

Assam Schedule VII. Form No. 132

**HIGH COURT FORM NO J (2)**  
**HEADING OF JUDGMENT IN ORIGINAL SUIT**  
**DISTRICT: LAKHIMPUR**  
**IN THE COURT OF THE MUNSIFF NO.1, NORTH LAKHIMPUR,**  
**LAKHIMPUR**

**WEDNESDAY THE 24<sup>th</sup> DAY of MARCH 2021**

**MONEY SUIT NO: 16/2021**

**Present: Ms. Sparsita Garg, M.A, LL.M, AJS**  
**Munsiff No.1, North Lakhimpur,**  
**Lakhimpur.**

**IDBI Bank Limited** represented by Branch Head,  
Lakhimpur, North Lakhimpur ..... **Plaintiff**

**Versus**

**1. Sri Champak Gam**

S/o: Kula Gam  
Village-: Kholihamari Pathar, Nowboicha,  
P.S.: North Lakhimpur  
District: Lakhimpur, Assam

**2. Sri Dimbadhar Gam,**

S/o: Kula Gam  
Village-: Kholihamari Pathar, Nowboicha,  
P.S.: North Lakhimpur  
District: Lakhimpur, Assam

..... **Defendants.**

This suit coming on for hearing on **15<sup>th</sup> day of March 2021** in  
the presence of:-

Mr. Soumitra Sarkar ..... **Learned Counsel for plaintiff.**

Mr. Brojen Boruah ..... **Learned Counsel for defendants.**

**M.S. 16 OF 2021**

And having stood for consideration to this **24<sup>th</sup> day of March 2021**, the court delivered the following Judgment:-

### **J U D G E M E N T**

**1.** This is a suit for recovery of Rs.3,38,258.80/- (Rupees Three Lakhs Thirty Eight Thousand Two Hundred Fifty Eight and Eighty Paise Only) along with consequential reliefs.

**2.** Plaintiff's case in brief is that the defendant no.1 Champak Gam applied for a loan from the plaintiff bank for purchase of a tractor. The plaintiff after considering his application along with quotation sanctioned a loan amount of Rs.6,42,000/- (Rupees Six Lakhs Forty Two Thousand Only) on 30.05.2015 by executing the loan documents. However, defendant no.1 made some deposits irregularly through his savings bank account and thereafter failed to repay the amount. The defendant no.1 on 19.04.2018 executed an acknowledgment of debt-cum-revival letter to the plaintiff bank acknowledging his debt and confirming his obligation. However, defendant no.1 failed to regularize his loan amount which has become NPA. The plaintiff issued notices to defendant no.1 for clearance of the loan. Having received no response from defendant no.1, the plaintiff bank filed this suit for recovery of outstanding loan amount with cost of the suit. Hence, the plaintiff's suit.

**3.** The defendants contested the suit by filing written statement wherein they denied the claim of the plaintiff and prayed for dismissal of the suit. The defendants however admitted about taking loan from the plaintiff's bank. The defendants submitted that the suit is barred by the law of limitation as defendant no.1 never executed any acknowledgment of debt-cum-revival notice, which is a concocted document. The defendants denied the averments made by the plaintiff. Defendants further submitted that all the transactions were not entered into the loan amount. Hence, the account submitted by the plaintiff is not correct and up-to-date. Defendant no.1 has a fixed deposit amount of Rs.1,00,000/- (Rupees One Lakh Only) with the plaintiff bank and he was informed that the

said amount has been transferred to the loan amount. On 11.10.2018 and 31.12.2018 an amount of Rs.15,000/- (Rupees Fifteen Thousand Only) and Rs.10,000/- (Rupees Ten Thousand Only) were recovered for the loan from his S.B. Account No.122410400009072 but those amounts has not been reflected in the loan account. Further the defendants submitted that the plaintiff bank took signature of the defendants in various documents without reading out the contents of those documents. Hence, the documents are illegally obtained and are not enforceable. As the plaintiff has not come up with clean hands, the suit is liable to dismiss with cost.

**4. On going through the rival pleadings the following issues are framed for decision:**

**Issue no.1:** Whether the suit is barred by law of limitation?

**Issue no.2:** Whether on 30.05.2015 the defendant no.1 took loan of Rs.6,42,000/- (Rupees Six Lakhs Forty Two Thousand Only) from the plaintiff's bank and whether the defendant no.2 stood as surety for the loan ? If so,

**Issue no.3:** Whether the defendants failed to repay the loan amount?

**Issue no.4:** Whether the plaintiff's bank is entitled to a decree for recovery of Rs.3,38,275/- along with interest from the defendants?

**6.** I have heard arguments advanced by learned counsel of both sides. The plaintiff side examined one witness and from the defendant the defendant no.2 was examined as D.W-1 and both parties proved documents in support of their respective pleas. Let me now discuss the issues one by one.

