

**The Bankers' Book
Evidence
Act 1891**

THE BANKERS' BOOKS EVIDENCE ACT, 1891

1 Title and extent. □

(1) This Act may be called the Bankers' Books Evidence Act, 1891.

(2) It extends to ¹ [the whole of India ² [except the State of Jammu and Kashmir.]] ³ [***] ⁴ [***]

2 Definitions. □ In this Act, unless there is something repugnant in the subject or context, □

⁵ [(1) □ company □ means any company as defined in section 3 of the Companies Act, 1956, (1 of 1956), and includes a foreign company within the meaning of section 591 of that Act;

(1A) □ corporation □ means any body corporate established by any law for the time being in force in India and includes the Reserve Bank of India, the State Bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959);]

(2) □ bank □ and □ banker □ means □

⁶ [(a) any company or corporation carrying on the business of banking;]

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

⁷ [(c) any post office savings bank or a money order office;]

⁸ [(3) □ bankers' books □ include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;]

⁹ [(4) □ legal proceeding □ means, □

(i) any proceeding or inquiry in which evidence is or may be given;

(ii) an arbitration; and

(iii) any investigation or inquiry under the Code of Criminal Procedure, 1973 (2 of 1974), or under any other law for the time being in force for the collection of evidence, conducted by a police officer or by any other person (not being a magistrate) authorised in this behalf by a magistrate or by any law for the time being in force;]

(5) □ the Court □ means the person or persons before whom a legal proceeding is held or taken;

(6) □ Judge □ means a Judge of a High Court;

(7) □ trial □ means any hearing before the Court at which evidence is taken; and

¹⁰ [(8) □ certified copy □ means when the books of a bank, □

¹² [2A. Conditions in the printout. □ A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely: □

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of □

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and

(I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.]

3. Power to extend provisions of Act. □ The State Government may, from time to time, by notification in the Official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash book, a day-book or journal, and a ledger, and may in like manner rescind any such notification..

4. Mode of proof of entries in bankers □ books. □ Subject to the provisions of this Act, a certified copy of any entry in a banker □ s books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. Case in which officer of bank not compellable to produce books. □ No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker □ s book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause..

6. Inspection of books by order of Court or Judge. □

(1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker □ s book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their

intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. Costs.

(1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under and order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself: Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs..

14 [8 Order of Court to be construed to be order made by specified officer. In the application of sections 5, 6 and 7 to any investigation or inquiry referred to in sub-clause (iii) of clause (4) of section 2, the order of a Court or a Judge referred to in the said sections shall be construed as referring to an order made by an officer of a rank not lower than the rank of a Superintendent of Police as may be specified in this behalf by the appropriate Government. Explanation . In this section, appropriate Government means the Government by which the police officer or any other person conducting the investigation or inquiry is employed.]

1. Subs. by A.O. 1950, for all the provinces of India .

2. Subs. by Act 3 of 1951, sec. 3 and Sch., for except Part B States.

3. The word and rep. by Act 10 of 1914.

4. Sub-section (3) rep. by Act 10 of 1914.

5. Subs. by Act 56 of 1962, sec. 4, for clause (1) (w.e.f. 14-12-1962).

6. Subs. by Act 56 of 1962, sec. 4, for sub-clause (a) (w.e.f. 14-12-1962).

7. Added by Act 1 of 1893, sec. 2.

8. Subs. by Act 55 of 2002, sec. 11, for clause (3) (w.e.f. 6-2-2003). Earlier clause (3) was substituted by Act 21 of 2000, sec. 93 and Sch. III (w.e.f. 17-10-2000). Clause (3), before substitution by Act 55 of 2002, stood as under:

9. Subs. by Act 1 of 1984, sec. 2(a)(i), for clause (4) (w.e.f. 15-2-1984).

10. Subs. by Act 21 of 2000, sec. 93 and Sch. III, for clause (8) (w.e.f. 17-10-2000). Earlier clause (8) was amended by Act 1 of 1984, sec. 2(a)(ii) (w.e.f. 15-2-1984).

