(2013) 05 DEL CK 0100

In the Delhi High Court

Case No : C.S. (O.S.) No. 893 of 1996

Himachal Pradesh State Co-operative Bank Ltd. APPELLANT

Vs

M/s. National Fruit Agency and Others RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2013) 05 DEL CK 0100

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Sumant De, Mr. A.K. Mehta and Mr. Prateek Kohli, for the Appellant; Adarsh Dial and Mr. Pushkar Sood, for D-4 to 8, for the Respondent

Judgement

M.L. Mehta, J.—The plaintiff has filed this suit for recovery of Rs. 1,24,85,553.96/-(Rupees One Crore Twenty Four Lakhs Eighty Five Thousand Five Hundred and Fifty Three and Paise Ninety Six only) with interest calculated till March 31, 1996 and further pendent lite interest as well as future interest at the rate of 24% per annum. The facts leading to this suit are as follows:

The plaintiff is a co-operative bank registered under the Himachal Pradesh Co-Operative Societies Act, 1968. The plaintiff has its registered office in Himachal Pradesh and one of its branches is situated in Delhi. This suit pertains to the said branch at Delhi situated at 10, New Sabzi Mandi, Azad Pur, New Delhi - 110033. The plaintiff submits that defendant no. 1 is a partnership firm duly registered under the Partnership Act and engaged in the business of Commission Agent under the name and style of M/s. Fruit Agency. Defendant nos. 2 and 3 are stated to be the partners of defendant no. 1 firm. And that the defendant no. 4 is a partnership concern consisting of partners namely Sh. Bal Krishan Jaggi, Sh. Pawan Kumar Jaggi, Sh. Sanjay Jaggi and Sh. Rohit Jaggi; who are defendants no. 5 to 8 respectively; running their business under the name and style of M/s. Jaggi Apple Co.

2. The plaintiff submits that defendant no. 9 is also a partnership concern

consisting of 4 partners namely, Sh. Madan Lal Anand, Sh. Ajay Anand, Smt. Kamal Mohini and Smt. Rajani Anand, who are defendant nos. 10 to 13 respectively; running their business in the name and style of M/s. Madan Lal Ajay Kumar. The plaintiff submits that defendant no. 1 through its partners approached the plaintiff bank for seeking loan facilities for the purposes of working capital and business activities. Defendant no. 1 firm submitted the proposals and loan applications for sanctioning of the loan/advances/credit facilities from the plaintiff bank. The nature of the advances sought by the defendant was in the form a Cash Credit Limit. The plaintiff submits that it accepted the requests of the defendant no. 1 and sanctioned a Credit Limit facility in the nature of Cash Credit Limit for Rs. 3,00,000/- (Rupees Three Lakh Only). The plaintiff also submits that the defendant no. 1 accepted the terms and conditions of the plaintiff bank and agreed to pay interest at the rate of 24% per annum with quarterly rests. It also submits that the defendant no. 1 also executed an Agreement of Hypothecation of Goods to secure the aforesaid credit facility, in addition to various other documents.

3. The plaintiff submits that the defendant no. 1 failed and neglected to adhere to the terms and conditions of the said loan facility resulting into overdrawing over and above the sanctioned limit of Rupees Three Lakh against clearing cheques which were presented by the defendant no. 1 to the plaintiff bank from time to time. The said clearing cheques, however, stood dishonoured by the drawee bank resulting in overdrawing in excess to the sanctioned limit. In furtherance of this, the plaintiff contends that being partners of the defendant no. 1 firm, the defendants no. 2 and 3 are jointly and severally responsible for all acts, omissions and commission of the defendant no. 1 firm. And that defendant no. 4 and 9 stood guarantor and hence its partners are also jointly and severally liable.

4. The plaintiff submits that the outstanding amount against the defendant no. 1 as on March 31, 1996 culminated to a total of Rs. 1,24,85,553.96/- (Rupees One Crore Twenty Four Lakhs Eighty Five Thousand Five Hundred and Fifty Three and Paise Ninety Six only). The plaintiff further submits that the defendant acknowledged and confirmed the outstanding debts by virtue of an Acknowledgement of Debt Slip and balance Confirmation Slip dated January 17, 1994 in favour of the plaintiff bank. The sum so admitted as on the above mentioned date was, Rs. 72,11,710.96 (Rupees Seventy Two Lakhs Eleven Thousand Seven Hundred and Ten and Paise Ninety Six Only). The plaintiff submits that over and above the Deed of Hypothecation, the defendant has also submitted the collateral security to the plaintiff bank by depositing the Original Title Deed of the property bearing No. 25, Indra Market, Delhi, thereby creating an Equitable Mortgage transaction in favour of the plaintiff bank. The plaintiff claims that it is therefore, entitled to recover the outstanding dues from the sale proceeds of the aforesaid property.

