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(1999) 10 DEL CK 0051

In the Delhi High Court

Case No : Suit No. 1968 of 1996

Indian Bank APPELLANT

Vs

M/s. Shree Venkateshara Printing Press and Others RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Citation : (1999) 10 DEL CK 0051

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

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

Judgement

Vikramajit Sen, J.—This is a suit for the recovery of Rs. 9,24,089/- (Rs. Nine lakhs twenty four thousand eighty nine only). The Plaint discloses that on the application of Defendant No. 2, who is the proprietor of Defendant No. 1, and in consideration of Defendants 3 and 4 having stood personal guarantee for the repayment of the Credit Facilities granted by the plaintiff to Defendant No. 1, an Open Cash Credit (in working capital) Facility of Rs. 1,00,000/- (one lakh only), and a Medium Term Loan of Rs. 1,00,000/- (Rs. one lakh) was granted on 7.7.1989. On the request of Defendants 1 and 2 the plaintiff increased the Cash Credit Facility by a further sum of Rs. 1,00,000/- (Rs. one lakh only), and on a further request made by them converted this into a normal Open Cash Credit Facility. The following documents were executed.

(i) Demand Promissory Note dated 03.06.1992 for Rs. 2,75,060.40.

(ii) Renewal Letter dated 03.06.1992.

(iii) Agreement for Demand Cash Credit dated 03.06.1992.

(iv) Demand Promissory Note dated 03.06.1992 for Rs. 1,49,948.05.

(v) Renewal letter dated 03.06.1992.

(vi) Letter of acknowledgement of Debt dated 03.06.1992 for Rs. 2,75,060.00.

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(vii) Letter of acknowledgement of dated 03.06.1992 for Rs. 1,49,948.05.

2. Defendants 3 and 4 renewed the guarantee on 3.6.1992. The Plaint further states that in 1981 the Defendants had agreed to pay interest at the rate of 4% and 3.5% per annum over and above the R.B.I. rate subject to a minimum of 14% per annum and 13.5% per annum with quarterly rests in the Open Cash Credit Account and Medium Term Loan account respectively. On to pay the interest was agreed between the parties to be payable at the rate of 18.25% and 15.5% respectively and that the interest rate would be increased or decreased in accordance with the R.B.I. guidelines. It is stated in the Plaint that at the time of its filing the Defendants were liable to pay interest at the rate of 20.75% per annum and 19.75% per annum respectively. The Defendants also obligated themselves to pay additional penal interest at the rate of 2% per annum over and above the prescribed rates in case of delay or default in the repayment schedule. Since this has occurred the Defendants are liable to pay interest at the rate of 22.75% per annum and 21.75% per annum respectively with quarterly rests.

3. It is further averred that the Defendants acknowledged their indebtedness on 24.3.1994 for a sum of Rs. 4,01,022.40. (Rs. Four lakhs one thousand twenty two and paise forty only) and Rs. 2,11,646.05. (Rs. Two lakhs eleven thousand six hundred forty six and paise five only) on these two accounts, as on 31.12.1993. They further acknowledged the liability in terms of their letters dated 28.1.1991, 3.9.1991, 31.3.1993, 2.12.1994 and 26.6.1995. In accordance with the plaintiff''s books of accounts maintained by them in the ordinary course of business, a sum of Rs. 6,88,280/- (Rs. Six lakhs eighty eight thousand two hundred eighty only) was due and payable against the Open Cash Credit amount and Rs. 2,35,800 (Rs. Two lakhs thirty five thousand eight hundred only) in respect of the Medium Term Loan Account, thereby aggregating Rs. 9,24,080/- (Rs. Nine lakhs twenty four thousand and eighty only) as on 31.12.1991. A Legal Notice issued on 14.11.1994 failed to elicit the requisite response. Hence the suit.

