Bank then disbursed the loan in the account of Defendant No.1. The Defendants executed revival letters in favour of the Plaintiff-Bank acknowledging the debt of the Plaintiff-Bank. When the Defendants did not pay the dues of the Plaintiff-Bank, notice was issued by the Plaintiff-Bank through its lawyer calling upon the Defendants to clear the loan dues. On the failure of Defendants to do so, the suit has come to be filed.

4. The Defendants, in the written statement, have refuted the case of the Plaintiff as to grant of any loan to Defendant No.1. It is also stated that Defendant No.2 never stood as a guarantor for payment of loan dues by Defendant No.1. The execution of Demand Promissory Note is also denied and they denied to have executed any agreement for hypothecation or guarantee. The rate of interest as calculated by the Plaintiff-Bank is stated to be excessive and arbitrary. All these documents are attacked on the ground that the signatures of the Defendants had been taken by the Bank Officials on papers, which were then remaining unfilled. It is further stated that the Defendants had never executed revival letters in favour of the Plaintiff-Bank and if such documents are there, the same are forged. Therefore, it is stated that the Defendants are not liable to pay any dues to the Plaintiff-Bank.

5. On the above rival pleadings, the Trial Court, has framed as many as seven issues. On the issue no.4 with regard to advancement of the loan of Rs.10,000/- by the Plaintiff-Bank to Defendant No.1 and Defendant No.2, coming to stand as a guarantor thereto, the Trial Court has answered against the Plaintiff-Bank.

Both the Courts below have dismissed the suit on the ground that the Plaintiff-Bank has failed to prove as to what is the outstanding loan dues to be paid by the Defendants as on the date of the suit by not duly proving the Statement of Accounts; having further held that the Statement of Accounts, which has been admitted in evidence and marked Ext.7, in the absence of a proper certificate, as required under section 8 of the Bankers Books of Evidence Act, 1891 (in short, 'the Act') is of no aid to the case of the Plaintiff-Bank in proving the debt as due.

6. The Appeal has been admitted on 27.09.1999 to answer the substantial questions of law as indicated in (i) & (ii) of the Memorandum of Appeal, which read as under:-

> "A. Whether the learned Appellate Court is justified in rejecting the Appeal filed by the Plaintiff on the sole ground that Ext.7 (State of Accounts) was not genuine?; and
>
> B. Whether the learned Appellate court is justified in concurring with other findings of Trial Court without application of mind?"

7. Mr.P.V.Balkrishna, learned counsel for the Appellant-Bank submitted that the Courts below have committed grave error in rejecting the claim of the Plaintiff-Bank when the evidence let in by the Plaintiff-Bank are overwhelming on the score of advancement of the loan to the Defendant No.1 in further establishing that the Defendant No.2 was the guarantor for the said loan. He further submitted that when the Plaintiff-Bank has proved the Statement of Accounts containing the certificate as required under the Bankers Book of Evidence Act and that has not been challenged by the Defendants and has rather been admitted in evidence and marked without any objection, the same ought not to have been eschewed from consideration holding that it is not admissible and, therefore, cannot be taken into account for the purpose of ascertaining as to the loan dues as against the Defendant No.1 outstanding as on the date of institution of the suit.

8. Learned counsel for the Respondents, by filing a memo in Court, has intimated to have no instruction in the matter. None appeared to argue the matter on behalf of the Respondents on the date of hearing.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

10. The Trial Court, having framed seven issues, has answered issue no.4 in the negative. The issue no.4 concerns with the advancement of the loan of a sum of Rs.10,000/- as pleaded by the Plaintiff-Bank, which has been denied by the Defendants. For this conclusion, the Trial Court as well as the First Appellate Court have examined the Statement of Accounts (Ext.7) in saying that the same does not disclose either payment of Rs.10,000/- to Defendant No.1 or the receipt by him on 21.09.1979. However, the other document proved by the Plaintiff-Bank, i.e, Ext.1 to 4 have not been found to be ingenuine. Ext.1 is the loan application submitted by the Defendant No.1 and Ext.2 is the Demand Promissory Note. The deed of hypothecation and letter of undertaking are Exts.3 and 4 respectively. This deed of hypothecation contains the signature of Defendants 1 and 2 and the letter of undertaking also contains the signature of Defendant No.1. Revival letters have been proved in the case and have been admitted in evidence and marked Ext.8 to 14. All these documents have been marked without any objection from the side of the Defendants and the Statement of Accounts (Ext.7) has also been so marked without objection. The documents reveal that Defendant No.1 had applied for grant of cash credit loan for having wider activity in running his existing sweet stall. Ext.1/A is the letter of sanction containing the terms and conditions for grant of the loan where the Defendant No.1 has signed and so also Defendant No.2 has signed thereon in token of acceptance of the terms and conditions as set out therein. The loan has been sanctioned and the limits of the cash credit was Rs.10,000/-. In that view of the matter, the Statement of Account not disclosing that at a time from the beginning a sum of Rs.10,000/- has been advanced and has been credited to the account of the Defendant No.1 is not a circumstance to be taken note of against the case of the

Plaintiff-Bank as to advancement of loan in disbelieving the said fact. The Courts below are found to have completely fallen in error by drawing an adverse inference therefrom that the Plaintiff-Bank has failed to prove the factum of advancement of loan of Rs.10,000/- to Defendant No.1, which is clearing being oblivious of the position that sanctioning the cash credit loan up-to a particular limit does not mean that the maximum amount would immediately be credited to the account of the borrower. Therefore, the findings of the Courts below are found to be wholly erroneous on this point that the Plaintiff-Bank has failed to prove the advancement of the loan to the Defendant No.1.

11. Next coming to the Statement of Account, it is seen that the same been admitted in evidence and marked Ext.7 without any objection. It is seen that the Branch Manager of the Plaintiff-Bank has given the certificate at the foot of the said statement in his own hand mentioning that such statement is the true copy of the ledger account and by that he has meant as maintained in the Bank. Therefore, the conclusion of the Courts below that the said Statement of Account (Ext.7) does not contain the certificate as required under section 8 of the Bankers Book of Evidence Act is found to be based upon a pedantic approach as here the fact remains that the Defendants at no point of time during trial have raised or questioned the correctness of the said statement of account and had not even raised any objection when it was admitted in evidence and marked Ext.7 nor have questioned the correctness of the same and taken any step to call for the original ledger from the custody of the Plaintiff-Bank in asserting that the entries in the original ledger are not those as have been reflected in the Statement of Account produced and proved.

The aforesaid discussion and reasons provide the answer to the substantial questions of law in favour of the Plaintiff-Bank, which in turn, run to set aside the judgments and decrees passed by the Courts below and decree the suit filed by the Plaintiff-Bank as against Defendants holding them jointly and severally liable to pay a sum of Rs.11,440/- to the Plaintiff-Bank with pendentelite and future interest @11.5% per annum with quarterly rests as agreed upon.

12. Resultantly, the Appeal stands allowed. There shall, however, be no order as to cost.

(D. Dash),
Judge.

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