

Assam Schedule VII: Form No. 132

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT ON ORIGINAL APPEAL

**IN THE COURT OF THE CIVIL JUDGE SENIOR DIVISION CUM
ASSISTANT SESSIONS JUDGE NO-1, KAMRUP(M),
GUWAHATI**

Present: **N.J. Haque, LLM, AJS**
Civil Judge Senior Division No-1
Kamrup(M), Guwahati

9th day of February' 2024

MONEY SUIT NO.191/2022

1. SRI NIBARAN DAS,aged about 69
year, S/o Lt Modan Mohan Das,

2. SMT. PADMINI DAS, aged about 55
year, W/O-Sri Nibaran Das, Resident of
H.No.30 Brindaban Path Beharbari, Near
A.G. Residential Colony, Po:-Sawkuchi.
P.S- Basistha, Guwahati -781040, District
Kamrup (M) Assam,Phone No.
7002354556

Plaintiffs

VS

1. SRI ALOK SEN,S/o Lt AbaniKanta
Sen @ KantaSen, Phone No-9435191784

2. SMT. POMPY SEN, W/O- Alok Sen,
Phone No-9435191784

3. SRI ABHIK SEN, S/O- Alok Sen

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4. SMT. PRIYANKA SEN, D/O- Alok Sen, No. 1 to 4 are residents of 82/1 PGH, Sha Road, Kolkata-32 District 24 Pargana, West Bengal

Substitute Address

Pailan Park Housing Complex, Plot No. 103, Sector 1, Diamond Harbour, Kolkata-700104 West Bengal

5. Sri DIRAJ SHARMA S/O- Lt. Naren Sharma R/O-Vishnupur, P.s- Barpeta, P.O.-Bhella, PIN: 781311 District - Barpeta, Assam, Phone No-78965-59938

6. SRI BIPUL PAL, S/O- Unknown, C/O- Alok Sen, 82/1, PGH Sha Road, Kolkata-32, District 24 Pargana, West Bengal

7. SMT. SABINA PAILAN, D/O- Unknown, C/O- Alok Sen, 82/1, PGH Sha Road, Kolkata-32, District 24 Pargana, West Bengal

8.Md. MAINUL HAQUE, S/O- Unknown, C/O- Alok Sen, 82/1, PGH Sha Road, Kolkata-32, District 24 Pargana, West Bengal

9.SRI SUDIP DAS@Rahul Roy, S/O- Unknown, C/O- Alok Sen, 82/1 , PGH Sha Road, Kolkata-32, District 24 Pargana, West Bengal

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10.SRI MANASH BISWASH, S/O-
Unknown, C/O- Alok Sen, 82/1, PGH Sha
Road, Kolkata-32, District 24 Pargana,
West Bengal

11.SRI RANJIT KALITA, S/O-
Unknown, C/O- Alok Sen, 82/1,PGH Sha
Road, Kolkata-32, District 24 Pargana,
West Bengal

**12.SRI GOBINDA DAS@Gobinda
Saikia,** S/O- Unknown, C/O- Alok Sen,
82/1,PGH Sha Road, Kolkata-32, District
24 Pargana, West Bengal

13.SRI SWAPAN GHOSH, S/O-
Unknown, C/O- Alok Sen, 82/1,PGH Sha
Road, Kolkata-32, District 24 Pargana,
West Bengal

14. A.P. COMMUNICATION,
Represented by Alok Sen 82/1,PGHSha
Road, Kolkata-32, District 24 Pargana,
West Bengal

15. BIOSCOPE ALOSUCHI,
Represented by Alok Sen, 82/1,PGHSha
Road, Kolkata-32, District 24 Pargana,
West Bengal

Defendant

**Suit for realization of
Rs.10461200.00 (Rupees One
Crore forty six lakhs Sixty one
thousand two hundred).**

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And the suit came up for final hearing on-11/1/2024 in presence of following advocates:-

Ld. Advocate appeared for the plaintiff : - Mr. M. Rahman.

Ld. Advocate appeared on behalf of defendant: - None appeared.

