(1993) 10 DEL CK 0007

In the Delhi High Court

Case No : Interim Application No''s. 9500 of 1989 and 6513 of 1991 and Suit No. 3451 of 1989

Allahabad Bank APPELLANT

Vs

Amba Ceramic Decal Pvt. Ltd. RESPONDENT

Date of Decision : 01-10-1993

Acts Referred:

Citation : (1993) 4 AD 141 : (1993) 52 DLT 409

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Vishnu Mehra, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a suit for recovery of a sum of Rs. 23.53,762.00together with pendente lite and future interest @ 13.5% p.a. on Rs.10,15,247.00 and @ 15.5% on Rs. 10,69,160.65p and @ 16.5% p.a. on Rs. 2,69,354.35p from the date of suit till realisation of the amount.

(2) The facts of the case briefly stated are that the plaintiff is a banking company constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Calcutta and one of its Branch Offices at 17, Parliament Street, New Delhi, Shri I.M.Mishra being the Principal Officer of the plaintiff Bank is duly authorised to sign and verify the pleadings and to institute and prosecute the present suit.

(3) As per averments made in the plaint, at the request of defendant No .1 which is a Private Limited Company incorporated under the Companies Act, 1956 and in consideration of defendants No. 2 to 5 and Shri T.R. Iyengar (since dead) agreeing to stand guarantee in their personal capacity ,the plaintiff Bank sanctioned the credit facilities of term loan of Rs. 6.25 lacs, cash credit (Hyp.) facility of Rs. 3.70 lacs, advance against D.D. Bills of Rs. 80,000.00 and letters of credit (foreign) Rs. 2.00 lacs to defendant No. 1 vide their letter dated 7th

October, 1983. The de defendant No .1 through its Director late Shri T.R. lyengar accepted various terms and conditions of the sanction of the above mentioned facilities vide letter dated 8/10/1983.

(4) It is further alleged that vide their resolution dated 8/10/1983, the defendant No. 1 authorised its directors, namely Shri R. Prasan Kumar lyengar and Shri Sharad Chandra to execute all the necessary documents on behalf of the defendant No. 1 for the purposes of borrowing the money from the plaintiff-Bank. Accordingly, defendant No. 1 through the said two directors executed various documents, namely, agreement of hypothecation dated 8.10.93, letter dated 8.10.83, regarding maintenance of margin in Cash Credit (Hyp.), Agreement dated 8.10.83 relating to securities of goods covered against bills, money consideration receipts dated22.10.83 for Rs. 2,76,840.00, pronote dated 22.10.83 for Rs. 2,76,840.00, money consideration receipt for Rs. 2.10 lacs and Pronote dated 26.12.83 for Rs. 2.10 lacs in respect of the facility of term loan and cash credit (Hyp.).

(5) It is further alleged in the plaint that in terms of sanction letter dated 7.10.83, the plaintiff agreed to advance term loan as and when required by the defendant No. 1 for the purpose of plant and machinery etc.and the defendant No. 1 agreed to repay the amount of loan in term loan Account with interest @ 3.5% over the Reserve Bank of India rate with a minimum of 13.5%, with quarterly rests spread over 50 equal monthly installments of Rs. 22.500.00 commencing after five months of the date of first disbursement of loan.

(6) It is further stated in the plaint that the plaintiff advanced a sum of Rs. 4,96,840.00 in the term low Account on different dates by making payments to the various suppliers as per the request of the defendant No. 1and in terms of the agreement of term loan, the plant and machinery purchased by defendant No. 1 from the loan advanced by the plaintiff stands charged and hypothecated to the plaintiff.

(7) It is further alleged that in terms of the agreement of hypothecation executed on 8.10.83 by the defendant No. 1, the plaintiff Bank agreed to advance money to ''defendant No. 1 in the Cash Credit Account from time to time against security and hypothecation of stocks of raw materials and the defendant No. 1 agreed to pay on demand by the plaintiff the amount advanced by the plaintiff Along with interest @ 5.5% over the Bank rate with minimum of 15.5% p.a. with quarterly rests.

