(1992) 11 DEL CK 0031

In the Delhi High Court

Case No : Suit No. 510 of 1987

Central Bank of India APPELLANT

Vs

Karnani Polymers Pvt. Ltd. and Others RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Citation : (1993) 1 BC 26 : (1993) 49 DLT 103

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : S.D. Sharma and Sunita Harish, for the Appellant;

Judgement

C.L. Chandhry, J.

(1) The plaintiff has filed this suit for the recovery of Rs. 5,85,303.71 on the allegations made in the plaint as under :

(2) The plaintiff is a bank constituted and functioning under the Banking Companies Act. Shri Naresh Malhotra is the Regional Manager, Principal Officer and General Attorney of the plaintiff and is conversant with the facts of the case. He is authorised as general attorney to sign and verify the plaint and institute the suit on behalf of the plaintiff bank.

(3) The defendant No. 1 is a private limited company carrying on the business of manufacturing and dealing in all types of Pvc shoes and chappals and defendant Nos. 2 to 6 are the sureties and guarantors for the repayment of the dues by defendant No. 1. Defendant No. 2 for and on behalf of defendant No. 1 approached the plaintiff bank and submitted that defendant No. 1 had taken over the unit known as ''Lakshmi Industries'' and requested the plaintiff for grant of certain credit facilities. The plaintiff bank was informed that no objection certificate from the New Okhla Industrial Development Authority, Noida had been applied for creation of an equitable mortgage in favor of the plaintiff bank. On 11-2-1984 the bank sanctioned/granted the following facilities to defendant No. 1 :-

(a) Bill Discounting : Rs. 3,00,000.00 (b) Cash Credit Open Loan against Hypothecation of stocks : Rs. 2,000,00.00 (c) Term loan to be paid to U.P. Financial Corporation for the release of their hypothecation of plant and machinery in favor of the plaintiff : Rs. 1,50,000.00

(4) That defendants 2 and 3 for and on behalf of and as Directors of defendant No. 1 executed various documents signifying the above said loan. Defendants 2 to 6 stood personal sureties/guarantors for the repayment of the plaintiff''s dues from defendant No. 1 and executed various letters of guarantees in favor of the plaintiff. By letter dated 12-3-1984 the defendant No. 1 under the signatures of defendant No. 2 acknowledged the sanction of term loan of Rs. 1.5 lacs cash credit, hypothecation of Rs. 2 lacs and Bill Purchase Facility to the extent of Rs. 3 lacs and requested the plaintiff for discounting of D.A. bills drawn on upcountry/ local dealers. By letter dated 28-2-1984 the defendant No. 1 under the signatures of defendant No. 2 informed the plaintiff of defendant No. 1 having deposited a sum of Rs. 50.000.00 with the plaintiff and requested the plaintiff No. 1 to issue to them a Bank Draft in the sum of Rs. 1,96,777.33 in favor of U.P. Financial Corporation, NOIDA. The plaintiff by its letter dated 29-2-1984 sent a Pay Order for this amount to the U.P. Financial Corporation, NOIDA. to the debit account of defendant No. 1. The plaintiff further requested the U.P. Financial Corporation to send the title deeds of the property/assets, raw materials, semi-finished, finished goods and stocks in trade of defendant No. 1 to the plaintiff. By letter dated 3-8-1984 the defendant No. 3 as Director of defendant No. 1 requested the plaintiff for enhancement of Bill Discounting Facility from Rs. 3 lacs to Rs. 5 lacs, which request was declined by the plaintiff. By letter dated 7.10.1984 the plaintiff brought to the notice of defendant No. 1 that a debit balance of Rs. 3,11,075.14 existed in the account books of the plaintiff which was far in excess of the sanctioned limit of Rs. 2 lacs. The plaintiff reminded the defendant to make timely payments. On 16-8-1985 the defendant No. 2 acknowledged the balance confirmation of Rs. 3,58,236.90 as on 30.6.1985 in respect of cash credit account. Defendants 2 and 3 for and on behalf of defendant No. 1 acknowledged the outstanding dues of the plaintiff in Term Loan Account in the sum of Rs. 1,72,944.41 as on 20-11-1985. By letter dated 3-8-1985, the defendant No 2 as Director of defendant No. 1 undertook to regularise the overdrawn/out of order accounts by the end of August and further undertook to start payment of the Installment of term loan from September onwards and assured the plaintiff that total dues of overdue Installments of the plaintiff in all the accounts shall be cleared by December, 1985. The defendant company, despite requests failed to submit the statement of stocks, raw material etc. to the plaintiff. Despite various requests made by the plaintiff the defendants did not obtain the ''No Objection Certificate'' from U.P. Financial Corporation and to handover and deposit the title deeds by way of equitable mortgage of property situate at B-23, Sector I, Noida Complex. The plaintiff by letter dated 3-8-1985 called upon the transporter i.e M/s. Cargo Movers of India to inform the position of the goods dispatched under M.R. No. 54331 dated 1-5-1985 in respect of 10

