
(2011) 03 DEL CK 0155

In the Delhi High Court

Case No : Regular Second Appeal No. 7 of 2005

Allahabad Law Journal and Another

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Contract Act, 1872 — Section 129, 145, 69

Citation : (2011) 03 DEL CK 0155

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Pankul Nagpal, for the Appellant; Seema Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 6.5.2004 which had endorsed the finding of the trial judge whereby the suit filed by the plaintiff i.e. Canara Bank seeking recovery of Rs. 50,400.40 against the Defendants had been decreed against the Defendants No. 1 and 2 along with interest @ 12 % per annum.

2. The plaintiff is a banking company. Defendant No. 1 is a body corporate. Suit amount was claimed from it on account of the fact that the plaintiff had furnished a bank guarantee on behalf of the Defendant in favour of the Court of Sh. Ravi Kumar, Additional District Judge, Delhi. Defendants No. 2 and 3 are severally liable along with Defendant No. 1. Contention was that the first Defendant had availed several credit facilities from the plaintiff such as overdrafts and other credit facilities. A consolidated letter of guarantee had been executed by Defendants No. 2 and 3 undertaking to pay to the plaintiff all amount due from the first Defendant. This letter of guarantee executed by the second and third Defendant was a continuing guarantee and their liability was joint and several along with the first Defendant. plaintiff bank at the request and on behalf of the Defendant No. 1 issued bank guarantee dated 13.6.1982 in the sum of Rs. 33,000/- in favour of Court of Mr. Ravi Kumar, Additional District Judge, Delhi in

suit No. 12/1982 . This bank guarantee was in addition to another bank guarantee of Rs. 5000/- which had been executed by the plaintiff on behalf of the Defendant. The first Defendant had also executed a deed of counter guarantee undertaking to hold itself responsible for the due performance of all obligations as specified in the said bank guarantee. plaintiff bank had thereafter issued the bank guarantee No. 24/82 dated 13.7.1982. On 24.8.1987 an order was received from Sh.S.R. Goel, ADJ, Delhi in Execution Case No. 80/87 to pay the amount of Rs. 33,000/- under the two bank guarantee issued in favour of the court. On receipt of this order the plaintiff bank paid the aforesaid amount under the two bank guarantees. Before payment plaintiff tried to contact the first Defendant whose office was already closed. Defendants No. 2 and 3 were also not available on their given addresses. On 22.9.1987 plaintiff bank in compliance of the order of the court deposited two cheques in the sum of Rs. 38,000/-being the amount guaranteed under the aforesaid bank guarantees. This amount has now been claimed by way of the present suit along with interest.

3. Defendants had denied their liability. It was stated that the bank guarantee was valid and in force only from the date of the execution of the bank guarantee for a period of one year; this bank guarantee had expired on 12.7.1983 and no amount was payable after that period. It was denied that any counter guarantee had been executed by Defendant No. 2.

4. Trial judge had framed four issues. Three witnesses were examined on behalf of the plaintiff. One witness was examined on behalf of the Defendant No. 2. Trial judge examined the oral and documentary evidence holding that the plaintiff is entitled to the decree as prayed for. PW-3, the Senior Manager of the plaintiff had proved the letter of request sent by Defendant No. 1 for issuance of a bank guarantee of Rs. 33,000/-; this document was proved as Ex.PW-3/1; counter guarantee had been proved as Ex. PW-3/2; the guarantee bond was Ex.PW-3/3; letters sent by the plaintiff to the Defendant which had come back unserved had been proved as Ex.PW-3/5 to Ex.PW-3/14; their postal receipts and A.D. Cards are Ex.PW-4/15 to Ex.PW-3/23. DW-1 had admitted that a bank guarantee Ex.PW-3/3 had been executed on his written request; counter guarantee had also been admitted. Court had returned a positive fact finding that the plaintiff had issue a bank guarantee dated 13.7.1982 in the sum of Rs. 33,000/- on the request of the Defendant No. 2 which was made on behalf of Defendant No. 1. Thereafter the plaintiff bank had paid this amount to the court in terms of the request made by the executing court vide order dated 24.8.1987. This amount was thus liable to be compensated to the plaintiff. Document Ex.PW-3/1 was the guarantee bond. This judgment of the trial judge was endorsed in appeal by the first Appellant court vide the impugned judgment dated 06.5.2004. Vehement contention of the Appellant is that this document states that the guarantee will expire on 12.7.1983; honouring of the guarantee after the aforementioned period is clearly an illegality and has raised a substantial question of law. Attention has been drawn to Section 145 of the Indian Contract Act, 1872, it reads as follows:

145. Implied promise to indemnify surety - In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he had paid wrongfully.

5. It is pointed out that a party is entitled to recover only that amount which had been rightfully paid under the guarantee. In this case the guarantee stood expired on 12.7.1983. Demand after the said date was clearly a wrongful demand, thus disentitling the plaintiff to recover the aforementioned amount.

