

**Money Appeal No. 03 of 2022.**

District :- Hailakandi.

**IN THE COURT OF  
THE ADDITIONAL DISTRICT JUDGE,  
HAILAKANDI.**

**Present :-Md. M. H. Barbhuiya,  
A.J.S., Ph.D.-in-Law  
Additional District Judge,  
Hailakandi.**

Monday, the 11<sup>th</sup> day of September' 2023.

**Money Appeal No. 03 of 2022.**

From the Judgment and decree dated,  
20.09.2019, passed by the Learned Civil Judge,  
Hailakandi, in Money Suit No.14 of 2017.

**Md. Abdul Jalil Laskar,**  
S/o-Late Moyub Ali Laskar,  
Vill.- Algapur Part-III,  
P.S.: Algapur & District- Hailakandi (Assam)  
.....**Defendant/ Appellant.**

**-VRS-**

**Md. Baran Khan,**  
S/O-Late Jungle Khan,  
Vill.- Hailakandi Town Ward No.1,  
P.S. & District- Hailakandi (Assam)  
..... **Plaintiff / Respondent;**

This Appeal coming for final hearing on this day [or having been heard] on 14.08.2023,

**In presence of:-**

For the Appellant: Mr. N. M. Barbhuiya, Ld. Counsel.

For the Respondent: Mr. K. I. Laskar, Ld. Counsel.

And having stood for consideration to this, the 11<sup>th</sup> day of September, 2023, the Court delivered the following Judgment:-

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

- 1.** The Judgment and decree dated 20.09.2019, passed by the Learned Civil Judge, Hailakandi (hereinafter referred as the Ld. Trial Court), in Money Suit No.14 of 2017 by which he decreed the suit on contest against the defendant/ appellant, has been challenged in the instant appeal.
- 2.** Before entering into evaluation of the judgment and order impugned herein, for the sake of convenience, this Court proposes to highlight the brief facts leading to filing of the suit by the plaintiff:

**3. PLEA OF THE PLAINTIFF/**

**RESPONDENT:** The respondent as plaintiff had instituted the suit before the learned trial court. The contention of the plaintiff, in brief, is that the defendant who was acquainted with him, approached him on 02-03-2015 to lend a sum of Rupees Three Lakhs and on 02-07-2015 for another sum of Rupees Three Lakhs. On his approach, on the aforesaid dates, the plaintiff lent a sum of Rs.3,00,000/- + Rs.3,00,000/- = Rs.6,00,000/-. In this regard, the defendant executed two “hand notes” to repay the said amount on demand.

**3.1** It is the contention of the plaintiff that although, subsequently, he asked the defendant to repay the amount borrowed by him, the oral approaches gone in vein. Lastly, on 26-10-2016 he sent a legal notice through his engaged advocate. Although the defendant received the same, he did not respond to it.

**3.2** In the premises aforesaid, the plaintiff filed the suit before the Id. trial court praying

for a direction to the defendant to pay a sum of Rs.6,00,000/- along with cost and compensation.

**4. PLEA OF THE DEFENDANT/APPELLANT:**

The defendant contested the proceeding by filing written statement wherein he contended that there is no cause of action for the suit; that the suit is not maintainable in the present form and manner, the suit is barred by limitation.

**4.1** While denying the contentions of the plaintiff, the defendant contended that in the year 2005 he had borrowed a sum of Rs.50,000/- from the plaintiff and by the year 2010, he had already repaid the entire amount with interest thereon to the plaintiff. While taking the admitted loan, the plaintiff took his signatures in two blank 13-inch size papers but even after repayment of the amount, the plaintiff did not return the said blank papers in spite of his repeated approaches.

**4.2** The defendant contended that he was a teacher in an M.E. School and was not in any need to take loan of such a huge sum

as pleaded by the plaintiff. Rather, it is the plaintiff who has prepared the false and fabricated hand notes on the blank signed papers took from him by the plaintiff. In the premises aforesaid, the defendant prayed for dismissal of the suit.

- 5.** On the pleadings of the parties, the learned trial court framed the following issues, such as:-

*(i). Is there any cause of action for the suit?*

*(ii). Whether the defendant borrowed Rs.6,00,000/- by executing hand-note dated 02.03.2015 and 02.07.2015 from the plaintiff?*

*(iii). Whether the defendant failed to repay the said amount to the plaintiff as per terms and conditions ?*

*(iv). Whether the plaintiff is entitled to the relief, as prayed for in the suit?*

- 6.** In support of the case, the plaintiff had adduced evidence through 3 numbers of witnesses and also exhibited 3 numbers of

documents. The defendant side submitted evidence in chief of two witnesses but the same was not considered due to technical grounds.

**7. Findings by the trial Court :** On conclusion of the trial, the learned trial court was pleased to decree the suit in favour of the plaintiff.