JUDGMENT

Plaintiff's case

1. The plaintiff's case appears to be in a nutshell is that the plaintiff no. 1 is a retired Govt. servant and the plaintiff no. 2 is a retired Headmistress of a private School. That in the month of May, 2012 the defendant no.5 frequently visited at the house of the plaintiffs and in the meantime he became a close friend to the plaintiffs. In the meantime, the defendant no. 5 came to know that the daughter of the plaintiffs was preparing for medical entrance and from that time he made an unexpected conspiracy to grab and earn money from the plaintiffs. That in the month of June, 2012 when the defendant no. 5 visited at the house of plaintiffs he told the plaintiffs that he has very good relationship and contacts with the Officials of the Medical Selection Board of Assam. That the defendant no. 5 falsely assured the plaintiffs that if they interested then he will make contact with the Officials of the Medical Selection Board of Assam in connection with the Admission of the daughter of the plaintiffs. That by knowing such information from the mouth of the defendant no. 5, the plaintiffs requested the defendant no. 5 to do the needful. In turn the defendant no. 5 told the plaintiffs if they will arrange the amount of

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Rupees 20,00,000/- for donation then he can be doing something. The plaintiffs being confidence on the defendant no. 5, agreed the proposal of the defendant no. 5. They also agreed to pay the sum of Rs.20,00,000/- to the defendant no. 5 in connection with the selection of their daughter. In this way the defendant no 5 had taken an amount of Rs.19,65,000/-in cash from the plaintiffs within the period of more than one year's i.e. from 22/7/2012 to 4/11/2013. By this time the daughter of the plaintiffs appeared in the entrance exams of medicals. But as assured by the defendantno 5 she has not been selected for the course of M.B.B.S and when she was not cleared the entrance exam of medical it was demoralizing her along with her parents i.e. the plaintiffs. That in the month of August, 2013 the Defendant no-1 visited at the residence of the plaintiffs and introduced himself as a member of the Medical Selection Board of Assam. That during the conversation with the plaintiffs, the defendant no. 1 falsely assured the plaintiffs that as a member of the Medical Selection Board he can managed the admission of the daughter of the plaintiffs in M.B.B.S course. That in this way one month was elapsed, after the elapsed of more than one month, one day on the month of October, 2013 the defendant no.1 and 5 visited at the residence of the plaintiffs and informed them that the daughter of the plaintiffs get admission in Guwahati Medical College, after giving that information to the plaintiffs, the defendant no. 5 had given in the hands of

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the plaintiffs a letter, an identity card and a money receipt and told them that he has kept his promises and it is the duty for the plaintiff no. 1 to deposit the remaining balance of donation. The letter which was shown issued under the pad of Office of the Director of Medical Education, Dispur dated 18/9/2013, the identity card which was shown issued in the name of the daughter of the plaintiffs dated 7/10/2013 and also the Receipt of Rs.58,962/-dated 3/10/2013 issued under the pad of Gauhati Medical College & Hospital, Bhanagarh, Guwahati-781032 is all forged documents. That on the basis of that fake documents the defendant no. 1 & 5 fraudulently collected a huge amount of Rs.19,65,000/- from the plaintiff within the period from 22/7/2012 to 4/11/2013. From that time the plaintiffs had found something suspicious in the activities of the defendant no. 5 and as such in the month of December, 2013 they told the defendant no. 5 to return the amount which he was taken from them in connection with the admission of their daughter. That in first time the defendant no. 5 avoided the plaintiffs. But when the plaintiffs continuously demanded to return back their money then the defendant no. 5 had issued on the first week of December, 2013 a postdated cheque in favour of the plaintiff no. 1, bearing cheque no. 001852 dated 28/12/2013 drawn on ICICI Bank, which was amounting of Rs.4 lakhs 10 thousand. When the plaintiff no. 1 tried to encase the said cheque then he came to know that it was a fake cheque, the plaintiff no 1 immediately informed the defendant no. 5 about

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the matter and demanded his money back after that then the defendant no. 5 returned an amount of Rs.4 lakhs to the plaintiffs in two installments and told the plaintiffs that the remaining amount of Rs.15 lakhs 55 thousand will be refunded by Alok Sen i.e. the defendant no.1 of this Case. Suddenly on the Second Week of December, 2013 the Defendant no. 1 visited at the residence of the plaintiffs and when the plaintiffs told him about the matter of refund of the amount of Rs.15.55 lakhs which was taken by him alone with the defendant no. 5 as donation for the admission of their daughter at Gauhati Medical College in turn then the defendant no. 1 falsely assured the plaintiffs that he will refund the entire amount of Rs. 15.55 lakhs to them shortly. During the conversation with the plaintiffs, the defendant no. 1 offered the plaintiff no. 1 to invest money in the contract works under the N.F. Railways. The defendant no. 1 convinced the plaintiffs that it will be a profitable business for him if the plaintiff no. 1 invested money in the contract of N.F. Railways. That defendant no.1 informed the plaintiff no. 1 that the N.F. Railway has issued a tender notice dated 30/9/2013 for constriction of drain at various location amounting of Rs.2.15 Crore vide tender no. DV. CE/CON/NMX-JPZ/Misc. Drain/2013/OT-13, amounting of Rs.2.15 Crore. The defendant No. 1 told the plaintiff no. 1 that he will apply for the said tender and requested the plaintiff no. 1 to arrange the required amount of Rs.3,12,700/- i.e. earnest money along with the cost of the tender documents. As per

