(1995) 05 DEL CK 0061

In the Delhi High Court

Case No : Regular First Appeal No. 444 of 1993

Central Bank of India APPELLANT

Vs

Naresh Electric Co. and Others RESPONDENT

Date of Decision : 03-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1996) 1 CivCC 280 : (1995) 58 DLT 620 : (1995) 111 PLR 7

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : N.K. Khetarpal, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

M.K. Sharma, J.—This appeal arises out of the judgment and order dated 14.10.1992 passed by learned Additional District Judge, Delhi in Suit No. 95/1988. By the aforesaid judgment and order the suit filed by the appellant for recovery of Rs. 29,909.95 was dismissed on the ground that the suit was not filed by a duly authorised and competent person.

2. The appellant/plaintiff filed a suit for recovery of Rs. 29,909.25 which constituted a term loan of Rs.25,000/- taken by defendants 1 & 2 from the plaintiff bank. The defendants No. 3 & 4 stood guarantors for repayment of the loan by executing a letter of guarantee. The defendants however, failed in their commitment and failed to pay the amount of Installments and accordingly the defendants are said to be indebted to the plaintiff to the tune of Rs.29,909.25 which included interest up to 25.5.1988.

3. The defendants Nos. 1 to 3 filed their written statement whereas the defendant No. 4 did not contest the suit and as against him the suit was proceeded exparte. Subsequently, the other defendants namely--defendants 1, 2 &3 also did not appear and contest the suit. Accordingly as against them also the suit proceeded ex parte on account of their non-appearance. During the trial of

the suit the plaintiff examined PW1, Om Prakash Gupta, the Sub Accountant of the Janpath branch of the plaintiff bank at the relevant time and also the Branch Manager of the plaintiff bank''s branch at Karkardoma when the loan was sanctioned. The said witness deposed before the Court that Hari Ram Sharma was the Assistant Regional Manager and he was duly authorised to file the suit on behalf of the plaintiff bank by means of a notarised Power of Attorney and duly executed by the Directors of the bank. The learned Additional District Judge, Delhi however, by his judgment and order aforesaid dismissed the suit holding that the plaintiff has miserably failed to prove that the suit has been filed and that the plaint has been signed and verified by a duly authorised and competent person.

The present appeal was admitted on 12.8.1993 and the notices were issued to the respondents. However, the said notices could not be served on the respondents by ordinary process and accordingly by order dated 23.1.1995 it was ordered that the service on the respondents be effected by affixation which was subsequently done.

4. When the appeal was taken up for hearing however, none represented the respondents and accordingly we have heard Mr. N.K. Khetarpal, learned Counsel for the appellant. The learned Counsel submitted before us that the learned Trial Court erroneously dismissed the suit without taking into consideration the facts of the case and also without going into the facts mentioned in the plaint and as proved by the witnesses produced on behalf of the appellant/plaintiff. He further submitted that since defendants did not choose to contest the suit and the suit was proceeded ex parte the statements made in the plaint stood unrebutted and there was no challenge and cross to the statements made in the plaint and in that view of the matter the learned trial Court acted illegally and without jurisdiction in dismissing the suit.

5. It may be mentioned at this stage that the appellant/plaintiff has also filed an application in this Court under Order 41 Rule 27 read with Section 151 CPC seeking permission to lead additional evidence to prove the power of attorney executed in the present case in the interest of justice and equity.

6. On perusal of the contents of the impugned Judgment and order we find that the learned Trial Court dismissed the suit on the ground that the plaintiff had miserably failed to prove that the plaint has been signed and filed by a duly authorised and competent person. It appears that the learned Trial Court arrived at the aforesaid finding in view of the fact that it was not ascertainable to the learned Trial Court as to on which document the signatures of directors have been identified and that it was also not clear if the original power of attorney was brought before the Trial Court or not. From the aforesaid observations of the learned Trial Court it appears to us that there was no clear finding and the learned Trial Court was not sure as to whether the original power of attorney was brought before the Court or not. In our opinion if there was such a doubt in the mind of the learned Trial Court he could have called for the power of attorney in

original so as to remove his doubts and to obtain clarifications. We further find that the copy of the power of attorney was already on the record of the suit which appears to have been proved by producing the original power of attorney at the time of leading evidence. It has been stated before us by the learned Counsel for the appellant that he is still ready to produce the original power of attorney and prove the same if deemed fit and necessary. In our opinion no prejudice would also be caused to the respondent if the power of attorney is allowed to be proved even at this stage in view of the fact that the power of attorney of the bank is a public document and there is no reason to doubt the genuineness of the same.

7. In the result we set aside the impugned judgment and order dated 14.10.1992 passed by the learned Additional District Judge, Delhi in Suit No. 95/1988 and remand the matter back to him to proceed with the suit in accordance with law. We also allow the application filed by the appellant/plaintiff before us under Order 41 Rule 27 read with Section 151 CPC seeking permission to lead additional evidence to prove the power of attorney executed in the present case in the interest of justice. The learned Trial Court shall, Therefore, allow opportunities to the appellant/plaintiff to lead additional evidence to prove the power of attorney executed in the present case. We also direct the appellant/plaintiff to appear before the learned Additional District Judge, Delhi on 1.6.1995 for necessary orders in the suit.

With the aforesaid observations and directions this appeal is allowed. The judgment and order passed by the learned Additional District Judge, Delhi dated 14.10.1992 passed in Suit No. 95/1988 is set aside. There will however, be no order as to costs.