(8) It is further slated that the defendants 2 to 5 and the deceased Shri T.K.. Iyengar being the directors of the defendant No. 1 stood guarantee for the amount advanced or to be advanced to the defendant No. 1 in the term loan and Cash Credit (Hyp.) Account and in respect of various other credit facilities.

(9) It is then alleged in the plaint that in June, 1984 the plaintiff allowed defendant No. 1 the facility of D.D. Bills (IBD) of Rs. 80,000.00 to be utilised in the facility of Cash Credit (Hyp.) Account and thus the said Cash Credit facility to

defendant No. 1 was raised from Rs. 3.70 lacs to rs. 4.50 lacs. On 19.2.85 the plaintiff-Bank at the request of defendant No .1, sanctioned fresh credit facilities of Cash Credit (Pledge) of Rs. 1.76lacs for payment of customs duty against the pledge of imported raw materials and the defendant No. 1 through their directors Shri R.P.K.Iyengar and Shri Sharad Chandra executed documents, namely, agreement to pledge dated 2.3.85 and letter dated 2.3.85 regarding maintenance of margin .In terms of the said documents executed by the defendant No. 1,the plaintiff-Bank agreed to make advances to the defendant No. 1 to the extent of Rs. 1.76 lacs by keeping margin of 25% on the value of stock consisting of imported raw materials stored in the godown within the factory premises of the defendant No. 1 at Ghaziabad and the defendant No. 1agreed to repay the money so advanced Along with interest @ 6% over the Bank rate with minimum of l6% with quarterly rests and other incidentals incurred by the plaintiff and debited in the Account of defendant No. 1.

(10) It is further alleged that at the request of defendant No. 1 the plaintiff-Bank sanctioned and granted additional facility of Cash Credit(Pledge) of Rs. 100 lac to the defendant No. 1 subject to the terms and conditions mentioned in the sanction letter dated 22.3.85 duly accepted by the defendant No. 1. In terms of the said sanction letter dated 22.3.86 the plaintiff agreed to advance money by way of loan to the defendant No .1 in the Cash Credit (Pledge) Account against the pledge and security of the stocks of the defendant No. 1 lying/stored in the godown at Ghaziabad and the defendant No. 1 agreed to repay on demand all sums advanced bythe plaintiff in the above mentioned Account Along with interest @ 6.5?^over the Bank rate with minimum of 16.5% p.a. to be charged quarterly in the Account.

(11) It is further alleged in the plaint that the defendant No. 1 did not adhere to the financial discipline as agreed to and undertaken by them in the various documents mentioned hereinabove and inspire of repeated promises and assurances given by the defendant No. 1 from time to time, failed and neglected to regularise the Accounts. Accordingly in terms of the agreements in respect of various facilities and as per the practice, the plaintiff Bank charged additional/ penal interest @ 2% p.a. in the Cash Credit Pledge Account from June, 1987 in Cash Credit (Hyp.) Account from January,1987 and in term loan/pronote Account from June, 1986. It is further alleged that at the time of filing of the suit a total sum of Rs. 23,53,762.00namely Rs. 10,15,247.00 under the term loan (Pronote) Account, Rs.10,69,160/65 under Cash Credit (Hyp.) Account and Rs. 2,69,345/35 under the Cash Credit (Pledge) Account inclusive of interest up to 18/12/1989 are outstanding against the defendants which they have failed to pay.

(12) It is further alleged that on 16/01/1987 the defendant No .1 acknowledged their liability for the amount due to the plaintiff in all the three Accounts by executing balance confirmations for Rs. 6,44,809/25in the term loan (pronote) Account, Rs. 5,87,782.27 in the Cash Credit(Hyp.). Account, Rs. 17,77.746/39 in the Cash Credit (Pledge) Account as on 31.12.86. It is further stated that the

defendant No. 1 also admitted their liability towards the plaintiff-Bank in their balance sheet for the year ending on 31.5.85, 31.5.86 and 20.3.87.