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request of the defendant no. 1 the plaintiff no. 1 issues a cheque amounting of Rs.3,12,700/- in the name of Sapan Ghose i.e. the defendant no. 13 of this case, from the account no. 33273265712 dated 20/12/2013 for the expenditure of applying the tender. After two days the defendant no. 1 visited at the house of the plaintiffs with a work order (Fake) dated 23/12/2013 amounting of Rs.2.15 Crore and told the plaintiffs that the construction work will be started from the next date at Goalpara and it is required for the plaintiff no. 1 to appear on the day of starting the construction. The defendant's no. 1 and 2 repeatedly requested the plaintiffs to invest money in their Firm Namely Bioscope Alosuchi and A. P. Communication. Finding no other way the plaintiff no. 1 agreed to invest money in their firms and on the day the plaintiff no. 1 gave two cheques one of amounting of Rs.8,00,000/- dated 27/12/2013 and another was amounting of Rs.2,00,000/- in the hands of the defendants no. 1 and 2 in the name of Bioscope Alosuchi and A. P. Communication respectively. That on first week of January, 2014 the defendant no. 1 again visited at the residence of the plaintiffs and met the plaintiff no. 1 and hand over a work order(fake) dated 07/01/2014 amounting of Rs.3.01 Crore, which was shown issued in the name of Nibaran Das i.e. the plaintiff no. 1 of this case, the said work order shown issued under Memo. No. NFR/PW02/MLG/S)PT)W. That in the middle of the January, 2014 the defendant no.1 called the plaintiffs to Delhi to receive one demand draft amounting of

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Rs.1.5Crore as advance payment for the constructionwork. As asked by the defendant no. 1 the plaintiffsappeared at New Delhi on 21/04/2014 and met thedefendant no. 1 and collected the demand draft(fake) from the defendant no. 1 but the saiddemand draft was not genuine, when the defendantno. 1 was informed about the matter by theplaintiffs then the defendant no. 1 he returned backthe said demand draft and assured that he will givea fresh and correct demand draft to them. When theplaintiffs were in Delhi then one day the defendantno. 1 met the plaintiffs and requested the plaintiffno. 1 to meet one person namely Mr. Mahavir Singh, as per request the plaintiff no. 1 agreed to meet thesaid person, the defendant no. 1 took the plaintiffno. 1 to the said person namely Mr. Mahavir Singh, the defendant no. 1 introduced the said person infront of the plaintiff no. 1 as PA of Chairman of Railway Board New Delhi. After conversation with the person namely who introduced himself as the PA of Chairman of Railway Board New Delhi, the plaintiff was advise by him to send a letter addressing to the Chairman requesting there by request to clear the outstanding dues of Rs.5.25 Crores (Total Work Order). As per advice by Mr. Mahavir Singh, the plaintiff no. 1 immediately prepared a letter and gave it in the hand of Mr. Mahabir Singh in front of defendant no. 1. Thereafter suddenly Mr. Mahabir Sinnggh suddenly contacted with the plaintiff no.1 on 3/4/2014 and demanded Rs.10,00,000/- to plaintiff for the purpose of clearing the demand draft,

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subsequently the defendant no. 1 also started put pressure on the plaintiff no. 1 to arrange the amount of Rs.10,00,000/- for clearing the demand draft. Whenone after another phone calls were came then the plaintiffs somehow arranged an amount of Rs.5,00,000/- by taking loan from close relatives and friends. After arranging the amount of Rs.5,00,000/- the plaintiff no. 1 gave the said huge amount to the person namely Mahabir Singh for the propose of clearing the demand draft. But as assured by the defendant no. 1, the demand draft was not found cleared till the end of March, 2014. Instead of that on 10/4/2014 the defendant no. 1 informed the plaintiff no. 1 that the Demand draft could not be cleared due to an accident of the Chairman of the Railway Board, the defendant no. 1 also informed the plaintiffs that the Chairman of Railway Board has gone to Patna for his treatment. The defendant no. 1 on 13/4/2014 informed the plaintiff no. 1 that he went to Patna to meet the Chairman at Patna and the Chairman of the Railway Board informed him that the Demand Draft is laying in the Office and the Office would be cleared it after the Lok. Sabha Election, 2014. The defendant no. 1 on 25/04/2014 also forwarded a message to the plaintiff thereby informing them that the SBI has been issued a letter for the purpose of all kind of transaction until the enforcement of the election code of conduct. That on 6/6/2014 the defendant no. 1 was sent a cheque of Rs.18,00,000/- bearing No. 074244 dated 5/6 / 2014 to the plaintiff no. 1. The cheque was issued in the name of