**8.** Being aggrieved and dissatisfied with the aforesaid judgment and decree, the defendant preferred the instant appeal contending inter alia that the learned trial court failed to appreciate the materials available on record in their proper perspectives; for that although the defendant adduced evidence but the Id. trial court did not take into account of those evidence in accordance with law;

**9. POINTS OF DETERMINATION:** During hearing, following points have been framed to decide the instant appeal:

*1) Whether the Id. trial court failed to appreciate the fact that non-appreciation of the evidence adduced*

*by the DWs-1 & 2 has caused prejudice to the defendant ?*

*2) Whether the Id. trial court failed to consider the materials available on record in deciding the suit ?*

*3) Whether there is anything to interfere with judgment and decree impugned herein?*

**10.** I have heard the learned Counsel for the parties. Also perused the records.

**11. DISCUSSION AND DECISION THEREFOR:**

Perusal of the record reveals that after framing the issues on 20-01-2018, the Id. trial court asked the plaintiff to adduce evidence on 13-02-2018. After taking one adjournment, on 08-03-2018, the plaintiff side submitted evidence-in-chief on affidavit of P.W's 1 and 2. Again, after taking three adjournments, on 09-05-2018, the evidence of the P.W.3 was submitted by the plaintiff. After taking three adjournments, on 30-06-2018, the P.W.3 faced cross-examination; after taking one adjournment, on 25-07-2018 P.W.2 faced cross-examination and after taking eleven

adjournments, only on 03-04-2019 the P.W.1 appeared before the court to face cross-examination.

**11.1** Thereafter, 09-04-2019 was fixed for adducing evidence by the defendant (for typing mistake written as P.W.'s). After taking four adjournments, on 26-06-2019, the D.W's 1 and 2 submitted their evidence-in-chief on affidavit. On that day, the defendant filed Petition No. 1622/19 praying to call for the Account Book and Income Tax Return of the plaintiff.

**11.2** Record reveals that on 04-09-2019 the defendant was absent without any step and on that day, the Id. trial court disposed of the petition No. 1622/19 filed by the defendant, and on merit, the said petition was dismissed.

**11.3** In that order, the Id. trial court made a note in his order that ***'defendant side is directed to ensure defence witness within next date, as further adjournments for them is not maintainable under order 17 of C.P.C., as defendant availed***



***adjournments on 09-04-2019, 29-04-2019, 20-05-2019 etc.'***

**11.4** By the said order, the Id. trial court fixed the next date on 11-09-2019 for evidence/N.O./ Closure of DW. However, on 11-09-2019, 13-09-2019 and 17-09-2019 the defendant was absent without any step and for which, the Id. trial court heard argument on behalf of the plaintiff fixing 20-09-2019 for passing judgment. Of course, liberty was given to the defendant to place written argument before pronouncing judgment. However, the defendant did not take part in the hearing anymore.

**12.** Ultimately, vide judgment and order dated 20-09-2019, impugned herein, the suit was decreed in favour of the plaintiff.

**13.** Order XLI, R-33 C.P.C. casts a duty upon the appellate court to see that complete justice is done to the parties. In the case in hand, perusal of the record reveals that the Id. trial court invoked the power contemplated in Order-XVII of C.P.C. pertaining to granting of adjournments

only in respect of the defendant, but, not in respect of the plaintiff. The Id. trial court granted numerous adjournments to the plaintiff to adduce evidence or to face cross-examination, but, similar opportunity was not afforded to the defendant and the same is apparent on the face of the record, highlighted in paragraph No. **11.3** and of course, during the last stage of the proceeding, the defendant was found absent in the court nor he was represented by anybody. Even, the Id. trial court did not expunge the DW's adduced by the defendant by any formal order.

**13.1** Besides, while the case was pending for hearing before this court, on 31-05-2023 the defendant/ appellant filed petition No.135/01 reiterating that although the defendant side adduced evidence-in-chief on affidavit, the same were not tested through cross-examination and as a result of which, the Id. trial court did not appreciate the evidence produced by him. By that petition, the defendant/appellant prayed for allowing cross-examination of the D.W.s 1 and 2.

- 14.** Considering the entire facts and circumstances, this court finds that the Id. trial court did not consider the evidence adduced by the defendant and for which, the defendant was prejudiced. The Id. trial court ought to have given an opportunity to the defendant to produce the witnesses to face cross-examination so as to form the evidence as part of the record and use the same in pronouncing the judgement. In such a situation, the judgment and decree cannot sustain.
- 15.** In the result, the judgment and decree, impugned herein is hereby **set aside**.
- 16.** The matter is **remanded back** to the Id. trial court to allow the plaintiff to cross-examine the DWs whose evidence in chief are already in the record so that the evidence adduced by the defence could be used in writing the judgment. Thereafter, the Id. trial court will pass judgment afresh without being influenced by the judgment passed by his predecessor or observation made by this court.

**17.** As the matter is an old pending one, it is expected that the Id. trial court will make an attempt to dispose of the matter within a period of three months from the date of receipt of the record. The parties shall appear before the court on 12-10-2023 for obtaining further instructions.

**17.1** As the delay in disposing the suit is attributed to the defendant also, he must compensate the plaintiff who has suffered a lot in respect of time. Accordingly, it is directed that the defendant/appellant shall pay a sum of Rs.5,000/- (Rupees five thousand) as cost to the plaintiff/respondent on the next date fixed before the Id. trial court.

**18.** With the above direction, the instant appeal is disposed of.

**19.** Return the L.C.R. to the Id. Trial Court along with a copy of this Judgment for information and necessary action.

Given under my hand and seal of this Court on this, the **11<sup>th</sup>** day of

**September, 2023, at Hailakandi,  
Assam.**

*(Md. M.H. Barbhuiya)*  
*Additional District Judge,*  
*Hailakandi.*

Dictated and corrected by me.

**Additional District Judge,  
Hailakandi.**

Transcribed by :-

B. Choudhury, Stenographer.