(2007) 06 AP CK 0028

In the Andhra Pradesh High Court

Case No : C.C.C.A. No. 31 of 1985

Indian Bank, Secunderabad Branch — APPELLANT

Vs

K.T. Abraham and Another — RESPONDENT

Date of Decision : 04-06-2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11

Citation : (2008) 1 ALD 64 : (2008) 2 BC 642

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Suresh, for the Appellant; No representation, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Indian Bank, Secunderabad Branch, represented by its Manager, being aggrieved of the nature of the decree made in OS No. 667 of 1980, dated 18.6.1982, on the file of V Additional Judge, City Civil Court, Hyderabad, had preferred this appeal.

2. Sri Suresh, learned Counsel representing the appellant-plaintiff had pointed out that the learned Judge had totally erred in being silent about the future interest on the suit amount from the date of suit till the date of realization. The learned Counsel also pointed out that in the light of the facts and circumstances granting a decree permitting payment in instalments also cannot be sustained. The learned Counsel also pointed out that no evidence had been let in by respondents-defendants. The learned Counsel also would further point out that the Advocate''s fee as certified also is not in accordance with the Rules since it was shown as Rs. 1,256/- instead of Rs. 3,008/-, hence the same to be rectified accordingly.

3. Heard the learned Counsel for the appellant-plaintiff. None represents respondents-defendants.

4. In the light of the submissions made by the learned Counsel representing the

appellant-plaintiff, the following points arise for consideration in this appeal:

1. Whether non-granting of future interest on the suit amount from the date of suit till the date of realization be justified in the facts and circumstances of the case?

2. Whether the learned Judge is justified in granting a decree for instalments in the facts and circumstances of the case?

3. If so, to what relief the parties would be entitled to?

Points 1 and 2:

5. Indian Bank, Secunderabad Branch, represented by its Manager, appellant herein, as plaintiff instituted the suit OS No. 667 of 1980 on the file of V Additional Judge, City Civil Court, Hyderabad praying for recovery of an amount of Rs. 62,806.84 ps with interest thereon and for costs. It was pleaded in the plaint as hereunder:

Defendant No. 1 is the sole distributor of Beer Manufactured and Brewed by M/s. Punjab Breweries Limited, Ludhiana, for States of Andhra Pradesh, Tamilnadu, Karnataka and Kerala. At the request of defendant No. 1, the Ambala Cantonment, Branch of the plaintiff Bank opened letter of credit in favour of M/s. Punjab Breweries Limited, Ludhiana to be operated through the Bank''s Ludhiana branch. This letter of credit was provided in respect of consignments of beer to be dispatched by the manufacturer to the sole distributor at Secunderabad through Kanpur-Calcutta Goods Carriers, Kanpur. The lorry receipts were being drawn in favour of M/s. Indian Bank, Secunderabad as the consignee. The arrangement was that defendant No. 1 should retire the lorry receipts on full payment of the value of the goods and take delivery of the goods from the carriers. The defendant No. 1 contrary to the understanding to delivery of the consignment without production of lorry receipt, depriving the plaintiff from the value of the goods. On demanding the payment, the defendant No. 1 executed a demand promissory note on 23.7.1977 for Rs. 1,30,383.68 being the amount due by him towards the value of consignment goods which he unauthorisedly took with an agreement to payment interest at 9% per annum over the Reserve Bank of India rate with a minimum of 18% per annum. The defendant No. 1 did not pay the amount. Hence, a legal notice was issued on 6.10.1977. Defendant acknowledged his liability to pay the amount, but did not pay.

6. The suit summons had been duly served upon respondents-defendants and they had entered appearance through their Advocate and filed their written statement with the following averments:

The Branch Manager of the plaintiff Bank is not entitled to institute the suit on behalf of plaintiff. The suit is barred by limitation. The suit is bad for mis-joinder and non-joinder of necessary and proper parties. The goods are to be dispatched through Kanpur-Calcutta Goods Carriers, but consignors are dispatching the goods through various transports contrary to agreement. The goods were being booked as ''Door delivery'' and the same were being delivered by the transporters at godown of defendant, as such the allegation that D.1 had no right to take delivery of goods without lorry receipt is not tenable. The pronote in question was obtained by the Bank at threat of institution of legal proceedings and due to financial difficulty this defendant was forced to execute the same. Plaintiff has no cause of action to file the suit. Without prejudice to the above contents, it is prayed that the defendant be permitted to pay the amounts in instalments of Rs. 500/- per month.

