**(2002) 02 DEL CK 0064**

**In the Delhi High Court**

**Case No :** Suit No. 544/84

Indian Overseas Bank APPELLANT

Vs

S.N.G. Castorete Pvt. Ltd. and Others RESPONDENT

**Date of Decision :** 06-02-2002

**Acts Referred:**

**Citation :** (2002) 5 AD 174 : AIR 2002 Delhi 309 : (2002) 62 DRJ 32

**Hon'ble Judges :** Jiwan Dass Kapoor, J

**Bench :** Single Bench

**Advocate :** Mahender Singh, for the Appellant; Nemo, for the Respondent

## Judgement

J.D. Kapoor, J.—This is a suit for recovery of rs. 2,29,548.31 towards the outstanding amount against bridge loan facility.

2. The case of the plaintiff in brief is as under:-

3. The plaintiff is a body corporate constituted under the Banking Complies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Officer at 762, Anna Salai, Madras and branch office at F-47, Malhotra Building, Janpath, New Delhi. Defendant No. 1 is a company registered under the Companies Act, 1956, carrying on business at 14A/1, Sahibabad industrial City-IV, Ghaziabad, U.P. Defendant No. 1 was at all material times, carrying on the business of manufacture of pre-cast, pre stressed hollow core concrete slabs. Defendant Nos. 2 to 5 are the directions of defendant No.1

4. The plaintiff sanctioned various credit limits from time to time to defendant No. 1 including the cash credit, bridge loan and bills purchase and letter of guarantee. Some time in April, 1977, a bridge loan of Rs. 3.5. lakhs was granted to defendant No. 1 carrying interest @ 7.5% over bank rate with minimum 161/2% per annum with quarterly rests repayable on demand. Demand promissory note for Rs. 3.5. lakhs was executed by defendant No.1. Defendant also signed a deed of hypothecation to the extent of Rs. 6 lakhs as security for bills purchase limit of Rs. 3.5. lakhs and bridge loan of Rs. 2.5 lakhs. Vide letter

 

dated 8th August, 1977, Managing Director of defendant No. 6 wrote to the plaintiff bank that at the request of defendant No.1, defendant No. 6 confirms that it shall make payment to the plaintiff bank found due to defendant No. 1. The plaintiff had also informed the Uttar Pradesh Financial Corporation (in short UPFC) about the granting of fresh loan of Rs. 3.5. lakhs as against its letter dated 25.3.1977. The defendant No. 6 was also informed that the said loan was not liquidated and a sum of Rs. 2 lakh was outstanding.

5. By letters of acknowledgment of debts/security dated 10.1.1980, 9.12.1982, 25.3.1980, 12.1.1980 and 31.10.1983, the defendant Nos. 1 to 5 confirmed and acknowledged the outstanding as mentioned in the said letters as due to the plaintiff int he bridge loan facility. Vide letter dated 6.4.1981, defendant Nos. 2 to 5 guaranteed the repayment of the outstanding amount. The plaintiff by legal notice of demand dated 14.5.1979 sent under Regd. A.D. post called upon the defendants jointly and severally to pay inter alias the then outstanding of Rs. 1,82,901.07 in the bridge loan account together with interest due thereon within 14 days from the date of receipt of the said notice. The said notices were duly served on the defendants. The defendants by way of reply to the plaintiff''s notice never disputed any of the liabilities. Hence this suit.

6. As nobody was appearing on behalf of the defendants for the last two/three dates of hearing, defendants were proceeded exparte vide order dated 19.8.1997. plaintiff has filled affidavit by way of evidence and proved the following documents:-

(i) Exhibit PW 1/1 is the power of attorney in favor of Mr. Raghava Varma to sign, verify & institute the suit; (ii) Exhibits PW 1/2 & PW 1/3 are the letter dated 8th December, 1976 & 25th March, 1977 whereby defendant No. 6 requested the plaintiff bank to grant bridge loan facility to defendant No. 1; (iii) Exhibit PW 1/4 is the letter dated 8.8.1977 whereby defendant No. 6 confirmed that defendant No. 6 shall make payment to the plaintiff bank of the amount due to defendant No. 1; (v) Exhibit PW 1/5 is the statement of accounts duly certified; (vi) exhibits PW 1/6 to 1/18 are the balance confirmation letter and revival letters executed by defendant Nos. 2 to 5 dated 13th August, 1979, 10.1.1980 and 9.12.1982; (vii) Exhibits PW 1/9 to 1/13 are the telegraphic notices dated 26.3.1984 issued to defendant Nos. 1 to 5 respectively; (viii) Exhibits Pw 1/14 & 1/15 are the telegraphic notices dated 1./4.1984 to 2.4.1984 to defendant No. 6; (ix) Exhibit PW 1/16 is the legal notice dated 14.5.1979 to defendant Nos. 1 to 3; (x) Exhibit PW 1/17 is the guarantee deed dated 6.4.1981 executed by defendant Nos. 1 to 5; (xi) Exhibits PW 1/18 & 1/19 are the letters dated 7.3.1984 & 5.5.1981 addressed to the plaintiff for regularisation of CC account; (xii) Exhibits P-1 to P-20 are the loan documents, resolutions passed by defendant No. 1 and letters addressed by defendant No. 1 to the plaintiff bank.

7. As is apparent from the aforesaid documents, the plaintiff has successfully proved its claims against the defendants 1 to 5 as defendant No. 1 is the principal borrower and defendant Nos. 23 to 5 are the guarantors. Defendant No.

 

6 cannot be held liable as the letter dated 8th August, 1977 was only as assurance by defendant No. 6 to pay the amount and it cannot be construed as a guarantee deed. It was nothing but a recommendation by defendant No. 6 in favor of defendant No. 1 to advance the loan. The legal liability of a person arises only if a proper document is executed as was done in the case of defendant Nos. 2 to 5. Defendant Nos. 2 to 5 executed deed of guarantees. Letter sent by defendant No. 6 was a general assurance that defendant No. 6 takes the guarantee of making payment against the outstanding amount. This is a general assurance of a person without having any legal force.

8. In view of the foregoing reasons, suit is decreed against defendant Nos. 1 to 5 for Rs. 2,29,548.31 with cost along with pendentelite and future interest @ 19.5% till realisation. Decree sheet be prepared accordingly.