

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**

**RFA 04 (AP)2017**

Smti. Pakter Koyu Marde,  
Wife of Shri Takar Marde,  
R/O 'H' Sector, Itanagar,  
P.O/P.S.-Itanagar, Papum Pare,  
Arunachal Pradesh.

*.....Appellant/ Plaintiff.*

By Advocates:

Mr. M. Biswas, learned Adv.

**- Versus -**

Smti. Toko Yaram,  
Wife of Shri Toko Talo,  
R/o Papu Hill, Opposite side  
Of O/O Superintendent Engineer  
(PWD) Central Zone,  
P.O/P.S.-Naharlagun, Papumpare,  
Arunachal Pradesh.

*..... Respondent/ Defendant.*

By Advocates:

Mr. N. Taje, learned Adv.

**::BEFORE::**

**THE HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : **12.12.2017**  
Date of Judgment (Oral) : **12.12.2017.**

**JUDGMENT AND ORDER (ORAL)**

This is an appeal under Section 96 read with order XLI, Rule 1 of the Code of Civil Procedure preferred against the judgment and decree, dated 18.05.2017, passed by the learned Civil Judge (Sr. Division), Capital Complex, Yupia in Title Suit No. 03/ 2015, whereby the suit of the plaintiff/ appellant was dismissed.

**2.** The plaintiff/ appellant's case, in a nutshell, is that the plaintiff/ appellant had taken a loan of Rs.70,00,000/ (seventy lakhs) on different dates by executing promissory notes on respective dates from the defendant/ respondent promising to refund the loan amount along with interest @10%,

per month, and to secure the loan, the plaintiff/ appellant had given on security her RCC building at Itanagar and some ornaments. As per the terms of the agreement, the plaintiff/ appellant had made re-payment of Rs.70,92,337/- (Seventy lakhs ninety two thousand three hundred and thirty seven) till filing of the suit in excess of the principal loan amount. However, in terms of the promissory notes, the plaintiff/ appellant has to pay the balance amount of Rs.77,77,663/- (seventy seven lakhs seventy thousand and six hundred and Sixty three) only. The plaintiff/ appellant has expressed her willingness to repay the balance loan amount with interest at the rate prescribed for similar transactions by the Reserve Bank of India i.e. @14% per annum. Hence, prayed for a decree.

**3.** The defendant/ respondent contested the suit by filing a written statement, inter-alia, on the grounds that the plaintiff/ appellant had taken the loan amount for execution of contract work under PMGSY for construction of road from Barijo to Rika, and was paid on repeated request of the plaintiff/ appellant. The plaintiff/ appellant accepted the loan amount with interest @10% per month voluntarily. The defendant/ respondent denied having received re-payment of the entire principal amount from the plaintiff except for Rs.14,70,000/- (Fourteen lakhs seventy thousand) and the gold chain valued approximately at Rs.2,00,000/- (two lakhs) which was delivered to her as security. Therefore, the plaintiff/ appellant has not paid the balance amount of Rs.77,77,663/- (Seventy seven lakhs seventy seven thousand and Six hundred and sixty three). The defendant/ respondent further denied having acknowledged receipt of money from the plaintiff/ appellant and putting of her signatures in the money receipts for Rs.10,00,000/- (Ten lakhs) on 09.03.2013; Rs.25,00,000/- (Twenty five lakhs) on 09.03.2013; and Rs.20,00,000/- (Twenty lakhs) on 05.09.2013 respectively and thus alleged to have forged her signatures on the purported money receipts by the plaintiff. Hence, prayed to dismiss the suit.

**4.** On the basis of the rival pleadings and on hearing the learned counsel for the parties, the learned Court below framed the following issues:-

“ (1) Whether the defendant is authorized to lend money as per law?

(2) Whether the plaintiff had taken loan from the defendant if so, how much?

(3) How much money the plaintiff has returned to the defendants?

(4) Whether the signature of the defendant in money receipt dated 10.04.2013, and 05.09.2013 are forged?

(5) To what other relief or relieves the parties are entitled to?"

**5.** In order to establish the claim, the plaintiff/ appellant examined 4 (four) witnesses. The defendant/ respondent did not adduce any evidence. The learned Court below after having gone through the pleadings of the parties and the evidence of the plaintiff's witnesses and further, hearing the learned counsel of both the sides, the learned Court below dismissed the suit on the point of maintainability.

**6.** So far the issue No. 1 is concerned, the learned Court below answered the same in the negative and against the plaintiff/ appellant holding that the evidence on record reveals that the transaction of lending money was purely private in nature on need basis with interest as per mutual agreement and understanding between the parties. The learned Court below answered the issues No. 2 & 3 in the affirmative and in favour of the plaintiff/ appellant holding that the loan amount of Rs.70,00,000/- (seventy lakhs) and re-payment of Rs.14,70,000/- (Fourteen lakhs seventy thousand) and 1,22,337/- ( One lakh twenty two thousand and three hundred and thirty seven) are admitted positions. Further, the learned Court below found consistent and direct evidence in support of plaintiff's plea of re-payment of Rs.70,92,337/- (seventy lakhs ninety two thousand three hundred and thirty seven). The learned Court below also observed that the defendant had not taken any steps to prove her purported signatures on the money receipts dated 10.04.2014 and 05.09.2013 to be forged and consequently, answered the issue No. 4 in the negative and against the defendant. The learned Court below in Paragraph-16 of the impugned judgment and decree, held as herein quoted below:-

