(1979) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 195 of 1975

Malhara Singh and Others — APPELLANT

Vs

Official Liquidator, Punjab Finance Private Ltd. (In Liquidation) — RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:
Companies Act, 1956 — Section 446, 468
Contract Act, 1872 — Section 173, 176

Citation : (1979) 01 P&H CK 0016

Hon'ble Judges : S.S. Sandhwalia, C.J;Harbans Lal, J

Bench : Division Bench

Advocate : R.S. Bindra and Lakhinder Singh, for the Appellant; J.S. Narang, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—A claim petition u/s 446(2) read with Section 468, Companies Act, 1956, was decreed for the sum of Rs. 21,681.33 against the present appellants without any future interest, vide judgment dated December 6, 1974. The same has been challenged in the present letters patent appeal.

2. According to the averments in the claim petition, the appellants took a loan of Rs. 21,000 from the respondent on May 22, 1964, and entered into a hire-purchase agreement on the same day in respect of truck No. PUN-6058 for Rs. 26,880. According to the agreement, the loan and interest were payable in 24 instalments. The first instalment of Rs. 1,120 was payable on July 21, 1964, and thereafter, monthly instalments of the said amount had to be paid from August 21, 1964, to June 21, 1966. Pronote and receipt in connection with the said loan were also executed. Some amount was paid in instalments from time to time and the last amount of Rs. 9,500 was credited in the account of the appellants on December 1, 1967, after the sale of the said vehicle. Claim was made in the petition for the recovery of Rs. 20,313.67 as principal and Rs. 2,952.22 as

interest for the period from April 1, 1970, to August 30, 1971, at the rate of 12 per cent. per annum. Before filing the claim petition, the official liquidator served a notice upon the appellants as required under the rules. As the liability referred to therein was not admitted, the claim petition was filed. In the written statements filed on behalf of the appellants, taking of the loan amounting to Rs. 21,000 and the execution of the hire-purchase agreement was admitted. It was further averred that the truck in question was surrendered to Sri Kanwar Sain, P.W. 2, the then managing director of the respondent-company, and thereafter no demand for the recovery of any amount was ever made. It is the case of the appellants that as the truck financed by the respondent-company had been taken over in 1967 there was no cause of action for filing the claim petition. According to their further averments, a sum of Rs. 27,283.56 had been paid towards the loan which had not been fully adjusted. Objection was also raised to the effect that the claim petition was time barred. In view of the pleadings of the parties, the following issues were framed :

"1. Whether respondent No. 1 surrendered the vehicle on November 3, 1967, as alleged by him and the hire-purchase agreement was terminated ?

2. Whether respondent No. 3 executed hire-purchase agreement and became a guarantor of respondent No. 1 ?

3. Whether the petition is within time ?

4. What payment, if any, has been made by respondent No. 1 towards the repayment of the loan ?

5. What amount, if any, is due to the petitioner company from the respondents or any one of them ?

6. Relief."

3. Issue No. 3 regarding limitation was not pressed by the appellants at the time of the arguments. On issue No. 1, it was held that respondent-appellant No. 1 had surrendered the vehicle in question to the respondent-company on November 3, 1967, but the same did not result in a termination of the hire-purchase agreement in dispute. Issue No. 2 was decided against the appellants in view of the admission of respondent-appellant No. 2 as having signed the agreement as a guarantor. Regarding issue No. 4, it was held that respondent-appellant No. 1 had made the payment of Rs. 20,318.56 in all to the respondent-company. It was further held that the respondent-company was entitled to the decree of Rs. 21,681.33 without any future interest. The contention of the learned counsel for the respondents-appellants that the then managing director of the company had not served any notice on the respondents-appellants before putting the vehicle to sale was negatived in view of the statement of Shri Kanwar Sain, P.W. 2, that the actual notice had been served upon the guarantor as the whereabouts of the principal-debtor were not known. Another contention on behalf of the respondents-appellants that the value of the truck was much more

than Rs. 9,500 for which it was sold, was also not upheld.