6 This submission of the learned Counsel for the Appellant has been dealt with in the impugned judgment. The relevant extract is as follows:

21. I have gone through appeal, grounds taken therein and record of the case including the impugned judgment and have heard the Ld. Counsel for the parties.

22. The present suit relates to the liability of the Defendant only in respect of BG24/82 for Rs. 33,000/- The case of the Appellant Defendant in the trial court was that the said bank guarantee furnished by the plaintiff bank was valid and was in force for one year only for 13.7.82 to 12.7.1983.

23. At this stage one may refer to the initial request made by the Appellant to the Bank Manager vide letter dated 13.7.1983 Ex. PW-3/1. This request was to issue bank guarantee for Rs. 33,000/- for a period of one year from the date of the application in favour of Sh. Ravi Kumar, Addl. Distt. Judge, Delhi. The question is whether the plaintiff Bank accepted the request of the Defendant No. 1 by providing bank guarantee for a period of one year or the period longer than that vide the guarantee bond Ex. PW-3/3 dated 13.7.82.

24. To understand the true import of the bank guarantee and extent of liability by this bond, it would be appropriate to reproduce the same.

(a) That this guarantee is executed at New Delhi on 13th July 1982 by the Canara Bank, Chandni Chowk, Delhi (hereinafter called the bank).

(b) Whereas, according to the orders of the Hon"ble Court of Shri Ravi Kumar, Addl, Distt & Sessions Judge, Delhi in the case of Smt. Bimla Singh v. Allahabad Law Journal Co. Ltd., the Defendant has been directed to furnish bank guarantee for a sum of Rs. 33,000/- (thirty three thousand only) only for complying with the final order in the above case for remittance of any amount to that extent that may be found payable by the Defendant to Smt. Bimla Singh plaintiff.

Therefore, Canara Bank, Chandni Chowk, Delhi do hereby stand as surety and hereby bind itself unto the above Hon"ble Court, Delhi that the said Defendant shall comply with the order of the above Hon"ble Court when required and in default of his doing so, Canara Bank, Chandni Chowk, Delhi bind itself to pay to the Hon"ble Court of Shri Ravi Kumar, Addl. Distt & Sessions Judge, Delhi, such amount not exceeding the said amount of Rs. 33,000/- (thirty three thousand only) as the said Hon"ble Court may adjudge. This guarantee shall expire on

12.7.1983.

(c) Notwithstanding any thing stated above, the liability of bank under the guarantee is restricted to Rs. 33,000/- (Rupees thirty three thousand only).

FOR AND ON BEHALF OF THE BANK

FOR CANARA BANK

ACCTT. MANAGER

CHANDNI CHOWK, DELHI

25. How should a document be construed? This has been explained by the Hon"ble Supreme Court in its various judgments.

26. In the case of Delhi Development Authority Vs. Durga Chand Kaushish, the Hon"ble Supreme Court held as under:

In construing document one must have regard, not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of the document are possible, the one which would give effect and meaning to all its parts should be adopted and for the purpose, for words creating uncertainty in the document can be ignored ILR (1971) Del 350, affirmed. Case law discussed (paras 20 to 24, 26, 33).

27. In the case Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, the Hon"ble Supreme Court held as under:

(ii) Now, it is settled rule of interpretation that if there is admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ur res magis valeat quam pereat.

28. In the case of Naramadaben Maganlal Thakkar v. Pranjivandas Maganlal Thakkar and Ors. (1977) 2 SCC 255 the Hon"ble Supreme Court held as under:

... 3. It is now well-settled legal position that a document has to be read harmoniously as a whole giving effect to all the clauses contained in the document which manifest the intention of the persons who execute the document" Although the bank guarantee specifically provides that expires on 12.7.83.

29. Paragraph (b) of the bank guarantee is very material. The Defendant namely the present Appellant had been directed by the Court of Sh. Ravi Kumar, Ld. ADJ to furnish bank guarantee for a sum of Rs. 33,000/- and for compliance with the final order incase Smt. Bimla Singh v. Allahabad Law Journal for remittance of any amount that may be found payable by the Defendant to Smt. Bimla Singh plaintiff. In other words the court never wanted from the Defendant Appellant the bank guarantee bank for a limited period of one year only. The bank, therefore

did not issue bank guarantee only for a period of one year but specifically wrote in the guarantee bond that Canara Bank binds itself un to the court that the said Defendant shall comply the orders of the court when required and in default of doing so the bank shall be liable.

30. The use of expression "when required" makes it abundantly clear that the guarantee was not to last for one year but till the period the court passes final order and makes demand on the bank to pay the amount. Thus although the Appellant had made request to the bank of bank guarantee of only one year, the fact remains that the bank guarantee was issued till the period when the court makes demand upon the bank for complying with the final order in this case of *Bimla Singh v. Allahabad Law Journal*.

