CNR No. ODBS030033892026

IN THE COURT OF THE CIVIL JUDGE SENIOR DIVISION (COMMERCIAL COURT), BALASORE

Present: Sri Biswajit Nayak, LL.M.,
Civil Judge (Senior Division)
(Commercial Court), Balasore.
[JO Code No. OD-00529]

MS No. 678/2011

CIS No. 358/2026

State Bank of India, a statutory body corporate constituted under the State Bank of India Act, 1955 and having its Local Head Office at SBI buildings, Pandit Jawaharlal Nehru Marg,
Bhubaneswar and branch, among other places; At/P.O.-Dhamara, P.S.- Bansada,
Dist. Bhadrak represented by its principal officer and Branch Manager, Dakshina Dhamara
Branch, At/P.O. -Dhamara, P.S.- Bansada,
Dist.- Bhadrak

…………Plaintiff.

-VERSUS-

1. Ramprasad Mandal, aged 44 years
S/o- Late Madhusudan Mandal
2. Purna Chandra Manna, aged 40 years

S/o- Atul Manna Defendants.
At/P.O.-Karanapalli, P.S.- Bansada,
Dist. Bhadrak.

………………. Defendants

Date of Conclusion of Argument: **07.08.2026**

Date of Judgment: **17.08.2026**

Counsel for the Plaintiff:
Adv. Sri Rabindra Prasad Ray
Counsel for the Defendants:
None

JUDGMENT

1. The plaintiff has filed this suit for:

   a. realization of Rs. 5,81,450/- jointly and severally from the defendants along with pendente lite and future interest at the contractual rate with quarterly rests;

   b. on failure of the defendants to pay the decretal dues within the stipulated period, for sale of the mortgaged properties mentioned in the schedule "B" of the plaint and adjustment of sale proceeds towards realization of decretal dues and in case the sale proceeds are found insufficient or the mortgaged properties or any part or portion thereof are not available for sale, then realization of decretal dues by sale of other properties of defendants; and

c. for payment of costs of the suit.

2. This suit had been instituted before the Court of Civil Judge (S.D.), Basudevpur. After functioning of the Commercial Court, Balasore, the suit has been transferred to this Court.

3. The plaintiff's case is as follows: -

3.1 The plaintiff is a statutory body constituted under the State Bank of India Act 1955, having its Local Head Office At- S.B.I. Buildings, Pandit Jawaharlal Nehru Marg, Bhubaneswar and branch, among other places; At/P.O.-Dhamara, P.S.-Bansada, Dist. Bhadrak and is represented by its principal officer and branch manager, Dakshina Dhamara Branch, At/P.O.-Dhamara, P.S.-Bansada, Dist. Bhadrak and is within the territorial jurisdiction of this court. The plaintiff is a scheduled commercial bank and is exempted from the application of the Orissa Money Lenders Act 1939 and Orissa Debt Relief Act 1980.

3.2 On 23.10.2008, the defendant no. 1 applied to the plaintiff-bank for agriculture term loan of Rs.5,00,000/- for purchasing a tractor and the defendant no. 2 stood as the guarantor for the repayment of the loan. The plaintiff by its letter dtd. 28.11.2008 sanctioned loan of Rs.5,00,000/- in favour of defendant no. 1 on some terms and conditions. The sanction letter issued by the plaintiff was accepted by the defendants on 28.11.2008. The loan was secured by the defendant no. 1 by executing hypothecation agreement and by the defendant no. 2 by executing the deed of guarantee in favour of the plaintiff-bank on 28.11.2008. To further secure the loan, the defendant no. 1 being the owner of the schedule "B" properties agreed to create equitable mortgage in favour of the plaintiff and deposited his title deeds with the plaintiff-bank on 28.11.2008 and accordingly equitable mortgage was created on 28.11.2008 as security for the repayment of the loan. He also confirmed the same by his letter received by the plaintiff on 29.11.2008. Accordingly, a loan account was opened for Rs.5,00,000/- in the name of the defendant no. 1 carrying interest thereon at the rate of 0% above/below SBAR with minimum of 13.25% per annum with quarterly rests and in accordance with the usual practice and procedure of the plaintiff. The defendant no. 1 also availed the said loan. Both the defendants are jointly as well as severally liable for the repayment of the dues of the plaintiff, but after repeated demand they failed and neglected to pay the dues of the plaintiff and also violated the terms and conditions of the loan agreements for which the account in the name of defendant no. 1 was determined and the plaintiff has been compelled to file the present suit. A sum of Rs. 4,74,926/- was due and outstanding in the loan account and additionally interest of Rs. 1,06,524/- had accrued but not applied and the plaintiff is to entitled to get Rs. 5,81,450/- along with pendente lite and future interest at the contractual rate till realization of the dues.