4. It was contended by the learned counsel for the appellants that the agreement executed between the parties was not a hire-purchase agreement, but only a pledge and, therefore, as soon as the truck in question which was pledged with the respondent-company was taken over by the latter, the liability of the appellants was completely washed off and the agreement was terminated entirely. Sale of the vehicle exhausted the agreement and no liability could be fastened on the pawnor thereafter. This contention is devoid of merit. The fact that the loan had been taken by the appellants on the basis of the written hire-purchase agreement was expressly averred to in the claim petition by the respondent-company and the same was admitted in the written statements by the appellants. It was in view of this admission that no issue was framed in respect of the nature of the agreement. Even in the grounds of appeal, this contention was not raised. It is the admitted case of the parties that after the advancement of the loan and the execution of the agreement and other documents, possession of the vehicle remained with the appellants till it was surrendered to the respondent-company in 1967. In case of pledge, the pawnee is entitled to retain the goods pledged with him u/s 173 of the Contract Act. Even in the case of pledge of goods or any property, if the payment of the debt is not made at the stipulated time, the pawnee is entitled to sell the pledged goods on giving the pawnor a reasonable notice of the sale and the pawnor is still liable to pay the balance u/s 176 of the aforesaid Act, reproduced below :

"If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security ; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such a sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."

5. It was then contended by the learned counsel for the appellants, that the vehicle in question had not been surrendered by the appellants, but had been taken possession of forcibly by the respondent-company and, secondly, no notice had been given to the appellants regarding the sale of the truck. It was also stressed that the vehicle had a much higher value than Rs. 9,500, for which it is alleged to have been sold by the respondent-company. These contentions are also bereft of any substance. It is clear from the statement of Shri Kanwar Sain, P. W. 2, the then managing director of the respondent-company, that the whereabouts of the principal-debtor, that is, appellant No. 1, were not known and, consequently, it was not possible to serve a notice on him, but the notice was expressly served on the guarantor. The guarantor in his statement denied to have received this notice, but the same was not given any credence by the

learned single judge. The statement of Mr. Kanwar Sain, P. W. 2, in this regard is quite consistent and credible. On the face of his clear statement, denial by the guarantor, who was obviously interested, was rightly not given any importance. So far as the value of the vehicle is concerned, no question was put to Mr. Kanwar Sain, P. W. 2, regarding the same in cross-examination. The statements of Amar Singh, R.W. 1, and Tara Singh, R.W. 4, regarding the valuation of the vehicle are quite vague. According to Amar Singh, R.W. 1, the valuation of the vehicle at the time of the seizure was approximately Rs. 25,000 to Rs. 30,000. According to Tara Singh, R.W. 4, the value of the vehicle was about Rs. 30,000. Amar Singh, R.W. 1, is no other than the guarantor himself and Tara Singh, R.W. 4, was the brother of Malhara Singh in whose name the truck was purchased and money borrowed. Thus, both these witnesses were quite interested and their evidence regarding valuation was rightly discarded by the learned single judge as against the statement of the managing director of the respondent-company.

6. So far as the notice regarding the sale of the vehicle is concerned, the gurantor, Amar Singh, R.W. 1, had been given the notice and he was expected to guard the interest of the principal-debtor as his interest was indisputably linked with that of the latter. Neither the principal-debtor nor the guarantor made any complaint regarding the sale of the vehicle, nor took any other proceedings in the matter till the present claim petition was filed.

7. It was also contended by the learned counsel for the appellants, that it was clear from the statement of the accounts produced by the respondent-company that the amount of Rs. 6,134 was credited to the account of the debtors on July 19, 1965, but a debit entry was made regarding the said amount on the same date. According to the learned counsel, this disclosed that the accounts of the company were forged, on which could not be placed any reliance, to fasten the liability on the appellants. However, it is a matter of common knowledge that sometimes some wrong entries regarding credit or debit do creep in the accounts in the course of business and there is no other way to scrap them except by making reverse entries. As the reverse entry in the present case was made on that very day, no adverse inference can be drawn against the respondent-company.

8. Lastly, it was canvassed that according to the claim and the agreement, Ex. P-3, interest at the rate of 12 per cent. was charged which was in violation of the provisions of the Usurious Loans Act, 1918, and the Punjab Relief of Indebtedness Act, 1934. According to the same, interest exceeding seven and a half per cent. in respect of secured loans was not permissible. As a proposition of law, this is unexceptionable. However, in the present case, admittedly, the vehicle in question, on the security of which the loan had been taken, was sold in November, 1967. The claim petition relates to the balance amount remaining unpaid after taking into account the sale prcceeds of the vehicle as well as the interest thereon after the sale. Subsequent to the sale of the truck, the security was not existing and the loan was converted into an unsecured one and as such,

under the provisions of the Act, mentioned above, interest at the rate of 12 per cent. per annum, as stipulated in the agreement, Ex. P-3, could be lawfully claimed. Thus, there is no violation of either the Usurious Loans Act or the Punjab Relief of Indebtedness Act.

9. In view of the above discussion, there is no merit in this appeal which is hereby dismissed, however, with no order as to costs.

Sandhwalia, C.J.

10. I agree.

