
(2007) 04 P&H CK 0113
In the Punjab And Haryana At Chandigarh

Central Bank of India

APPELLANT

Vs

Jai Kishan and Another

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Citation : (2007) 4 PLR 245 : (2007) 3 RCR(Civil) 633

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The present Regular Second Appeal has been filed against the judgment and decree dated 7-9-1983 passed by the learned lower Appellate Court vide which the suit filed by the appellant-plaintiff herein was ordered to be dismissed against defendant No. 3 i.e. guarantor.

2. The plaintiff-Bank filed a suit for recovery of Rs. 1,65,227/- against the defendants including defendant No. 3 Shri Banarsi Dass son of Bishan, as a guarantor. It was pleaded in the suit that under the Self Employment Loan Scheme defendant No. 1 was sanctioned an interim loan amounting to Rs. 69,000/-. The said loan was to be paid back with interest of 5% over the Reserve Bank of India's rate of interest. To secure the loan, defendant Nos. 1 and 2 executed a Demand Promissory Note for a sum of Rs. 69,000/-letter of waiver, letter of interest, letter of non-encumbrance and letter of authority. In addition, hypothecation agreement was also executed whereby all tangible immovable properties such as Tractor, accessories etc. were hypothecated as security of the loan. An additional loan of Rs. 41,000/- was also sanctioned which was also secured by the documents referred to above. The said loan was also secured by a personal guarantee of defendant No. 3. Out of the sanctioned loan a sum of Rs. 49,500/- was released by defendant Nos. 1 and 2. However, on the failure to repay the loan, a suit for recovery of Rs. 1,65,227.09 was filed.

3. Whereas defendant Nos. 1 and 2 have admitted their liability. However,

defendant No. 3 contested the suit, who denied having executed any guarantee deed in favour of the plaintiff-bank as security. It was further claimed that he stood discharged from liability, because extension was granted to defendant Nos. 1 and 2 for repayment of loan and further that acknowledgment of defendant Nos. 1 and 2 was not binding on him.

4. In replication, the stand taken by the plaintiff was reiterated and following issues were framed:

1. Whether defendant No. 3 stood guarantee for defendant Nos. 1 and 2 regarding the amount of loan in dispute as alleged? OPP

2. Whether the suit is within limitation? OPP

3. Relief.

5. The learned trial Court decided issue Nos. 1 and 2 in favour of the plaintiff-appellant and decreed the suit. Defendant No. 3 i.e. guarantor filed an appeal against the judgment and decree. The learned lower Appellate Court accepted the appeal on the ground that the plaintiff-bank had failed to prove due execution of the guarantee-deed by defendant No. 3. The evidence of handwriting expert, which proved the execution of the guarantee-deed by defendant No. 3, was disbelieved for the reason that the hand writing expert had not compared the signature on the guarantee deed with one of the admitted signatures. The hand-writing expert had compared the signatures on the acknowledgement receipt signed by defendant No. 3. The learned lower Appellate Court also came to the conclusion that though Mr. Goel, was a Clerk in the Bank, but the plaintiff-bank had failed to produce Mr. Goel, who is stated to have filled up the guarantee-deed. Thus by holding that the plaintiff-bank had failed to prove the execution of guarantee-deed, the finding on issue No. 1 was reversed. Even on issue No. 2 the learned lower Appellate Court came to the conclusion that as the loan was advanced in the year 1973 and there was a default committed by the loanee, the suit filed in the year 1979 was therefore, barred by limitation.

6. Mr. R.K. Aggarwal, learned Counsel appearing on behalf of the appellant-bank, has challenged the findings recorded by the learned lower Appellate Court on the plea that in spite of notice, defendant No. 3 failed to appear and contest the suit. Rather the suit was said to be contested through his attorney. The contention of the learned Counsel for the appellant, therefore, was that it was not open to the attorney to depose qua the facts which were personal to Shri Banarsi Dass.

7. The learned Counsel for the appellant further contended that, as a matter of fact, an adverse inference ought to have been drawn against Shri Banarsi Dass for not putting in appearance in spite of due service. He also contended that there was no occasion for the learned lower Appellate Court to disregard the report of the handwriting expert as Banarsi Dass, defendant No. 3, the guarantor, did not appear before the Court to deny the signatures on the acknowledgement

of notice. The acknowledgement has been produced by the Postal Department. The contention of the learned Counsel for the appellant, therefore, was that the acts done by the official, are deemed to have been done in the normal course of business and are to be prima facie believed unless contrary is proved and, therefore, the learned lower Appellate Court was not right in rejecting the said report which was duly relied upon by the learned trial Court.

8. Learned Counsel for the appellant submitted that once the document was proved and duly exhibited, it was not open to the learned lower appellate Court to reverse the finding on presumption by drawing an adverse inference for non-production of Mr. Goel when the said document was proved by PW-2 Shri J.N. Narrowjee.

9. Learned Counsel for the appellant further submitted that the learned lower Appellate Court was also wrong to hold that the suit was barred by time. The contention of the learned Counsel for the appellant was that the findings recorded by the learned lower Appellate Court are contrary to the law laid down by the Hon'ble Supreme Court in the case of B.G. Vasantha v. Corporation Bank, Mangalore and Anr. 2005 (10) S.C.C. 215, wherein it has been held as under:

4. We are in agreement with the view of the High Court that the suit was not barred by limitation. The guarantee being a continuing guarantee, so long as the principal debt remained due and payable, the guarantor also remained liable.

5. We are also in agreement with the High Court that the guarantee is not only for repayment of the principal amount but also for interest therein. However, we find that so far as the principal debtor is concerned, the liability to pay interest is @ 13.5% p.a. in respect of the term loan facility and 14% p.a. in respect of cash credit facility. Even though the guarantee documents mention interest @ 15.5% p.a., in our view, the liability of the guarantor cannot exceed that of the principal debtor. The guarantor is only guaranteeing debt due by the principal debtor. The High Court thus erred in granting decree against the guarantor and the principal debtor for interest @ 15.5% p.a. To this extent the High Court judgment needs to be modified. We direct that the principal amount payable will be with interest @ 13.5% p.a. in respect of the term loan facility and 14% p.a. in respect of cash credit facility.

In the light of the submissions referred to above, I find that following substantial questions of law arise for consideration in this appeal:

1. Whether it was open to the learned lower Appellate Court to reverse the findings recorded by the learned trial Court even though defendant No. 3 has chosen not to appear in the Court in spite of service of notice?

3. Whether the suit on continuing guarantee can be said to be barred by limitation when the suit is held to be within limitation qua the principal debtor?.

In view of the submissions raised by the learned Counsel for the appellant, all these questions are decided in favour of the appellant. Accordingly, this appeal is

accepted, the judgment and decree passed by the learned lower Appellate Court is set aside and that of the trial Court is restored with no order as to costs.