
(2002) 09 OHC CK 0054
In the Orissa High Court
Case No : First Appeal No. 321 of 1981

Indian Bank

APPELLANT

Vs

B. Patnaik Mines (P.) Ltd. and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1, Order 22 Rule 4
Limitation Act, 1963 — Section 19
Negotiable Instruments Act, 1881 (NI) — Section 27, 28

Citation : AIR 2003 Ori 81

Hon'ble Judges : P.K. Balasubramanyan, C.J.; A.S. Naidu, J

Bench : Division Bench

Advocate : S. Dey, for the Appellant; S.L. Pangari, R. Sahoo, M. Jena and S.N. Shukla, for the Respondent

Judgement

A.S. Naidu, J.—The Indian Bank as Plaintiff filed Money Suit No. 159 of 1977 for recovery of Rs. 3,11,500.43 with interest pendente lite and future and for other ancillary reliefs based on a Demand Promissory Note coupled with a deed of mortgage and other collateral documents duly executed by the defendants in favour of the Bank.

2. Bereft of all unnecessary details, the facts averred in the plaint which are necessary for effectual adjudication are :--

Defendant No. 1, a Private Limited Company of which defendants 2 to 5 are the Directors, approached the plaintiff, which is a Nationalised Bank, for a cash credit loan in the year 1959. After examining the viability, the plaintiff-Bank agreed to advance a cash-credit loan to a tune of Rs. 9 lakhs to the defendants. As collateral security, defendant No. 1-Company mortgaged all its assets to the Bank and created a charge in accordance with Sections 125 to 130 of the Companies Act on July 2, 1960. Defendants 2 to 5 executed a Demand Promissory Note and other documents and made themselves liable as co-obligators. There was regular transaction with the bank- and the defendants

executed documents acknowledging the balance outstanding in the account time and again. The last document was executed on 17th April, 1974 accepting the liability of Rs. 2,50,000.00 for open cash credit account and Rupees 1,75,000.00 by hypothecation on demand cash-credit account. The total amount due from the defendants with interest till 31st March, 1977 was Rs. 3.11,300.00 as per the details or the accounts enclosed and made part of the plaint. Along with the plaint the loan documents executed by the defendants were filed in support of the averments made. It was specifically averred in the plaint that the outstanding loan amount was not time-barred and it was prayed to pass a decree against all the defendants for realisation of the suit amount.

Two sets of written statements have been filed by the defendants, one by defendant No. 1 Company represented through the liquidator, and the other by defendants 2 and 3.

3. It is pertinent to mention here that before filing of the suit, the Company came under liquidation and Company Act Case No. 12 of 1978 was filed in this Court. It would be evident from Ext. 2 dated 27th November, 1978, the order passed by this Court in the Company Act Case, that on the basis of the petition filed by the Plaintiff-Bank and on the basis of the undertaking filed in Court, permission was accorded to the Bank to proceed with the suit (M.S. No. 159/77) subject to the condition that it will not be open to the Bank to execute the decree without leave of this Court.

4. In its written statement, defendant No. 1-Company inter alia, contended that as the last document was executed on 17th April, 1974 by defendant No. 2 alone, the Company was not bound and the suit claim had become barred by the principle of limitation. The averment made in the plaint that the suit claim is a continuing one was strongly repudiated.

5. The other defendants in their written statement baldly denied the allegations and contended that they were not individually liable for the debt. They also denied the averment that the loan was a continuing one on the basis of the documents executed on different dates and stated that the suit was clearly barred by time.

6. On the basis of inter se pleadings, the Trial Court, framed as many as eleven issues. To substantiate their case, the Plaintiff-Bank examined one witness and exhibited fortythree documents. On the other hand, no witness was examined on behalf of the defendants and only a photostat copy of the letter issued by defendant No. 2-Director of the Company dated 17th April, 1974 was exhibited as Ext. A. The office copy of the said letter was also exhibited by the Plaintiff-Bank as Ext. 28.

7. The trial Court, on the basis of the evidence adduced, both oral and documentary, arrived at the conclusion that initially the executants made themselves individually and separately liable as principal debtors and that defendants 2 to 5, who signed the document, were responsible as principal

debtors and not as guarantors. It was also that defendants 2 to 5 never executed any document as sureties or guarantors. The trial Court relying upon the proviso to Section 6 of the Contract Act held that execution of a fresh set of documents on 17th April, 1974 by defendant No. 2 alone as the Director of the Company amounted to novation of the contract and the previous contract must be deemed to have been given a go-bye.

