
(2007) 08 JH CK 0007
In the Jharkhand High Court

Bank of India

APPELLANT

Vs

Gobardhan Bhagat and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 18
Stamp Act, 1899 — Section 11, 12

Citation : (2008) 1 BC 630 : (2008) 1 JCR 203

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The plaintiff / appellant has preferred this appeal against the judgment dated 16.12.2000 and its corresponding Award dated 9.01.2001 passed by the Sub Ordinate Judge-2nd, Khunti (Ranchi) in Money Suit No. 3 of 1993, whereby the suit of the plaintiff/appellant was dismissed.

2. Plaintiff, Bank of India, had filed the suit against the defendants/respondents for the recovery of a sum of Rs. 3,67,286.44 with interest pendente-lite at the rate of 18.75% per annum with quarterly rest. The case of the plaintiff was that on the request of the defendant No. 1, the plaintiff had advanced a sum of Rs. 3,31,000/- on 27.8.1987 to the defendant No. 1 which was repayable to the plaintiff on demand by specific monthly installments together with interest at the rate of 2.5% O.B.R minimum 12.5% per annum with quarterly rest or at such rate of interest which should be payable from time to time. Against the loan so advanced, the defendant No. 1 had executed demand promissory note and other relevant documents creating securities. The money was borrowed by the defendant No. 1 for the purchase of a new Tata Bus Chasis and its body. The defendant No. 1 had executed documents of hypothecation and further deposited a sum of Rs. 50,000/- on 27.8.1987 in his D.B.D Account No. 691 and had pledged the same as security. The defendant No. 4 had executed a letter of guarantee dated 27.8.1987 assuring re-payment of the loan amount and

defendants had undertaken to bear liability for the re-payment of the loan, jointly and severally. It is further claimed that the defendants had acknowledged the debt and security by their letters dated 23.8.1988, 30.5.1990 and 24.11.1992 and acknowledged their liability to pay the debt. When the instalments were not being paid according to the terms of contract, the plaintiff bank issued a lawyer's notice on 3.1.1992 demanding a sum of Rs. 4,20,966.64 together with interest calculated till September 1991. In absence of any response from the defendants, the plaintiff has filed the suit claiming cause of action having accrued on the date of grant of loan on 27.8.1987 and on the various dates on which acknowledgement of debt was executed in writing by the defendants and also the date on which lawyer's notice making demand for payment was made.

3. Defendants / respondents had contested the suit denying the entire claim of the plaintiff on the ground that the suit was not maintainable and the suit was barred by law of limitation. Defendants had further denied to have executed any of the documents on the dates as claimed by the plaintiff and has claimed on the contrary that the plaintiff had obtained the signatures of the defendants on blank forms, blank stamp papers and plain sheets which the plaintiff had conveniently converted into purported valuable securities. It was further claimed that a sum of Rs. 50,000/-, which was deposited by the defendant No. 1 by way of term deposit for a period of five years on which the plaintiff had agreed to pay interest, was illegally appropriated by the bank before the maturity of the term deposit. It was also pleaded that the defendant No. 1 being a driver, the rate of interest which was agreed with him was 10% per annum and not 12.75%, as wrongly claimed by the plaintiff. The amount of money claimed has also been disputed on the ground that out of total amount of Rs. 3,31,000/-, a sum of Rs. 50,000/- which was deposited by way of term deposit, and was appropriated by the bank, should have been deducted and the interest should have been calculated only on the balance and not on the amount of Rs. 3,31,000/-. It was also pleaded that there was no contractual liability to pay higher rate of interest and neither was any notice served upon the defendants by the plaintiff for charging enhanced rate of interest at the rate of 18.75% per annum.

4. On the basis of the rival pleadings, learned court below has framed following issued:

- i. Is the suit as framed is maintainable?
- ii. Whether plaintiff has the cause of action for the suit?
- iii. Is the suit barred by law of limitation?
- iv. Whether the dedfts, have executed security documents in favour of the plaintiff for the loan amount?
- v. Are the dedfts. liable to repay the suit amount to the plaintiff?
- vi. Is the plaintiff entitled to recover the dues from the dedfts.?

vii. Is the plaintiff entitled to cost & other reliefs as claimed?

viii. Is the plaintiff entitled to get -the decree with interest & other reliefs as claimed?

Though, it was pleaded by the defendants in their written statement to the issue relating to the suit being barred by limitation was not pressed at the time of hearing and, therefore, the issue vide issue No. 3 was decided by the court below against the defendants.