paragons of Pvc footwears within 7 days of the receipt of the letter and cautioned them not to deliver the goods to the party without plaintiff''s permission. Similarly, the plaintiff called upon the transporter M/s. Bawa Transport Company to inform the position of the goods dispatched under various Mrs. The plaintiff asked the defendants several times to return the amount of Rs. 3,17,329.75. The defendant Nos. 1 to 3 instead of making deposit of the sale proceeds of the hypothecated material with the plaintiff towards repayment of plaintiff''s dues, started misappropriating the sale proceeds of the plaintiff''s security to their own advantage. The officers of the plaintiff were not allowed to physically verify the hypothecated stocks. That on 28.7.1986, the defendant No. 5 acknowledged and confirmed the debit balance of defendant No. 1 in the sum of Rs. 6,17,955.44 up to 7-7-1986. The defendants promised to pay the above said dues by 30-7-1986 together with interest and tendered cheques in the aggregate amount of Rs. 2,35,000.00 in favor of the plaintiff towards liquidation of the dues of Canara Bank to redeem and receive the title of the said property (which property was originally offered to be equitably mortgaged with the plaintiff) and mortgaged by defendant No. 1 with Canara Bank branch Noida Complex. The cheques on presentation were returned with the remarks ''exceed arrangement''. Despite repeated visits by the officers of the bank and personal enquiries from the office of the transporters, the plaintiff was denied even the information about the position of the goods, alleged to have been dispatched through the transporters. It is further claimed that defendants 1 to 6 are jointly as well as severally liable to pay the amount claimed by the plaintiff in the suit. It is claimed that a sum of Rs. 5,85,303.71 is due from the defendants in the 2 heads i.e. Rs. 3,67,420.61 in hypothecation account and Rs. 2,17,883.10 as the balance term loan.

(5) Despite service none appeared on behalf of the defendants and they were proceeded ex parte by order dated 17-9-1987 and 15-11-1988. The plaintiff has filed ex parte evidence by way of affidavits.

(6) An affidavit of Mrs. N. Narsimhan has been filed. In the affidavit, she has supported the allegations made in the plaint on all material particulars and proved certain documents. The second affidavit filed on behalf of the plaintiff bank is that of Shri R.D. Sharma, who also supported the allegations made in the plaint and proved various documents. The third affidavit is of Shri A.P. Jain, who also supported the allegations made in the plaint and proved certain documents.

(7) I have perused the oral as well as documentary evidence produced on behalf of the plaintiff. Ex. P-1 is the photostat copy of the Power of attorney executed by the plaintiff in favor of Shri Naresh Malhotra. By virtue of this power of attorney, Mr. Malhotra was authorised to file the suit on behalf of the plaintiff bank. The plaint is signed and verified by Mr. Naresh Malhotra. Ex. P-2 is the original letter dated 9-12-1983 from U.P. Financial Corporation, Noida addressed to the defendant. Ex. P-3 is the defendants'' letter dated 14-12-1983 addressed to the plaintiff. Ex. P-4 is the undertaking dated 19-2-1984 by defendant No. 6 to the plaintiff. Ex. P-5 is the original demand promissory note in the sum of Rs. 5