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the plaintiff no. 1 and it was shown issued by one namely Susmita Singha. After obtaining the said cheque the plaintiff no. 1 deposited it at SBI, Dispur Branch but unfortunately the bank returned it with a returning memo dated 13/06/2014 showing the reason "Account block situation covered in 2125 prime. That when the plaintiffs informed the defendant no. 1 about the dishonor of the cheque dated 05/06/2014 then the defendant no. 1 again given a cheque to the plaintiff no. 1 of Rs. 18,00,000/- bearing No. 074246 dated 20/06/2014. The said cheque also shown issued from the account of Susmita Sinha. The plaintiff no. 1 as told once again deposited the said cheque in his bank but this time to the bank was returned the cheque with a returning Memo dated 20/6 / 2014 showing the reason "drawer signature differ". This time the plaintiffs told the defendant no. 1 to arrange the payable amount in cash but in turn the defendant no. 1 advice to wait till the clearance of the demand Draft. That on 08/07/2014 an unexpected message was received by the plaintiffs from the defendant no. 1. In the said message the defendant no. 1 informed the plaintiffs that the Railway Board is demanding an amount of Rs.28,00,000/- for clearing the demand draft. After receiving the message the plaintiffs became restless and sleepless because the defendant no. 1 along with the co- defendants almost taken a huge amount in the name of a Contract work and the plaintiffs not had such a huge amount as such finding no other way they sell their immovable property under Dispur Revenue Circle at a

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consideration of Rs.24,00,000/- and hand over it to the defendant no. 1 on 22/8/2014 (i.e. 14 ,00,000/-) , and 23/8/2014 (i.e. Rs.10,00,000/-). After receiving the amount of Rs.24 ,00,000/- from the plaintiffs, the defendant no.1 falsely assured the plaintiffs that the said amount of Rs.24,00,000/- will be given to the Chairman of Railway Board to clear the demand draft. That on 28/07/2014 the defendant no. 1 informed the plaintiffs that he had received the demand draft of Rs.5 Crore in the name of M/S- P.B enterprise. He also informed the plaintiffs that on the next day he will come to Guwahati to deposit the said demand draft in bank. That the plaintiffs were waiting for the defendant no. 1 but the defendant no. 1 not visited at the house of the plaintiffs. That on 24/8/2014 the defendant no. 1 suddenly visited at the residence of the plaintiffs and informed the plaintiffs that he has already deposited the demand draft of Rs.5 Crore into bank and to convince the plaintiffs, defendant no.1 also shown a counter folio (fake) dated-24/8/2014 and hand over it to the plaintiffs. Surprisingly on the next date the defendant no. 1 informed the plaintiff no. 1 through message that the demand draft is discarded by the bank. By receiving the said information, the health condition of the plaintiff no. 1 gone in worse condition also the plaintiffs became upset. That when the plaintiffs contacted the defendant no. 1 on 2/9/2014 and opened the matter of payment then the defendant no. 1 again falsely assured the plaintiffs that the entire amount will be

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cleared by the Railway Board in four phases. That since the year of 2013 the defendant no. 1 and this accompanied co-defendants of this case deliberately cheated the plaintiffs. That on 09/09/2014 the defendant no. 1 again informed the plaintiffs that the chairman of the Railway board has changed and the new chairman has demanded an amount of Rs.11,00,000/- for clearing the demand draft. On 10/9/2014 the defendant no. 1 falsely assured the plaintiffs that the Railway Board has issued a demand draft of Rs.1.25 Crore in the name of M / S P.B Enterprise, he further informed the plaintiffs that the said demand draft has deposited at Industland Bank, near Rail Bhawan New Delhi by one Manish Agarwala. But the plaintiffs had not got any amount from the said transaction nor the plaintiffs has actual knowledge whether the said demand draft was issued or not. That finding everywhere in darkness, the plaintiffs decided to return back the money from the defendants which were collected by the defendants from the plaintiffs. And when the plaintiffs told the defendant no. 1 to return the invested money then the defendant no. 1 tactfully told the plaintiffs that he had already met the Railway Minister of Railway and request him to take step to clear the demand draft. The defendant no. 1 also informed the plaintiffs that the Railway Minister told him to give Rs.2,50,000/- to the party fund. In this time the defendant no. 1 put pressure on the plaintiffs to arrange the amount of Rs.2,50,000/- but the plaintiffs denied to give any amount to