5. On issue No. 5 whether the defendants are liable to pay the suit amount to the plaintiff and the issue No. 6 as to whether the plaintiff was entitled to recover dues from the defendants, the learned court below has considered both the issues along with issue No. 4 as to whether the defendants had executed security document in favour of the plaintiff for the loan amount. Learned court below had considered the evidences both oral and documentary as adduced by the plaintiff bank. Amongst the documents relied upon and filed by the plaintiff is the purported agreement of loan and hypothecation and for repayment of the loan amount in installments (Ext.-2), letter of installment (Ext.-3), declaration form (Ext.-7), letter of undertaking (Ext.-8), letter of set off and appropriation (Ext.-9), letter of guarantee (Ext.-10), Agreement of hypothecation of road transport vehicle (Ext.-11), letter of undertaking executed by defendant No. 1 acknowledging their debt / securities (Ext.-14 to 16), pleader's notice (Ext. -17) and statement of account (Ext.-19).

6. In support of its claim for the amount to be recovered from the defendants, the plaintiff had relied upon Ext.-19 as being the purported statement of account. Learned court below has refused to accept the same on the ground that Ext.-19 does neither bear any certificate, nor signature and name of the principal accountant / manager of the bank and the same being not a certified copy of the original, has no evidentiary value in the eye of law. The learned court below has observed that the plaintiff bank has not proved and established by any reliable evidence that the amount as claimed by the plaintiff as their actual dues from the defendants.

Learned court below after referring to the various documents (Exts.- 7,10 and 13) which were claimed to be the declaration / undertaking given by the borrower and guarantor, has observed that the plaintiff has claimed that the aforesaid documents were executed by the defendants on 27.8.1987, but the documents were embossed on 27.3.1979, 8.10.1988 and 27.3.1979 respectively and not on the date of the alleged execution of the documents. Learned court below has observed that though, under the provisions of Section 2(b), 11 and 12 of Indian Stamp Act, 1899, the documents should have been embossed on the date of execution, but the documents were apparently embossed either much prior to the purported date of execution or much later. Learned court below had also observed that the Agreement of hypothecation of road transport vehicle (Ext.-11) which was purported to have been executed on 27.8.1987, but

endorsement of the stamp vendor indicated that the stamp paper on which Agreement was recorded, was sold on 12.10.1987. It was also observed that this documents was also embossed on 3.4.1984 i.e. three yeas prior to the purported date of execution. On the basis of such observation, the learned court below has refused to accept of the documents as genuine. Learned court below has also observed that the amount of Rs. 50,000/- which was deposited by the defendant No. 1 as fixed deposit, was appropriated by the bank even before maturity and this amount should have been deducted from the original amount of loan, but the plaintiff while having appropriated the money, has charged interest on the entire loan amount. Learned court below has further observed that the plaintiff bank had illegally computed interest at the enhanced rate of interest @ 18.75% per annum without giving any advance notice to the defendants and, therefore, the amount as claimed by the plaintiff as dues from the defendants, cannot be accepted.

7. The appellant has assailed the impugned judgment and decree of the court below on the ground that the court below has seriously erred in dismissing the suit of the plaintiff bank without considering that the defendants having admitted the fact of borrowing a sum of Rs. 3,31,000/- by way of loan and as such, the documents filed in support of the plaintiffs claim are of secondary importance and detailed examination of the documents (Exts.- 19,7,10,11 and 13), as made by the court below, was therefore uncalled for. Learned Counsel for the appellant has argued that even according to the written statement of the defendants in which they have stated that the term deposit of Rs. 50,000/- by way of D.B.D account having been appropriated by the bank, the same ought to have been deducted from the principal amount and the interest at the rate of 12.5% per annum should have been calculated only on the balance amount of Rs. 2,81,000/-. Learned Counsel argues that the above statement as appearing in the defendant's written statement is clear indication of the admission of the fact that the defendants had borrowed the money. Learned Counsel argues further that the claim of the defendant No. 1 that his signature and that of the co-defendants were taken on blank papers, should not have been accepted by the court below since as per Section 18 of the Negotiable Instrument Act, if a person signs any paper, it is presumed that he has read and understood the paper and the onus was, therefore, upon the defendants to rebut the presumption by adequate evidence.

Learned Counsel for the appellant has further argued that the findings of the learned court below that the person who had signed the plaint, had no authority to sign the same and, therefore, the suit is not maintainable, is totally misplaced since it is settled law that any of the officer who is the principal agent or constituted power of attorney may sign or swear the plaint.

8. Learned Counsel for the respondents, on the other hand, submits that the definite stand taken by the defendants was that the signatures of the defendants were obtained on blank forms and blank papers and considering the fact that the

documents relied upon and filed by the plaintiff bank were found to be not genuine, it was for the plaintiff to prove and establish that the amount claimed by the plaintiff, was actually due and recoverable from the defendants. Learned Counsel argues that the defendants had categorically denied and disputed the amount claimed by the plaintiff as being not recoverable and it was therefore upon the plaintiff to prove that the amount claimed by it was proper and genuine. Learned Counsel further argues that the suit as filed by the plaintiff was thoroughly barred by limitation since as per the plaintiffs claim, loan was advanced to the defendant No. 1 on 27.8.1987, but the suit was filed on 15.5.1993. Learned Counsel explains that in view of the finding of the court below that none of the documents relied upon and filed by the plaintiff were genuine, the plaintiff cannot claim that the defendants had acknowledged any debt beyond the period of limitation. Learned Counsel adds further that even though, the learned court below has not dealt with this issue on the ground that the defendants had not pressed this issue at the time of hearing, but the respondents are certainly entitled to plead this issue as a ground in this appeal.