(13) It is then alleged in the plaint that since the defendant No. 1failed and neglected to clear/liquidate their liability, the plaintiff-Bank issued a legal notice dated 14.12.88 to the defendants through their Counsel and on their failure to pay the amount demanded in the notice, the plaintiff advertised sale of the pledged stocks in the newspapers Hindustan Times and Nav Bharat Times both dated 28.11.89. but the sale could not materialise because the prospective buyers and the Bank officials were not allowed to have inspection of the goods. The plaintiff Bank incurred expenses of Rs. 18.000.00 on advertising the sale of the pledged goods/stocks and the same was also debited to the Cash Credit (Pledge) Account of the defendant No .1.

(14) It is further alleged that after receipt of the legal notice, the defendant No. 1 vide their letter dated 25.10.89 while acknowledging their liability in all the three accounts promised to pay but failed to do so. Eventually the plaintiff-bank issued a final recall notice to the defendants vide their letter dated 3.11.89 calling upon the defendants to liquidate the outstandings in all the three Accounts within seven days but the defendants failed to pay, hence the present suit has been filed by the plaintiff.

(15) After service, defendants No. 1 and 5 were being represented bya Counsel at the initial stage, but he discontinued appearing on behalf of those defendants from 27.7.92 onwards. Defendants No. 2, 3 and 4 were served by means of proclamation published in the newspapers States mandated 27.4.91 for 3.5.91. But they failed to appear. Accordingly all the defendants were proceeded against ex pane vide orders dated 25.1.93. On the same date, the plaintiff was directed to file ex parte evidence by way of affidavits .Accordingly, the plaintiff Bank has filed the affidavit of Shri P.C.Dhingra, Assistant General Manager Indl. Finance Branch, Connaught Circus, New Delhi. All the averments and allegations made in the plaint have been proved through the said witness.

(16) EX.P-1 is the power of attorney dated 6.3.73 authorising ShriI.M Mishra, the then Chief Manager of the plaintiff Bank to sign and verify the plaint on behalf of the plaintiff. Ex.P-2 is the letter dated 7.10.83 by which the plaintiff-Bank at the request of defendant No. 1 and in consideration of the defendants 1 to 5 and deceased T.R. Iyengar agreeing to stand guarantee in their personal capacity sanctioned the credit facilities to the tune of Rs. 12.75 lacs. Ex.P-3 is the letter dated 8.10.83 signed by two directors of the defendant company accepting the terms and conditions asset out in Ex. P-2. Ex. P-4 is the copy of the resolution dated 8.10.87 passed by the defendant No. 1 authorising the defendant No. 1 to borrow the credit facilities mentioned hereinabove. Ex. P-5, P-6, P-7, P-8, P-9, P-10 and P-11are the documents, namely, (a) Agreement hypothecation dated 8.10.83;(b) Letter dated 8.10.83 regarding maintenance of margin in Cash Credit(hyp.); (c) Agreement dated 8.1083 regarding security of goods covered against bills etc. (d) money consideration receipt dated 22.10.83 for Rs.2,76

