(1998) 07 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2624 of 1991 (O and M)

Daryai Lal Mehta — APPELLANT

Vs

State Bank of India and Another — RESPONDENT

Date of Decision : 22-07-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 120 PLR 307 : (1998) 4 RCR(Civil) 393

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : L.N. Verma, for the Appellant; G.S. Bawa, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—State Bank of India filed a suit against the petitioner and another for the recovery of Rs. 33,208.52/- with interest. Notice of the suit was given for 7.1.1984. However, the defendants put in appearance on 6.1.1984 and moved an application. They also made a statement on that very date. The defendant who took the loan made a statement admitting the claim of the plaintiff with a prayer that the suit be decreed with costs and interest. He also agreed to pay future interest @ 11% but prayed that the instalments be fixed and in case he fails to pay the instalments, the plaintiff shall be entitled to recover the amount in lump sum. Petitioner who is a guarantor and a defendant in the suit also made a statement reading as under:

" I was a guarantor of defendant No. 1. I have heard his statement. Sohan defendant has one saw-mill, one Atta-chakki and a residential house etc. He would pay the whole amount in instalments as per his statement." The trial court keeping in view the statements of the parties decreed the suit on that very date by passing the following order:-

"File taken up today on the application filed by the defendants. The defendants had filed admission, written statement and. have also made the statement to the same effect. In view of the statement of the defendants I decree the suit of the plaintiff for the recovery of Rs. 33,208.50p with costs. Plaintiff is further entitled to the future interest at the rate of 12% per annum from the date of the institution of the suit till the recovery of the decretal amount. Decree-sheet be prepared accordingly. File be consigned to the record room."

2. Instalments were not paid, the plaintiff therefore, took out execution of the decree. Petitioner filed objections in the execution application that he was a guarantor at the time of grant of the loan, but is not liable to "pay the decretal amount as the decree was passed only against the loanee and he is not liable for the repayment of the loan. The executing court on a consideration of the matter dismissed the objection petition. Hence this revision at his instance.

3. Learned counsel for the petitioner by reference to the statement made by the loanee and the petitioner-guarantor submitted that the decree passed by the trial court is only against the loanee and not against the petitioner and, therefore, executing court was no right in recovering the decretal amount from the guarantor.

4. After hearing learned counsel for the parties, I am of the opinion that the contention has not merit. Loanee appeared in court and filed written statement admitting the claim in the suit. He further- made a statement to the following effect:-

"The claim of the plaintiff is admitted. It may be decreed with costs and interest. I would also pay future interest at the rate of 11% till realisation. Installments may be fixed. In case. I fail to pay any instalment, the plaintiff would be entitled to recover the amount in lump sum."

5. Not only this the petitioner also put in appearance on that very date and made a statement as reproduced in the earlier part of this order. The suit was thereafter disposed of by passing the order, reproduced above. A reading of this order clearly goes to show that the suit was decreed not only against the loanee, but also against the petitioner. If the petitioner has not appeared and had not made a statement reproduced above, the position might have been different. It was no where stated by the petitioner that he is not liable to pay the amount of guarantee or that he never executed the guarantee deed. Once the suit is decreed against the loanee and the guarantee bond was not disputed, petitioner is clearly liable jointly and severely for the repayment of the loan in terms of the decree. Learned counsel for the petitioner also submitted that the suit was barred by time and the same could not be decreed. It is not for this Court to go into this question as it was open to the petitioner to contest the suit on all or any of the ground available to him at that time. But once the suit is decreed, the executing court cannot go behind the decree and is expected to execute the decree as it is, I, thus see no merit in this revision petition and the same is dismissed, but with no order as to costs.