11. Ins. by Act 55 of 2002, sec. 11 (w.e.f. 6-2-2003).

12. Ins. by Act 21 of 2000, sec. 93 and Sch. III (w.e.f. 17-10-2000).

13. This Act has been extended to Pondicherry by Act 26 of 1968, sec. 3 and Sch.

14. Ins. by Act 1 of 1984, sec. 2(b) (w.e.f. 15-2-1984).

Comments and Landmark Judgements in this Act

Case Title : State Bank Of India vs Smt. Gita Devi

Petitioner(s) : State Bank Of India

Respondent(s) : Smt. Gita Devi

Judge : Narendra Nath Tiwari

Date of Judgement : 3.04.2007

Referred Sections : Section 4

Court : Jharkhand High Court

Judgement Summary:

The plaintiffs case is that the defendant No. 1 is a Government contractor and was doing contract business at Chaibasa and other places, The defendant No. 1 approached the plaintiff-Bank on 3.3.1981 and requested for the facilities of term loan for Rs. 50, 000/- for purchasing (T.M.B.) Truck No. BRS 2705. The request of the defendant No. 1 was considered by the Bank and the term loan facility for Rs. 50,000/- was granted to him. The defendant No. 2 stood as a guarantor. An agreement was executed dated 3.3.1981 whereby the defendant No. 1 agreed for not creating any further charge over their properties and assets. The defendant No. 1 also agreed to pay interest @ 2% below the State Bank advance rate minimum 14% per annum with monthly rests in respect of the facilities of the said term loan. According to the terms of the agreement, the said vehicle was to be remained hypothecated to the plaintiff-Bank and to stand charge and constitute the Bank's security for the amount of the advance made by the plaintiff-Bank to the defendant No. 1. The defendant No. 1 had also agreed to pay the dues of the plaintiff-Bank along with the interest. But the defendant No. 1 defaulted in payment. As a result of which the huge sum became outstanding against the defendant No. 1. The defendant No. 1 had signed and executed a D.P. Note revival letter on 18.3.1983 and also a balance confirmation letter dated 27.3.1983 in respect of the said term loan account and he had acknowledged his indebtedness towards the plaintiff-Bank. The plaintiff-Bank has maintained books of accounts regularly, in respect of the aforesaid term loan of the defendant No. 1 and as per the said books of accounts, the total sum outstanding was Rs. 68,749.14. Interest thereon was also payable by the defendant No. 1 till 10.5.1984. Further case of the plaintiff is that the defendant No. 1 again approached the Bank in the month of May 1981 for enhancement of the facilities of overdraft from his current account and also for enhancement of the facilities in the cash credit account. The plaintiff agreed to the said proposal and enhanced case credit facilities up to Rs. 3,80,000/- w.e.f. 30.5.1981 and the facilities

of overdraft from the current account was also enhanced to Rs. 2,70,000/- w.e.f. 30.5.1981. The defendant No. 1 executed the required documents for the said facilities. The defendant No. 2 stood guarantor in respect of the cash credit account as well as in respect of the said facility of overdraft. It has been stated that the defendants were irregular in making the deposits and on 1.6.1981 the defendants submitted a programme for repayment to the plaintiff-Bank. They also undertook to pay the dues of the entire cash credit account by an easy monthly instalment. But the defendant No. 1 failed and neglected to pay the just dues of the plaintiff-Bank. According to the regular books of accounts maintained by the plaintiff, a sum of Rs. 6,54,320.74 was due on 10.5.1984 towards the cash credit account, a sum of Rs. 4,31,884.50 was due on the said date towards overdraft current account and a sum of Rs. 68,749.14 was due on the said date towards term loan account being the total amount of Rs. 11,56,954.48 which is payable by the defendants to the plaintiff-Bank. Decree was sought for recovery of the said amount with interest. The defendant No. 1 contested the suit by filing his written statement. The defendant No. 1 denied and disputed the facts stated in the plaint. According to him, the plaintiff has got no cause of action for the suit and the suit is not maintainable. Thus suit is also bad for misjoinder of causes of action and misjoinder of parties. The defendant No. 1 has, however, not denied the amount of loan taken by him in respect of the cash credit and overdraft facilities. But it was alleged that the Bank had procured their signature on some blank papers and printed forms with blank spaces and the contents of the same were not explained to the defendants. The defendant No. 1 has denied that there was any term of agreement for payment of interest @ minimum 14% per annum with monthly rests. It was further stated that all the payments made by the defendants towards term loan account were not accounted for by the plaintiff-bank and they have also charged interest @ 14% whimsically and arbitrarily which is apparent from the letter dated 5.5.1983. The amount mentioned in the plaint as due was denied. The statement of accounts furnished by the Bank is ex facie wrong. The defendant No. 1 repaid the amount substantially prior to institution of the suit and an amount of Rs. 68,749.14 was also denied. It has been further stated that the defendant had never approached the Bank for aforesaid facilities and it was the Bank which forced the defendants to avail the said facilities. The amount of interest has also been calculated whimsically and arbitrarily. Therefore, though the overdraft facility and cash credit facility were given to the defendant No. 1, the amount shown in the schedule of the accounts appended to the plaint and claimed by the Bank is incorrect and disputed. The claim is inflated and not supported by any document. It has been stated that even after institution of the suit, the defendant made deposits which were accepted by the Bank, but the same were not adjusted in the books of the account. The books of accounts thus do not give the true picture. The D.P. Note also does not give the actual calculation of the due amount. The plaintiff's suit is thus not based on correct statement and is liable to be dismissed. The defendant, however, admitted that the defendant No. 2 stood as a guarantor in respect of all the advance facilities i.e., term loan, cash credit and overdraft granted to the defendant No. 1. However, it was stated that the documents signed by the defendant No. 1 was in English and since the defendant No. 1 does not know English, he was not aware of the contents of the said documents. On the basis of the said pleadings, the following issues were framed by learned trial Court.

