(2007) 06 MP CK 0042

In the Madhya Pradesh High Court

Case No : F.A. No. 171 of 2001

Krishna Deo Passey and Others APPELLANT

Vs

The State Bank of India RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2008) 3 MPJR 50

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Advocate : Naman Nagrath with Mr. Aditya Sharma, for the Appellant; Rajesh Maindiratta, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.

This appeal u/s 96 of the CPC has been preferred by the Appellants being aggrieved by the judgment and decree dated 24.11.2000 passed by Additional District Judge, Harda in Civil Suit No. 2-B/82 whereby the suit of the Plaintiff-Bank has been allowed directing the Appellants to pay jointly and severally the amount of Rs. 858823/- alongwith 14% interest from the date of filing of the suit till realization.

The case of the Respondent in short is that the Plaintiff is a body corporate constituted by the State Bank of India Act, 1955. The Defendant No. 1 and 2 are sons of Defendant No. 5. Defendant No. 6 is the wife of Defendant No. 1 and Defendant No. 7 is the wife of Defendant No. 2. The Defendant No. 5, 6 and 7 formed a registered private limited company in the name and style of "M s H.L. Passey Engineering Private Limited", Station Road, Harda. The Defendant No. 5 is the Managing Director and Defendant No. 6 and 7 are the directors of this Company. On 01.04.1978 the Defendant No. 1,2,3 and 5 formed a partnership under the name and style of M H.L. Passaey & Sons, Station Road, Harda and its branch at 72-75/A, Industrial Area, Govindpura, Bhopal.

It is also averred that Defendants No. 1 to 5 borrowed money and also entered into agreement and transactions as detailed in para No. 8 of the plaint. The Defendants No. 5, 6 and 7 also stood as sureties on behalf of Defendants No. 1 to 5. They executed guarantee agreement in favour of the Plaintiff-Bank.

On 21.06.1979 the Defendant No. 1 submitted an application to Plaintiff for granting working capital financed by way of cash credit limit of Rs. 3,75,000/-, under small scale Industry Loan Scheme of the Plaintiff-Bank.

On 21.06.1979 the Defendants No. 2 and 3 have specifically authorized to Defendant No. 1 to execute the documents for and on behalf of the Firm M/s H.L. Passey and Sons, Harda, in favour of the Plaintiff-Bank.

On 21.06.1979 the Defendant No. 1 executed the documents in favour of the Plaintiff-Bank as mentioned in para 6 of the plaint for and on behalf of the Defendants No. 1 to 5.

On the same date the Defendant No. 5 in personal capacity has executed a Guarantee Agreement for small Industrial Advance for Rs. 3,75,000/- in favour of the Plaintiff-Bank standing surety for M/s H.L. Passey and Sons '' with interest, costs, charges and expenses.

On execution of the aforesaid documents the Plaintiff-Bank sanctioned a loan of Rs. 3,75,000/- to the Defendants No. 1 to 5 on 21.06.1979 as follows:

(i) Against Hypothecation of goods Book debts and other assets Rs. 1,00,000/-

(ii) Pledge of goods movables and other assets Rs. 1,75,000/-

(iii) Against receivables and Bill in the course of collection Rs. 100000/- totaling to Rs. 3,75,000/-

According to the terms and conditions of the document the Bank charged interest at the rate of 14%. They were required to submit periodical statements of accounts, profit and loss sheet, certified balance sheets and stocks statements and to route the entire transactions through the Bank Account.

The Defendants willfully failed to comply with the terms and conditions of the documents and have committed the number of defaults.

The Defendants requested the Plaintiff-Bank to execute a Guarantee on behalf of Defendants in favour of the General Manager, Vehicle Factory Jabalpur, the Defendants executed the Counter Guarantee aggregating Rs. 10 lacs only in favour of the Plaintiff-Bank on 30th day of October, 1979. In pursuance of this Counter Guarantee Agreement the Plaintiff-Bank executed two Guarantee Agreements each amounting Rs. 2,50,000/-, total Rs. 5,00,000/- in favour of the General Manager, Vehicle Factory, Jabalpur. The Defendants had agreed to indemnify Plaintiff-Bank for any amount to be paid by the Plaintiff to the General Manger, Vehicle Factory, Jabalpur. The Defendants also agreed to pay the Plaintiff for all the loss and damages with interest incurred in relation to the Guarantee given by the Plaintiff.

The Defendants made a breach of contract with the General Manager, Vehicle Factory, Jabalpur. In consequence of that breach the Plaintiff-Bank had to pay Rs. 5,00,000/- to the Manager, Vehicle Factory, Jabalpur on 06.05.1981 by Cheque No. Cx 491428. The Defendants are liable to pay that amount with interest at the rate of 14% per annum.

