

The Court of Additional Civil Judge (J.D.)

Court No. 7, Lakhimpur Kheri

Presiding Officer- Surya Chauhan
(Uttar Pradesh Judicial Service)

Case No. 658/2015

CNR NO-UPLP060014612015

Shahabuddin s/o Mr. Ahmed Ali Resident Village Padaria Kalan Pargana Srinagar
Tehsil Lakhimpur District Lakhimpur Kheri .

...Plaintiff

Vs

- (1). Punjab National Bank, Main Branch, Station Road Lakhimpur Kheri By Branch
Manager, Punjab National Bank Lakhimpur Kheri.
- (2). Punjab National Bank Zonal Office (Circle Office) Bareilly by Zonal Manager
Bareilly
- (3). Govt. Of Uttar Pradesh(Through District Magistrate,Lakhimpur Kheri)
(Struck off vide order Dated - 02/05/2017)

...Defendants

Ex-Parte Judgement

- 1). The recovery suit in question has been instituted by the Plaintiff for the relief of a decree for recovery against the defendants.
- 2). Brief facts of the suit are that an account was opened in the name of Plaintiff on 05-01-1996 under Recurring Deposit Scheme at PUNJAB NATIONAL BANK,Main Branch,Station Road,Lakhimpur Kheri. The account number of the said account was 672. The Plaintiff had to deposit the monthly installment of Rs.1500/- (Rupees one thousand five hundred only). The first installment of the same was deposited on 05-01-1996.The Plaintiff had deposited Rs 16,500/-(sixteen thousand five hundred only) through total 11 (eleven) installments. The tenure of the said account was 3 years. The plaintiff had deposited 11 installments and received receipts. The plaintiff had stopped depositing the installments due to embezzlement by the employee of defendant No. 1, Punjab National Bank.The plaintiff had deposited only 11 installments in total.The Plaintiff deposited Rupees 16,500/- but the bank paid only 9000/- to the Plaintiff.The Plaintiff gave an application in this regard on 07-04- 1997 to the Defendant No.1 and demanded the bank to pay the balance amount. The application was presented on 07-04-1997 before the Branch Manager,Punjab National Bank,Main Branch, Station Road Lakhimpur Kheri/defendant No. 1 which was received by defendant no. 1 and the receipt is available with the plaintiff.In response to the application dated 07-04-1997 submitted by the plaintiff, a letter was sent by the defendant No.-1 Senior Manager Punjab National Bank on 09-03-1998 to the plaintiff with the intention that the plaintiff should provide the original copy of the related vouchers so that his claim

could be considered by the higher authorities. The plaintiff vide application dated 11-04-1998 provided the original deposit dated 09-03-1996, 31-05-1996, 05-08-1996, dated 13-09-1996, slip except deposit slip dated 08-04-1996 which was lost, to Defendant No. 1, Manager, Punjab National Bank in reply to the letter dated 09-03-1998 of Defendant No. 1. Receipt of application dated 11-04-1998 is available with the plaintiff. Despite giving the original deposit slip by the plaintiff, the defendant no.1 did not pay the due amount to the plaintiff and the defendant no.1 continuously kept delaying the matter by making false promises stating that his claim is under consideration and would be paid soon. The plaintiff kept believing the defendant no. 1, visited the bank from time to time but the amount was never paid. The plaintiff also sent an application to defendant no. 2 regarding his payment. But even defendant no. 2 did not consider the payment of the plaintiff. On 11-05-2015, the plaintiff, through his advocate, sent a notice under Section 80 CPC through registered post to the defendants with the intention that the defendants should pay the due amount of five installments deposited of Rs. 7500/- along with interest to the plaintiff. The defendant No.1 did not pay the amount and sent a reply on false and baseless facts and stating that the amount has been paid to the plaintiff. The reply to the notice is completely false and misleading. The intention of the defendants became clear from the reply sent by the defendant no.1 Punjab National Bank to the notice of plaintiff that defendant will not repay the plaintiff's money. Therefore the plaintiff is entitled to obtain a decree for recovery of Rs.7500/- (Seven Thousand Five Hundred) with interest against the defendants. The cause of action arose on 05-06-2015 when the defendant No. 1 Punjab National Bank sent a reply to the notice of the plaintiff on the basis of untrue and baseless facts and refused to pay the amount to the plaintiff. The plaintiff has requested that an decree for recovery of Rs. 7500/- with interest from the date of deposit till date of payment at the rate prevalent be granted in favour of plaintiff against the defendants.

EX-PARTE PROCEEDINGS

3). Summons were sent to the defendants by the Court. The service was held sufficient on account of summons served personally upon defendants. Vakalatnama was filed by Defendants No. 1 and 2. Written Statement was not submitted on their behalf. Therefore, on 02-05-2017, in the absence of the defendants, the Court rejected the exemption application of the defendants and proceeded ex-parte. An application 27 Ga 2 was presented by the defendant No.1 to set aside the Order dated 02-05-2017, which was accepted by the court and the defendant No. 1 was given an opportunity to defend the suit. But the defendant No.1 again remained absent and did not file the Written Statement due to which the Court closed the opportunity vide order dated 10-03-2021 to file written statement by defendant No.-1. Respondent No. 1 again filed an application 28 Ga2 under Order 9 Rule 7 dated 08/04/2021 to set aside the order dated 10-03-2021 which was rejected by the court on 11/03/2022 due to not being pressed even after being given several opportunities by the Court. During the trial the defendant no.3 was struck off. The word defendants therefore, shall mean defendants No.-1 and defendants No.-2, hereinafter. ③

295/2

EX-PARTE EVIDENCE OF THE PLAINTIFF AND DOCUMENTS RELIED UPON BY PLAINTIFF

4). The plaintiff, in order to prove his case, led plaintiff's evidence and got examined himself as PW-1, who has filed his evidence by way of affidavit 26Ka 2/1-26Ka 2/3, wherein, he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the following documents:- List 6Ga1 in evidence.

