(2015) 01 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil First Appeal Nos. 46 and 124/1995

Abdul Karim APPELLANT

Vs

State Bank of Bikaner and Jaipur RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34, 96

Citation : (2015) 2 CDR 730 : (2015) 1 WLN 250

Hon'ble Judges : Nisha Gupta, J.

Bench : Single Bench

Advocate : M.A. Khan and M. Shrimani, for the Appellant; Balwant Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nisha Gupta, J.—Both these appeals under Section 96 CPC have been filed against the judgment and decree dated 14.11.1994 passed by Additional District Judge, Sambher Lake in Civil Suit No. 170/92 (49/82). Appeal No. 46/95 has been filed by the guarantor and Appeal No. 124/95 has been filed by the borrower. Since both these appeals are against common judgment, they are decided by this common judgment.

2. The brief facts of the case giving rise to these appeals are that a suit has been filed by the respondent for recovery of Rs. 1,41,205.21 and it has been pleaded that to appellant Kureshi Agro Service Center, Phagi the loan has been advanced of Rs. 66,000/- for purchase of MCL Tractor, Motor Cycle and other agricultural complements and cash credit of Rs. 32,000/- and of Rs. 8,000/- has also been allowed and three sureties were furnished by Munshi, Razak and the present appellant Abdul Karim. The suit has been decreed by the court below, hence these appeals.

3. The contention on behalf of the borrower is that Agro Service Centers have been established by Government of India. The appellant being a technical hand

was selected for training and after completion of the same he was allowed to establish Agro Service Center but the scheme proved to be a total failure and most of the service centers including appellants became sick. Writ Petitions have been filed from all over India in which specific directions have been issued by the Supreme Court. The court below has not complied with the directions of the Apex Court. The suit has been decreed without giving any opportunity of leading evidence to him. As per directions of the Supreme Court only simple interest was chargeable whereas penal interest has been charged and expanses have also been included. 13% interest has been allowed, hence the court below has erred and he is not liable to pay the amount.

In another appeal, the contention of the guarantor was that he never stand guarantor for the loan as per the case of the Bank, Peer Mohd. has forged his signatures and when he has not executed any document he could not be held liable for the amount.

Per contra, contention of the Bank is that court blow has rightly decreed the suit. Documents Ex. 1 to 37 have been considered. No evidence has been produced on behalf of the appellants in spite of opportunity. There is no infirmity in the impugned judgment and the appeals be dismissed.

4. Heard the learned counsel for the parties and perused the impugned judgment and decree as well as the original record of the case.

5. The suit has been filed with the contention that loan facilities has been allowed to the appellants Kureshi Agro Service Center, Phagi. Faiz Mohd. is the proprietor. Munshi and Rajjak were guarantors for the same who have not assailed the judgment. The contention of the appellant is that directions of the Supreme Court have not been complied with but bare reading of the impugned judgment goes to show that the court below was aware of the fact that directions have been issued by the Apex Court to charge only 5% interest and in view of the directions of the Supreme Court, the court has rightly ordered only 5% interest upto 30.9.93 and directions of the Supreme Court has been complied with.

6. The other contention of the appellant is that no opportunity of leading evidence has been allowed to him but orders sheets of the court below goes to show that on 11.10.93, the appellants themselves have closed their evidence while reserving their right to rebuttal and thereafter evidence of plaintiff has been recorded, hence it does not lie in the mouth of the appellants to say that no opportunity of leading evidence has been allowed to him. Documents Ex. 1 to 37 have been considered by the court below and apart from it, these documents are admitted documents by the appellant Faiz Mohd. and rightly relied upon by the court below.

7. The objections have been raised as regards compound interest and inclusion of expenses in the statement of accounts. Statement of accounts has been submitted as Ex. 34 to 36 which has not been disputed by the appellants before the court below and statement of accounts have also been proved by the

evidence of Bank. Admittedly statement of accounts has been kept regularly and certified by the bank, hence there is no reason to disbelieve the statement of accounts and court below has rightly relied upon all entries in statement of accounts Ex. 34 to 36.

8. The issue has also been raised as regards the limitation but Ex. 30 to 33 has been submitted by the Bank by which liability has been acknowledged by the appellant borrower. It has also been objected that 13% interest has been awarded pending suit and after the decree, the court below was within his jurisdiction under Section 34 of the Civil Procedure Code to allow interest pending suit and after a decree which it deems reasonable to be paid and direction of the Apex Court was only upto specific date i.e. 30.9.93 apart from it, the condition precedent to have the benefit of the direction of the Apex Court was that the Agro Service Centers should have been closed prior to 1.3.93 but no such averment has been made before the court below and no evidence has been submitted which could show that the Agro Service Center was closed prior to March, 1993 in spite of this, the court below has awarded interest as per the directions of the Supreme Court.

9. The court below has considered the rival contentions. The fact of having loan from the Bank was not in dispute and documents have also been presented by the plaintiff which amply proves the fact that loan has been advanced to the appellant which has not been paid and balance amount has also been specified through statements of accounts Ex.34 to 35.

10. In view of the above, the court below has rightly decreed the suit against the appellant borrower and no interference is needed.

11. The contention on behalf of the guarantor is that he never stand guarantor for the loan amount. Peer Mohd. has forged his signatures and he should be excluded from the liability and specific reference has been made as regards the statement of Smt. Pranati Koshish, Manager, SBBJ, Phagi who has stated that as per bank record Peer Mohd. has executed the document but the counsel for the respondent has rightly pointed out that it was the contention of the appellant that Peer Mohd. has forged his signatures but to support his contention, no evidence has been submitted and FIR was lodged by the Bank in which Peer Mohd. has been acquitted from the charges. The documents submitted clearly shows that guarantee deed, Ex.37 has been signed by the appellant Abdul Karim. The appellant has not submitted any evidence to show that Ex. 37 document is forged document or it does not carry his signatures and objections raised by the appellant have been considered by the court below and rightly answered. Issue No. 7 and 11 has been specifically framed in this regard that whether documents have been executed by Abdul Karim, defendant No. 4 and after considering the rival contentions, these issues have rightly been decided against the appellants. No evidence has been submitted before the court below to show that on Ex.37, the signatures contents are of Peer Mohd, hence on ipse dixit the appellant could not escape from his liability which is co-existent with that of borrower.

12. The court below has rightly considered the rival contentions. Opportunity of hearing has been allowed to the parties in spite of this, no evidence has been submitted by the appellants and suit has rightly been decreed against the appellants. No interference is needed.

The appeals are accordingly dismissed.