The Defendants failed to deposit the Guarantee amount to the Plaintiff-Bank for which the Plaintiff-Bank reminded the Defendants several times orally and in writing also. The Plaintiff had lastly served a registered legal notice dated 22.12.1980 through its Counsel on the Defendants demanding from them to pay the amount on every account for which the Defendants are liable to the Plaintiff. The Defendants failed to pay any amount to the Plaintiff.

The Defendants created the equitable mortgage by depositing the title deeds of their properties in favour of the Plaintiff-Bank as security for the payments of all advances made by the Plaintiff to the Defendants.

Since the Defendants failed to repay the amount, therefore, the Plaintiff-bank instituted the suit for recovery of amount Rs. 8,58,823(sic) with interest at the rate of 14% per annum from the date of filing of the suit till realization.

The Appellants have filed their written statement and denied the claim of the bank. It was specifically denied that the Appellants No. 5,6 and 7 formed a registered Private Limited Company as was alleged in the plaint. It was stated that they were merely shareholders like many others.

The Appellants denied that any application was submitted by the Appellant No. 1 on 21.06.1979 for grant of working capital financed by way of cash credit limit of Rs. 3.75 lacs. It was denied that Appellants No. 2 and 3 had authorized the Appellant No. 1 to execute the document on behalf of the Firm. The Appellants denied executing any documents on 21.06.1979 as was alleged in the plaint.

The Appellants stated in their written statement that certain blank documents were got signed including stamp papers under the belief that they would be used for sanction of cash credit limit against the sanction of loan application submitted on 28.10.1978. It was alleged that Plaintiff-Bank had misused blank proforma and stamp papers and manufactured the documents for the purposes of instituting the suit. As per written statement, the same amounted to deliberate fraud and breach of trust and forgery on the part of the Bank.

The Appellants also denied any equitable mortgage by depositing any title deed and clearly stated that no such document was ever executed in respect of any loan or property during the transaction with the bank. It was, however, admitted that documents for equitable mortgage were executed on 26.10.1979 by the Appellant No. 5 but the same were specifically for furnishing the Bank Guarantee with the Bank. Thus securities were not furnished for any other advances except the Bank Guarantee for Rs. 10 lacs which was although sanctioned by the Bank but not released and Bank Guarantee of only Rs. 5 lacs was released. The equitable mortgages as mentioned in the plaint were denied.

The Appellants in their written statement also raised objection that the civil suit had multiple causes of action and could not have been clubbed in a single suit. The transaction as alleged related to different contracts and documents allegedly executed by different Defendants on various dates. The plaint suffered from not only misjoinder of causes of action but also from misjoinder of parties, hence they prayed for dismissal of the suit.

The trial court famed the issues and the parties adduced their evidence thereon.

The Plaintiff examined as many as five witnesses whereas the Defendant K.D. Passey examined himself on behalf of Defendants.

After appreciation of evidence the trial Court found that the case of the Plaintiff proved hence decreed the suit.

Being dissatisfied with the judgment and decree of the trial Court the Appellants have preferred this appeal u/s 96 of the Code of CPC on the grounds mentioned in the memo of appeal to set aside the judgment and decree of the trial Court.

The learned Counsel for the Appellants has submitted that the trial Court has not appreciated the oral and documentary evidence in the proper perspective. The Appellants did not apply to sanction the loan of Rs. 3,75,000/- on 21.06.1979 and did not execute the documents for this purpose. The Plaintiff-Bank got signed some documents including the stamp papers under the belief that they would be used for sanction of loan application dated 28.10.1978 but the Respondent-Bank misused these blank documents. It is also submitted that the equitable mortgage of the property was not done for the security of any other advances except the Bank Guarantee. It is further submitted that the Bank Guarantee was issued for the Firm M s H.L. Passey and Sons having three partners as K.D. Passey, B.R. Passey and H.L. Passey Engineering Private Limited and in default of payment thereof. Therefore, the Bank could have instituted a separate suit against the said Firm and its partners and a joint suit of this nature clubbing the Bank Guarantee was not maintainable.

On the other hand, the learned Counsel for the Respondent supported the judgment and decree passed by the trial Court and submitted that the trial Court has rightly decreed the suit, therefore, it does not call for any interference.

The main point for consideration in this appeal is that whether the trial Court has committed any illegality in decreeing the suit of the Respondent-Bank against the Appellants ?