840.00; (e) Pronote dated 22.10.83 for Rs. 2,76,840.00 (f) Money consideration receipt for Rs. 2,10,000.00dated 26.12.83, duly executed by the two directors of the defendant No. 1 who were authorised by the Board resolution Ex. P-4 respectively. Ex. P-12 is the copy of the certificate of registration registered with the Registrar of Companies, Delhi and Haryana regarding the charge over the plant and machinery stocks and raw material and finished and semi finished goods. Ex. P-13 is the agreement of guarantee duly signed and executed by defendants 2 to 5 and late Shri T.R. lyengar who stood guarantee .by the amount advanced or to be advanced to the defendant No. 1 in the term loan Cash Credit (Hyp) Account and in respect of various other credit facilities. Ex. P-14 is the letter of request dated22.684 of the defendant No. 1. Ex. P-15 is the letter of sanction dated192 85 by which the plaintiff-Bank bad sanctioned fresh credit facilities of Cash Credit (Pledge) of Rs. 1.76 lacs. Ex. P-16 is the agreement of pledge dated 2.3 85 and Ex. P-17 is the letter dated 2.3.85 regarding maintenance of margin both duly signed by Shri R.P.K. Iyengar and Shri Sharad Chandra, directors of the defendant No. 1. Ex. P-18 is the copy of the Board Resolution dated 20.2 85 of the defendant No. 1. Ex. P. 19 is the letter dated20 2.85 of the defendant No, 1 bearing the signatures of defendant No. 1,2 and 4 confirming the sanction of Rs. 1.76 lacs. Ex. P-20, is the copy of the bank letter issued by the plaintiff-Bank to M/s. Chhota Lal Keshav Jee Shah & Sons enclosing the bank draft for Rs. 1.76 lacs. Ex. P-21 is the sanction letter dated 22.3.86. Ex P-22 and P-23 and P-24 are the statement of Accounts of the defendant No. 1 in respect of term loan (pronote)Account. Cash Credit (Hyp.) Account, Cash Credit (Pledge) Account respectively duly certified under the Bankers Books Evidence Act. Ex. P-25to Ex. P-36 are the various letters which bear the signatures of the defendant No .4 on behalf of the defendant No. 1 acknowledging the liability of defendant No. 1 for the payment of the amounts due in the aforesaid threeA/cs. Ex. P37, P-38 and P-39 are the balance confirmation by the defendant No .1 acknowledging their liability for Rs. 6,44,809/25 in the term loan (pronote) Account, Rs. 5,87,782/27 in the Cash Credit (Hyp.) Account and Rs. 1,77,746/39 in the Cash Credit (Pledge) Account as on 31.12.86. Exs.P-40, P-41 and P-42 are the balance sheet of the defendant No. 1 for the years ending 31.5.84, 31.5.85 and 28.2.87 respectively. Ex.P-43 is the copy of the legal notice sent by the plaintiff Bank through their Counsel to the defendants and Ex. P-44 to P-49 are the original postal receipts and Ex. P-50to P-53 are the acknowledgement due cards in respect of aforesaid legal notice .Ex. P-54 is the letter of the defendant No. 1 dated 25.10.89acknowledging their liability in all the three accounts mentioned herein above and promising to pay the amount which they failed to pay. Ex. P-55 is the statement of Plant and machinery of the defendant No. 1 which was hypothecated to the plaintiff Bank. Ex. P-56 is the statement of hypothecated goods as on 1.10.85, Ex. P-57 to Ex. P-60 are the copies of the plaintiff Bank letters dated 12.9.84, 10.11.84, 22.8.80 and 30.5.88 issued by the plaintiff Bank to the defendant No. 1 demanding the payment of the Bank amount.

(17) All these exhibits have beer. duly proved by Shri P.C. Dhingra, who has signed and sworn the affidavit on behalf of the plaintiff-Bank. This witness has also proved that on the failure of the defendants to pay the amount demanded in the legal notice Ex. P-43, the plaintiff advertised sale of the pledged stock in two newspapers, namely, Hindustan Times and Nav Bharat Times both dated 22.11.89 but the sale could not materialise because the prospective buyers and bank officers were not allowed to have the inspections of the goods by the defendants and the plaintiff Bank had to incur expenses of Rs. 18,000.00on advertising the sale of the pledged goods/stocks and the same were debited to the Cash Credit (pledge) Account of the defendant No .1. He also stated in the affidavit that in all, the plaintiff is entitled to recover from defendants a sum of Rs. 23,53,762/20 Along with interest pendente lite and future @ 13.5% p.a.on the term loan (Pronote) Account and @ 15.5% on Cash Credit (Hyp.) Account 16.5% per annum on Cash Credit Pledge Account being the agreed rate.

