**(2023) 05 KL CK 0240**

**In the High Court Of Kerala**

**Case No :** Appeal Suits No.325 Of 2002

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| C.K.Jayalakshmi | APPELLANT |
| Vs | |
| Vijaya Bank | RESPONDENT |

**Date of Decision :** 29-05-2023

**Acts Referred:**
Code of Civil Procedure, 1908 — Order 41 Rule 27

**Citation :** (2023) 05 KL CK 0240

**Hon'ble Judges :** Sathish Ninan, J

**Bench :** Single Bench

**Advocate :** T.P.Varghese, M.F.Mohammod Siyad, Philip T.Varghese, Thomas T.Varghese, K.Shrihari Rao

**Final Decision :** Dismissed

## Judgement

Sathish Ninan, J.

1. The suit for money filed by the Bank on a loan account, was decreed by the trial court. The third defendant-guarantor is in appeal.

2. On 27.06.1995, the first defendant availed a temporary overdraft of ☐ 5 lakhs from the plaintiff-Bank. The third defendant stood as guarantor for the facility. She also created equitable mortgage of immovable property to secure the liability. Subsequently, on 16.08.1995, the first defendant availed a secured loan of ☐ 2,25,000/- and closed the overdraft facility. According to the plaintiff, the guarantee of the third defendant continued and in addition, the second defendant who is the husband of the third defendant also stood as a guarantor. Since repayment was defaulted, the suit was filed.

3. The third defendant denied the plaintiff's contention that she was a guarantor to the loan availed by the first defendant on 16.08.1995. According to her, she stood as a guarantor and created equitable mortgage only to secure the overdraft facility availed on 27.06.1995. After closure of the said facility on 16.08.1995, no fresh documents were executed by her guaranteeing the

 

subsequent loan of ☐ 2,25,000/- availed by the first defendant on 16.08.1995. Thus, she sought for dismissal of the suit.

4. The second defendant, who is the husband of the third defendant, contended on the same lines.

5. The trial court held that the guarantee given by the second defendant at the time of availing the overdraft facility was a continuing guarantee and that she was liable under the facility granted on 16.08.1995. It is aggrieved thereby that the third defendant is in appeal.

6. Heard learned counsel on either side.

7. The point for determination is, whether the finding of the trial court that the liability of the third defendant continued under the facility availed by the first defendant on 16.08.1995, justified on the materials.

8. Ext.A3 is the guarantee agreement given by the third defendant at the time of availing the overdraft facility by the first defendant. Clause-1 in Ext.A3 specifically provides for grant of further credit to the first defendant, subject to the cap of ` 5 lakhs. The third defendant as guarantor has agreed to hold herself liable for the overdraft facility or any other facility which may be granted to the first defendant thereafter subject to the limit as above. Hence the trial court was right in holding that the guarantee given by the third defendant was a continuing guarantee and that she continues to be liable for the loan granted to the first defendant on 16.08.1995.

9. Learned counsel for the appellant would contend that after closure of the overdraft availed by the first defendant, the third defendant had demanded return of title deeds but the same was not returned by the Bank. The fact that third defendant demanded return of title deeds indicates that she did not intend to guarantee the subsequent loan availed on 16.08.1995, it is argued. He also points out that the third defendant-appellant has produced additional documents before this Court today under Order XLI Rule 27 of the Code of Civil Procedure along with IA No.1/2023 producing therewith copy of a letter dated 20.04.1996, postal receipt and postal acknowledgment card. As per the said letter, the third defendant demanded return of the title deeds. Therefore, it is evident that the appellant did not intend to guarantee the loan granted on 16.08.1995, it is contended.

10. The contention of the appellant based on the additional documents sought to be produced is not liable to be accepted. In the written statement filed by the third defendant, there is no contention that such a letter, as is now claimed, was sent by the third defendant to the plaintiff. The documents are sought to be produced after the lapse of 25 years. Not only that the grounds under Order XLI Rule 27 of the Code of Civil Procedure are not made out, but as noticed, the evidence is sought to be adduced without any plea. Even if the documents are accepted in evidence, the said letter could at best be construed as a letter

 

revoking the continuing guarantee. The loan in question was availed on 16.08.1995. No further advances were made on or after the date of the letter, 20.04.1996. Therefore, the said letter is of no avail even if it is admitted in evidence. The application is only to be dismissed and I do so.

11. The trial court is right in holding that the third defendant is liable for the plaint claim. There is no merit in the appeal.

The appeal is dismissed.

 