9. The points which arise for determination in this appeal are, whether the defendants had borrowed a sum of Rs. 3,31,000/- from the plaintiff bank and, whether the plaintiff bank is entitled to recover the said sum together with interest from the defendants. It was also for determination as to whether finding of the learned court below on the issue relating to limitation can be sustained?

10. Specific claim of the plaintiff bank is that it had given loan of a sum of Rs. 3,31,000/- to the defendant No. 1 on 27.8.1987 against which the defendant No. 1 had executed demand promissory note besides executing an Agreement of Hypothecation of the vehicle which was purchased by him. Plaintiff had also pleaded that the defendant Nos. 2 and 3 had executed letters of guarantee and hypothecation of their respective vehicles for re-payment of the loan amount. It is also pleaded that the defendants had executed letter of acknowledgement of debt on various dates, last of which were executed on 24.11.1992. From the pleading of the defendant No. 1, it would appear that the fact that he had borrowed a sum of Rs. 3,31,000/- from the bank on 27.8.1987, has not been specifically denied. It is also not denied that he and his co-defendants had appended their respective signatures on several documents, though according to them, the documents on which the signatures were obtained were unfilled blank forms, blank stamp paper and blank plain papers. The defendant No. 1 while acknowledging the fact of borrowing the loan amount of Rs. 3,31,000/-, has claimed that a sum of Rs. 50,000/- which he had deposited as term loan, was appropriated by the bank without prior notice to him and appropriated amount should have been deducted from the principal amount. This averment in the written statement of the defendant No. 1, also confirms the admission on his part of the fact that he had borrowed the money from the bank. However, the defendants have denied their liability to pay the amount claimed by the Bank and the plaintiffs right to recover the same.

11. The documents on which the plaintiff has relied upon, have been examined by the learned court below in the light of the defendant's claim that the documents were not executed on the dates as claimed by the plaintiff and that the signature of the defendants were obtained on blank papers which were later converted by the employees of the bank as purported deeds of agreement of hypothecation, letter of undertaking and acknowledgment of debt. On examination of the various documents, the learned court below has recorded its finding that none of the documents appear to have been executed on 27.8.1987. Learned court below has assigned reasons to record its finding that while Ext.-10 was embossed on 8.10.1988, Ext.s-7 and 13 was embossed on 27.3.1979 and the purported Agreement of hypothecation was embossed on 3.4.1984, whereas stamp paper on which purported letter of Agreement was recorded was sold by the stamp vendor on 12.10.1987. Learned court below has also observed from the evidence of DW-2 that the bank was not prepared to file the register containing entries pertaining to the documents. In the light of the above facts and circumstances, learned court below has rightly recorded its finding that none of the documents relied upon and filed by the plaintiff are genuine. The plaintiff has therefore, not been able to prove the actual terms of contract between the bank and the defendants, nor has it been able to prove that the defendants had acknowledged their debt on the dates beyond the period of limitation. The suit for recovery of the money filed on 15.5.1993 for the loan advanced on 27.8.1987 has to be deemed as barred by limitation.

12. As regards the amount claimed by the plaintiff, learned court below has rightly recorded its finding that no such amount as claimed by the plaintiff can be accepted. Admittedly, a sum of Rs. 50,000/- which was deposited by the defendant No. 1 by way of term deposit was appropriated by the bank prematurely, but the same was not adjusted against the principal amount and the interest was calculated on the entire principal amount. Furthermore, the plaintiff bank has claimed interest at the rate of 18.75% per annum with quarterly rest, although, according to its own claim, contractual rate of interest was 12.5% per annum. The plaintiff bank had never informed by way of any advance notice to the defendants for enhancement of the rate of interest and as such, it was not entitled to claim interest on any enhanced rate beyond the contractual rate.

13. Furthermore, the plaintiff bank has not adduced reliable evidence to show its computation and the basis of amount claimed as dues from the defendants. The purported statement of account (Ext.-19) has rightly been rejected by the learned court below on the ground that it was uncertified copy without bearing signature of the bank manager or the accountant. No other document has been placed by the bank to enable proper assessment in respect of its claim for recovery of the money mentioned in the plaint.

14. For the above reasons, I do not find any merit in this appeal. Accordingly, the same is dismissed, but in the circumstances, without any order as to costs.