

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.302 OF 2002

In the matter of an appeal under section 100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned 2nd Additional District Judge, Berhampur, in Title Appeal No.15 of 2002 by confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Berhampur in TMS No.89 of 1993.

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Smt. Kumari Behera & Another* :: *Appellants

-versus-

Canara Bank, Represented by its Manager, Berhampur Branch. **Respondent**

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

For Appellants - M/s. Manoj Mishra, P.K. Das,
B. Mishra, S.K. Pradhan,
Advocates.

For Respondent - M/s. D. Nayak, Advocate,
M/s. G.N. Mishra, S.C. Sahoo,
Advocates,
M/s. Brundaban Rout,
M. Rout, R.C. Swain,
N.K. Mohanty, M. Mohanty,
B.K. Das, Advocates.

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING:: 12.05.2022, DATE OF JUDGMENT::20.06.2022

The Appellants by filing this Appeal under Section 100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) have assailed the judgment and decree passed by the learned 2nd Additional District

Judge, Berhampur, in Title Appeal No.15 of 2002 (T.A. No.41 of 2000-GDC).

By the same, the Appeal filed by the present Appellants (Defendants Nos. 1 and 2) being aggrieved by the judgment and decree passed by the learned Civil Judge (Senior Division), Berhampur in TMS No.89 of 1993 under Section-96 of the Code decreeing the suit filed by the Respondent (Plaintiff-Bank) holding these Appellants (Defendant Nos. 1 & 2) jointly and severally liable to pay a sum of Rs.83,000/- with the interest @ 12.5% per annum with half yearly rests from the date of disbursement till payment by adjusting the amount collected from the Appellants (Defendant Nos.1 & 2) have been confirmed.

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 Suit.

3. The case of the Plaintiff-Bank is that the Defendant Nos. 1 & 2 had jointly availed a loan of Rs.83,000/- for excavation of new Tank for Inland Fisheries for Pisciculture on Commercial Scale. The Defendant No.3 stood as Guarantor for due payment of the said loan dues by the Defendant Nos.1 & 2. The loan being sanctioned, finally the Defendant Nos. 1 & 2 executed a Demand Promissory Note for Rs.83,000/- on 05.09.1986 in favour of the Plaintiff-Bank and they also executed an

agreement coupled with delivery letter. Equitable mortgage of the landed properties by depositing of original title deeds was also created by the Defendants in favour of the Bank. The loan being sanctioned for Rs.83,000/-, the Defendant availed a sum of Rs.96,500/- and as they got subsidy of Rs.13,500/- Fish Farmers Development Agency (for short, 'the FFDA') the same has been adjusted towards their loan amount. The loan was disbursed on phases; finally as the Defendants defaulted in making repayment of the loan dues, they too had executed the documents acknowledging their liability on 06.09.1988 and 14.11.1990. Ultimately, when the Defendants failed to make the payment, the Plaintiff-Bank filed the suit.

4. The Defendant Nos. 1 & 2 in their written statement while admitting the advancement of the loan to them by the Plaintiff-Bank and its availment denied to have executed any document in favour of the Plaintiff-Bank. It is stated that the Bank-Authorities had obtained their signatures on different forms and created those documents by utilizing those for the purpose. It is further stated that they were given the impression by the Bank-Authorities, that the loan would carry simple interest. It is also stated that there being draught and flood in the year, 1989 and 1990, Tank in question faced massive damage and the entire Scheme became a failure. It is stated that the Plaintiff-Bank instead of

reimbursing the loss suffered by the Defendants for the damage and refinancing for the project has filed the suit. It is also stated that when the loan has been advanced for the purpose of pisciculture, levy of compound interest is illegal which the Plaintiff-Bank is not entitled to get.

5. On the above rival pleadings, the Trial Court besides other issues framed two crucial issues as to the liability of the Defendants and correctness of the statement of accounts. Upon examination of evidence and their evaluation it has finally answered those in holding the Defendants liability to pay the sum of Rs.83,000/- with pendentelite and future interest @ 12.5% per annum with half yearly rests from the date of disbursement till final payment. The Defendants having preferred the Appeal have been unsuccessful. सत्यमेव जयते

6. The present Second Appeal has been admitted on the following substantial question of law:-

“Whether the judgments and decrees of the Courts below can be interfered with for non-consideration of the document under Ext.Q, relating to that relief granted to the loanes who availed agricultural loan from the Nationalized Bank within the stipulated period as mentioned in said Ext.Q?”

7. Learned Counsel for the Appellants submitted that the Officers of the NABARD visited the site on 16.01.1991 and thereafter the Officers from the Divisional Office of the Plaintiff-Bank too had visited the site on 27.02.1991 with the Chief Executive Officer of FFDA and had assessed the damage to the tune of Rs.46,970/- and later on there was request from every quarter for providing necessary help to these Defendants. He submitted that the facts as stated in Ext. Q prove all these which are not disputed. He therefore, submitted that the Courts below ought not to have saddled the liability of repayment of the loan dues upon these Defendants.

8. Learned Counsel for the Respondent (Plaintiff-Bank) submitted that the documents proved from the side of the Defendants, Ext.Q is nothing but a letter written by the Defendants to the Relief Commissioner, Government of Orissa, Bhubaneswar with copies to the concerned Divisional Manager and Branch Manager of the Plaintiff-Bank. He further submitted that assessment of damages in the pisciculture activities carried out by the Defendants in the project area has got nothing to do with the repayment outstanding of the loan dues and the Plaintiff-Bank has no responsibility to see that the project proponent, here the Defendants Nos. 1 & 2 get the damage. He submitted that there might be a declaration of relief to the persons being

affected by such natural calamity but in that event the payment has to come from the State Authority and that having not been received at any point of time, the Defendants cannot escape from their financial liability towards the Plaintiff-Bank as they having taken the loan have utilized the same and as such in terms of the demand promissory note and other agreement executed by them are liable to clear the loan dues.

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

Coming find out the answer to the substantial questions of law in addressing the rival submissions, it is seen that the document, Ext.Q has been admitted in evidence being proved from the side of the Defendant Nos. 1 & 2. It is a copy of the letter written by the Defendant No.1 to the Relief Commissioner, Government of Orissa, Bhubaneswar. It reveals therefrom that by the same, the Defendant No.1 has made an appeal for grant of relief. There was an inquiry by different Officers attached to the State Government, Banks and the FFDA. During the visit, there was assessment of the damage and calculation as to the repair costs etc. The Defendant No.1 had raised a grievance that the same has not been paid and therefore, she being not able to carry out the activity in the project properly has suffered the loss and is not in the position to repay the loan incurred from the Plaintiff-Bank for construction of pisciculture Tank.

The suit is for recovery of the outstanding loan dues of the Plaintiff-Bank from the Defendant Nos. 1 & 2 and that process cannot be stalled since the State Government or any other Authorities did not grant any debt relief keeping in view the loss suffered by the loanee being faced with the natural calamity. In the present case, the Courts below on detail discussion of the evidence on record having concurrently held that the Defendants are jointly and severally liable to pay the loan dues as claimed by the Plaintiff-Bank which has duly proved the copy of the statement of Account duly certified as required under the Banker's Books of Evidence Act, 1891 and as admissible in law; same is not liable to be interfered with merely because of non-consideration of the prayer of the Defendant No.1 as advanced in the letter vide Ext.Q for grant of debt relief by the Central / State Government as the case may be. The substantial questions of law thus being answered against the Defendants; the judgments and decrees passed by the Courts below are found not liable to be interfered with.

10. In the result, the Appeal stands dismissed. There shall, however be no order as to cost.

***(D. Dash),
Judge.***