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him and told him that their financial condition is not sound. The plaintiffs were waiting and when they repeatedly demanded the defendant no.1 to return back their money then the defendant no. 1 sent some unknown person at the residence of the plaintiffs to threaten them. The said unknown person as per the instruction of the defendant no. 1 threatened the plaintiffs that if the plaintiffs again make demand to return any money from the defendant no. 1 then they will kill the entire family of the plaintiffs. For that incident the plaintiff no. 2 lodged a F.I.R at the Basistha Police Station, accordingly the Police registered a case vide Basistha P.S. Case no. 1367. But till the end of December, 2019 no result was found. That suddenly in the last part of December, 2019 the police arrested the defendant no. 1 from the Guwahati Airport. When the defendant no. 1 was produced in Court then defendant no. 1 was agreed to give an amount of Rs.87,00,000/- to the plaintiffs. And on 2/1/2020 when the defendant no. 1 when in custody, had entered in to an agreement with the plaintiff no 1 and agreed to pay Rs.87,00,000/- to the plaintiff no. 1. On that day the defendant no. 1 paid an amount of Rs.2,50,000/- to the plaintiff no. 1 and as per the condition of clause 2 of the agreement dated 2/1/2020 he assured that the remaining balance. The defendants by cheating the plaintiffs had taken an amount of Rs.10461200.00/- from the plaintiffs. That amount was the hard earned money of the plaintiffs. The documents

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which have annexed along with the plaint shall amply prove the fraudulences of the defendants. Hence, this suit.

2. The defendants on receiving summons did not turn up and the case proceeded ex-parte against the defendants.
3. I have gone through the evidence on record including the documents relied on and also heard the arguments of learned counsel appearing for the plaintiff.
4. The following point is formulated for determination:-

“Whether plaintiffs are entitled to get any decree as prayed for?”

EVIDENCES ADDUCED BY THE PLAINTIFF

5. Plaintiff side during the ex-parte hearing examined four numbers of witnesses and exhibited certain documents.

APPRECIATION OF PLAINTIFF’S EVIDENCE

6. The court has meticulously perused the evidence presented by PW-1 in the backdrop of the pleadings on record and finds that PW-1 in his evidence in chief has not exhibited any documents. The plaintiff side submitted certain documents as exhibits but those were admittedly not incorporated with the evidence in chief and that being the position this court is not in a position to consider those documents as exhibits. The other three witnesses also have not exhibited any documents before this court. The PW-1 in his evidence in chief deposed that he has entitled to get an amount of Rs.10461200.00/- from the defendants along with interest @ 18% and in the same time in Para no-25 of his evidence in chief he testified that defendant

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no-1 agreed to give an amount of Rs.87,00,000/- and on-2.1.2020 when the defendant no-1 was in custody he had entered into an agreement with him and agreed pay Rs.87,00,000/-. The plaintiff side failed to establish the fact that defendants have received a sum of Rs.10461200.00/- from the plaintiff. The plaintiffs in their plaint claimed several facts upon which the defendants have received money from the plaintiffs but the plaintiffs failed to establish such fact by adducing any cogent evidence before this court. The plaintiffs in their pleadings claimed that plaintiffs have invested money for construction work and also paid an amount of Rs.19,65,000/- to the defendant no-1 on several dates for admission of daughter of plaintiff in Medical College and to establish such fact no cogent evidence adduced before this court. The plaintiffs in nowhere in their plaint claimed that defendants have obtained loan from the plaintiffs, whereas the contents of agreement is talking about the loan amount and that appears to be contradictory with the contentions of plaint. Further, this court fails to understand one thing regarding the execution of an agreement by the defendant no-1 when he was jail custody.

7. To sum up the evidences on record, this court finds that plaintiff side failed to adduce any sort of evidence to establish the facts as pleaded in their plaint. Accordingly, the plaintiffs are not entitled to get any reliefs as prayed for.

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ORDER

8. In the result the plaintiff suit is dismissed without cost. The cost is not awarded since the matter proceeded ex-parte against the defendants.
9. Prepare the decree accordingly. Judgment is pronounced and delivered in open court under the hand and seal of this court on 9th day of February' 2024.

CIVIL JUDGE NO-1,
KAMRUP(M), UWAHATI

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Appendix

1. Plaintiff Witnesses:

PW-1 :- Nibaran Das

PW-2 Padmini Das

PW-3 Bhabesh Talukdar

PW-4 Upendra Panday

2. Plaintiff Exhibits: NIL

3. Defendant Witnesses: NIL

4. Defendant Exhibits:- NIL

(N. J. Haque)

Civil Judge Sr. Division No-1
Kamrup(M), Guwahati