
(1997) 08 DEL CK 0027
In the Delhi High Court
Case No : Suit No. 3016 of 1988

Bank of India

APPELLANT

Vs

Rajesh Sareen and Another

RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

Citation : (1997) 5 AD 92 : (1998) 91 CompCas 686 : (1997) 68 DLT 866

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Mala Goel, for the Appellant;

Judgement

K.S. Gupta, J.

(1) This suit has been filed alleging that the plaintiff-Bank is constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act No. 5 of 1970 having its head office at Express Towers, Nariman Point, Bombay, with one of its branches at Connaught Circus, New Delhi. Plaintiff has been signed and verified and the suit instituted by Krishan Kumar Chopra, who has been duly authorised to sign and verify the plaint and to file the suit. Defendant No. 2 is the proprietary concern of defendant No. 1. At the request of defendant No. 1, plaintiff-Bank agreed to grant him advance to the tune of Rs.53,000.00 by way of Demand Term Loan for purchase of a Maruti vehicle. In consideration of sanctioning of the loan defendant No. 1 on November 3, 1986, executed demand promissory note, agreement of hypothecation in respect of vehicle No. DDA-302, letter of instalment, letter of continuing security, letter of undertaking, letter of lien and set-off, bearer letter and letter authorising plaintiff-Bank to pay the insurance premium etc. of the said vehicle on behalf of defendant No. 1. Sanctioned loan carried interest of 7.5% over the bank rate with a minimum of 17.5% per annum with quarterly rests. Loan account in the name of defendant No. 1. was opened in the books of accounts of the plaintiff-Bank and the loan was disbursed to defendant No. 1. Defendant No. 1 did not pay the monthly installments and the interest agreed upon and a total sum of Rs. 59,192.55p was

due from him on the date of the filing of the suit.

(2) It is further alleged that defendants deposited two Cheques Nos. 627446 dated November 20, 1986, for Rs. 20,000.00 and 06628 dated November 26, 1986, for Rs. 78,000.00 both drawn on Syndicate Bank on November 21, 1986 and November 27, 1986, respectively and on the pay-in-slips depositing the cheques request was made by then for purchasing the same which request was acceded to by the Chief Manager of the plaintiff-Bank. Amount of both the aforesaid cheques totalling Rs. 85,200.00 was credited in the current account in the name of defendant No. 2. Both the cheques on being sent for collection were returned unpaid with the remarks "refer to drawer". On dishonour the plaintiff-Bank credited the "Bill Purchase General Ledger Account" of defendant No. 2 and debited the "Past Due Bills Purchase Account". It is stated that the plaintiff-Bank also informed the defendants about the dishonour of the aforesaid cheques and asked them to deposit a sum of Rs. 85,200.00 with interest but the defendants failed to do so. Defendants are, thus, further liable to pay Rs. 85,200.00 with interest thereon @ 18% per annum from November 21, 1986 onwards. Amount of interest till the filing of the suit comes to Rs. 30,931.32P. It is stated that despite service of the notice of demand dated November 29, 1988 defendants have failed to pay Rs. 59,192.55p in the Loan Account, and Rs. 1,16,131.32p in the Cheque Purchase Account. It was prayed that a decree for Rs. 1,75,323.87p with costs and interest pendente lite and future may be passed in favor of the plaintiff-Bank and against the defendants. Vehicle No. DDA-302 hypothecated by defendant No. 1 with the plaintiff-Bank is also sought to be sold to meet the decretal amount.

(3) Defendants have contested the suit by filing written statement. By way of preliminary objections it is alleged that the plaint has not been signed and verified and suit instituted by an authorised person on behalf of the plaintiff-Bank. On merits, it is not denied that defendant No. 1 who is the proprietor of defendant No. 2, approached the plaintiff-Bank in or about November, 1986 for grant of Demand Term Loan for purchase of a Maruti Vehicle and loan to the tune of Rs. 53,000/- was sanctioned by the plaintiff-Bank against hypothecation of the vehicle, as alleged. However, it is alleged that the documents, as detailed in Para 6 of the plaint, were filled in later on and are not even properly stamped as per law. It is denied that the agreed rate of interest was 7.5% over the bank rate with a minimum of 17.5% with quarterly rests as alleged by the plaintiff-Bank. It is admitted that the defendants deposited two cheques in question and those were purchased by the plaintiff-Bank and the Current Account of defendant No. 2 was credited with an amount of Rs. 85,200.00 as alleged. However, it is stated that no intimation in regard to dishonour of both the cheques in question was sent by the plaintiff-Bank to the defendants. Dishonoured cheques have been illegally withheld by the plaintiff-Bank. Liability to pay interest @ 18% per annum on the said amount of Rs. 85,200.00 is emphatically denied. It is stated that the defendants suffered huge financial loss and as such could not pay the amount in time. They still want to clear the dues in easy installments and the amount of interest may either be waived or charged @ 6% per annum.

(4) On the pleadings of the parties, following issues were framed on October 22, 1991:

1. Whether Sh. Krishan Kumar Chopra is competent to sign and verify the plaint and to bring forward the present suit?

2. What is the agreed rate of interest between the parties ?

3. To what amount, if so, are the plaintiffs entitled ?

4. To what relief, if any, are the plaintiffs entitled ? Issue No. 1:

(5) After examining P.L. Gupta Public Witness 1 and A.K. Gupta Public Witness 2 Ms. Mala Goel appearing for the plaintiff-Bank, closed the evidence on September 17, 1992. On that date itself case was posted for defendant's evidence to December 9, 1992. Neither on December 9, 1992 nor on subsequent dates to which the case was adjourned for recording evidence of the defendants, anyone put in appearance on their behalf and by the order dated August 1, 1996 they were proceeded ex-parte.

