

(1996) 11 DEL CK 0010

In the Delhi High Court

Case No : Suit No. 215 of 1995 and Interim Application No. 2433 of 1996

Indian Overseas Bank

APPELLANT

Vs

K.K. Sharma

RESPONDENT

Date of Decision : 15-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Citation : (1996) 1 BC 194 : (2003) 39 DRJ 644

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : R. Vasudevan, K.K. Sharma and Saroj Sharma, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This is a suit instituted by the plaintiff against the defendants for recovery of Rs.8,54,120.35p with pendente lite and future interest till recovery.

(2) The defendant No.1 was an account holder with the plaintiff Bank. The plaintiff granted a Cash Credit facility of Rs.50,000.00 to the defendant and in consideration of the same," a demand promissory note dated 28.10.1988 and a letter of hypothecation dated 28.10.1988 hypothecating the umbrella stitching machines, over lock machines, garments etc., lying at the premises of the defendant No.1 and letter of hypothecation dated 28.10.1988 hypothecating the aforesaid machineries in favor of the plaintiff were executed. Besides, the defendant No. 2 also executed a letter of continuing guarantee dated 28.10.1988 assuring and guaranteeing repayment of the amount due from the defendant No. 1 together with interest and charges thereon. The defendant No. 1, however, after obtaining the aforesaid facilities became highly irregular in maintaining the account. Consequently, the plaintiff issued a number of reminders to the defendants. Inspire of the aforesaid efforts on the part of the plaintiff, the defendant No. 1 failed/neglected to regularise the account though he promised to do so each time.

(3) On 25.10.1991, the defendant No. 1 executed a revival letter whereby the defendant No. 1 acknowledged the execution of the promissory note dated 28.10.1988 and his liability thereunder. On 2.3.1993, the defendant No. 1 acknowledged and confirmed that as on 31.12.1992, the debit balance in his account was Rs.5,15,870.35p. On the said date, that is , on 2.3.1993, the defendant No. 2 also acknowledged and confirmed the debit balance in the account of defendant No. I as being Rs.5,15,870.35p as on 31.12.1992 and executed a revival letter acknowledging her liability under the letter of guarantee dated 28.10.1988. On 3.10.1994, the defendant No. 1 executed another promissory note dated 28.10.1988 and his liability thereunder.

(4) After serving of a legal notice by the plaintiff on the defendants, the present suit has been instituted. The defendants have been served with summons and they have appeared in the suit and have filed a written statement. In the written statement, the defendants have acknowledged their liability in respect of the entire claim of the plaintiff. It is, however, stated in the said written statement filed by the defendants that the defendant No. I met with an accident and, Therefore, he could not attend to his duties properly for about two months as a result of which he suffered heavy losses like debit on cloth and debit on other material and payments of threads and accessories. It is stated that the defendant No. I had no other alternative, but to close his business and that none of the defendants have any means to pay the dues to the plaintiff.

(5) I have heard the counsel appearing for the plaintiff and also both the defendants appearing in person before me today.

(6) In view of the averments made in the written statement, there are apparent admissions of fact by the defendants to the averments made in the plaint. In view of the aforesaid admissions of fact by the defendant Nos. 1 and 2 in their written statement in respect of the claim made in the plaint, in my considered opinion, the provisions of Order 12 Rule 6 CPC are applicable and no issue is required to be framed in the present case in view of the admissions on the part of the defendant Nos. 1 and 2 in respect of the claim of the plaintiff in the suit.

(7) In view of the admissions on the part of the defendant Nos. 1 and 2 in respect of the claim made in the suit by the plaintiff, the suit stands decreed with cost. In addition, the plaintiff shall be entitled to pendente lite and future interest at the rate of 9 per cent per annum from title date of institution of the suit till realisation.

(8) I.A. No. 2433/1996 stands also stands disposed of.