

(1998) 04 DEL CK 0017

In the Delhi High Court

Case No : I.A. No. 7859 of 1995 in Suit No. 279 of 1995

Indian Bank

APPELLANT

Vs

Cheese Wafers (India) Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Citation : (1998) 04 DEL CK 0017

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. M.S. Saluja, for the Appellant; Mr. Shyam Moorjani, for the Respondent

Judgement

Vijender Jain, J.—This is an application filed by the defendants under Order 37, Rule 3(5) read with Section 151 of the CPC (for short "CPC").

2. The suit has been filed by the plaintiff-Bank under the provisions of Order 37, CPC. Mr. Shyam Moorjani, learned Counsel appearing for the defendants, has argued that in terms of Order 37, Rule (2) of the CPC, plaintiff is required to state that no relief which does not fall within the ambit of this rule has been claimed in the plaint. However, the plaintiff has claimed 2% additional interest by way of penalty, which has been imposed on the defendants. Mr. Moorjani has further contended that such a recovery of 2% on account of alleged penal rate of interest is nothing but a penalty not covered under the provisions of Order 37, CPC. Mr. Moorjani has also contended that the plaintiff-Bank has sanctioned the credit facilities against hypothecation and pledge of raw material, finished goods, packing material, NSC etc. and the plaintiff should have taken prompt care as is required from a reasonable person dealing with securities of hypothecation and pledge of stocks.

3. Counsel has also contended that at the time of taking over the assets of the defendant as well as earlier Rajasthan Financial Corporation had informed about the same to the plaintiff Bank and had also advised to take charge of the

hypothecated and pledged stocks. He has contended that huge stocks were lying in the factory premises of defendant No. 1 valued at about Rs. 6.5 lakhs, which was much more than the plaintiff Bank could allege, to be due to them. The same was damaged on account of negligence of the plaintiff and non-action on the part of the plaintiff Bank.

Said non-action of the plaintiff was detrimental to the interest of defendants and the defendants are not liable to pay any amount to the plaintiff Bank. He has further argued that whether any liability pursuant to the suit filed by the plaintiff is existing, would be determined only after the evidence is recorded and, Therefore has contended that there are triable issues which have to be tried on the basis of these arguments. Mr. Moorjani has contended that leave to defend may be granted to the defendants unconditionally.

4. Mr. Moorjani has further contended that some of the FDR's, which were lying the plaintiff Bank were debited for discharge of the liability of the plaintiff Bank, however, the defendants are not aware as to whether any interest was paid on the said FDRs and if interest was paid at what rates and how the adjustment has been made by the plaintiff. Mr. Moorjani has contended that the statement of account does not specify as to at what rate plaintiff Bank has charged interest and the statement of account as well as plaint is contradictory in terms of rate of interest levied on defendants.

5. Lastly, Mr. Moorjani has contended that insurance cover has taken one in respect of the stocks etc. with United India Assurance Company and other in respect of its dues from Guarantee Corporation of India covering its risks arising from loss suffered by the plaintiff Bank on account of nonpayment the amount of premium of these policies were paid by the defendants. He argued that without taking recourse under the said policies, suit filed by plaintiff is not maintainable under Order 37 of the CPC. Whether the amount has been paid under the said policies of insurance or not. plaintiff Bank cannot fasten the liability on the defendants if the money has been received from the defendant Company by the plaintiff. According to the learned Counsel it would be another triable issue, which has to be gone into after recording the evidence in this regard.

6. In support of his contentions, Mr. Moorjani has cited unreported judgments of this Court in I.A. No. 4223/85 in Suit No. 1917/84 titled as Rajputana Exports Vs. Rudrakasha Exports, decided by the learned Single Judge of this Court on 3rd February, 1986 in which it is held that there is dispute regarding the interest as that was not a part of the agreement and the same is not covered under Order 37 of the CPC and such claim is beyond the scope of Order 37 of the CPC. Relying on the aforesaid authority, another learned Single Judge of this Court in A.A. Nos. 5400 & 5275/86 in Suit No. 605/1983 titled as United Western Bank Vs. Rajasthan State Tanneries Limited & Others, took the similar view on 9th May, 1991.

