

Money Suit No. 12 of 2023
Reg No. Money Suit 12 of 2023

Ex parte Order No. 13, Dated: 18.03.2025

1. Today is fixed for ex parte hearing on the main suit.
2. The plaintiff files hazira.
3. Now, the record is taken up for hearing argument.
4. Heard argument for the plaintiff at length.
5. The record is now taken up for passing order.
6. The Court has perused the plaint, the affidavit-in-chief of the witness, the evidence, documents tendered and all other materials on record.
7. Considered.
8. Upon perusal of the plaint it seems that this is a Money Suit which has been filed by the plaintiff for recovery of an amount of Rs. 2,52,000/- from the defendant Rekha Roy.
9. The plaintiff's case in nutshell is that the defendant during her financial crises approached the plaintiff to give her a loan of Rs. 3,00,000/- with promise to repay the said loan within three months and on account of good relation, the plaintiff agreed to give the said loan amount to the defendant by issuing two Cheques. On 08.09.2021 the defendant withdrawn the amount of Rs. 2,00,014/- and on 27.01.2022 withdrawn the amount of Rs. 1,00,000/- both from the State Bank of India, Hakimpara Branch, Siliguri, altogether total amount given and accordingly, on 03.07.2022 the plaintiff gave an amount of Rs. 50,000/- to the defendant by way of Bank transfer. After the lapse of one year the defendant has failed to return the plaintiff's remaining money back and on being reminded by the plaintiff, the defendant ignored his request and neglected to repay the remaining loan amount. Thereafter, plaintiff has also served a notice through his Lawyer on 28.11.2022 but the defendant did not repay the said amount in spite of receiving the said notice on 30.11.2022, but despite of receive of the said notice, the defendant has not paid such amount to the plaintiff.
10. Hence, the plaintiff finding no other alternative has been compelled to file the instant suit for realization of the said amount of Rs. 2,52,000/- as per the prayer of the plaint.
11. However, in order to prove the instant case in favour of the plaintiff, it has adduced the evidence of the following witness:

No. of the witness	Name of the witness	Relation

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PW 1	Hirendra Chandra Roy	Plaintiff himself
PW 2	Prashant Pradhan	Summoned witness

11. *In order to prove the fact of the plaintiff and to establish its case, the plaintiff has tendered the following documents which have been marked accordingly as per the provisions of the Indian Evidence Act:*

Serial No.	Document Exhibit	Exhibit Marked
1.	<i>Legal notice dated 28.11.2022</i>	1
2.	<i>Signature of PW 1 on the notice</i>	1/1
3.	<i>Track Report along with postal Receipt</i>	2
4.	<i>Postal Receipts</i>	2/1
7.	<i>Authorization Letter issued by Chief Manager, SBI, Hakimpara Branch, Siliguri</i>	3
8.	<i>Signature of Chief Manager, SBI, Hakimpara Branch, Siliguri namely Abha Esha Kujur on the Authorization Letter</i>	3/1
9	<i>Signature of PW 2 on the Authorization Letter</i>	3/2
10	<i>Original Passbook along with the entry page dated 27.01.2022 showing the details of the Cheque transferred to Mrs Rekha Roy amounting to Rs. 1,00,000/-</i>	4, collectively
11	<i>Original Passbook along with the entry page dated 08.09.2021 showing the details of the Cheque transferred to Mrs Rekha Roy amounting to Rs. 2,00,000/-</i>	5, collectively
12	<i>Two counter slips of depositing the two Cheque amounting to Rs. 1,00,000/- and Rs. 2,00,000/- with the SBI, Hakimpara Branch, Siliguri</i>	6, series

12. *Perused the plaint, considered the submission of the Ld. Advocate for the plaintiff, the documents exhibited and the materials in the case record.*

13. *Having considered the above fact and circumstances and also on perusal the case*

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record it reveals that the summons of this case was duly served upon the defendant as per the Legal Notice dt. 30.11.2022 and the Postal Track Report dated 30.11.2022. After that as the defendant did not turn up to contest the suit, the Court on 22.02.2024, was pleased to proceed with the case as ex parte hearing against the defendant.

14. Before quench into the truth of the case of the plaintiff we have to critically assess the evidence of the witness and the documents exhibited by the plaintiff in support of its case.

15. Generally, it is the plaintiff who assert a particular fact has to prove that fact. In the plaint the plaintiff has alleged that the defendant approached to the plaintiff and requested to give her a loan of Rs. 3,00,000/- (Rupees Three Lakh) and promised him that she shall repay the same amount within three month. And, the plaintiff accordingly on 08.09.2021 by way of cheque amounting to Rs.2,00,014/- gave the amount to the defendant and also on 27.01.2022 the plaintiff further gave Rs.1,00,000/- by way of cheque being no. 652556 both cheque drawn from S.B.I. Hakimpara Branch. But as the defendant failed to make the said loan amount to the plaintiff within time, the plaintiff finding no other alternative issued legal notice dt. 28.11.2022 to the defendant asking and requesting the defendant to repay the loan amount to the plaintiff within 15 days from the date of receipt of said legal notice which was duly received by the defendant on 30.11.2022 in her duly noted address, but despite of receive of the said notice, the defendant has not paid such amount to the plaintiff.