Sr.No.	Description of Document	Paper No.
1.	Application dated 07-04-1997 to Senior Manager PNB	7Ga1
2.	Reply By Senior Manager,PNB dated 09.03.1998	8Ga1
3.	Application dated 11-04-1998 by Plaintiff .	9Ga1
4.	Notice dated 11-05-2015 by Plaintiff	12Ga1
5.	Postal receipts	11Ga1
6.	Reply dated 05-06-2015 by Manager PNB to letter of Plaintiff dated 11-05-2015	10Ga1

5). Arguments of the Learned Counsel of the Plaintiff have been heard.

FINDINGS AND CONCLUSIONS OF THE COURT

6). The case of the plaintiff is that the plaintiff the plaintiff opened a Recurring Deposit Scheme Account in the Punjab National Bank,Main Branch, Station Road Lakhimpur Kheri (hereinafter Def.No.1) on 05-01-1996 bearing number 672 for a period of three years.The plaintiff had to pay a monthly installment of Rs. 1500/- (Rupees Fifteen Hundred only).The first intsalment was deposited on 05-01-1996.Plaintiff averred that he deposited Rs. 16,500/- through 11 installments.The plaintiff stopped making further payments due to an embezzlement on part of the employee of Def No.1.The Def.No.1 made a payment of Rupees 9000/- only while the plaintiff deposited Rs 16,500/-.Aggrieved by this,the plaintiff made an application for payment of the balance amount to Def.No.1,the copy of the same with receiving of the Bank has been put on record as 7Ga1. As per the application 7 Ga1 one employee of def No.1 named Sagar has misappropriated the funds of various people,the plaintiff being one among them.The Def.No1 acknowledged the application 7Ga1 of the plaintiff and further asked the plaintiff to submit the original deposit receipts to consider the case of the plaintiff through letter dated 09.03.1998 which has been put on record as 8Ga1.Thereafter the plaintiff through his letter 9Ga1 dated 11-04-1998 deposited four original receipts dated 07-03-1996, 31-05-1996, 05-08-1996, 13-09-1996 except receipt dated 08-04-1996 which was lost.The defendant No.1 acknowledged the receipts of the above said original counterfoils with stamp of the bank and the endorsement made thereon.The plaintiff reaffirmed the contents of the plaint in his oral evidence.

7). The reply 10Ga1 sent to the plaintiff by the bank mentions that the amount has been paid by the bank.However no details have been mentioned in the notice.

3


Bank being such a body where numerous transactions take place everyday could not be expected to not having maintained any record for the case in question. It has been categorically held in the case of **M/s. Sri Ram Industrial Enterprises Ltd. vs. Mahak Singh, AIR 2007 SC 1370** by the Apex Court that "If a party withholds from court the best evidence or some material evidence (document) or witness, adverse presumption against such party can be drawn u/s 114(g) of the Evidence Act." The plaintiff during Argument stated that the claim is based on the aforesaid receipts out of which only one receipt has been lost. The defendant number 1 was given several opportunities to defend the case but the said defendant chose not to file any leave to defend or file any written statement. As per the provisions laid down in Order 37 Rule 3 Sub Rule 6 (a) "if the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff shall be entitled to judgement forthwith."

8). The law relating to Standard of Proof came up before the three Judges bench of the Apex Court in **Narayan Ganesh Dastane v/s Sucheta Narayan Dastane [AIR 1975 SC1534]** where the Apex Court has held that the normal rule which governs the civil proceeding is that it is proved by preponderance of probabilities. The plaintiff has well established his case and has supported the same with the documentary evidence. The version of the plaintiff is uncontroverted. Though the defendant received summon from the Court and he appeared but he never contested the case irrespective of the fact that several opportunities were granted to him. Hence an adverse presumption will be drawn against the defendant that he admitted the claim of plaintiff. From the evidence on record the plaintiff is able to prove that he deposited Rupees 16,500/- but the bank paid only 9000/- to the Plaintiff and the amount of 7,500/- (Seven Thousand Five Hundred Rupees only/-) remained unpaid. The plaintiff having sufficiently proven his case is entitled to decree of Rupees 7,500/- with interest rate of six percent from the date of deposit till the realisation of the decretal amount in the opinion of this Court.

ORDER

- 9). The suit is decreed *ex parte*. It is decreed and ordered that the plaintiff is entitled to recover Rs 7500/- (Rupees Seven thousand five hundred only) from the defendant Bank along with an interest of 6% P.A. from the date of deposit of last installment till the realization of the decretal amount.
- 10). Prepare the decree accordingly.
- 11). Given under my hand and seal of this Court on the 12th day of December, 2023.

Date-12.12.2023


SURYA CHAUHAN
 (J.O. Code UP3420)
 Additional Civil Judge (J.D.)
 Court No.-7, Lakhimpur Kheri

could
has

2951/3

12). Dictated ,Pronounced and signed by me in open Court.

Date-12.12.2023

CCU
SURYA CHAUHAN
(J.O. Code UP3420)
Additional Civil Judge (J.D.)
Court No.-7,Lakhimpur Kheri

*Sir
Sam
12/12/23*

डिप्टी डा इण्टर लनामा
अगत डिप्टी पण अल
थे कोडे आण्डे वी
वह अं हा (उ) काय कर
सुझा करे ।

रिडर

डिप्टी पण अल कोडे
आण्डे वी नमामालम की
मेहर लनाकर को ओठ
महेराम के एसाहा कराम
गमे ।

योगिह डी

12/12/23