(6) It is in the deposition of Public Witness 2 that he has been working in the plaintiff-Bank since December 1972 and is presently posted in the Connaught Circus Branch of the Bank in Advances department. He knew Krishan Kumar Chopra since 1972 and is familiar with his signatures. Plaint bears the signatures of Krishan Kumar Chopra which he identifies. It is further in his deposition that Shri Chopra was holding power of attorney from the plaintiff-Bank and he had brought the original power of attorney in his favor executed by N.S. Parulekar, Director of the Bank and Dr. S.M. Pathak, General Manager of the Bank. Ex. PW2 /1 is the photostat copy of that power of attorney. In cross-examination he has admitted that the aforesaid power of attorney was not executed in his presence nor did he ever work under said N.S. Parulekar or S.M. Pathak. He expressed his inability in saying whether any resolution was passed by the Board of Directors authorising aforesaid N.S. Parulekar and S.M. Pathak to execute power of attorney in favor of Shri Chopra. He has emphatically denied the suggestion that the plaint has not been signed and verified by Shri Chopra.

(7) From the line of cross-examination conducted with said Public Witness 2 it is manifest that the power of attorney (Photostat copy Ex. Public Witness ") executed in favor of Shri Chopra was sought to be assailed on behalf of the defendants on the grounds of aforesaid N.S. Parulekar and S.M. Pathak not having appended their signature thereon in his presence and resolution of the Board of Directors of the plaintiff-Bank authorising both of them to execute power of attorney not having been passed. Identical issue came to be considered by the Supreme Court in the decision in United Bank of India v. Naresh Kumar & Ors., Air 1997 Sc 3 and in Paras 8,9 & 10 of the report it was held :

"In this appeal, Therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person. In cases like the present where suits are instituted or defended on behalf of a public

corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6, Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the Company. Order 29, Rule 1 of the Code of Civil Procedure, Therefore, provides that in a suit by or against a Corporation the Secretary or any Director or other Principal Officer of the Corporation who is able to depose to the facts of the case might sign and verify on behalf of the Company. Reading Order 6, Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure, it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the Corporation. In addition thereto and dehors Order 29, Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the Company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favor of any individual in absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the Corporation had ratified the act of signing of the pleading by its officer."

In Para 13 of the report, which too is relevant, it was further held :

"The Court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant-company; full amount of Court-fee had been paid by the appellant-Bank documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and hereafter it continued with the suit."

(8) It is pertinent to note that aforesaid power of attorney dated December 9, 1986 (Photostat copy Ex. Public Witness 2/1) allegedly executed by N.S. Parulekar and S.M. Pathak was notarised by S.R. Vakil, Notary House, Bombay, Notary Maharashtra State and towards the end it is mentioned therein that aforesaid N.S. Parulekar and S.M. Pathak were authorised to execute the same pursuant to a resolution of the Board of Directors of the plaintiff-Bank. That be so, this case stands on a better footing compared to United Bank of India's case (supra). Considering the ratio in the said decision plaintiff must be held to have been signed and verified and suit instituted by a duly authorised person on behalf of the plaintiff-Bank. Issue is answered in affirmative, Issue No. 2

(9) It is in the deposition of P.L. Gupta, Public Witness I, that in 1986 he was posted in Connaught Circus Branch of the plaintiff-Bank and promissory note Ex. P1, agreement of hypothecation Ex. P2, letter of installments Ex. P3, letter of continuing security Ex. P4, letter of lien and set off Ex. P7 and loan bearer letter Ex. P8 were filled in by him and thereafter signatures were appended thereon by defendant No. 1 in his presence. Letter of authority Ex. P5 and letter of undertaking Ex. P6 were further furnished by the defendants in favor of the plaintiff-Bank. In cross-examination he has emphatically denied the suggestion that Exs. P2 to P8 were filled in by the Bank just before the institution of the present suit. Needless to repeat, that plea taken in the written statement is that the aforesaid documents were filled in later on. Obviously, onus of proof of the aforesaid plea was squarely on the defendants which they have failed to discharge. In Exs. P1 & P2 executed for securing the Demand Term Loan of Rs. 53,000.00 it is specifically noted that rate of interest was 7.5% over the Bank rate with a minimum of 17.5% per annum with quarterly rests. As regards loan due on cheques purchased, the plaintiff-Bank has claimed interest @18% per annum from November 21, 1986 onwards. It is the usual rate of interest on which loan is advanced by Banks to its customers. plaintiff-Bank is, thus, entitled to claim interest at the aforesaid rates on two loans from the defendants. Issue is decided accordingly. Issue Nos. 3 & 4 :

(10) Both these issues are interconnected and may be taken up together for discussion. Defendants do not dispute either of taking Rs. 53,000.00 by way of Demand Term Loan or availing of the amount of Rs.85,200.00 being the sums of two Cheques Nos. 627446 and 06628 purchased from them by the plaintiff-Bank. Dispute raised by the defendants centres around the rate of interest charged by the plaintiff-Bank which dispute stands answered while deciding issue No. 2 above. plaintiff-Bank is entitled to recover the suit amount which includes two amounts of loan and interest thereon up to the date of filing of the suit.

(11) Suit is, thus, decreed for recovery of Rs. 1,75,323.87 Public Witness with interest pendente lite and future @ 18% per annum and also the costs against the defendants. plaintiff-Bank may apply for sale of hypothecated vehicle No. DDA-302 to meet the decretal amount on the execution side.