**DISCUSSION, REASONS AND DECISION THEREOF:**

**Issue no.1: Whether the suit is barred by law of limitation?**

7. As regards issue no. 1 it appears that defendants in their written statement submitted that the suit is barred by the law of limitation and denied having executed acknowledgment of debt - cum- revival notice. On the other hand the plaintiff submitted that the suit is well within the period of limitation as the defendant no.1 himself executed acknowledgment on 19.04.2018. For recovery of debt the period of limitation is 3 years. Though the loan was taken in the year 2015 but the acknowledgment given by the defendant no.1 on 19.04.2018 gives life to the plaintiff suit. The plaintiff side proved the acknowledgment as Exhibit XIII. Simple denial of acknowledgment letter dated 19.04.2018 does not discharge the burden of defendant no.1. Therefore, it is found that the suit is filed well within the period of limitation. Hence, issue no.1 is decided in favour of the plaintiff.

**Issue no.2 Whether on 30.05.2015 the defendant no.1 took loan of Rs.6,42,000/- (Rupees Six Lakhs Forty Two Thousand Only) from the plaintiff's bank and whether the defendant no.2 stood as surety for the loan ? If so,**

8. Plaintiff in his plaint submitted that the defendant no.1 took a loan for purchase of a tractor and accordingly the plaintiff bank sanctioned a loan amount of Rs.6,42,000/- (Rupees Six Lakhs Forty Two Thousand only). Defendant no.2 stood as a guarantor for recovery of loan. Defendants in their written statement admitted about taking loan from the plaintiff bank. The admitted fact need not be proved and hence it is found that defendant no.1 took a loan from the plaintiff bank and defendant no.2 stood as a guarantor for defendant no.1. Hence, issue no.2 is decided in affirmative and in favour of the plaintiff.

**Issue no.3: Whether the defendants failed to repay the loan amount?**

**Issue no.4: Whether the plaintiff's bank is entitled to a decree for recovery of Rs.3,38,275/- along with interest from the defendants?**

9. Issue No.3 and 4 are interrelated and hence both the issues are decided together for the sake of convenience. The plaintiff submits that defendant no.1 Champak Gam applied for a loan from the plaintiff bank for purchase of a tractor. The plaintiff after considering his application along with quotation sanctioned a loan amount of Rs.6,42,000/- (Rupees Six Lakhs Forty Two Thousand Only) on 30.05.2015 by executing the loan documents. However, defendant no.1 made some deposits irregularly through his savings bank account and thereafter failed to repay the amount. The defendant no.1 on 19.04.2018 executed an acknowledgment of debt-cum-revival letter to the plaintiff bank acknowledging his debt and confirming his obligation. However, defendant no.1 failed to regularize his loan amount which has become NPA. The plaintiff issued notices to defendant no.1 for clearance of the loan. Having received no response from defendant no.1, the plaintiff bank filed this suit for recovery of outstanding loan amount. Plaintiff also exhibited the loan application as Exhibit I and also proved signature of both the defendants which shows that those documents were exhibited by the defendants. On the other hand, the defendants stated that the loan statement submitted by the plaintiff side is not correct as it failed to reflect the recovery of fixed deposit of Rs.1,00,000/- (Rupees One Lakh Only) as well as deduction of Rs.15,000/- (Rupees Fifteen Thousand Only) and 10,000/- (Rupees Ten Thousand Only) from the S.B. Account No.122410400009072 (IDBI) of defendant no.1.

Plaintiff in support of his case examined himself as P.W-1 and also exhibited various numbers of documents. Evidence of P.W-1 clearly shows that defendant no.1 took a loan from the plaintiff bank for purchase of a tractor by executing various documents. P.W-1 was cross-examined but the defendants nowhere denied having taking

loan and executing various documents. The loan statement also shows that defendant no.1 last made payment on 11.10.2018. The various exhibits proved by the plaintiff side remained unrebutted. Though the defendants in their written statement submitted that the documents executed while sanctioning the loan were not read over to the defendants and they did not know the contents of those documents but they cannot challenge those documents as they themselves admitted their signatures in those documents. D.W-1 in his evidence stated that the loan statement is not correct as it failed to reflect the payments recovered by the bank towards the loan account. The defendant side examined defendant no.2 as D.W-1 who was the guarantor of the loan taken by defendant no.1. Primarily the defendant no.1 is the right person to support his claim as he is the person who has taken the loan. For non-examination of defendant no.1 adverse inference has to be drawn against him. It is not denied that the defendant no.1 was not irregular in repayment of loan as he failed to pay the monthly installments agreed upon by the parties. The evidence of the D.W-1 that Rs.15,000/- (Rupees Fifteen Thousand Only) and 10,000/- (Rupees Ten Thousand Only) towards the loan account appears to be not correct as Exhibit 17 proved by the plaintiff bank clearly shows that those amounts have been received by the bank towards the loan account. Hence, the claim of the defendants that the loan statement appears to be not correct cannot be accepted. Further the defendants claimed that fixed deposit of Rs.1,00,000/- (Rupees One Lakh Only) has not been adjusted by the plaintiff bank but to this effect the defendant side failed to prove any documentary evidence to support their claim. Considering the evidence of both the parties as well as exhibit 17, it appears that the defendants have outstanding amount of Rs.3,38,258.80/- (Rupees Three Lakhs Thirty Eight Thousand Two Hundred Fifty Eight and Eighty Paise Only) to be paid towards the loan account. Hence, issue nos. 3 and 4 are decided in favour of the plaintiff.

