

(2023) 03 GUJ CK 0108
In the Gujarat High Court

Case No : R/Letters Patent Appeal No.1 Of 2023 In R/Special Civil Application
No.2375 Of 2016

Janak Shantilal Patel

APPELLANT

Vs

M/S Aditya Birla Finance Limited

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Indian Contract Act, 1872 — Section 126

Citation : (2023) 03 GUJ CK 0108

Hon'ble Judges : A.J.Desai, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Devang Nanavati, Rohan A Shah, Jal Soli Unwala, Amar N Bhatt,
Bomi H Sethna

Final Decision : Dismissed

Judgement

A. J. Desai, J

1. The present appeal under Clause 15 of the Letters Patent has been filed by the appellants - original petitioners challenging the CAV judgment dated 30.9.2022 rendered by learned Single Judge in captioned writ petition by which learned Single Judge has refused to treat the present appellants as individual applicants and upheld the decision of the respondent No.1 Finance Company of refusing to grant benefits to the appellants provided under a Notification dated 14.7.2014 issued by the Reserve Bank of India by which foreclosure charges / prepayment penalties of term loan sanctioned to individual borrowers were ordered to be foregone.

2. The respondent No.1 - Finance Company had appeared on caveat through learned Senior Counsel Mr. Jal Soni Unwala assisted by learned advocate Mr. Bomi H. Sethna. Subsequent to issuance of notice, learned advocate Mr. Amar Bhatt has appeared for respondent No.2 - Reserve Bank of India.

3. Learned advocates appearing for the parties have agreed that the appeal may

be heard finally and accordingly, the same is heard finally.

4. The case put forward by the appellants - original petitioners are as under :-

4.1 That both the appellants jointly applied for loan to respondent No.1 Finance Company who by its letter dated 30.3.2012 sanctioned loan of Rs.58,75,00,000/- (Rupees Fifty Eight Crores Seventy Five Lacs only) by way of Rental Discount Facility. The rate of interest was floating rate. The interest rate referred in the said sanctioned letter reads as under :-

"Interest Rate :- Rate applicable for the facility which is being offered to you is 12.5% p.a. floating which is linked to Indusind Bank base rate (i.e. Indusind Bank base rate + Margin). Indusind Bank base rate at present is 10.75% p.a. Margin offered is + 1.75% p.a. Hence the applicable current floating ROI is 12.50%."

4.2 The period of loan was 96 months which was revised to 180 months later on. It is the case of the appellants that the said sanction letter dated 30.3.2012 was amended by respondent No.1 by letter dated 13.4.2012 in which three persons, namely, Mrs. Amisha Janakbhai Patel, Mrs. Sharmila Mukeshbhai Patel and M/s. Sai Enterprises (a Partnership Firm in which the present appellants are Partners) were shown as guarantors and certain terms and conditions were revised and accordingly, the loan was sanctioned and thereafter disbursed. The appellants thereafter started paying the installments and when the appellants shown their readiness and willingness to pay the entire loan amount, the respondent No.1 Finance Company by letter dated 1.4.2015 asked the appellants to pay total amount of Rs.51,60,89,236/- including the prepayment charges to the tune of Rs.1,12,55,885/- since as per one of the conditions, on prepayment of loan, such charges were required to be paid by the loanee. Accordingly, the appellants paid Rs.50,16,89,236/- by different cheques. The respondent No.1 issued No Due Certificate on 20.4.2015.

4.3 Meanwhile, having come to know about issuance of a Notification dated 14.7.2014 at the instance of the Reserve Bank of India with regard to levy of foreclosure charges/pre-payment penalty on Floating Rate Loans, the appellants requested the respondent No.1 to refund the prepayment charges to the tune of Rs.1,12,55,855/- with interest @ 12% p.a. The said demand was rejected by respondent No.1 by its letter dated 3.9.2015. Hence, writ petition came to be filed challenging the action of the respondents.