4. A Written Statement was filed in opposition to the Plaint, but as observed in the Order dated 20.5.1998, the claim of the plaintiff was virtually admitted and the learned counsel for the Defendants sought and obtained an adjournment to take instructions from the Defendants about making payment. The Defendants were ordered to be present in Court on the next date of hearing. Since these directions were not complied with ex parte orders were passed on 27.7.1998 and the plaintiff was permitted to file affidavit by way of evidence. This has been done in terms of the affidavit of Mr. B.L. Satyogi, Manager of the plaintiff Bank and Mr. A.K. Chhabra, Assistant General Manager Overseas Branch.

5. The evidence on behalf of the plaintiff, which remains uncontroverted, is that Shri B.L. Satyogi, being the Manager of the concerned Branch of the plaintiff Bank from 1.4.1987 to 8.10.1994 is fully conversant with the facts of the case. He has deposed that Defendant No. 2, as the Sole Proprietor of Defendant No. 1, is the Principal Borrower and Defendants 3 and 4 are the Guarantors in respect

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of the credit facilities granted by the Bank. He has deposed about Defendant No. 2''s request for the grant of Medium Term Loan of Rs. 1,00,000/- and open Cash Credit Facility of Rs. 1 lakh and that this was accordingly granted to her as per Ex. P-2 and P-3. The Continuing Guarantees executed by Defendants Nos. 3 and 4 were duly proved and are Ex. P-4 and P-5. He further deposed that Ex. P-6 was the letter dated 10.11.1989 whereby the Open Cash Credit Facility was enhanced by Rs. 1,00,000/-. Thereupon the Demand Promissory Note dated 10.11.1989 Ex. P-7 was executed by Defendant No. 2 as well as the Renewal letter Ex. P-8, Demand Promissory Note Ex. P-8(a), Agreement for Demand Cash Credit Ex. P-9, Demand Promissory Note Exbt P-10, Renewal Letter Ex. P-11, Letter of Acknowledgment for Rs. 1,49,948.05, Ex. P-13, Letter of Continuing Guarantee Ex. P-12, and letter of acknowledgment of Debt for Rs. 2,75,060.40, Ex. P-14 were duly executed on 3.6.1992. On this date Defendants 3 and 4 stood guarantee for the due repayment of the enhanced Open Cash Credit Facility of Rs. 2,00,000/- and Medium Term Loan of Rs. 1,00,000/-. He thereafter deposed about the interest rate, in accordance with the averments made in the Plaint. He has also proved the letter of acknowledgement of Debt each dated 24.3.1994 confirming the amount of Rs. 4,01,022.40 Ex. P-16 and Rs. 2,11,646.05 Ex. P-15 and that the Defendants had admitted a liability in their letters Ex. P-17 to P-21. He further proved the legal notice issued on the failure of the Defendants to clear their account, being Ex.P-22 together with postal receipts and acknowledgment Exts. P-23 to P-28. He has thereafter details the amounts due and outstanding in favor of the plaintiff and against the Defendants, in an aggregate sum of Rs. 9,24,080/-. The duly certified Statement of Accounts Exts. P-29 to P-32 was proved.

6. Shri A.K. Chhabra Assistant General Manager of the plaintiff Bank has duly proved the Power of Attorney Ex. PW2/1 and stated that the Plaint has been signed and verified and the suit had been instituted by a duly authorised person on behalf of the plaintiff Bank.

7. The testimony of its witnesses as remained uncontroverted. I am satisfied that the plaintiff has sufficiently proved the correctness of the statements made in the Plaint. I, accordingly, pass a decree in favor of the plaintiff and against the Defendants jointly and severally for a sum of Rs. 9,24,080/- together with interest thereon from the date of the filing of the suit till its realisation at the rate of 18% per annum. I further order that the hypothecated stock and plant and machinery if any, be sold for the recovery of the decretal amount. In the event of a shortfall, the remaining decretal amount shall be recoverable from the personal assets of the Defendants. The plaintiff is also be entitled to the costs of the suit.

8. Decree sheet be drawn up accordingly.

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