**17.** In the result the plaintiff is found entitled to recovery of outstanding amount of Rs.3,38,258.80/- ( Rupees Three Lakhs Thirty Eight Thousand Two Hundred Fifty Eight and Eighty Paise Only) along with interest of 12% till recovery of the decretal amount.

**18.** Plaintiff suit is decreed on contest without cost.

**19.** Prepare a decree accordingly.

Given under my hand and seal of this court on this 24<sup>th</sup> day of March, 2021 at North Lakhimpur, Lakhimpur.

**(Ms. Sparsita Garg)**  
Munsiff No.1,  
North Lakhimpur, Lakhimpur

**APPENDIX****1. WITNESS OF PLAINTIFF SIDE:**

1. P.W-1 : Angshuman Das

**2. EXHIBITS OF PLAINTIFFS SIDE:**

1. Exhibit I : Loan Application and annexed documents
2. Exhibit I (1) & 1(2) : Signature of defendant no.1
3. Exhibit I (3) & 1(4) : Signature of defendant no.2
4. Exhibit I (5) : Photograph of Defendant No.1
5. Exhibit I (6) : Photograph of Defendant No.2
6. Exhibit II : Sanction letter
7. Exhibit II(1) : Signature of Branch Head
8. Exhibit II(2) : Initial of Branch Head
9. Exhibit II (3) : Initial along with seal of plaintiff bank
10. Exhibit II (4) to II(6) : Signature of Defendant No.1
11. Exhibit III : Demand promisory note
12. Exhibit III (1) & III(2) : Signature of Defendant No.1
13. Exhibit IV : Take delivery letter
14. Exhibit IV(1) to IV(8) : Signature of Defendant No.1
15. Exhibit V : Agreement
16. Exhibit V(1) to V(18) : Signatures along with seal of Defendant No.1
17. Exhibit VI : Common guarantee deed
18. Exhibit VI(1) to VI(16) : Signature of Champak Gam
19. Exhibit VII : Undertaking to be executed by Defendant No.1
20. Exhibit VII(1) to 7(6) : Signatures of Defendant No.1
21. Exhibit VIII : Undertaking for right of account
22. Exhibit VIII(1) to VIII(2): Signatures of Defendant No.1
23. Exhibit IX : Undertaking
24. Exhibit IX(1) to IX(2) : Signatures of Defendant No.1
25. Exhibit X : Undertaking for overrun
26. Exhibit X(1) to X(4) : Signatures of Defendant No.1
27. Exhibit XI : Common guarantee deed
28. Exhibit XI (1) to XI(16): Signatures of Defendant No.2
29. Exhibit XII : Undertaking
30. Exhibit XII(1) to XII(6) : Signatures of Defendant No.2
31. Exhibit XIII : Acknowledgment of debt-cum-revival letter
32. Exhibit XIII(1) : Signature of Sri Champak Gam (Defendant No.1)
33. Exhibit XIV : Notice of Defendant No.1
34. Exhibit XIV (1) to XIV(3): Seal & Sign of Branch Head
35. Exhibit XV : Notice to Guarantor
36. Exhibit XV(1) to XV(3) : Sign of Branch Head along with seal
37. Exhibit XVI : Legal Notice dt. 13.08.2019
38. Exhibit XVI(1) to XVI(2): Postal receipts
39. Exhibit XVII : Computerised printout of the statement of account of the ledger entries
40. Exhibit A (defendant) : Bank passbook (original IDBI) of Sri Champak Gam
41. Exhibit B(defendant) : Bank deposits slip of Champak Gam (Rs.15,000/-)

**3. WITNESS OF DEFENCE SIDE:**

1. D.W-1 : Dimbadhar Gam

**4. EXHIBITS OF DEFENCE SIDE:**

1. Exhibit A : Passbook of S.B. Account No.1224104000009072 IDBI
2. Exhibit A(i) : Entry of passbook of loan recovery of Rs.10,000/- dated  
31.12.2018
3. Exhibit B : Receipt dated 11.10.2018

**(Ms. Sparsita Garg)**  
Munsiff No.1,  
North Lakhimpur, Lakhimpur