31. Reference may also be made to the counter guarantee Ex. DW-3/2 runs parallel to the guarantee bond Ex. PW3/3. Thus counter guarantee contains the following two last clauses Ex. PW3/2 which reads as under:

we undertake not to revoke the guarantee without your consent in writing. This counter guarantee shall be valid and binding on us until the aforesaid guarantee executed by you on our behalf is returned duly cancelled or on advice of cancellation of guarantee is received by you from the beneficiaries.

This indemnity and guarantee shall be effective and be available for any extended period of the guarantee and shall not be affected by any change in the constitution of us or of the bank.

32. It is clear that the Appellant had always intended to remain guarantor as per court order. That is why counter guarantee came to be given containing the aforesaid clauses.

33. It may also be pointed out that the Appellant did not ask for return of the bank guarantee after the expiry of one year. It was clear to the Appellant that the bank guarantee would remain in force and operative till such time the court passes final order. The Appellant never approached the court for return of the original bank guarantee. In his cross-examination DW namely Defendant No. 2 stated that he had never written ay letter of revocation of the bank guarantee or of the counter guarantee.

34. In the case of *Syndicate Bank Vs. Vijay Kumar and others*, it has been held that a bank guarantee imposes absolute obligation on the bank to fulfill the terms and it is an autonomous and an independent contract between the bank and the beneficiary/assured.

35. The liability of a person who has executed a bond in favour of the court, arises only at the time when the guarantee bond is invoked for payment. The provisions of Section 145 of Contract Act are not attracted to the facts of the present case. The bond in favour of court does not by itself expires merely be mentioning of any alleged expiry date in the guarantee bond. It continues to exist till the time it is invoked by the court or on the happening of the

contingency for which the bank guarantee had been executed in its favour.

36. Reliance by the Ld. Counsel for the Appellant on Section 145 of the Contract Act is misplaced. Section 145 of the Contract Act reads as under:

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully

37. In the present case it cannot be said that the bank wrongfully paid the amount. The bank has rightfully paid the amount as demanded by the court. Section 145 of the Contract Act has no application to the present case.

38. The Ld. Civil Court has applied doctrine of unjust enrichment emerging from Section 69 of the Contract Act. Section 69 of the Contract Act provides for reimbursement by a person interested if he makes the payment.

39. Section 69 applies to cases for example where the plaintiff has been compelled by law to pay, or, being compelled by law, has paid money which the Defendant was ultimately liable to pay, so that the latter obtains the benefit of the payment by the discharge of his liability. Under such circumstances the Defendant is held indebted to the plaintiff in the amount.

40. In the present case concept of unjust enrichment does not arise. The bank guarantee was in force and operative and had to be honoured when the court may demand for the amount as the bank guarantee was not limited to a specific period but whenever the demand was made by the court subject to passing of final order.

41. The fact remains that the bank guarantee was issued not for a limited period but till the court makes final order in the case against the Appellant and makes payment for the amount of Rs. 33,000/- The said payment was demanded by the Ld. Successor Court of Sh. S.R. Goel, ADJ vide order dated 24.8.89 received by the bank. The Defendant was liable to pay the amount whatsoever from the bank guarantee No. 24/82.

42. The Ld. Civil Court has rightly held that there is the liability of Defendants No. 1 & 2. The plaintiff is entitled to the said amount as also the interest @ 12% p.a. from the date of filing of the suit till realisation of the decretal amount.

7. The impugned judgment had rightly held that a document has to be construed in its entirety and a single sentence can not be subtracted from the body of it to give a meaning which otherwise cannot be read if the document is read as a whole. Para (b) of the guarantee bond was clear and unequivocal. Intention was to honour the commitment "when required" making it clear that it was not for any limited period but till the time when the guarantee is invoked. Provisions of Section 69 of the Indian Contract Act had also been discussed; there was no question of any unjust enrichment. Amount had been paid by the plaintiff bank

as and when the communication was received from the executing court. Bank guarantee had been furnished for the said purpose i.e. to honour the commitment given by the Defendant; prior to making this payment the plaintiff bank had also made efforts to contact the Defendants but they could not be contacted. Positive fact finding was returned that this bank guarantee was not for a limited period. This finding is in no manner perverse. No interference is warranted.

8. The substantial questions of law have been embodied on page 2 of the body of the appeal. They read as follows:

a) Whether the Judgments/Decrees passed by the Ld. Subordinate Courts are valid and legal judgments specifically when they are based on non-existent document/bank guarantee expired on 12.7.1983 and the payment is made by the plaintiff bank on the basis of the said document after a lapse of more than 4 years on 22.09.1987.

b) Whether the Appellant is duty bound to indemnify the Respondent bank/surety despite he is entitled for protection within the provisions laid down u/s 145 of the Indian Contract Act.

c) Whether the provisions laid down u/s 69, 129 and 145 of the Indian contract Act are rightly dealt with in the judgment and decrees passed by the Ld. Subordinate Courts.

9. None of the aforementioned noted substantial questions of law has arisen. Decretal amount in favour of the decree holder in terms of the order of this Court is permitted to be withdrawn by the Respondent. Appeal is dismissed in limine.