3.3 The cause of action for this suit arose on 28.11.2008, when the hypothecation agreement and deed of guarantee were executed and title deeds were deposited by the defendants and the cause of action arose within the territorial jurisdiction of this Court.

With these averments the plaintiff has sought the reliefs prayed.

4. The defendants were set ex-parte vide order dtd. 03.10.2013.

5. In order to prove its case, the plaintiff has examined its Branch Manager viz. Prafulla Kumar Pallai as P.W.1. Apart from oral evidence, the plaintiff has adduced documentary evidence which have been marked as Ext. 1 to Ext. 7.

6. Basing on the pleading and evidence of the plaintiff, the following points are required to be determined for proper adjudication: -

i. Whether the suit is maintainable?
ii. Whether the suit is barred by limitation?
iii. Whether the plaintiff has got any cause of action to file the suit?
iv. Whether the plaintiff is entitled to recover Rs. 5,81,450/- jointly and severally from the

defendants along with pendente lite and future interest @ 13.25 % per annum with half yearly rests?

v. Whether the plaintiff is entitled for an order for sale of the mortgaged properties and appropriation of the same towards payment of the decretal dues and in case of the said sale proceeds are found insufficient or the mortgaged properties or any part or portion thereof are not available for sale, then for an order for sale of other properties of the defendants for realization of the decretal dues?

vi. Whether the plaintiff is entitled to costs of the suit?

vii. To what other reliefs(s) the plaintiff is entitled for?

7. On perusal of evidence of P.W.1, it is forthcoming that during his examination-in-chief filed by way of affidavit, he has deposed along the lines of the averments made in the plaint. The plaintiff has proved the loan sanction letter dtd.28.11.2008 (Ext. 1), the hypothecation agreement (Ext. 2), the deed of guarantee (Ext. 3), the arrangement letter (Ext.4), the RSD No. 384 dtd. 27.03.2002 (Ext.5), the ROR bearing Khata No. 236/247 of mouza-Karanpalli (Ext. 6) and the statement of accounts (Ext.7). On perusal of the evidence, it is forthcoming that the defendant no. 1 for purchasing a tractor applied for loan to the plaintiff and

defendant no. 2 stood as the guarantor for loan. The plaintiff sanctioned loan in favour of the defendant no. 1 to the tune of Rs. 5,00,000/-. The defendants executed the aforementioned documents which bear their signatures. It had been agreed by the defendants that the loan would carry an interest @ 13.25 % per annum with quarterly rests. It had been further agreed that the tractor, being hypothecated to the plaintiff, constituted as the primary security and the landed properties of the defendant no. 1 was furnished as the collateral security to ensure the repayment of loan and equitable mortgage had been created by way of deposit of title deeds with the plaintiff. The said mortgaged land in ROR bearing Khata No. 236/247 stands recorded in the name of defendant no. 1 and the sale deed has been executed in favour of the defendant no. 1.

8. The aforementioned documents unequivocally establish the contractual relationship between the parties and the sanction of the loan facility. The execution of these documents has remained unchallenged. Collectively, they demonstrate that the defendants accepted the terms and conditions governing repayment of the loan, together with the applicable interest and other charges. The plaintiff has proved the loan account statement (Ext. 7) which reveals that Rs. 5,81,450/- was outstanding as on 12.08.2011 in the loan account of defendant no. 1 comprising of an outstanding amount of Rs. 4,74,926/- and accrued interest of Rs. 1,06,524/-.

It is evident from the account statement that the defendant no. 1 has failed to repay the loan amount as agreed by him.