We have perused the record and entire evidence in it.

According to Plaintiff-Bank after execution of the documents the loan of Rs. 3,75,000/- was sanctioned on 21.06.1979 for and on behalf of Defendants No. 1

to 5. The Plaintiff has adduced the evidence to prove this fact.

Dalveer Singh Chauhan (PW-1) was the Officer at Harda Branch on 21.06.1979. He has stated that the cash credit limit was sanctioned to M/s H.L. Passey Engineering Private Limited and the document pertaining to that credit limit were executed before him. He has stated that document Ex.P/1 to Ex.P/7 were executed before him and Defendant No. 1 K.D. Passey signed on these documents. These documents also contain the signature of Shri Sakalle the then Branch Manager who is now no more. This witness has further stated that K.D. Passey is an educated and can well read and understand the English language. Thus, these documents were not executed defrauding him. Neither these documents were signed under pressure.

Rameshchandra Khare (PW-2) was the accountant on 21.06.1979 in the Harda Branch. He has deposed that H.L. Passey who is the father of K.D. Passey has signed on the document Ex.P/8 before him.

Madhukar Sahastrabuddhe (PW-5) has also stated that on 21.06.1979 the loan of Rs. 3,75,000/- was sanctioned to the Defendants.

By this evidence the Plaintiff has tried to establish that the loan of (sic) to Defendants and Defendants No. 1 to 8 executed such documents as stated above.

On the other hand, K.D. Passey (DW-1) has deposed that he has not signed any document on that day and no facility has been given to Defendant No. 4. He has also submitted that no application was filed on 21.06.1979 to sanction the loan and he was also not authorized by other Defendants to file such application. He has further stated that no loan was sanctioned on that day. In cross examination he has admitted his signature on the documents Ex.P/1 to P/7 and also of his father on Ex.P/8.

By this evidence, Defendants tried to establish that no such application was filed on that day and no loan was sanctioned.

On perusal of the entire evidence adduced in this behalf it is manifestly clear that K.D. Passey (DW-1) is admitting his signatures on Ex.P/ 1 to P/7 and also of his father on Ex.P/8. It clearly indicates that the documents were executed on that day.

The case of the Defendants is that these documents were filed in respect of sanction of loan of Rs. 14,00,000 - but it is borne out from the evidence that no such loan was sanctioned to the Defendants on the application dated 20.10.1978. In such situation, the defence of Defendants that these documents were executed for sanction of loan of Rs. 14,00,000/- does not find support from the record. Since loan of Rs. l4,00,000/- was not sanctioned, therefore, these documents were not executed for that purpose.

From the evidence of Madhukar Sahastrabuddhe (PW-5) it reveals that the application dated 20.10.1978 was submitted only to increase the limit of loan which was not sanctioned but the existing limit remained as such. Furthermore he has deposed that the Defendants were operating their accounts from previously and after reconstitution of the Firm the same remained continued. The time of 18 months was granted to produce the new documents. He has relied upon the Ex.P/29 submitted by the Defendants. Furthermore he has stated that on 21.06.1979 the loan which was granted was the transfer of loan from old Firm to new Firm. He has stated the reasons of so doing that the new Firm was constituted and it accepted the liability of the old Firm. The balance of confirmation letters were also submitted by Defendants accepting the liability of old Firm. Application Ex.P/30 was also submitted wherein the balance sheets of 31.03.1978 and 01.04.1978 were attached.

On the basis of the evidence of Madhukar Sahastrabuddhe (PW-5) and on perusal Ex.P/67 to P/74 it transpires that the loan was granted by depositing the amount in three preexisting accounts of Appellant No. 4 and by issuing the Bank draft of Rs. 66,456,32 to Defendant No. 4.

From the oral and documentary evidence adduced on behalf of Plaintiff-Bank, it is manifestly clear that the loan was granted by way of depositing the amount in three preexisting accounts of old Firm and also by issuing the draft in favour of Appellant No. 4.

The case of the Defendants is that the new constituted Firm is not liable for the dues of old Firm and the suit ought not to have been instituted clubbing the amounts of old and new Firm.

We have perused the evidence adduced in this regard.

Madhukar Sahastrabuddhe (PW-5) has stated that the relationship between M/s H.L. Passey and Sons and H.L. Passey Engineering Private Limited is that the Private Limited Company was constituted by the members of the same family who also became the partner in this Firm. Furthermore, he has submitted that only one partner was retired from old Firm and in his place H.S. Passey Engineering Private Limited Company was inducted. It became the partner of H.L. Passey and Sons, thus H.L. Passey became the partner of this Firm also. K.D. Passey became the Managing Director of this Firm. The partnership deed was also filed in this behalf.