8. The trial Court further held that as the last set of documents was signed by defendants 2 to 5 on 9th October, 1971, vide Exts. 18, 19 and 20, and as the suit was filed on 14th April, 1977, i.e. more than three years after, Article 35 of the Schedule to the Limitation Act will directly apply and, as such, the claim against defendants 2 to 5 as per the 1971 documents must be held to be time-barred. It was further observed that as the letter of acknowledgment (Ext. 37) was not signed by any of the defendants except by defendant No. 2 on 27th August, 1974 and as the acknowledgment was made only on behalf of the Company (defendant No. 1), it cannot be considered to be his personal acknowledgment. On the basis of such observations, the trial Court came to the conclusion that defendants 2 to 5 were not personally or individually liable for the outstanding loan amount as they were neither co-obligators nor guarantors for the suit amount and that they were not legally bound to re-pay the suit amount outstanding against defendant No. 1-Company. On the basis of such conclusion the trial Court decreed the suit on contest against defendant No. 1 alone. The suit, so far as other defendants were concerned, was dismissed. The Plaintiff-Bank has preferred this First Appeal impugning the said Judgment and decree and claiming a decree against defendants 2 to 5 as well.

9. Before proceeding to deal with the inter se disputes, it is pertinent to mention here that defendant-respondent No. 2 expired during the pendency of the First Appeal and applications for substitution, setting aside the abatement and condonation of delay were filed with a prayer to substitute the legal heirs of respondent No. 2. But then, respondent No. 2 was only the Managing Director of the Company in question. The other Directors of the Company had been impleaded as respondents Nos. 3 to 5 and are on record. All the Directors including defendant-respondent No. 2 contested the suit by filing a common written statement. The application for substitution which was registered as Misc. Case No. 298 of 2002 also reflected that the legal heirs of defendant-respondent No. 2 being defendant-respondent Nos. 3 and 4, were already on record. We are constrained to observe that the averments made in the applications for substitution, setting aside the abatement and condonation of delay were very vague and reflected complete non-application of mind, inasmuch as the appellant-Bank did not bother even to give the date of death of defendant-respondent No. 2, much less explaining each day's delay in filing the petition for substitution. Defendant-respondent No. 2 was a well-known person and was the Ex-Chief Minister of the State and it cannot be said that the date of death of such a person could not be ascertained by the Bank. The entire scenario and the way the plaintiff-Bank had prosecuted the suit, reveal a sorry state of affairs

inasmuch as the plaintiff-Bank for reasons best known to it, did not implead the guarantors though the concerned document was filed and marked as Ext. 5. Be that as it may, according to us, the belated applications for substitution, setting aside the abatement and condonation of delay filed by the Bank on 10th April, 2002, i.e. on the date when hearing of the (sic) was concluded and delivery of judgment was reserved, without furnishing any particulars and without properly explaining the delay, deserve no consideration and the same are rejected.

10. Mr. Dey, learned counsel for the appellant-Bank, forcefully attacked the finding of the trial Court holding that the suit was barred u/s 35 of the Limitation Act, so far as defendant-respondents 2 to 5 were concerned. It is submitted that all the defendants availed the loan and as collateral security, executed documents undertaking their personal liability for due payment of the loan as would be evident from Ext: 4 (Agreement for demand cash-credit dated 11th May. 1960). Ext. 5 (promissory note dated 11th May, 1960) and the letter forwarding the demand promissory note (Ext. 6) of the same date. Defendant No. 2 had signed all these documents not only as the Director representing defendant No. 1-Company, but also in his individual capacity. Execution of these documents was not denied by any of the defendants. The statement of accounts of the Bank, which was prepared in due course of business, has been exhibited as Ext. 1. The entries made therein clearly reveal that the monetary transaction inter se between the defendants and the plaintiff-Bank was continuing all through till 31st December, 1975. Thus, the finding that the suit has become barred by time, is not correct. So far as the documents executed by defendant No. 2 in the year 1974, vide Exts. 21 to 27, are concerned, it is contended that these documents were obtained from defendant No. 2 only as acknowledgment of the outstanding loan. Such documents were, in fact, not necessary in view of the fact that the documents executed by all the defendants in the year 1960 coupled with the transaction all through till 1975 saved the period of limitation, the suit having been filed in the year 1977. It is also submitted by the plaintiff-Bank that the letters or acknowledgment issued by the Managing Director and other defendants, vide Exts. 29, 30, 35, 36 and 37, have not been kept in mind by the learned trial Court while holding the suit claim as time-barred so far as defendants 2 to 5 were concerned. In support of his contention, the learned counsel for the Bank relied upon the decisions, reported in Punjab National Bank Ltd. Vs. Shri Vikram Cotton Mills and Another, and The Wandoor Jupiter Chits (P.) Ltd. (in Liquidation) Vs. K. P. Mathew and Another, .