7. On the other hand, learned Counsel for the plaintiff Bank, Mr. M.S. Saluja, has

vehemently contended that there is no triable issue which has been raised in the application for leave to defend by the defendants. Mr. Saluja. has contended that in terms of the agreements between the parties, the plaintiff Bank was entitled to charge interest at the rate of 21.25% and the plaintiff has charged interest only at the rate of 17.5%. He has further stated that no penal interest at the rate of 2% as has been alleged by the defendants/applicants, has been charged by the plaintiff from the defendants. Mr. Saluja has contended that in the plaint, it has been averred that plaintiff is entitled to charge penal interest as defendants have failed to clear their dues but that does not amount to charges of penal interest.

8. Mr. Saluja has further contended that the statement of account is a true account which has been kept in due course of business and is duly certified under the Bankers Book Evidence Act. Mr. Saluja has also contended that the interest due on the FDRs was given to the defendants and it is at the behest of the defendants that the maturity value of the said FDRs was adjusted towards the loan liability. Mr. Saluja has also cited Punjab and Sind Bank Vs. Ram Prakash Jagdish Chander and Others, in support of his contentions.

9. I have given my careful consideration to the arguments advanced by the learned Counsel appearing for both the parties. In para-11 of the plaint, there is a specific averment made by the plaintiff that the defendants have admitted and acknowledged their liability and executed a letter of acknowledgement of debt on 7.2.1992 confirming the amount of Rs. 4,60,911.48 paise due and outstanding against the aforesaid loan account as on 31.12.1991. The defendants have also executed a letter of renewal on 17.2.1992 and a demand promissory note dated 17.2.1992 for a sum of Rs. 4,60,911.48 paise and promised to liquidate its liability shortly Photocopies of these documents are on pages 29 and 30 of the paper book. Can it be said that in view of their unambiguous and unequivocal acknowledgement of the liability it is open for the defendants to now claim and contend that they are not liable to pay the dues of the plaintiff Bank on account of certain adjustent not given by Bank. The answer is in the negative. Defendants did not raise even a whisper after signing this letter of acknowledgement of liability, Therefore, now to contend that the documents signed by the defendants were blank, which were subsequently filled up, is only an afterthought to cover their acknowledgement which they have made in the year 1992. Why the defendants chose to keep silent about their signatures having been obtained on blank documents. This plea was taken at the time of filing of the application for leave to defend not earlier at any stage. Conclusion, Therefore, is that plea now sought to be raised by the defendants to the effect that the signatures were obtained on blank documents, is merely a sham plea and devoid of any force. In para-13 of the plaint, it has been specifically mentioned that the agreed rate of interest was 21.25% per annum with quarterly rest, however, in the agreement it was very clearly mentioned that the interest is, in case of increase or decrease, as per the directions of the Reserves Bank of India, defendants would be liable to pay at the prescribed rates. In the same

para, the plaintiff has claimed that at present defendants are liable to pay interest at the rate of 17.75% with quarterly rest. What they have pleaded is that as the defendants have become defaulter, they are liable to pay additional overdue interest at the rate of 2% as per the directions of the Reserve Bank of India. How that plea could be construed to be a plea for charging interest. Even if plaintiff would have charged interest at the rate of 2% as per the directions of Reserve Bank of India plaintiff would have been justified in maintaining the suit under the provisions of Order 37 of the CPC as that would have been based on the terms agreed between the parties on the basis of the agreement consciously executed by the defendants, Therefore, the authorities cited by the learned Counsel for the defendants, Rajputana Exports Vs. Rudrakasha Exports (supra) and United Western Bank Vs. Rajasthan State Tanneries Limited & Others (supra), is of no help to the defendants. The question involved in those cases pertained to interest which was not the subject matter of an agreement, that is not the case before me.

10. Coming to the other submission of the learned Counsel for the defendants regarding the dual policy of insurance taken by the plaintiff from Guarantee Corporation of India and United India Assurance Company, those policies have been taken by the plaintiff Bank in order to protect themselves from financial losses in case of non-payment by the erring borrowers, even though the premium thereof has been paid by the defendants, that would be a subject matter between the Insurance Companies and the plaintiff Bank, defendants cannot claim that there is any triable issue on account of the premium being paid by the defendants. I do not see any force in the arguments advanced by the learned Counsel for the defendants. For the reasons discussed above, the application for leave to defend is devoid of any merit, no triable issues have been raised by the defendants, same is dismissed.

Suit No. 279/1995

List this matter for further proceedings on 22nd July, 1998.