lacs dated 15-2-1984. Ex.P-6 is the original letter of waiver dated 15-2-1984. Ex.P-7 is the original letter of continuity dated 15-2-1984. Ex. P-8 is the original agreement of Hypothecation to secure Demand Cash Credit against Goods for Rs. 5 lacs dated 15-2-1984. Ex. P-9 is the Original Agreement of Hypothecation to secure advances against Railway Receipts for Rs. 3 lacs. Ex. P-10 is the Original Agreement of Bill Discounting dated 15-2-1984. Ex. P-l I is the Original Term Loan Agreement dt. 15-2-84 against machinery. Ex. P-l 2 is the original letter of guarantee executed by deft. Nos. 2 to 6 in favor of the plaintiff. Ex. P-l 3 is the Letter of Undertaking dt. 15-2-84 given by deft. No. 2.Ex.P-14is the original Sanction Advice dated 11-2-84 from the plaintiff to the defendants .Ex. P-15 is the defendant''s letter dated 12-3-1984. Ex.P-16. is the defendant''s letter dated 28-2-1984 addressed to the plaintiff. Ex. P-17 is the copy of plaintiff''s letter dt. 29-2-1984 addressed to defendant No. 1. Ex. P-18 is the letter dt. 17-4-1984 from the Assistant Registrar of Companies, Delhi and Haryana addressed to the defendants, Along with two certificates dated 15-2-1984, certifying the creation and registration of charge on the assets of defendant No. 1, in the sum of R.S. 5 lacs and Rs. 1.5 lacs in favor of the plaintiff. Ex. P-19 is the defendant''s letter dt 3-8-1984 addressed to the plaintiff. Ex. P-20 is the plaintiff''s letter dated 7-10-1984 addressed to the defendants. Ex. P-21 is the balance confirmation dated 16-8-1985 in the sum of Rs. 3,18,236.90 as on 30-6-1985 executed by the defendants in favor of the plaintiff. Ex. P-22 is the balance confirmation dated 20-11-1985 in the sum of Rs. 1,72,944.41 as on 20.11.1985 executed by the defendants in favor of the plaintiff. Ex. P-23 is the defendant''s letter dt. 3-8-1985 addressed to the plaintiff. Ex. P-24 is plaintiff''s letter dated 3-8-1985 addressed to M/s. Cargo Mover of India, Calcutta. Ex. P-25is the plaintiff''s letter dated 3.8.1985 addressed to M/s. Bawa Transport Co., Delhi. Nine MRs Along with their relative Hundis and invoices are collectively marked as Ex. P-26. Originals of returned unpaid bills are collectively marked as Ex. P-27. Ex. P-28 is the plaintiff''s letter dated 19-8-1985 addressed to the defendants. Legal notice of demand dated 14-10-1985 served by the plaintiff on the defendants through its lawyer is Ex. P-29. Ex. P-30 is the plaintiff''s letter dated 7.6.1986 addressed to the defendants. Ex. P-31 is the plaintiff''s letter dated 23-7-1986 addressed to the defendant Along with the statement containing details of 22 MRs. Ex. P-32 is the acknowledgement of debts submitted by defendant No. 5 to the plaintiff on 28-7-1986. Ex. P-33 to P-37 are the original cheques Nos. 020981,020982, 020983, 020984 dt. 31-7-1986 in the sum of Rs. 50.000.00 and Cheque No. 020985 dated 31-7-1986 all drawn on Allahabad Bank. Bombay in favor of the plaintiff, issued by Chittaranjan Karnani Textiles P. Ltd. Ex. P-38 is the Original Notarial Report dated 26-7-1986 of Mr. Krishan Pal Singh, Advocate. Ex. P-39 is the statement of account in respect of Ccm Hypothecation (including the amount of bills discounted and returned unpaid). duly certified under Banker''s Book of Evidence Act. Ex. P-40 is the statement of account in respect of Term Loan, duly certified under Banker''s Book of Evidence Act.

(8) I have carefully considered the ex parte evidence produced on behalf of the

plaintiff. In my opinion, the plaintiff has been able to establish its claim ex parte that a sum of Rs. 5,85,303.71 is due from the defendants and I hold that the liability of defendants I to 6 is joint and several. Accordingly, I pass an ex parte decree for the recovery of a sum of Rs. 5,85,303.71 in favor of the plaintiff and against the defendants with costs. The plaintiff shall also be entitled to pendente lite and future interest @ 12% per annum on the amount of Rs. 5.85.303.71 from the date of institution of the suit till realisation. The decree be drawn accordingly and the file be consigned to records.