9. The defendants have preferred to not to contest the suit. Since the defendants have been set ex parte, the averments made in the plaint, testimony of P.W.1 and the documents relied upon by the plaintiff remain unchallenged. It is the settled position of law that if an allegation is not denied by the adversary, then the same is deemed to be admitted. From evidence of P.W.1 as well as from the documents on record, it stands proved that the defendant no. 1 even though availed loan, but has neglected to repay the same as per the agreed terms. The defendant no. 2 being the guarantor for the loan, is jointly and severally liable to the bank for repayment of the loan amount. The plaintiff has further prayed that on failure of the defendants to pay the decretal dues within the stipulated period, the mortgaged properties mentioned in the schedule "B" of the plaint be sold and sale proceeds be adjusted towards realization of decretal dues and in case the sale proceeds are found insufficient or the mortgage properties or any part or portion thereof are not available for sale, then realization of decretal dues be made by ordering sale of other properties of defendants. As discussed earlier, the mortgaged properties were the collateral securities for repayment of loan. Hence, in case of default in payment of the decretal amount within the period fixed by this Court, the

plaintiff shall be at liberty to sell the mortgaged properties for realization of the balance amount and in case the sale proceeds are found insufficient or the mortgaged properties or any part or portion thereof are not available for sale, then realization of decretal dues be made by sale of other properties of defendants.

10. The plaintiff has claimed pendente lite and future interest at the contractual rate of 13.25% per annum with quarterly rests. Under Section 34 (1) CPC, the award of interest pendente lite and future interest is discretionary and is to be exercised *de hors* the contract between the parties, as held by the Supreme Court in **Central Bank of India v. Ravindra**, *(2002) 1 SCC 367*. The proviso to Section 34 (1) CPC permits an award exceeding 6% per annum, up to the contractual rate, where the liability arises out of a commercial transaction. Having regard to the fact that the loan was advanced by a scheduled bank in the ordinary course of its banking business, it is considered just and reasonable to award pendente lite and future interest @ 8% per annum on the footing of simple interest on the decretal amount, from the date of institution of the suit till realisation, for the reasons aforesaid.

11. The plaintiff has also prayed for the costs of the suit. When the defendants have not contested the claims of the plaintiff and are responsible for the litigation, they are held liable to bear the costs of the litigation. Accordingly, the plaintiff is entitled for the costs of

litigation.

12. The present suit has been filed for recovery of outstanding dues in the loan account which has been secured by creation of equitable mortgage. Article 62 of the Limitation Act, 1963 prescribes a limitation period of 12 years to enforce the payment of money secured by a mortgage or otherwise charged upon immovable property. In the instant case, loan was advanced on 28.11.2008, equitable mortgage was created on same day and the present suit, having been filed on 24.08.2011, is within the period of limitation. As the plaintiff had advanced loan and the defendants failed to repay the same as per the agreed terms and conditions and despite of issuance of demand notice, the plaintiff has cause of action to file the present suit and the same is maintainable.

13. Therefore, in view of the aforesaid discussions it can safely be concluded that the plaintiff has established its case by preponderance of probability by adducing cogent evidence and is partly entitled to the reliefs claimed.

Hence, it is ordered.

ORDER

The suit be and the same is preliminarily decreed as ex parte against the defendants. The defendants are directed to pay the plaintiff a sum of Rs. 5,81,450/- along with pendente lite interest and future interest @

8% per annum on the footing of simple interest from the date of institution of the suit till realization and costs of the suit. The aforesaid payment is to be made within three months from the date of this order failing which the plaintiff is at liberty to apply to the Court for making the decree final and realize the outstanding dues by selling the mortgaged properties measuring Ac. 4.67 dec. under Khata No. 236/247 situated at mouza-Karanpalli, P.S.-Bansada, Dist.-Bhadrak through the process of Court, and if the same is found insufficient or the mortgaged properties or any part or portion thereof are not available for sale, then the plaintiff shall be at liberty to recover the balance dues by sale of other properties of defendants through the process of Court.

Advocate's fees on uncontested scale.

Sd/-

Civil Judge (Senior Division),

Commercial Court, Balasore

The judgment has been prepared as per my direct dictation on the office computer, corrected by me and pronounced by me in the open Court today i.e., on the **17th day** of **August, 2026** under my signature and seal of this Court.

Sd/-

Civil Judge (Senior Division),

Commercial Court, Balasore

List of Witnesses examined for the Plaintiff:

P.W.1 Prafulla Kumar Pallai

List of Witness examined for the Defendants:

None

List of Exhibits marked for the Plaintiff:

Ext.1	The sanction letter dtd. 28.11.2008.
Ext.2	The Hypothecation Agreement
Ext.3	The Deed of Guarantee
Ext.4	Arrangement Letter
Ext.5	RSD No. 384 dtd. 27.03.2002
Ext.6	The Hal ROR Khata No.236/247 of mouza-Karanpalli.
Ext.7	The statement of Accounts.

List of Exhibits marked for the Defendants:

Nil

Sd/-

Civil Judge (Senior Division),

Commercial Court, Balasore