(2008) 11 DEL CK 0073

In the Delhi High Court

Case No : Regular First Appeal 594 of 2007

J.K. Aggarwal APPELLANT

Vs

Bank of India RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 4
Evidence Act, 1872 — Section 34

Citation : (2009) 2 ILR Delhi 751

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : Sanjay Gupta, for the Appellant; R.K. Dhawan and Rahul Gaur, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. The appellant was undoubtedly a guarantor in respect of a loan advanced to defendant No. 1 by respondent No. 1 who was the plaintiff. In respect of the loan, defendants No. 2 and 3 as also the appellant, impleaded as defendant No. 4, stood guarantee for repayment.

3. The suit has been decreed in sum of Rs. 7,84,415/- together with pendente lite and future interest @ 18.5% per annum from date of suit till realization.

4. We may note that the principal borrower i.e. defendant No. 1 and co-defendants No. 2 and 3 have not challenged the decree. Only the appellant is in appeal.

5. The statement of account on which the suit was based has been proved as Ex.P-13. The same reads as under:

Date Particulars Debits Balance Cr. Or Dr. Credits

10/12/97 By Balance/Totals 25,00,000 25,00,000 as per last statement Dr.

Brought Forward (To loan disburse)

01/01/98 To intt upto 18,443.64 31.12.1997

26/03/98 To intt upto 71,785.96 26.03.1998

27/03/98 By Transfer 12,960

29/07/98 To intt upto 2,29,633 31.07.1998

30/09/98 To intt upto 74,644 24.09.1998

23/12/98 By Transfer 10,000

29/12/98 To pay slip 750 issued for search in ROC

1/11/99 By Transfer 30,00,000 1,14,873 Cr.

8/11/99 To Transfer 42,480 (Valuation of Car)

31/12/99 To intt upto 71,279 10/11/98 Recovered

31/03/2000 By Transfer NIL 301012960 1114 NIL 301012960

03/04/2000 By Transfer NIL 301012960 1114 301012960

29/09/2000 To Transfer 1114

03/10/2000 By Transfer Cr. 1114 301124360 1114 301235760

Certified that the above is true copy of the entry/entries contained in the ledger being one of the ordinary book of the Bank, that such entry/entries were made in the usual and ordinary course of the business of the Bank and that the said book/ record is still in the custody of the Bank.

06/12/2000 To Balance B/Forward from Cr. 1114 statement as per Bankers'' Books Evidence Act 1981

To interest accrued from 785529 01/01/99 to 05/12/2000 Dr.

7,84,415

6. Since Ex.P-13 has been certified under the Bankers'' Book Evidence Act, the learned Trial Judge has held that entries reflected in Ex.P-13 have to be treated as correct.

7. Before analyzing Ex.P-13 viz-a-viz the challenge to the entries therein recorded, we would note at the outset that the appellant was denied the right to file a written statement and had no defence and thus was not permitted to lead any evidence. Thus, the fate of the appellant has to be decided limited to the question whether the plaintiff proved its case.

8. Needless to state a defendant who has not filed a written statement can always cross examine the witnesses of the plaintiff and can succeed if the defendant demolishes the credibility of the witnesses of the plaintiff or otherwise

is able to demolish the case of the plaintiff.

9. The challenge by the appellant to Ex.P-13 was predicated by cross examining the sole witness of the bank, examined as PW-1, with respect to the debit entry in sum of Rs. 42,480/- recorded on 8.11.1999 as also a debit entry in sum of Rs. 7,84,415/- reflected in the statement of account on 6.12.2000 after closing the account by recording a transfer entry on 3.10.2000, recording a credit balance in sum of Rs. 1,114.

10. The witness of the bank was cross examined on the two entries and the relevant extracts of the testimony are as under:

I have seen the document Ex.P-13. As per the said statement the withdrawal was made only once at the time of disbursement of loan''''...I have not prepared the statement of account Ex.P-13. I remained posted in the branch till June 1998, therefore, I cannot identify the name of the officer who has signed the Ex.P-13''. The bank has not placed any document or bill of the surveyor in respect of the expenditure of Rs. 42,480/- on account of valuation of the car''. The loan ledger from which the debit entry of Rs. 7,84,415/- has been made in Ex.P-13 has not been either produced today or the copy of the same are not on record''. It is correct that the minimum price of Rolls Royce is around Rs. 1 crore while the Ferrari being a sports car, its minimum value is around Rs. 2.5 crores. I cannot say on what basis the valuer of the bank has valued the car for just Rs. 30,00,000/- (Rupees Thirty Lacs).

11. Learned Counsel for the appellant has urged that the debit entry in sum of Rs. 42,480/- is neither by way of interest payable nor represents the money withdrawn by the defendant No. 1 and hence the plaintiff bank could prove the said debit entry only if it produced the bill raised by the valuer and the voucher or receipt evidencing payment under the bill. Challenging the debit entry in sum of Rs. 7,84,529/- reflected in Ex.P-13 after closing the account by certifying that Rs. 1,114/- was the credit balance in the account, learned Counsel for the appellant urges that PW-1 has not been able to prove the justification of the said debit entry.

12. Learned Counsel for the respondent No. 1 responds by urging that inadvertently the interest payable from 1.1.1999 to 5.12.2000 could not be debited in the account at the relevant time and thus corrective action was taken. Justifying the debit entry in sum of Rs. 42,480/-, learned Counsel urged that indeed the same represented the payment made to the surveyor when the car hypothecated to the bank was sold in sum of Rs. 30,00,000/- (Rupees Thirty Lacs).

