GAHC010011672015

2026:GAU-AS:15560

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/20/2015

SRI PRADIP KUMAR SARAWGI
S/O LATE BHURAMAL SARAWGI, R/O T.R. PHUKAN ROAD, FANCY BAZAR, GUWAHATI, DIST. KAMRUP M, ASSAM.

VERSUS

RAHMAT ALI B. DHANANI
S/O LATE BASUBHAI DHANANI, RABINDRA SARANI, KOLKATA 700073, R/O COL, J. ALI ROAD, LAKHTOKIA, GUWAHATI 781001, DIST. KAMRUP M, ASSAM.

Advocate for the Petitioner : MR.G N SAHEWALLA, MR. K SINGHA,G L BORA,MRS.S S BAWARI,MD.ASLAM,MS.B SARMA,MR.P DEKA

Advocate for the Respondent : MRS.N RAHMAN, MR.D UPAMANYA,MS.P TALUKDAR,MS.A CHOUDHURY,MR.P KHATANIAR,MR.K R SURANA

Linked Case : I.A.(Civil)/87/2023

SRI PRADIP KUMAR SARAWGI
S/O LATE BHURAMAL SARAWGI
R/O T.R. PHUKAN ROAD
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LAKHTOKIA
GUWAHATI 781001
DIST. KAMRUP M
ASSAM.

Advocate for : MR. R B PHOOKAN
Advocate for : MS N RAHMAN appearing for RAHMAT ALI B. DHANANI

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellant	:	Mr. R.K. Bhuyan, Sr. Advocate. Mr. K. Singha, Advocate.
Advocate(s) for the Respondent:		Mr. P. Khataniar, Advocate.
Date on which judgment is reserved:		01.10.2026.
Date of pronouncement of judgment	:	14.10.2026.
Whether the pronouncement is of the operative part of the judgment?	:	YES.
Whether the full judgment has been pronounced?	:	YES.

JUDGMENT AND ORDER(CAV)

Heard Mr. R.K. Bhuyan, learned senior counsel assisted by Mr. K. Singha, the learned counsel representing the appellant. Also heard Mr. P. Khataniar, learned counsel appearing for the respondent.

2. This is a Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure (CPC) whereby the judgment and decree dated 26.11.2014 passed by the court of the learned Civil Judge No.3, Kamrup(M) at Guwahati in Money Suit No.85 of 2007 is under challenge.

3. The respondent paid a total amount of ₹2,76,00,000/- to the appellant. The said amount carried an interest at the rate of 18% per annum.

4. On 04.02.2004, the appellant and the respondent had entered into a written agreement (Ext.2) whereby the appellant promised to pay the said amount of ₹2,76,00,000/- by December, 2006. The appellant also transferred his immovable property consisting of a building and land to the respondent.

5. The money was not returned by the appellant. Therefore, the respondent filed a money suit praying for recovery of the aforesaid money.

6. The appellant contested the case by filing written statement.

7. Denying all the averments of the plaint, the appellant claimed that he had given half portion of the mezzanine area of the building to the respondent for a monthly rent of ₹8,000/-. According to the appellant, on 01.11.2002, an agreement was executed between them to that effect. The appellant has claimed that the said written agreement had several blank spaces. According to the appellant, since he lived in Australia, he asked the respondent to look after the building and allowed him to stay in one room in the second floor. The appellant denied the fact that he had ever handed over any property to the respondent.

8. Upon the pleadings of the parties, the trial court framed the following issues:

i. Whether there is any cause of action for the suit?

ii Whether the suit is hit by the doctrine of estoppels and waiver?

iii. Whether the plaintiff is entitled to realise ₹4,61,20,566/- with pendente lite and future interest from the defendant till realisation?

iv. Whether the plaintiff is entitled to a decree as prayed for?

v. Whether the plaintiff had lent any money to the defendant and if so, as to whether an amount of ₹2,76,00,000/- was due and payable to the plaintiff by the defendant as on 04.02.2004?

vi. Whether the defendant had promised to pay the whole debt of ₹2,76,00,000/- to the plaintiff by December, 2006, by an agreement in writing dated 04.02.2004.?

vii. Whether the defendant is liable to pay to the plaintiff the amount as claimed in the suit?