11. Mr. Pangari, learned counsel for the respondents 2 to 5, supporting the judgment passed by the trial Court strenuously submitted that the pleadings made in the plaint should be strictly adhered to and as grounds of exemption from operation of law of limitation as stipulated under Order 7, Rule 6 of C.P.C. had not been made out in the plaint, the suit should be held to be barred by time. The attempt to prove acknowledgment by any of the defendants without supporting pleading was not permissible under law. It is further submitted that the last set of documents signed by defendants 2 to 5 was of the year 1970 and

the suit having been filed much after three years from 9th October, 1970, the same had become barred by time against respondents 2 to 5 in consonance with Article 35 of the Limitation Act. It is also contended that the transaction made in the year 1974 and the documents executed by defendant No. 2 alone as the Director of the Company, will constitute novation of the initial contract between the plaintiff-Bank and defendants 2 to 5. In the documents of 1974, defendants 2 to 5 not being signatories, the same cannot be enforced against them. In other words, Mr. Pangari contended that the plaintiff-Bank is entitled to get relief only on the basis of the 1974 documents which were executed by the defendant-Company represented through defendant No. 2 alone and since defendants 2 to 5 in their individual capacity were not in any way liable for the dues arising out of the said transaction of the year 1974, the suit has been rightly dismissed against them. The documents executed by defendant No. 2 in 1974 on behalf of the Company cannot be treated to be personal acknowledgment so as to get extension of a transaction of the year 1971 and defendant Nos. 2 to 5 are absolved of whatever liability they had by virtue of the documents executed in the year 1971, as the documents of the year 1974 superseded the same. In the alternative, it is submitted, assuming that the liability under 1971 transaction existed, all the three exhibits, being Exts. 35, 36 and 37, relied upon by the plaintiff-Bank, refer to the liability of the Company and not the personal liability of defendant Nos. 2 to 5. Thus, defendant Nos. 2 to 5 who were Directors of defendant No. 1-Company had no liability as the letters of acknowledgement had been issued by defendant No. 2 and others in their capacity as Directors. It is reiterated that Ext. 36 cannot create any personal liability for defendant No. 2 or the other defendants. Relying upon the decisions, reported in *Mrs. Margaret Lalita Samuel Vs. The Indo Commercial Bank Ltd.*, and *State of Uttar Pradesh Vs. Singhara Singh and Others*, Mr. Pangari submits that the suit on the basis of a Promissory Note against defendant-respondents 2 to 5 was barred by law or limitation and no provision of the Contract Act or agreement could override the law of limitation. Mr. Pangari also relied upon the decisions, reported in *M. Thirumalachariar Vs. S.P. Varadappa Chettiar*, ; *A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others*, AIR 1954 TC 419 (*S. Guruswami v. Chitra Cardamom*) and *Gharabharan Vs. Sri Radha Kishan and Others*, in support of his submission.

We have carefully gone through the decisions cited by the parties. There is absolutely no quarrel with regard to the legal proposition as enunciated in the aforesaid decisions.

12. The finding of the trial Court that respondent No. 1-Company is liable to repay the dues of the Bank is not contested by the respondents which has therefore become final and binding. Thus the only points that remain to be answered in this appeal are :--

(1) Whether defendant-respondents 2 to 5 who were admittedly Directors of defendant No. 1-Company are also liable personally to repay the debt, and

(2) Whether the debt has become barred by time so far as defendant-respondents 2 to 5 are concerned.

