
(2018) 03 OHC CK 0090
In the Orissa High Court
Case No : SA No.300 of 1988

KORAPUT PANCHABATI GRAMYA BANK
Vs
HARIDASH MANDAL

APPELLANT

RESPONDENT

Date of Decision : 29-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 8 Rule 5 (2), Order 19 Rule 1

Citation : (2018) 03 OHC CK 0090

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : T.K. Pattnaik

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This is a plaintiff's appeal against confirming judgment in a suit for realisation of Rs.4,132-45/- with P.L. and F.I. Â

2. The case of the plaintiff is that it is a Bank constituted under the Regional Rural Banks Act, 1976. The Bank has several branches amongst other

places at Malkanagiri. The plaintiff is a Scheduled Bank and is exempted from the Orissa Money Lenders' Regulation Act. The defendant applied

for a loan of Rs.3,500/- to purchase she-buffalows on 26.03.1982. The loan was sanctioned on 06.04.1982. On the same day, the defendant had

executed a demand promissory note. An amount of Rs.3,500/- was disbursed in his favour. The defendant paid an amount of Rs.500/- on 10.06.1985

towards outstanding dues. Since the loan amount is not cleared, the Bank issued demand notice.

3. The defendant was set ex parte. Neither any witness had been examined by the plaintiff nor any document exhibited. Learned trial court dismissed

the suit holding that the suit was barred by limitation. Unsuccessful plaintiff filed Money Appeal No. 03 of 1988 before the learned Additional District

Judge, Koraput, Jeypore, which was eventually dismissed.

4. The Second Appeal was admitted on the following substantial questions of law:-

Â??A. Whether in the absence of the order of the Head Office being filed, the contents of the affidavit are sufficient to explain the delay more

particularly when no counter has been filed to the said application ?

B. Whether there having been a reference in the affidavit filed by the plaintiff under Order 19 Rule 1 CPC to the statement of Accounts, the same

can be admitted as evidence under Section 4 of the Bankerâ??s Books Evidence Act, 1891 when admittedly the defendant did not contest the suit ?

C. Whether a judgment can be pronounced by the Court under Order 8 Rule 5 (2) CPC on the basis of the fact that the defendant has not filed any

pleadings ?â??

5. Heard Mr. T.K. Pattnaik on behalf of Mr. Mr. Jagannath Patnaik, learned Senior Advocate for the appellant. None appears for the respondent.

6. Mr. Pattnaik, learned Advocate for the appellant submits that the defendant was a loanee. An amount of Rs.3,500/- was disbursed in his favour. He

paid an amount of Rs.500/- on 10.06.1985 towards outstanding dues. The suit was filed on 16.09.1985. The same was instituted within the period of

limitation. Both the courts below have committed a manifest illegality and impropriety in dismissing the suit.

7. Neither any witness had been examined nor any document exhibited. Pleading is not proof. In the absence of any documentary evidence, it is

difficult to hold that the plaintiff had sanctioned a loan to the defendant and the defendant made a part payment thereof. The substantial questions of

law are answered accordingly.

8. Accordingly, the appeal fails and is dismissed. No costs.