7. On the strength of the above pleadings, the following issues were settled before the trial Court:

1. Whether the Assistant General Manager of the plaintiff Bank is competent to institute the suit?

2. Whether the suit is bad for mis-joinder and non-joinder of parties?

3. Whether the suit is barred by limitation?

4. Whether the plaintiff obtained signature on the promotes and other documents by coercion and undue influence and hence not binding on the defendants?

5. Whether the suit claim is correct?

6. Whether the plaintiff has no cause of action?

7. Whether the defendants are entitled for instalments?

8. To what relief?

8. On behalf of the appellant-plaintiff, PW. 1 was examined and Exs. A1 to A32 were marked and on behalf of the respondents-defendants none had been examined and no documents had been marked.

9. In the light of the evidence of PW. 1 and also Exs. A1 to A32 and on the strength of the request made by the counsel representing respondents herein, defendants before the trial Court, the suit was decreed with costs directing the defendants to pay the suit sum in monthly instalments of Rs. 1,500/- starting from 5.7.1982 and in case of default of any one instalment, the appellant-plaintiff Bank is at liberty to proceed against respondents-defendants and to recover the entire sum due by them in lumpsum.

10. The transaction is a commercial transaction. It is also stated by the learned Counsel that though this instalment decree was made as on 18.6.1982, till now no payment of any instalment as such had been made. Be that as it may, when it is a commercial transaction normally the parties are bound by the terms of the contract agreed upon and the learned Counsel for the appellant specifically pointed out that the judgment is silent relating to the granting of future interest on the suit amount from the date of suit till the date of realization and evidently since the decree would be drawn in accordance with the judgment, the decree also is silent. It is needless to say that the appellant- plaintiff being a banking

institution and also in view of the fact that the respondents-defendants borrowed this amount for commercial purpose, non-granting of interest would not be just and proper. In view of the same, the suit is decreed with costs directing the respondents-defendants to pay the suit sum with interest at 18% per annum with quarterly rests from the date of suit till the date of decree and subsequent thereto 6% per annum thereon till the date of realization.

11. The other question in controversy is that whether the trial Court is justified in granting an instalment decree on the request made by the counsel representing respondents-defendants in the facts and circumstances of the case.

12. Order XX Rule 11 of the CPC dealing with decree may direct payment by instalments, specifies as hereunder:

Decree may direct payment by instalments:

(1) Where and insofar as a decree is for payment of money, the Court may for any sufficient reason (incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that) payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) Order, after decree, for payment by instalments : After the passing of any such decree, the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

13. It is needless to say that Sub-section (1) is relevant for the present purpose. It is also not in controversy that on behalf of respondents- defendants, no evidence as such had been let in. The learned Counsel representing the appellant had placed strong reliance on the judgments reported in Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others, Bank of India Vs. Rakesh Jain and Others, and Sher Alam Vs. United Bank of India, . The Division Bench of Gujarat High Court in Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others, expressed the view that in commercial transactions by the Public Financial Institutions where money is advanced on security including personal guarantees, the granting of instalments, for payment of decretal amount is ruled out because that would frustrate the very purpose of taking security. Even otherwise, the words ''the Court may for any sufficient reason'' in Sub-section (1) of Order XX Rule 11 of the Code would go to show that the Court must record reasons and for arriving at a conclusion whether to grant a decree for instalments or not, there should be some acceptable evidence placed before the Court and on the mere request made by the counsel in the absence of any acceptable evidence whatsoever, the Court will not be justified in making such decree. Hence, this Court is of the

considered opinion that granting a decree permitting respondents-defendants to pay the decretal amount by way of instalments also cannot be sustained.

14. Incidentally the Advocate''s fee had been specified as Rs. 1,256/- instead of Rs. 3,008/- and it was stated by the learned Counsel for the appellant that it is not in accordance with the Rules. It is needless to say that the said defect be rectified in accordance with the Rules.

Point No. 3:

15. In the light of the reasons recorded above, the suit is decreed with an interest of 18% per annum with quarterly rests from the date of suit till the date of passing of the decree and 6% per annum thereafter till the date of realization, with costs through out.

16. The appeal is accordingly allowed as indicated above.