13. A debt is nothing, but a liability arising in due course of business. Admittedly, in consonance with a resolution of the Board of Directors of the respondent No. 1-Company (vide Ext. 38), the cash credit facility was availed from the plaintiff-Bank. Apart from pledging the stock of iron-ore towards collateral security, defendant-respondent No. 2 was also authorised by all the other defendant-respondents to execute the necessary documents in connection with the loan. The loan was also resolved to be guaranteed by all the Directors of the Company in their individual capacity.

14. In accordance with the aforesaid resolution, the loan was availed and all the respondents not only executed the Demand Promissory Note dated 11th May, 1960, but also executed other documents in their personal capacity as would be evident from Exts. 9, 10 and 11. It is pertinent to mention here that respondent No. 2 signed the documents twice, once as Director under the common seal of the Company, and then in his personal capacity.

15. Before proceeding further, it is necessary to refer to the law on the subject. The basic principle of the Negotiable Instruments Act (hereinafter referred to as "the Act") is that the parties to the instrument should be held bound by the terms of the instrument.

Section 26 of the Act stipulates that every person capable of contracting, according to the law to which he is subjected, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Section 27 of the Act deals with the case of agency and provides that every person capable of binding himself or of being bound as mentioned in Section 26, may so bind himself or be bound by a duly authorised agent acting in his name. It is made clear in the Section that a general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills of exchange so as to bind his principal. The Section also states that an authority to draw bills of exchange does not of itself import an authority to endorse. Thus, it is clear that if a person acts as an agent, he should have the specific authority of his principal to bring about a negotiable instrument, as has been done under Ext. 38 in the present case. Section 28 of the Act reads as follows :--

"An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable."

16. It is well settled that knowledge of agency to the other party does not free

the agent from liability, if he does not disclose on the instrument that he signed as agent.

The principle is that unless the maker has clearly affixed his signature to the instrument as agent or on account of or on behalf of a principal whose name is disclosed or, unless though he has signed unconditionally he has unequivocally and clearly disclosed in some portion of the document his own responsibility, and mentions the name of the person really liable, he cannot escape personal liability.

17. A Demand Promissory Note is an effective contract. In view of the fact that the defendant-respondents 2 to 5 signed the Demand Promissory Note and other documents without indicating therein that they signed as Directors, this case squarely comes within the Exception to Section 28 of the Act and it is to be held that the defendant-respondent are liable personally under the instrument.

18. Following the judgment of the Privy Council in the case of *National Bank of Upper India Ltd. v. Bansidhar* AIR 1929 PC 297, the facts of which case were almost identical to that of the present case, and the Full Bench decision of the Madras High Court in the case of *Sivagurunatha Pillai v. Padmavathi Ammal* AIR 1941 Mad 417, the Kerala High Court in the case of *P.R.S. Pillai Vs. Manuel Sathyanesan*, held that in a suit on a Promissory Note containing unconditional undertaking by the defendant to pay the plaintiff on demand in the absence of any indication whatever in the note that the defendant signed the note as the Manager of a Company or that he did not intend thereby to incur personal liability, it is not open, to the defendant to raise the plea in the defence repudiating his personal liability on the ground that he had in reality acted for an undisclosed principal, namely, the Company in executing the promissory note.

19. The Full Bench of Five Judges in the Madras case AIR 1941 Mad 417 (supra) observed that the Court cannot look beyond what is stated in the instrument and that it is the duty of the Court to read the instrument and judge its effects from the words used. In the present case, the Demand Promissory Note executed on 11th May, 1960 and the agreement for demand cash-credit on hypothecation of movable properties (Ext. 4) clearly indicate that the defendant-respondents signed the documents in their individual capacity. The recitals of Ext. 4 read "M/s. B. Patnaik Mines Private Limited and individually by. . . ." Thus in the light of the touch-stone of the legal principles enumerated in the decisions referred to above, we have absolutely no hesitation to hold that defendant-respondents 2 to 5 were also individually liable for the loan along with the Company.

