

(2016) 10 OHC CK 0001
In the Orissa High Court
Case No : Second Appeal No. 227 of 1998

Mamata Papers Pvt. Ltd.

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 2 BC 181

Hon'ble Judges : D. Dash, J.

Bench : Single Bench

Advocate : Mr. Biraja Pr. Satapathy, Advocate, for the Appellant; None, for the Respondents

Final Decision : Dismissed

Judgement

D. Dash, J.—This appeal has been directed against the judgment and decree passed by the learned District Judge, Cuttack in Money Appeal No. 06 of 1994 confirming the judgment and decree passed by the learned 1st Addl. Subordinate Judge, Cuttack in Money Suit No. 284 of 1982.

The respondent-Bank as the plaintiff had filed the suit for realisation of Rs. 24,165.72 with pendente lite and future interest at the contractual rate per annum from the present appellant defendant. The suit having been decreed for realization of sum of Rs. 24,165.72 with pendente lite future interest @ of 15% per annum from the appellant-defendant, an appeal under section 96 of the Code had been carried challenging the same. The appellant defendant having failed in the appeal has now filed this second appeal under section 100 of the Code of Civil Procedure.

2. For the sake of convenience as also to avoid confusion and bring in clarity, the parties hereinafter have been described as per their position and as assigned in the trial court.

3. Plaintiff's case is that the defendant-company had availed the over-drawal

facility from the plaintiff-Bank with the undertaking to make regular payment along with the agreed rate of interest @ 19.5% per annum. The defendant on several occasions had acknowledged the liability by executing letter of continuity. The defendant had also executed the demand promissory notes to the above effect. Upon failure of the defendant to make the payment properly and as agreed to, the plaintiff had served notice calling upon the defendant to make the payment of outstanding dues and when that went without any response, the suit had to be filed.

The defendant in the written statement challenged the rate of interest, the calculation of the outstanding dues and all the documents relied upon by the plaintiff. It is stated that such overdrawal facility was never availed of. The maintainability of the suit is also challenged on the ground of being barred by limitation. With all these averments at last of course the prayer had been made that in case a decree is passed, the defendant be directed to pay the decretal amount in instalments.

4. With such rival pleadings, the trial court framed three issues. Going to answer the most important issue as regards entitlement of the plaintiff to a decree for realization as prayed for, the answer has been recorded in favour of the plaintiff-Bank. The other technical objections have all been over ruled and on those issues, the answers have been recorded in favour of the plaintiff.

In the first appeal carried by the defendant, the lower appellate court having gone to examine the sustainability of the findings of the trial court on all those issues finally upon discussion of evidence on the factual setting as placed through the pleadings has affirmed the finding of the trial court and consequently the judgment and decree as passed by the trial court have been confirmed.

5. It may be stated that neither in the memorandum of appeal nor in any separate sheet annexed to the same or even filed later the substantial question(s) involved in this appeal have been pleaded. However, the learned counsel contends that the concurrent findings of the court below on issue no. 2 being perverse is unsustainable since the courts below have not directed their attention in specifically over-ruling the objection from the side of the defendant that the documents admitted on behalf of the plaintiff in evidence are all manipulated and fabricated for the purpose. This according to him is the substantial question of law which surfaces in this appeal for its certification for the purpose of admission.

6. The plaintiff-Bank in order to establish its case have proved two demand promissory notes executed by the defendant in favour of the plaintiff and those have been admitted in evidence and marked as Ext. 1 and 2. The documents clearly reveal that the defendant had availed of the over-drawal facility from the plaintiff- Bank from time to time. Next comes the deed of acknowledgement of debt executed by the defendant which is marked Ext. 3. The statement of account has also been admitted in evidence and marked as Ext. 6. These

documents have been marked without objection from the side of the defendant. When the plaintiff has proved these documents through its official examined as P.W. 1 and the courts below have found no such suspicious feature in those documents nor in the evidence of P.W.1, the defendant has not adduced any evidence either oral or documentary whatsoever to counter the same. The execution of these document have not been denied by the side of the defendant by examining the so called signatory to these documents that either it is not his signature nor giving any explanation as to how his signature appears over those and under what circumstances. Thus the allegations in the written statement have in no way been established. The documents have been proved being brought from proper custody. On the face of those documents no such suspicious feature is noticed. So, the courts below having held the plaintiff to have proved the case, this court finds no reason or justification to say that the said finding suffers from the vice of perversity in the above situation. Moreover, when the correctness of the settlement of account Ext. 6 has been challenged by the defendant, that has also remained at the stage of mere allegation without showing anything as to on what count the wrong has been committed and where the mistake lies so as to be discarded in computing the liability upon the defendant. The courts below have found on examination of the said statement of account as to have been correctly prepared and flawless.

In view of all these above, since the defendant has failed to clear the outstanding dues as established by the plaintiff-Bank, the decree for realization as above is found to have been rightly passed. This Court does not find any such infirmity therein. The submission of the learned counsel for the appellant accordingly stands repelled. The appeal thus does not merit admission.

7. Resultantly, the appeal stands dismissed. No order as to cost.