16. To prove this fact the plaintiff himself has adduced as PW-1. In course of his evidence the plaintiff has tendered the legal notice dated 28.11.2022 along with the postal receipts (Ex.1 and 1/1) and the other relevant document in support of his allegation.

17. Thus, upon perusal of the exhibited documents reveal that out of the loan amount of Rs.3,00,000/-, the defendant has paid an amount of Rs.50,000/- only and has failed to pay the balance amount of Rs.2,50,000/- to the plaintiff even despite of issuing notice upon him by the plaintiff.

18. In addition to this it further reveals from the before institution of this suit, the plaintiff has sent a lawyer's notice to the defendant asking thereby to repay the loan amount but the defendant has failed and neglected to repay within the stipulated period as mentioned in the notice even after service of the demand notice to him. Thus the defendant has failed to comply either of the two.

19. Upon appreciation of the evidence and on the basis of the above findings, this Court reaches its conclusion that the plaintiff in support of its claim have sufficiently

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produced the documents. It is further evident that the case of the plaintiffs have been sufficiently corroborated.

20. This is an ex parte hearing and although the defendant after receiving of the notice has failed to appear to contest the case by making his appearance and, in that connotation the general presumption goes against the defendant which proves that the prima facie case might fall in favour of the plaintiff and for that the defendant has neglected to appear before the Court intentionally and deliberately. Moreover, from the uncontroverted, unimpeached and unchallenged evidence it seems that the plaintiff has sufficiently proved his case and has discharged the same by proving its case and is therefore, entitled to get the decree.

21. It is the settled principle of law that the averment should be supported by adducing proper evidence. As this Court has already discussed at length and held that the plaintiffs in this case has sufficiently adduced such evidences which will prove the claim of the plaintiff in his favour, there remains no doubt to pass a decree in favour of the plaintiff.

22. At this stage, it is pertinent to mention that the plaintiff has prayed for an additional prayer for a decree in respect of the cost of Rs.2000/- for service of legal notice to the defendant in addition to the total amount claimed by him. On this account, the Court is triggered with the submission put forth by the plaintiff that it was the defendant who compelled the plaintiff to approach before the Court of Law to get the loan amount paid by him to the defendant as per his request. Not only that the plaintiff has to bear the expenditure borne by him in the proceeding of the instant suit. That apart, the plaintiff has to pass through the legal procedure to substantiate his claim and has to bear the cost of proceeding in the suit. Hence, the plaintiff has prayed for an additional cost of Rs.2,000/- by way of a decree in the instant suit.

23. Adverting to the aforesaid contention of the plaintiff, the Court is of the constraint opinion that since the payment of loan by the plaintiff to the defendant was not paid defendant which pushed him to come to the Court, the plaintiff is justified to get the relief by way of cost as prayed for by him.

24. In the premises above and having heard the Ld. Advocate for the plaintiff and on the basis of the uncontradicted and uncontested pleadings and following the aforesaid observation, this Court has reached to the conclusion that the plaintiff has been able to make out its case and in the background of the aforesaid circumstances, this Court has inclined to allow the prayer of the plaintiff and hence, it is entitled to get the decree as prayed for.

25. Considering the same the Court inclines to hold that the plaintiff has been able to

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substantiate and establish its case.

26. Accordingly, the suit succeeds.

27. Court fees paid, is correct.

28. Hence, it is,

ORDERED,

*that the instant suit **being Money Suit No. 12 of 2023** be and the same is **decreed ex parte** against the defendant.*

*The plaintiff is entitled to get a preliminary decree for recovery of **Rs. 2,52,000/-** (Rs. Two Lakh Fifty Two Thousand) only together with an interest @ 18% per annum on the loan amount from **14.12.2022** till the date of realization of the decretal amount.*

*The **defendant is hereby directed to pay the decretal amount of Rs. 2,52,000/- (Rs. Two Lakh Fifty Two Thousand) only** to the plaintiff along with the interest @ 18% per annum from 14.12.2022 till the date of realization of the decretal amount **within a period of six months from the date of this order**, failing which the plaintiff shall be at liberty to apply before the Court for effecting this order by drawing up a final decree towards realization of the decretal amount due to the plaintiff in accordance with the due process of law.*

*Accordingly, the instant suit is decided on merit and is thus disposed of as **ex parte**.*

It is hereby declared that interlocutory, if any, stands vacated.

There shall be no order as to costs.

*Dealing Assistant is further directed to **Draw up a decree at once**.*

Dealing Assistant is directed to note in the Trial Register and in the CIS.

Note accordingly.

File be consigned to the record room after due compliance.

Dictated & Corrected by me,

Sd/

*Civil Judge (Sr. Divn.),
 Siliguri.
 JOC : WB01203*

Sd/

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 Siliguri.
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