20. Mr. Pangari strenuously contended that even if the defendant-respondents are held personally liable, the last set of documents having been signed by all of them only on 5th October, 1971, vide Exts. 15, 16 and 17, the suit filed in 1977, i.e. beyond three years, was clearly barred by time so far as defendant-respondents 2 to 5 were concerned. He further contended that the last set of documents basing upon which the suit was filed (i.e. Exts. 21, 22 and 23) was executed by defendant-respondent No. 2 on 17th April, 1974 as Director

representing the Company. Thus according to Mr. Pangari there was a novation of the original contract exonerating the personal liability of defendant-respondents 2 to 5.

21. On perusal of the entire evidence on record, we do not find any substance in the argument of the learned counsel for the respondents. Admittedly, the Demand Promissory Note and the other documents like Exts. 4, 5, 6 and 7, were executed on 11th May, 1960 by all the defendant-respondents. At the cost of repetition, it is once again reiterated that the recitals of Ext. 6 reveal that the defendant-respondents were personally liable. They also executed several sets of documents in similar fashion in the year 1965 (Exts. 9, 10 and 11), in 1970 (Exts. 12, 13 and 14) and in 1971 (Exts. 15, 16 and 17) and also again on 9th October, 1971 (Exts. 18, 19 and 20). In none of these documents there is any endorsement that defendant-respondents 2 to 5 were signing the same as agents and/or for and on behalf of the Company.

22. Ext. 1 is the copy of the ledger folio of the Bank maintained in due course of business. The said Ext. 1 clearly reveals that there was regular transaction till March 31, 1976, inasmuch as huge amounts were deposited and withdrawn. The statement of accounts, i.e. the ledger folio of the Bank maintained in due course of business, enjoys a protection under the Bankers Books of Evidence Act, 1991, and certified extracts of account must be admitted as prima facie evidence of the fact that the amounts mentioned therein are correct and no further evidence is necessary see *United Industrial Bank Ltd. Vs. G.C. Dey*,

23. Section 19 of the Limitation Act deals with effects of payment on account of a debt. It stipulates that where payment on account of a debt is made before expiration of the prescribed period by the person liable to pay the debt, or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when payment was made. The proviso to the said Section only stipulates one embargo, that is acknowledgement of the payment must be in the handwriting of or in a writing signed by the person making the payment.

24. In the case of *Meenakshi Sethi v. R. S. M. Subramanian Chettiar* AIR 1957 Mad 8, it has been held that acknowledgment by one partner would go as against the other partners and saves limitation against all. In the present case, Mr. K. K. Patnaik, defendant-respondent No. 5, vide his letter dated September 11, 1974 while admitting payment of a sum of Rs. 3,36,000.00 requested the plaintiff-Bank to acknowledge receipt of the said payment and further requested the Bank to continue the cash credit facility (Ext. 35). In another letter of August 27, 1974 (Ext. 36), defendant-respondent No. 2 wrote to the Bank as follows :--

This is to inform you that the dues of Rs. 5,26,000.00 with your Bank on account of the Company has been reduced to Rs. 3,36,000.00 on 29th July, 1974.

We are arranging to sell the stock of ores shortly and shall write-off the balance amount outstanding with you out of the proceeds,"

25. By letter of July 29, 1974 (Ext. 37), two cheques of July 29, 1974, one for Rs. 1,36,000.00 drawn on Indian Bank, and the other for Rs. 2,60,000.00 drawn on Dena Bank, were deposited with the plaintiff-Bank with a request to credit the same on the loan account of the defendant-respondents. All these transactions duly find place in the statement of Accounts, Ext. 1.