K.D. Passey (DW-1) has himself admitted that there is no any change in the name and style of the Firm and the business. It clearly indicates that the old Firm was in the same name and style and also doing the same business and was also constituted by the members of the same family.

In the case of Radha Soami Satsangh Sabha Vs. Pawan Electric Refrigerating Co. and Another, , it has been held that the transfer of running business by itself would not bring out a dissolution of the firm.

When partnership firm reconstituted business of firm continued in its old name, liability of old firm admitted by partners of reconstituted firm, new firm held liable for amount in dispute. (See 1985 Tax Law Reporter (NOC) 10; (1986) 60 Com Cas 180 (P&H)).

A partner who retires from a firm does not thereby cease to be liable for the debts and obligations of the firm incurred before his retirement. (Section 17 (2) English Act.) Prima facie, he remains liable to third party for acts of the firm done before his retirement. He can get rid of this liability by an agreement to that effect between himself and the reconstituted firm and the creditors.

In the case of Vinaitheethal Achi Vs. Chidambaram Chettiar and Others, it has been held that the new firm had assumed the liability to pay the old debts and the Plaintiff by not insisting on the payment of the amount immediately on the new firm coming into existence, had agreed to look into the new firm on payment and thus discharged the old firm from its liability. It was held that the new firm had agreed by way of novation to assume the liability for the existing debt of the old firm and the Plaintiff had also agreed to accept the new firm as the debtor and therefore, the Defendants were also personally liable for payment of the suit amount. Reference was made to the decision in Meenakshi Achi and Another Vs. P.S.M. Subramanian Chettiar and Others, , wherein it was held that if the new firm had assumed liability to pay the debt and the creditor and agreed to accept the new firm as debtor to discharge the old partnership from its liability, the partners on the new firm would be liable to pay the creditor.

Since the Plaintiff-Bank has sanctioned the loan by way of transfer of loan and the new Firm has incurred its liability for the obligations of old Firm vide Ex.P/29, therefore, the Plaintiff-Bank has clearly established that the loan of Rs. 3,75,000/- was granted to the Defendants and they are liable to pay the amount jointly and severally.

The Court after elaborate discussion of the evidence adduced in the case, has rightly came to the conclusion that the Plaintiff-Bank has proved the granting of loan amount of Rs. 3,75,000/- to the Defendants. We affirm such finding of the trial Court being based on evidence.

Madhukar Sahastrabuddhe (PW-5) has deposed that Defendant No. 1 K.D. Passey applied for Bank Guarantee vide Ex.P/15 and the financial statement Ex.P/18 was enclosed with it and the performance guarantee of Rs. 10,00,000/- was sanctioned by him. He has further stated that he got executed the equitable mortgage of the property as a collateral security. Thereafter he took the two bank guarantees of Rs. 2,50,000/- each. According to him, if the Defendants failed to supply the goods according to the orders of Vehicle Factory, Jabalpur, and the demand was made Rs. 5,00,000/- will be paid to it. The Defendants failed to supply the goods. The vehicle Factory sent the demand letter Ex.P/23 and the amount of Rs. 5,00,000/- was paid by Ex.P/24.

K.D. Passey (DW-1) himself has admitted that two bank guarantees were taken by the Firm from the Bank.

On perusal of the entire evidence adduced in this behalf, it is clearly established that the Bank has paid the amount of Rs. 5,00,000/- to the Vehicle Factory, Jabalpur on its demand. Since these bank guarantees were taken on behalf of the Appellant No. 4, therefore, the Bank is entitled to recover the amount so paid on that behalf from the Defendants.

The trial Court has considered this aspect in great detail and rightly came to the conclusion that the bank is entitled to recover the amount of guarantees. We affirm the finding of trial Court in this regard also.

Madhukar Sahastrabuddhe (PW-5) has stated that the statement of account Ex.P/28 has been filed on behalf of Bank according to which the amount of Rs. 8,58,823/- was due on M/s H.L. Passey on 17.06.1981.

The Bank has instituted the suit for recovery of the aforesaid amount and the Court has rightly decreed the Plaintiff''s suit.

On foregoing discussions, we do not find any merit in this appeal, hence, deserves to be dismissed.

Consequently, the appeal fails and is hereby dismissed accordingly. The impugned judgment and decree passed by the trial Court is hereby affirmed. The Appellants apart from their own cost, shall also bear the cost of the Respondent-bank. Counsel fee be quantified as per schedule. Decree be drawn up accordingly.