
(2009) 01 P&H CK 0072
In the Punjab And Haryana At Chandigarh

Darshan Kumar

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 21A

Citation : (2009) 3 PLR 688

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This appeal is by defendant No. 2 challenging the judgment and decree of the Lower Appellate Court whereby the appeal filed by him against the judgment and decree dated 12.5.2005 passed by the Additional Civil Judge (Senior Division), Hisar decreeing the suit of the plaintiff-respondent for recovery of Rs. 2,23,844/- including interest upto 23.3.2001 with future interest at the rate of 12% per annum with quarterly rests w.e.f. 24.3.2001 till realization has been dismissed.

2. The facts necessary for the disposal of the appeal are that Harish Kumar, Proprietor of M/s Delhi Photo Store defendant No. 1 (respondent No. 2 herein) approached the respondent-plaintiff-Bank for Cash Credit Limit of Rs. 2,00,000/- for running his business. The bank agreed to grant the limit on execution of the necessary formalities. In pursuance thereof, the appellant (defendant No. 2) executed a letter of arrangement and a guarantee deed. Respondent No. 2 (defendant No. 1) created equitable mortgage of his residential house. It was agreed that the amount would be repaid with interest at the rate of 0% above the SBI rate with a minimum of 13.26% per annum. The prevailing rate was 12% at the time of institution of the suit. It was pleaded in the suit that the plaintiff opened the cash credit limit account and the defendant availed the loan facilities but did not adhere to the repayment schedule. It was pleaded that the defendant has failed to observe the financial discipline and, thus, violated the

terms and conditions. A sum of Rs. 2,23,844/- was due on 23.3.2001 which necessitated the filing of the present suit.

3. Notice of the suit was given to the defendants. Defendant No. 1 (respondent No. 2) filed separate written statement pleading that the suit has not been filed by an authorized person. A plea was taken that the signatures were obtained on bank papers and forms. It was pleaded that the documents were forged and fabricated.

4. The appellant (defendant No. 2) filed separate written statement pleading that the suit was not filed by a competent person; that the signatures of the appellant were obtained on some papers to open the bank account but later on, he came to know that the bank officials had converted the papers and was shown as a guarantor for respondent No. 2; that he was not liable to pay any amount; that the bank should call upon respondent No. 2 to clear his account and that no authority and legal notice was sent to him and the suit was not maintainable.

5. In support of his case, the plaintiff led his evidence. However, no evidence was led by the defendants and their evidence was closed by order of the Court.

6. After hearing both the sides, the suit was decreed against the defendants severally and jointly. The defendants were granted three months' time to make the payment of the decretal amount failing which the plaintiff-bank was entitled to effect the recovery by sale of hypothecated goods as well as mortgaged property and in case, the sale proceeds do not prove sufficient to satisfy the decree then the plaintiff-bank was entitled to effect the recovery of balance amount from the other property of the defendants.

7. Feeling aggrieved the appellant (defendant No. 2) filed an appeal in the court of District Judge, Hisar, challenging the judgment and decree dated 12.5.2005 passed by the trial Court which was dismissed vide impugned judgment and decree dated 6.3.2007.

8. Still not satisfied, the appellant has filed the instant appeal challenging the judgment and decree of the courts below contending that both the Courts below have awarded the interest at the rate of 12% per annum with quarterly rests which is very excessive and at the relevant time, the prevailing rate of interest was 12% per annum. It was further argued that the action against the guarantor could only be taken after the decree-holder exhausted all the remedies available against the principal debtor by selling of his property. In support of his arguments, learned Counsel for the appellant cited a judgment rendered in Pawan Kumar Jain Vs. The Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Others, .

9. On the basis of the aforesaid contention, the learned Counsel for the appellant has argued that the following substantial questions of law arises in this appeal:

Whether respondent No. 2-Bank can proceed against the appellant-Guarantor for recovery of its dues without exhausting its remedies against respondent No. 2-

Principal Debtor/Borrower?

Whether the plaintiff-bank can charge the higher rate of interest than the prevailing market rate of interest?

10. On the basis of aforesaid contention notice of motion was issued to the respondents who have put in appearance and contested this appeal and has argued that when there is an agreed rate of interest between the parties, the court cannot say it to be an excessive interest. Learned Counsel for the respondents has relied upon Section 21A as inserted in the Banking Regulations Act, 1949 which reads as under:

Notwithstanding anything contained in the Usurious Loans Act, 1918 or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

11. Learned Counsel has also relied upon a judgment of the Hon''ble Supreme Court reported as Karnataka State Financial Corporation v. N. Narasimahaiah and Ors. 2008 (3) R.C.R. 183 and State Bank of India Vs. Messrs. Indexport Registered and others, to contend that the decree-holder cannot be forced to first exhaust remedy by way of execution of mortgage decree alone and then proceed against the guarantor.

I have heard learned Counsel for the parties.

12. The argument raised by the learned Counsel for the appellant that action against the guarantor could only be taken after decree-holder has exhausted all the remedies available against the principal debtor, is without any merit in view of the facts and circumstances of the present case. Reliance of the learned Counsel for the appellant on the judgment of the Hon''ble Supreme Court in the case Pawan Kumar Jain (supra) is misconceived. The aforesaid judgment has been considered by the Hon''ble Supreme Court in a recent judgment in the case of N. Narasimahaiah and Ors. (supra) wherein it has been held that power of a lender to realize the amount let either by enforcing the charged and/or hypothecated or encumbrance created on certain property and/or proceeding simultaneously and/or independently against the surety/guarantor is a statutory right. Different statutes provide for different remedies and in the case of Pawan Kumar Jain (supra) a statutory mandate was given to realize the dues from sale of the mortgaged properties and then to sell other properties of the borrower. Thus, the case of the Pawan Kumar Jain (supra) has no relevancy to the facts and circumstances of the case. In the judgment N. Narasimahaiah (supra), it was also held that liability of a surety is co-extensive with the liability of the principal debtor. Not only this, the Hon''ble Apex Court in the case of Messrs Index Port registered (supra) has authoritatively held as under:

If the composite decree is a decree which is both a personal decree as well as a

mortgage decree, without any limitation on its execution, the decree holder, in principle, cannot be forced to first exhaust the remedy by way of execution of the mortgage decree alone and told that only if the amount recovered is insufficient, he can be permitted to take recourse to the execution of the personal decree.

13. Thus, in view of the aforesaid judgments of the Hon"ble Supreme Court the argument of the learned Counsel being based upon substantial question No. 1 is liable to be rejected. Question No. 2 as raised by learned Counsel for the appellant is also liable to be rejected in view of the judgment of the Hon"ble Supreme Court in the case of State Bank of India Vs. Yasangi Venkateswara Rao, , wherein it has been authoritatively held that entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be paid, then charging of compound interest or agreed rate of interest between the parties cannot be said to be excessive as the parties have agreed to the same.

14. Thus, in view of the above, the questions as raised by the learned Counsel for the appellant are without any substance and are answered against him.

15. I find no merit in this appeal and the same is dismissed.

No order as to costs.