*"16 Having perused the Sec. 2 and Sec. 3 of the provisions contained in Usurious Loan Act, 1918, the*

*benefits of Act will come into operation only if the defendant institutes a civil suit as contemplated under Section 3 of the said Act for recovery of the loan amount and interest thereon and not prior to that. The Act does not contemplate the Loanee to bring suit for reduction of interest independently. As such, the suit is premature and not maintainable”.*

**7.** It is pertinent to mention that the object of the Usurious Loans Act, 1918 (for short, 'the Act') is to prevent the civil Court being used for the purpose of enforcing harsh and unconscionable loans carrying interest at usurious rates. Therefore, the Act empowers the Courts on the lines of Section 1 of the Money Lenders Act, 1900 to re-open transactions by way of money or grain loans in cases where the Court is satisfied (1) that the interest or other return is excessive and (2) that the transaction is substantially unfair. After investigation into the circumstances, both attendant and antecedent, the Court may revise the transaction between the parties and if necessary, to reduce the amount payable on such sum as the Court, having regard to the risk and all the circumstances of the case may decide to be reasonable.

**8.** Mr. M. Biswas, learned counsel appearing for the plaintiff/ appellant submits that the Preamble to an enactment explains the scope, object and purpose of it more comprehensively and in consonance therewith. the provisions incorporated therein should be interpreted. Mr. Biswas submits that in the instant suit, the learned Court below failed to interpret the provisions of the Act from proper perspective.

**9.** Mr. Biswas further submits that application of Section 3 of the Act requires fulfilment of two conditions, firstly, that interest must be excessive and secondly, that transaction is substantially unfair as between the parties. According to Mr. Biswas, in the instant suit the condition for payment of interest @10% per month itself is certainly an excessive amount and when the plaintiff/ appellant wishes to pay back the defendant/ respondent, she has an indefeasible right to bring action under the provisions of the Usurious Loans Act and as such, the learned Court below has erroneously held the suit to be not maintainable being instituted by the 'loanee'. Mr. Biswas further

submits that on this count alone, the suit may be remanded back to the learned trial Court below to decide the reasonable rate of interest.

**10.** Mr. Biswas has relevantly relied on the ratio of the judgments rendered by the Supreme Court in the cases of *Workmen of Dimakuchi Tea Estate*, reported in *AIR 1958 SC 353*; *State of U.P.-vs- C. Tobit and Ors.*, reported in *AIR 1958 SC 414*; *Santa Singh-vs- The State of Punjab*, reported in *AIR 1976 SC 2386*; *M/s New India Sugar Mills Ltd.-vs- Bihar Sales Tax Act*, reported in *AIR 1963 SC 1207*; *Kanwar Singh and Others-vs-The Delhi Administration*, reported in *AIR 1965 SC 871*; *Deputy Custodian, Evacuee Property, New Delhi and Others-vs-Official receiver of the State of Daulat Ram Surana*, reported in *AIR 1965 SC 951*; *Motor Owner's Insurance Company Limited-vs Jadavji Keshavji Modi and Others*, reported in (1981) (4) SCC 660 and *Vaishnu Dass and Others-vs- Thakar Dass*, reported in AIR 1953 P & H 116 which are basically related to the rules of construction of the statutes.

**11.** It has been held in the case of **Workmen of Dimakuchi Tea Estate (Supra)** that "**the words of a statute**, when there is doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety or language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained".

**12.** Mr. N. Taje, learned counsel for the defendant/ respondent submits that there is clear dispute regarding the claim of the plaintiff/ appellant's claim that she has repaid the entire principal loan amount. According to Mr. Taje, the defendant/ respondent has no objection, if the plaintiff/ appellant comes forward for an amicable settlement of the dispute.

**13.** Mr. Biswas, learned counsel for the plaintiff/ appellant, however, submits that the defendant/ respondent has not preferred any cross-appeal in respect of the disputed amount, which the learned Court below answered in favour of the plaintiff/ appellant and that he has no objection, if the interest rate is fixed at 10% per annum.

**14.** Having considered the object of the Act, which aims at preventing enforcement of harsh and unconscionable Loans carrying interest at usurious rates, the competent Civil Court can re-open such transactions and give appropriate relief in the matter of interest when the transaction appears to be substantially unfair. It is the duty of the debtor claiming relief under the Act to establish that the interest in question is excessive and that the transaction is substantially unfair and the onus of showing to the contrary is on the creditor.

**15.** Therefore, the impugned judgment and decree, dated 18.05.2017, passed by the learned Civil Judge (Sr. Division), Capital Complex, Yupia in T.S. No. 03/2015 is hereby set aside and the suit is remanded back to the learned Court below to determine whether the rate of interest in question is reasonable or not taking into consideration of the attending circumstances, giving opportunity of adducing additional evidence to both the sides, if so advised and then to dispose of the matter afresh in accordance with law. No costs.

Send back the suit records along with a copy of this judgment and order.

**JUDGE**

Talor