5. Separate Written Statements have been filed by defendants no. 1 to 3 as well

as 9 to 13. Defendants no. 4 to 8 submit that they did not offer or agree to act as guarantors and did not execute any guarantee deed, bond or any other documents in favour of the plaintiff. And that defendant no. 5 is not the partner of defendant no. 4 nor was he authorized by any of the defendants to offer, act or sign any guarantee bond in favour of the plaintiff or stand as guarantor for any of the other defendants.

6. Defendants no. 1 to 3 submit that claim of the plaintiff is hit by the provisions of Sec. 34 of CPC and that the interest charged is exorbitant and not in conformity with the established RBI Guidelines and Banking Regulations Act, thereby amounting to unfair trade practice on the part of the plaintiff. The answering defendants also submit that the present suit is covered under the HP State Co-Operative Societies Act, 1968 as the plaintiff bank is a registered society under the said Act and the defendants are the members of the society as B-Class Nominal Members. Therefore, any dispute between the parties should be referred to arbitration proceedings according to the Act. The defendants no. 9 to 13 also submit that they neither offered nor agreed to act as guarantor nor had executed any guarantee deed, bond or any other document for anyone or in favour of the plaintiff, and as such, no suit is maintainable.

7. Vide Order dated October 27, 1998, this Court framed the following issues:

a. Whether the plaint has been signed and verified and the suit instituted by a duly authorized person on behalf of the plaintiff. OPP

b. Whether the defendant no. 5 is a partner of defendant no. 4? If not, to what effect?

c. Whether defendants no. 4 to 13 had executed any guarantee for payment of the amount allegedly due from defendants no. 1 to 3 to the bank? If so, to what effect?

d. If issue no. 3 is proved in the affirmative, whether the surety is still in existence? If so, to what effect?

e. To what amount, if any, is the plaintiff entitled and from which of the defendants?

f. Whether the plaintiff is entitled to interest? If so, at what rate and for what period?

g. Relief.

8. Vide Order dated March 14, 2008, the suit qua defendant no. 11 was dismissed as having abated since the LRs were not impleaded following the death of the defendant no. 11. Further, vide Order dated February 3, 2009, the evidence of defendants no. 1 to 3 was closed. Furthermore, the evidence of defendant nos. 9 to 12 was closed vide Order dated August 22, 2012. Therefore, in effect, the only contesting defendants in this suit are defendants no. 4 to 8. I have heard the learned counsels for the parties. Issue wise findings are as under.

9. With respect to the first issue, the burden of proof of the first issue was placed on the plaintiff. The plaintiff submits that Sh. G.R. Singta, Law Officer was the duly authorized person to duly sign the plaint and institute the suit. He was examined as PW1. In his affidavit of evidence, he deposed that there was a General Power of Attorney dated February 20, 1984 from the plaintiff bank, which is exhibited as Ex. No. PW1/1. Further, in the cross-examination of PW1, he stated that there existed a Power of Attorney in his favour executed by the plaintiff bank. This hasn''t been refuted by the counsel for the defendants during the cross-examination. The evidence of PW1 has remained unassailed, and therefore I find this issue in favour of the plaintiff.

10. With regards the second issue, both the Partnership Deeds of the M/s. Jaggi Apple Co. dated April 19, 1991 as well as May 28, 1992 are placed on record. It is seen that neither of these deeds names defendant no. 5, Sh. Bal Krishan Jaggi as its partner. Further, defendant no. 5, in his affidavit of evidence has deposed that he was the manager of the defendant no. 4 firm and not one of its partners. Meanwhile, it is also pertinent to note that the Original Certificate issued by the plaintiff Bank dated December 9, 1997 showed the status of defendant no. 5 to be the manager of the defendant no. 4 firm. Thus, I find that the defendant no. 5 was not one of the partners of defendant no. 4 firm.