26. The Supreme Court in the case of Tilak Ram and Others Vs. Nathu and Others, held that an acknowledgment of liability should indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement could admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. The letters referred to above acknowledging payment of amounts in the loan account, according to us, expresses such intention. Further, Section 19 of the Limitation Act speaks of payment by a person liable to pay the debt or by his agent duly authorised in that behalf. Defendant-respondent Nos. 2 to 5 are the person who are liable to the debt. They also authorised defendant-respondent No. 2, vide Ext. 38, to transact with the plaintiff-Bank. The proviso to Section 19 of the Limitation Act requires that there should be an acknowledgment of the payment which should be in the handwriting of or in the writing signed by the person making the payment. In this case the payments have been made by the defendant-respondents and the endorsements (Exts. 35, 36 and 37) were written and signed admittedly by defendant-respondents 2 to 5. Though it is contended by the learned counsel for the defendant-respondents that payments were made on behalf of the Company, the defendant-respondents having been held to be liable under the Promissory Note personally, the case undoubtedly falls within the aforesaid Section and its proviso as the payments were made and the endorsements in writing are available on record. It is pertinent to note that while Section 19 talks of the person liable to pay the debt, the proviso refers only to the person making the payment. Hence, the endorsement of acknowledgment need not be by the person who is liable to pay the debt. If the person making the payment is not liable to pay the debt, but is an agent duly authorised to make the payment and the endorsement is made by such an agent, that is, according to us, sufficient to bring the same within the proviso to Section 19 to save the limitation. If the contention of the defendant-respondents that the payments made by the Company were accepted and the contention that the endorsements were also made by the Company as the payments were made on behalf of the Company and letter of acknowledgment had been issued on behalf of the Company are accepted, the payments should be treated to have been made by the Company as agent of the defendant-respondents, as has been held by the Privy Council in AIR 1929 PC 297 (supra). Thus we have absolutely no hesitation to hold that the payments and endorsements saved the suit from the bar of limitation. Thus, according to us, all the defendant-respondents are personally liable to repay the debt.

27. An argument was advanced by Mr. Pangari that the documents of the year

1974 having been signed by defendant No. 2 alone on behalf of the Company, the same will not bind defendants 2 to 5 and it would be presumed that there was novation of the original contract. We are not persuaded to agree with the said submission for the simple reason that defendant No. 2 was authorised by all the other Directors of defendant No. 1-Company to execute the necessary documents in connection with the loan transaction. In view of such authority, execution of the documents in the year 1974 by defendant No. 2 alone binds other defendants also, and their personal liability does not cease. Even otherwise, the loan which was availed in the year 1960, as has been held earlier, has not become time-barred and the defendants are not absolved of their personal liability. The documents executed in the year 1974 should be construed to be acknowledgements of the existing loan and not fresh agreements. Even otherwise the defendants have not pleaded in their written statement about any novation of contract. No issue was framed to that effect, nor is there any evidence. It is settled that novation of contract is a fact which has to be pleaded and established. We have, therefore, absolutely no hesitation to hold that defendants 2 to 5 are personally liable and the documents executed by defendant No. 2 were in exercise of authority conferred upon him by all the Directors by a resolution (Ext. 38). Therefore, the finding of the trial Court that the Company alone was liable and there was novation of the contract is not only beyond the pleadings and issues framed, but also otherwise contrary to law and the said finding is liable to be set aside. According to us, the documents executed in 1960 (Exts. 4, 5 and 6), in 1965 (Exts. 9, 10 and 11) and all other documents executed time and again till 1971 by all the defendants coupled with the admitted payments and acknowledgments, save the period of limitation. Thus, the suit against the defendants was filed in time and all the defendants are jointly and severally liable to pay the suit amount.

28. Now coming to the question of effect of death of defendant-respondent No. 2, one of the Directors of the Company, and the non-substitution of all his heirs in the appeal, admittedly defendant-respondent No. 1 is a Private Limited Company and all the Directors are parties to the suit. Thus, death of one of the Directors does not affect the suit in any way. As regards defendant No. 2 personally, some of his legal heirs are already on the array of parties and hence there is no abatement:

29. We have already held above that defendant-respondents 2 to 5 are personally liable to repay the debt. Such liability shall, however, extend to their individual shares in the Company as existed on the date the loan was sanctioned and availed. So far as liability of deceased defendant-respondent No. 2 is concerned, after his death the same shall pass on to the other Directors who will be liable to discharge the same to the extent they have inherited his estate, or his estate in their hands.

30. In view of the aforesaid discussions, we allow the First Appeal and modify the judgment and decree of the then Subordinate Judge, Second Court, Cuttack in

Money Suit No. 159 of 1977. The Money Suit is decreed also against defendant-respondents 3 to 5 and they are held liable to pay the sum of Rs. 3,11,500.43 to the plaintiff-appellant Bank with pendente lite and future interest thereon at the rate of 12% per annum as prayed for in the suit. They are also bound to discharge the liability towards the loan of deceased defendant-respondent No. 2 to the extent of his estate inherited by them. Parties to bear their own costs.