4.4 In response to the notice issued by learned Single Judge, the respondent No.1 filed affidavit and opposed grant of relief as prayed for by the original petitioners on the ground that as per the Letter of Amendatory Sanction terms dated 13.4.2012, the present appellants as well as their wives and M/s. Sai Enterprises which is a Partnership Firm had jointly applied for loan and M/s. Sai Enterprises, a Partnership Firm of which the present appellants are Partners, they would not be entitled for the benefit provided under Notification dated 14.7.2014 issued by the Reserve Bank of India.

4.5 Learned Single Judge after considering the rival submissions of the rival parties and after examining the documents on record, refused to accept the contentions raised by the appellants that the loan was applied only by the present appellants as individuals and other three persons stood as guarantors and accordingly dismissed the petition.

4.6 Hence the present appeal.

5. Mr. Devang Nanavati, learned Senior Counsel assisted by learned advocate Mr. Rohan A. Shah appearing for the appellants has taken us through the first sanction letter dated 30.3.2012 issued by the respondent No.1 Finance Company in favour of the present appellants, the modified (amended) letter of sanction dated 13.4.2012, several terms and conditions referred in the said letter, Notification dated 14.7.2014 issued by the Reserve Bank of India and the findings of learned Single Judge in the impugned judgment. He would submit that initially, when the appellants had applied for loan, by a communication dated 30.3.2012, offer letter for loan against properties was granted to the present appellants to the tune of Rs.58,75,00,000/- (Rupees Fifty Eight Crores Seventy Five Lacs only). However, by another amended letter of sanction dated 13.4.2012, besides the names of the appellants, names of three persons have been referred. The said sanction letter was addressed to the present appellants wherein the names of their wives and one M/s. Sai Enterprises have been shown as guarantors. Therefore, the say of the respondent No.1 Finance Company cannot be accepted that all five persons have applied for loan which was granted in their favour.

By taking us through the letter dated 13.4.2012, he would further submit that in the revised conditions which are referred in the said letter, names of the appellants were shown as applicants and co-applicants whereas the names of other three persons i.e. wives of the appellants and Partnership Firm were shown as guarantors. He would further submit that the wives of the appellants and the Partnership Firm stood as guarantors of the applicants and, therefore, additional properties were added as security which was mortgaged against the said loan.

He would further submit that another column suggests that in earlier conditions referred in the letter dated 30.3.2012, all the owners of the property to come as co-applicants to the loan whereas the revised / amended conditions clearly suggests that all the owners of the property to come as co-applicants / guarantors to the loan which clearly suggests that the loan was sanctioned in favour of the present appellants. He would further submit that initially, the loan amount was disbursed as per the terms and conditions and finally the said loan amount was repaid by the present appellants and, therefore also, it establishes that the appellants have availed the loan as individuals and, therefore, the Notification dated 14.7.2014 is applicable and the appellants would be entitled for the prepayment charges which were paid by the appellants as penalty according to the terms and conditions. He would further submit that the guarantors are not a party to the contract of loan availed, but they are

guarantors and, therefore, Section 126 of the Indian Contract Act, 1872 is applicable.

5.1 Mr. Nanavati would further submit that other three persons including a Partnership Firm being guarantors promised to pay or to discharge the liability of the principal debtor, in case of his default and, therefore, those persons cannot be treated as a loanee as per the case put forward by respondent No.1. In support of his submissions, by relying upon the decision of the Hon'ble Supreme Court in the case of Maitreya Doshi v. Anand Rathi Global Finance Limited and another, 2022 SCC Online 1276, he would submit that the guarantors cannot be treated as joint contractors and, therefore, loan which was disbursed to the appellants should have been treated by the respondent No.1 as well as by learned Single Judge to individuals and, therefore, the Notification dated 14.7.2014 would be applicable.