11. With respect to the third, fourth and fifth issue, it is seen from the documents placed on record that the defendants no. 4 to 8 have not executed any guarantee deed. However, the loan application is placed on record as Ex. PW2/2. It is seen that defendant no. 5 as well as defendant no. 10 have signed the Guarantor Column in the loan application, on behalf of defendants no. 4 and 9 respectively. The plaintiff has contended that these signatures in the application should not be treated as a mere guarantor undertaking, but must be treated as a guarantee agreement. Meanwhile, the Acknowledgement of Debt Slip and Balance Confirmation Slip dated January 17, 1994 in favour of the plaintiff bank are placed on record as PW 2/8. This acknowledgement slip addressed to the Manager of the plaintiff bank from the Partners of defendant no. 1 firm. It states as under:

We have availed CC Limit from your bank expired on 31.12.1993. We have to pay a sum of Rs. 72,11,710.96 (Rupees Seventy Two Lakhs Eleven Thousand Seven Hundred and Ten and Paise Ninety Six Only) to the bank against the said limit as on 17.1.1994, as per the Bank Statement. At present, our money is invested with the growers of Kashmir and payments are pending in the market, which is expected to be received in the month of March and April, 1994. We undertake that the bank loan with up to date interest will be liquidated in full by the end of April 1994.

It is also pertinent to note that this letter/acknowledgement slip is unassailed because the right to lead evidence, of the partners of the defendant no. 1 firm i.e. defendants no. 2 and 3 has been closed.

12. With respect to the liability of defendants no. 4 to 8, who are the purported guarantors, this Court in the case of Himachal Pradesh State Co-Operative Bank Ltd. v. Sh. Gulshan Kumar & Ors., CS (OS) 1221/1996 has decided a similar issue arising from the loan application of the same plaintiff bank. The Court held:

Ex. PW-1/A being a mere application does not bind either party save and except requiring said parties to comply with the terms of the application. I do not find any operative words therein to make defendants 3 and 6 as liable as guarantors. Said defendants have (only) shown their willingness to stand as guarantors. No letter of guarantee stated to have been executed by the defendant no. 6 has been proved. Qua, defendant no. 6 and its stated partners, namely defendants no. 7 to 10, the suit must fail on this short ground.

13. In the instant case, as noted above, the defendants no. 5 and 10 have merely signed the guarantors column of the Loan Application on behalf of defendants no. 4 and 9 firms. This cannot be considered to constitute valid guarantors undertakings/guarantee agreements. As observed in the aforesaid case, the signing defendants are not bound as guarantors by merely signing the loan application, and thus the suit qua defendants no. 4 and 9 firms along with their partners is not actionable.

14. Further, the accounts of the plaintiff bank which are maintained in the ordinary course of its business are placed on record as Ex. PW2/9. As per the said accounts, a sum of Rs. 72,11,710.96 (Rupees Seventy Two Lakhs Eleven Thousand Seven Hundred and Ten and Paise Ninety Six Only) was outstanding against the defendants as on 17.01.1994. Also, the defendants have acknowledged their liability of the same amount, vide the Acknowledgment Slip in Ex PW2/8. Moreover, it is seen from the Promissory Note placed on record as Ex. PW2/3, that the amount payable was to be with interest @24% per annum at quarterly rests from January 18, 1994 till the liquidation of loan amount in full. Thus, a total sum of Rs. 1,24,85,553.96/- (Rupees One Crore Twenty Four Lakhs Eighty Five Thousand Five Hundred and Fifty Three and Paise Ninety Six only) was outstanding against the defendants as on March 31, 1996. With respect to the last and operative issue, based on my afore noted findings, I find that the defendant no. 1 firm, through its partners, namely defendant no. 2 and 3 had also undertaken to the outstanding dues vide the Acknowledgment Slip which has been proved on record. Therefore, I find that the plaintiff is entitled to the sum of Rs. 1,24,85,553.96/- (Rupees One Crore Twenty Four Lakhs Eighty Five Thousand Five Hundred and Fifty Three and Paise Ninety Six only), as prayed from defendants no. 1 to 3. Further, as observed earlier, since there is no valid Guarantee Agreement from defendants no. 4 and 9, and the partners thereof, the suit against all these defendants stands dismissed. Decree be drawn accordingly.

