
(2011) 10 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 429 of 2001

Kewal Krishan and Others

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 34

Citation : (2011) 10 SHI CK 0027

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is a Regular Second Appeal filed by the Appellants u/s 100 CPC against the judgment and decree dated 19.5.2001 passed by the learned Additional District Judge, Una, vide which the judgment and decree passed by the learned Senior Sub Judge, Una, decreeing the suit of the Respondent for recovery of ` 1,36,785.30 with costs and interest was modified and the interest for the period from filing of the suit till realization was reduced to 6%.

2. Briefly stated, the facts of the case are that the Respondent hereinafter referred to as the Plaintiff filed a suit for recovery of Rs. 1,36,785.30 as against the Appellants, hereinafter referred to as the Defendants. The allegations made by the Plaintiff bank were that Defendant No. 1 had applied to the Plaintiff bank for a term loan for the purchase of truck on 3.7.1986. His case was sponsored by the Chairman-cum-Managing Director of H.P. Ex-Servicemen Corporation, Hamirpur (H.P.). The Plaintiff bank agreed to the request of Defendant No. 1 and sanctioned a term loan of Rs. 1,80,000/-on 6.10.1986 to Defendant No. 1. Defendants No. 2 and 3 stood as guarantors for repayment of the amount and executed necessary documents in favour of the Plaintiff bank. The amount was to be paid in 46 equal monthly instalments of Rs. 3750/-plus interest. The Defendants defaulted in the payment of the amount and thereafter, the Plaintiff bank filed the suit for recovery of amount alongwith interest after notice to the

Defendants.

3. The Defendants took up various objections that the Manager had No. authority to file the suit and the suit is not properly presented and that the Defendant has agreed only to pay interest at the rate of 12.5% only and had never agreed to pay any increased interest and that the signatures were obtained on the blank papers.

4. On the pleadings of the parties, the following issues were settled by the learned trial Court:

1. Whether the Plaintiff is entitled to recover the suit amount alongwith interest as alleged? OPP

2. Whether the Manager of the Plaintiff-bank had No. authority to file the suit as alleged, if so, its effect? OPD

3. Whether the Plaintiff is not entitled to the rate of interest on the principal amount as alleged in the plaint, if so, what is the agreed rate of interest? OPD

4. Whether the suit is not within time? OPD

5. Relief.

5 The parties led their evidence and the learned trial Court vide its impugned judgment, decreed the suit of the Plaintiff for recovery of a sum of Rs. 1,36,785.30 Paise with costs and interest at the rate of 17? % per annum with quarterly rests.

6. On appeal, the learned Additional District Judge affirmed the findings of the learned trial Court decreeing the suit of the Plaintiff alongwith costs and interest, but the interest awarded during the pendency of the suit till the realization, was reduced u/s 34 Code of Civil Procedure. to the extent that it was payable at the rate of 6% from the date of decree till the realization of the entire amount. 7 I have heard the learned counsel for the parties and have gone through the record.

8. A perusal of the record shows that five substantial questions of law were framed by the learned counsel for the Appellants at the time of filing of the appeal. The appeal was admitted by the Court on 29.5.2002 on the following substantial question of law:

Whether the Defendant No. 1 was entitled to special relief/concession being Ex. Serviceman?

9. The learned Counsel for the Appellants during the course of arguments has not been able to refer to any ground taken by him that the Appellant was entitled to special concession/relief being ex-serviceman. He was not able to point out any such instructions which are in the nature of binding that such persons are entitled to any special relief/concession being ex-serviceman. Therefore, No. case is made out for considering this question and as such, Defendant No. 1 was not entitled to any special relief/concession being an ex-serviceman. Insofar as the

other points are concerned, the appeal was not admitted on any other questions of law and, therefore, the findings of the learned trial Court modified to some extent by the learned Appellate Court are liable to be affirmed. No. other point was urged for consideration.

10. A perusal of the record also shows that cross objections were filed by the Respondent against the findings of the learned Appellate Court, but in view of the objections, these were not considered and the objections were not removed and, therefore, the cross objections were not registered accordingly. Therefore, there are No. cross objections having been admitted for hearing.

11. In view of the above discussion, the findings of learned Appellate Court are liable to be affirmed and are affirmed accordingly. The appeal is dismissed accordingly alongwith costs. The decree sheet be prepared accordingly. The records be returned to the Courts below.