(i) Is the suit maintainable?

(ii) Has the plaintiff got valid cause of action for the suit?

(iii) Is the suit bad for misjoinder of causes of action, misjoinder of parties and it suffers from multifariousness?

(iv) Is the suit barred by law of limitation?

(v) Is the statements of accounts furnished by the plaintiff Bank correct?

(vi) Is the plaintiff entitled to get any relief, if so, what?

Evidences were led by the parties to prove their case. On conclusion of trial, learned Court below decided the Issue Nos. 1, 2, 3 and 4 in favour of the plaintiff and held that the suit is maintainable and not barred by limitation and that the plaintiff has got valid cause of action and the suit is not bad for misjoinder of the parties. However, learned trial Court recorded its finding deciding the Issue No. 5 against the plaintiff. So far as the claim of due is concerned, it has been held by learned trial Court that the account furnished by the plaintiff (Exts. 22 series) is not true and correct and the same cannot be accepted as evidence in view of the provision of Section 4 of the Banker's Book Evidence Act, 1891. The plaintiffs suit has been decreed holding the defendants liable to pay Rs. 11,56,945.48 and Rs. 4,31,884.50. during the pendency of the appeal, the respondent No. 1 died. Mr. Deepak Kumar Bharti, learned Counsel appearing on behalf of the appellant, submitted that learned Court below has committed serious error of law in rejecting and ignoring the Exts. 22 series which are the statement of accounts. In view of the provision of Section 4 of the Banker's Book Evidence Act, 1891, the said documents are admissible in evidence. Mr. Deepak Kumar Bharati, learned Counsel appearing on behalf of the appellant, submitted that the said statement of accounts was issued by the Branch Manager duly certified by him and under Section 4 of the Banker's Book Evidence Act, 1891, the same is admissible in evidence and if the said statement of accounts bears the entry of the balance amount due against the defendant, the plaintiffs claim cannot be thrown out. He submitted that learned Court below has erroneously discarded the said evidence against the provision of Section 4 of the Banker's Book Evidence Act, 1891. In order to appreciate the said contention, the provision of Section 4 of the Banker's Book Evidence Act, 1891 is to be noticed. It is clear from the said provision that a certified copy of any entry in the Banker's books shall be received as prima facie evidence of the existence of such entry and shall be admissible as evidence of the matters, transactions and accounts therein and to the same extent as, the original entry itself is now by law admissible. The said provision does not, therefore, exclude the statement of accounts which showed the transactions. It cannot be said that the entries showing transactions in the accounts and the statements of accounts is not admissible, if the same is otherwise not challenged or inadmissible. I have also thoroughly examined the evidences and materials on record. I find no infirmity or illegality in the said finding of the Court below. This point is, thus, decided against the appellant. In the result, the finding of learned Court below on Issue No. 5 is set aside and other findings are upheld. This appeal is, accordingly, allowed. There shall be no order as to costs. (Narendra Nath Tiwari)