5.2 By relying upon another decision of the Kerala High Court in the case of Popular Bank Limited v. The United Coir Factories and others reported in Manu/Ke/0249/1961, he would submit that the surety or guarantor cannot be treated as joint contractor and they are offering their properties for mortgage to ensure that if principal fails to keep his contract, they would be liable to pay and the loaner would be entitled for the transaction through these properties. He, therefore, would submit that the appeal be allowed and the order passed by learned Single Judge be quashed and set aside and the respondent No.1 be directed to refund the amount of Rs.1,12,55,855/- with interest @ 12% p.a.

6. On the other hand, Mr. Jal Soli Unwala, learned Senior Counsel assisted by Mr. Bomi H. Sethna appearing for the respondent No.1 Finance Company has vehemently supported the decision of the respondent No.1 which was upheld by learned Single Judge. He would submit that if the amended sanction letter dated 13.4.2012 in the column of applicants to the loan is perused, names of all five persons have been mentioned. He would further submit that in addition to the original applicants i.e. present appellants, names of other three persons have stood as guarantors. The fifth applicant is M/s. Sai Enterprises, a Partnership Firm in which the appellants are the only partners and having different properties in the names of those additional persons, namely, wives of the appellants and the Partnership Firm i.e. M/s. Sai Enterprises. Even additional properties were mortgaged and ultimately, term loan was granted to the appellants to the tune of Rs.58,75,00,000/-. He would further submit that the document dated 13.4.2012 was signed by the present appellants, their wives and by both the appellants as partners on behalf of M/s. Sai Enterprises. He would further submit that the said letter clearly mentions that all the borrowers have accepted the terms and conditions mentioned in the said offer letter.

6.1 By taking us through the said letter dated 13.4.2012, Mr. Unwala would submit that at no where, they have signed as guarantors. On the contrary, they have accepted the terms and conditions of the said sanction letter and, therefore, the respondent No.1 Finance Company has treated all the persons in

whose favour the sanction was granted as applicants. Further, the applicant No.5 - M/s. Sai Enterprises, a Partnership Firm cannot claim benefit under Notification dated 14.7.2014 issued by Reserve Bank of India since the same would be applicable to individual borrowers and not to Partnership Firm. He would further submit that all these aspects have been rightly dealt with by learned Single Judge.

6.2 Mr. Unwala would further submit that loan was sanctioned on additional security given by the applicants by mortgaging their individual property and the property belonged to the Partnership Firm and having found sufficient security towards the loan amount in the nature of mortgage of properties belonged to the applicants, loan was sanctioned. He would further submit that pre-deposit by the appellants would not change the terms and conditions referred in the sanction letter dated 13.4.2012 since the loan amount was released in favour of five applicants including a Partnership Firm. He, therefore, would submit that no interference is called for under Clause 15 of the Letters Patent and, therefore, the appeal be dismissed.

7. We have also heard Mr. Amar Bhatt, learned advocate appearing for the respondent No.2 - Reserve Bank of India.

8. We have heard learned advocates appearing for the respective parties. We have gone through the documents referred by learned advocates appearing for the parties. If we see the first offer letter dated 30.3.2012, the same was addressed to the present appellants - Janak Shantilal Patel and Mukesh Shantilal Patel. Subject referred in the said letter reads as under :-

"Sub.:- Offer Letter for Loan Against Property (Lease Rental Discounting)."

9. Now, if we peruse the details referred in the said letter, type of facility is shown as loan against property (Lease Rental Discounting). The amount sanctioned is shown as Rs.58,75,00,000/- (Rupees Fifty Eight Crores Seventy Five Lacs only). The term of the facility is 96 months. In the column of security, property belonged to the appellants are referred. The same is reproduced here under :-

Security

Registered Mortgage of Entire land admeasuring 8934 sq. mtr. and Building thereon comprising LBF + BF + GF + 5 upper floors at Central Mall and Cinemax Building (Old name is (RIS Mall), situated at Old revenue No.36, New revenue Survey No.18 paikee Hissa No.1 and 2 Rundh - Vesu Tal. Final Plot No.25 Opp. Valentine Cinema, Surat Dumas Road (Gaurav Path),

City - Surat, State - Gujarat.