13. Suffice would it be to state that a bank statement of account certified under the Bankers'' Book Evidence Act has not to be treated as a conclusive proof. Section 4 of the said Act only raises a presumption to the truthfulness and correctness of a statement of account certified under the Bankers'' Book Evidence Act. In the decision reported as AIR 1967 SC 221 Chandradhar

Goswami and Ors. v. Gauhati Bank Ltd. it was held:

It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them.

xxxxxx It will be clear that Section 4 gives a special privilege to banks and allows certified copies of their accounts to be produced by them and those certified copies become prima facie evidence of the existence of the original entries in the accounts and are admitted as evidence of matters, transactions and accounts therein, but such admission is only where, and to the same extent as, the original entry itself would be admissible by law and not further or otherwise. Original entries along u/s 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced u/s 4 of the Bankers'' Books Evidence Act obviously cannot charge any person with liability. Therefore, where the entries are not admitted it is the duty of the bank if it relies on such entries to charge any person with liability, to produce evidence in support of the entries.

14. The learned Trial Judge has thus ignored the law on the subject and has taken an incorrect view that law treats entries in the books of account maintained by a banker and duly certified under the Bankers'' Book Evidence Act as conclusive proof thereof.

15. Let us revisit Ex.P-13.

16. The same evidences that the entire loan in sum of Rs. 25,00,000/- (Rupees Twenty Five Lacs) was disbursed in one installment on 10.12.1997. Debit entries pertaining to interest which had accrued from time to time have been duly reflected in Ex.P-13. As and when some money was received by the banker credit entries have been made. As on 1.11.1999, Rs. 30,00,000/- (Rupees Thirty Lacs) has been credited in the account. The same obviously is the sale proceeds realized by the bank when the hypothecated motor vehicle was sold. It would not be out of place to record at this stage, that by said date, total amount payable by the loanee to the bank was Rs. 28,85,127/- and for said reason a credit balance has been reflected in the account in favour of the loanee in sum of Rs. 1,14,873/- i.e. Rs. 30,00,000/- minus Rs. 28,85,127/-.

17. It is of importance to note that while closing the account and certifying the same as correct, the bank has shown that as of 31.10.2000 a credit balance is available in the account in sum of Rs. 1,114/-.

18. From nowhere an entry has been made in the statement of account as of 6.12.2000 debiting Rs. 7,85,529/- as the alleged interest which has accrued.

19. The witness of the bank who was cross examined, and as noted above, stated that he had no personal knowledge as to in what manner the statement of account was prepared. He also stated that the stated loan ledger wherefrom the debit entry was reflected was not produced. He also stated that he had not prepared Ex.P-13 and categorically stated that he could not tell about the details of the interest which have been debited in the account and more so the stated consolidated interest entry dated 6.12.2000.

20. It is obvious that the bank has not been able to prove the debit entry in dispute.

21. We need not, thus, deal with the debit entry in sum of Rs. 42,480/- as the said debit would make difference to the case of the appellant.

22. The purity of the statement of account Ex.P-13 has been seriously dented by the manner in which the bank has made debit entries pertaining to interest which had become payable. For the loan in sum of Rs. 25,00,000/- availed of on 10.12.1997, interest has been debited in sum of Rs. 18,443.64 up to 31.12.1997 i.e. interest component for 21 days is Rs. 18,443.64. Thereafter, with effect from 1.1.1998 till 26.3.1998, interest has been debited in sum of Rs. 71,785.96. A measly sum of Rs. 12,960/- had been received by the bank thereby reducing the debit balance by said miniscule amount. Thereafter, interest with effect from 27.3.1998 till 31.7.1998 has been debited in sum of Rs. 2,29,633/-. Thereafter for the period 1.8.1998 up to 24.9.1998 interest has been debited in sum of Rs. 74,644. Learned Counsel for the bank failed to justify interest being debited in sum of Rs. 2,29,633 on 29.7.1998 for the reason if interest on a debit of Rs. 25,00,000/- for 21 days comes to Rs. 18,443.64 and for the next 86 days comes to Rs. 71,785.96, the same cannot be Rs. 2,29,633 for the next 120 days. That apart, as per the loan documents the interest was with quarterly rests, meaning thereby the interest had to be debited every quarter. The periodicity with which interest has been debited in Ex.P-13 does not match the terms of the contract.

23. Before concluding it would of some significance to note that the witness of the bank admitted that the two cars valued at Rs. 3.5 crores were sold for a paltry sum of Rs. 30,00,000/- (Rupees Thirty Lacs). It appears to us that only one car was sold, which one we do not know.

24. Be that as it may, for the reasons noted hereinabove we hold that the evidence on record establishes that the debit entries in Ex.P-13 pertaining to interest are random casting a serious doubt about their correctness. The basis of the suit is the debit entry in sum of Rs. 7,85,529/- evidenced by the fact that the suit seeks recovery of Rs. 7,84,415/- which is the sum reached by adjusting Rs. 1,114/-. The entry of Rs. 7,85,529/- is stated to be interest from 1.1.1999 to 5.12.2000. Entire loan of Rs. 25,00,000/- and interest thereon were recovered on 1.11.1999. The respondent therefore could not have charged interest after 1.11.1999. The last entry is highly tainted and has not been proved by the witness of the bank.

25. We allow the appeal.

26. Impugned judgment and decree dated 23.8.2007 against the appellant is set aside. Suit filed by the respondent against the appellant is dismissed.