9. The respondent examined himself as a witness whereas the appellant did not examine any witness.

10. On the basis of the evidence on record, the learned trial court held that the respondent is entitled to realise ₹2,76,00,000/- from the appellant with interest at the rate of 15% per annum with effect from 04.02.2004.

11. Aggrieved by the aforesaid judgment, the present appeal has been filed.

12. Mr. Bhuyan, the learned counsel for the appellant submits that Ext.2 dated 04.02.2004 is not a promissory note as defined under Section 4 of the Negotiable Instruments Act. Mr. Bhuyan has submitted that Ext.2 document is actually a mortgage deed because in lieu of ₹2,76,00,000/-, a property was handed over to the respondent. According to Mr. Bhuyan, a simple money recovery suit is not maintainable under the aforesaid circumstances. He submitted that the respondent should have filed a suit for redemption of mortgage.

13. The learned counsel Mr. Bhuyan submits that there should have been an issue as to whether the suit of the respondent is maintainable in law. Mr. Bhuyan pleaded that the appellant should have been given an opportunity to adduce evidence to prove the said issue.

14. Mr. Khataniar, on the other hand, submits that such an issue as pleaded by Mr. Bhuyan is not required to be framed in this case. Mr. Khataniar has pointed out to paragraph 20 of the impugned judgment and he submits that the learned trial court has dealt with the aforesaid issue in this paragraph.

15. The relevant portion of the said paragraph is quoted as under:

> "The plaintiff, so submits the learned advocate, has filed this suit only for realization of money. Ext.2, as it appears, consists of two parts – money part and mortgage part. The money part states that the first party (defendant) has borrowed a sum of Rs.2,76,00,000/- in cash from the second party (plaintiff) from time to time and has failed to refund the same. The money part further states that the first party promises to pay to the second party the aforesaid sum within a period of two years from now till 2006 December. I am of the considered view that the instant suit is very much maintainable on the basis of Ext.2 as because it contains an express promise on the part of the defendant to make payment of the amount mentioned therein to the plaintiff. The mortgage part of Ext.2 states about agreement to transfer the immovable property as part performance of the obligation to make the said payment, but the same is not at all relevant to this suit as because the plaintiff has filed this suit just for realization of money based on the money part of Ext.2. Therefore, the submission of the learned senior advocate for the defendant is not acceptable."

16. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

17. At this stage, we should have a brief visit to Section 4 of the Negotiable Instrument Act, which defines Promissory Note. It reads as under:

> **"4. "Promissory note".—**
>
> A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

18. In order to constitute a promissory note, there should be an unconditional undertaking to pay the money. In this case, the Ext.2 shows that the property was handed over to the respondent in lieu of the money paid. So, Ext.2 is prima facie not a promissory note as defined by Section 4 of the Negotiable

Instrument Act.

19. The learned trial court has decreed the suit of the respondent as prayed for. But what would happen to the property that was handed over to the respondent by the appellant, according to the terms of Ext.2. The property that was handed over to the respondent was in lieu of the money taken from him by the appellant. Ext.2 clearly states that in lieu of ₹2,76,00,000/-, the appellant had handed over his property to the respondent.

20. Under the aforesaid circumstances, the only point for determination in this appeal is as to whether the suit filed by the respondent for recovery of ₹2,76,00,000/- is maintainable in law. No such issue was framed by the trial court. If the trial court had framed such an issue, both sides would have got adequate opportunities to prove their respective cases.

21. This Court is of the opinion that this is a fit case for remand. The appeal is allowed. Accordingly, the impugned judgment dated 26.11.2014 passed by the learned Civil Judge, No.3, Kamrup(M) at Guwahati in Money Suit No.85/2007 is set aside. The case is remanded to the trial court for framing an issue as to whether the suit of the respondent is maintainable in law and facts. The trial court shall give opportunities to parties to adduce evidence to that effect and after that the trial court shall pass a fresh judgment on all issues.

The appeal as well as the connected Interlocutory Application being I.A.(C) No.87/2023 are disposed of accordingly. Send back the trial court records.

JUDGE

Comparing Assistant