10. Since the appellants had desired to repay the entire loan amount before the period of contract by which equal monthly installments were to be paid, the details were supplied by the respondent No.1 Financial Company including the

penalty for prepayment and accordingly, the said amount was paid by the appellants. However, subsequently, relying upon the Notification dated 14.7.2014 issued by the Reserve Bank of India, the appellants requested the respondent No.1 to refund the amount of prepayment charges to the tune of Rs.1,12,55,885/- on the pretext that the application for loan was made only by the present appellants in their individual capacity.

11. Notification dated 14.7.2014 issued by the Reserve Bank of India reads as under :-

"RBI/2014-15/121 July 14, 2014

DNBS(PD).CC.No.399/03.10.42/2014-15

All Non Banking Financial Companies /

Residuary Non Banking Companies

Levy of foreclosure charges / pre-payment penalty on Floating Rate Loans

Please refer to paragraph (III) of Guidelines on Fair Practice Code for NBFCs issued vide Circular DNBS(PD) CC No.80/03, 10.042/2005-06 dated September 28, 2006 and paragraph 2(A) (iii) of Master Circular DNBS(PD).CC.No.388/03.10.042/2014-15 dated July 1, 2014.

2. As a measure of customer protection and also in order to bring in uniformity with regard to prepayment of various loans by borrowers of banks and NBFCs, it is advised that NBFCs shall not charge foreclosure charges / pre-payment penalties on all floating rate term loans sanctioned to individual borrowers, with immediate effect."

12. From the aforesaid Notification, it is clear that the pre-penalties are required to be foregone if the loans are sanctioned to individual borrowers. Whether the loan was sanctioned to the present appellants only i.e. being the applicants or it was granted to all five persons including a Partnership Firm would be the question for our consideration in this appeal.

13. The final letter of sanction dated 13.4.2012 by which earlier sanction letter dated 30.3.2012 was amended / modified was addressed to the present appellants as well as three other persons including M/s. Sai Enterprises - a Partnership Firm of which appellants are the only partners. The respondent No.1 has compared the conditions which were in existence in the letter dated 30.3.2012 and the modified/revised/additional conditions of sanction terms dated 13.4.2012. If we peruse the table referred in the letter dated 13.4.2012, applicants to the loan as per sanction letter dated 30.3.2012 are only the appellants. However, as per the revised / additional conditions, names of applicants to the loan are shown which includes names of appellants as well as their wives and a Partnership Firm. The same is reproduced as under :-

Particulars of Terms & Conditions

Existing Conditions

Revised / Additional Conditions.

Applicants to the loan

Mr. Janakbhai Shantilal Patel (As Applicant) Mr. Mukeshbhai Shantilal Patel (As Coapplicant)

Mr. Janakbhai Shantilal Patel (As applicant) Mr. Mukeshbhai Shantilal Patel (As Coapplicant)

Mrs. Amisha Janakbhai Patel (As Guarantor) Mrs. Sharmila Mukeshbhai Patel (As Guarantor)

M/s. Sai Enterprises (As Guarantor)

14. If we see the details of security provided in the sanction letter dated 30.3.2012 and in the revised conditions of sanction terms dated 13.4.2012, the same reads as under :-

Particulars of Terms & Conditions

Existing Conditions

Revised / Additional Conditions.

Security

Registered Mortgage of Entire land admeasuring 8934 sq. mtr. and Building thereon comprising LBF + BF + GF + 5 upper floors at Central Mall and Cinemax Building (Old name is (RIS Mall), situated at Old revenue No.36, New revenue Survey No.18 paikee Hissa No.1 and 2 Rundh - Vesu Tal. Final Plot No.25 Opp. Valentine Cinema, Surat Dumas Road (Gaurav Path), City - Surat, State - Gujarat.

1) Registered Mortgage of Entire land admeasuring 8934 sq. mtr. and Building thereon comprising LBF + BF + GF + 5 upper floors at Central Mall and Cinemax Building (Old name is (RIS Mall), situated at Old revenue No.36, New revenue Survey No.18 paikee Hissa No.1 and 2 Rundh - Vesu Tal. Final Plot No.25 Opp. Valentine Cinema, Surat Dumas Road (Gaurav Path), City - Surat, State - Gujarat.