(18) As stated hereinabove, the defendants were proceeded against ex parte. They have not filed any written statement controverting the averments and allegations made in the plaint nor they have examined any witness to rebut the averments made in the plaint. On the other hand the plaintiff Bank filed evidence by way of affidavit of Shri P.C. Dhingra to prove the averments made in the plaint, hence the plaintiff Bank is entitled to succeed in the suit. Accordingly, the suit for recovery of a sum of Rs. 23,53.762.00is decreed with costs in favor of the plaintiff and against the defendants. The plaintiff bank shall be entitled to pendente lite and future interest @ 13.5% p.a. on Rs. 10,15.247.00 outstanding in the Term Loan (Pronote) Account: @ 15 5% on Rs. 10.69,160/65 outstanding in Cash Credit (Hyp.) Account and @ 16.5% p.a. on Rs. 2.69,354,35 outstanding in the Cash Credit (Pledge) Account. Decree may be drawn accordingly. A 6573/91

(19) During the pendency of the suit, the plaintiff Bank filed an application bearing is No. 5673/91 under Order 38 Rule 5 read with Section151 of the Code. In this application the plaintiff Bank has prayed for order of attachment in respect of 250 equity shares of Rs. 10.00 each issued in Subdivision of Bajaj Auto Ltd., registered in the name of defendant No. 2bearing Nos. 7793911 to 7794160 under Certificate No. 74770-74774 and has sought permission of the Court to sell the said equity shares on the quoted price of shares and adjust the net sale proceeds against the suit amount. Notice of the application was accepted by the learned Counsel of the defendants on 21.5.1992 but no reply has been filed by the defendants. The application is allowed in view of the facts stated therein and the plaintiff is allowed to sell the said equity shares in the manner stated above. The plaintiff will, however, give adjustment of this amount to the defendants against the decreed amount. With this order this is stands disposed of. A 9500/89

(20) This is an application filed by the plaintiff under Order 40 Rule I read with Section 151 of the Code. In this application it has been prayed that a Receiver be

appointed with the direction to inter upon the premises of defendant No. 1 Jyoti Cinema compound, G.T. Road, U.P. Border, Ghaziabad and to break open the lock if any found on the premises and also to seek police help in case of any resistance and further to take into custody or possession the goods/stocks/plant and machinery, pledged and/or hypothecated with the plaintiff-Bank and to prepare an inventory of the said goods and machinery and to sell by private sale or public auction and pay the sale proceeds to the plaintiff-Bank or deposit the same in the Court.

(21) Notice of this application was issued to the defendants and a reply was also filed on behalf of the defendant No. 1 on 12.4.1991. As stated hereinabove, all the defendants were proceeded against ex parte vide order dated 25.1.93. At the time of final hearing of the case the learned Counsel for the plaintiff submitted that since the plaintiff-Bank has proved its case by way of affidavit of Shri P.C.Dhingra, an officer of the Bank, this application be allowed and a Receiver be appointed.

(22) I have given my thoughtful consideration to the submission made by the learned Counsel for the plaintiff and have perused the application. Since I have decreed the suit in favor of the plaintiff and against the defendants ,I am of the view that this application should be allowed in order to protect the interest of the plaintiff-Bank to ensure that the Judgment Debtors shall not dispose of the goods/ stocks/plant and machinery, pledge and/or hypothecated with the plaintiff-Bank. Accordingly, I appoint ShriR.C. Nangia.. Advocate (retired Joint Registrar of this Court), Chamber No .346, Delhi High Court Lawyers Chamber, as Receiver who shall go to the premises of the defendant No. 1 at Jyoti Cinema compound, G.T. Road. Delhi ,U.P.,Boarder,Ghaziabad to take into custody or possession the goods/ stocks/plant and machinery, pledged and/or hypothecated with the plaintiff bank and shall prepare the inventory of the said goods and machinery. The receiver is authorised to break open the lock, if any, found on the premises and also to seek police help, if necessary. The Receiver is further directed to sell the said goods and machinery. He will. however, sell the goods and machinery after notice to the Judgment Debtors and if the Judgment Debtors are able to get a better price for those goods and machinery, then he will sell the same to such a party. The amount of the sale proceeds will be deposited by the Receiver with the plaintiff who will give adjustments of this amount against the decreed amount. The Receiver will be paid a sum of Rs. 5.000.00 as his fees by the plaintiff-Bank. With this order I.A. stands disposed of.I.A. Stands disposed of.