2) Registered Mortgage of the entire land and building premise known as Crossway Mall, situated at District Sub-District Surat bearing Majura Revenue Survey No.127/2/1 and 127/1, City Survey ward Majura No.461. Final Plot No.48/A/Paikee on land admeasuring around 2437 sq. yards and building comprising Ground plus three upper Floors at Ram Chowk, Ghod Dod Road, Surat - 395007.

3) Lien and Escrow of all present and future rentals receivable from M/s. Root Corporation Limited on property situated at Ginger Hotel, Opp. Four Season

Residency, Behind Nilam Baugh Party Lawn, Surat Dumas Road, Surat.

4) Original Property papers for the property situated at Ginger Hotel, Opp. Four Season Residency, Behind Nilam Baugh Party Lawn, Surat Dumas Road, Surat to be kept with AGFL as an interim Security until the registered mortgage on in favour of ABFL on above mentioned two properties is created. Documents as required by ABFL for the same along with clear legal and technical to be completed.

5) Mortgage on Property situated at Crossway mall along with personal Guarantee of Mrs. Amisha Janakbhai Patel, Mrs. Sharmila Mukeshbhai Patel, M/s. Sai Enterprises along with underlying escrow of lease rental receipts from the lessees in the cross way mall property and that from Roots (Giner hotel) will be released after lease

rental credits from PRIL with respect to the second floor of the property situated at IRIS Mall starts as per the terms of the registered lease agreement. The same will be subject to compliance with the following :-

a.....

b.....

c.....

d.....

e.....

Even other relevant condition referred in the said table reads as under :-

Particulars of Terms & Conditions

Existing Conditions

Revised / Additional Conditions.

Other Sanction Conditions

All the owners of the property to come as co- applicant to the loan.

All the owners of the property to come as co- applicant / Guarantor to the loan.

15. A true copy of the sanction letter has been produced by the respondent No.1 Financial Company along with its reply. From the perusal thereof, it appears that on each page, present appellants, their wives and the partners of M/s. Sai Enterprises have signed and at no place, they have signed as guarantors against the loan released.

16. Even at the end of contract, all the persons shown as borrowers have declared that they would be entitled for all the terms and conditions referred

therein. The relevant acceptance reads as under :-

"Borrower Acceptance :- I/We hereby accept all the terms and conditions mentioned above and overleaf."

17. Below the said acceptance, all the persons including the partners of the Partnership Firm have signed, which would be binding to them.

18. Considering the above aspects, we are of the opinion that when the Financial Company desired to grant loan by letter dated 30.3.2012, only one property was mortgaged as security against the loan of Rs.58.75 Crores. However, thereafter when all the applicants mortgaged individual properties as well as property of Partnership Firm, the loan was sanctioned with revised / modified conditions. Therefore, it cannot be said that names of other three persons should be treated as only guarantors. In fact, they are the applicants as well as stood guarantors by mortgaging their valuable immovable properties with the respondent No.1. Therefore, we hereby hold that the loan was sanctioned in the name of five persons including a Partnership Firm.

In view of the above, we have not discussed the provisions of Section 126 of the Contract Act since there is no question of deciding the same when particularly we have held that the loan was sanctioned in favour of five persons including a Partnership Firm and they were applicants and not stood as only guarantors in the said contract.

19. When we have held that the loan was applied and sanctioned in the name of five persons including a Partnership Firm, the benefit of Notification dated 14.7.2014 would not be applicable since a Partnership Firm is not an individual loanee. Hence, we are of the opinion that the action of the respondent No.1 Financial Company is not contrary to the terms and conditions of the sanction letter dated 13.4.2012 and has not illegally imposed penalty for prepayment charges. Hence, we uphold the judgment delivered by learned Single Judge and dismiss the present appeal.