
(2014) 05 P&H CK 0302

In the Punjab And Haryana At Chandigarh

Case No : R.S.A. No. 2544 of 2012 (O&M)

Manmohan Singh

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Citation : (2014) 05 P&H CK 0302

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Advocate : Vipin Mahajan, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.

C.M. No. 7089-C of 2012

1. Having heard learned counsel for the appellant and for the reasons indicated in the Civil Misc. application, same is allowed. Delay of 8 days in re-filing the appeal is condoned.

R.S.A. No. 2544 of 2012

2. Instant regular second appeal has been preferred by the appellant-LR of defendant No. 2 against the judgment and decree dated 29.07.2010 passed by learned Additional Civil Judge (Senior Division), Batala whereby suit filed by respondent No. 1/plaintiff for recovery has been decreed, as well as, against the judgment and decree dated 18.11.2011 passed by learned Additional District Judge, Gurdaspur whereby appeal preferred by the appellant/defendant No. 2 has been partly allowed and suit of the plaintiff has been partly decreed to the extent that plaintiff bank is entitled for the recovery of Rs. 2,36,926/- along with interest @ 6% per annum with half yearly rests from the date of filing of the suit till realization of the decretal amount and plaintiff bank is not at liberty to recover the amount by sale of property in question.

3. For convenience sake, reference to parties is being made as per their status in the suit.

4. The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, the facts relevant for disposal of this second appeal are to the effect that plaintiff filed a suit for recovery of Rs. 2,36,926/- along with interest, fully detailed and described in the head note of plaint, against the defendants on the ground that on 12.05.1995, defendant No. 1 approached the plaintiff-Bank for grant of loan of Rs. 1.62 lacs for purchase of tractor and the said loan amount was sanctioned and advanced to defendant No. 1. In lieu of that, defendant executed an agreement dated 13.05.1995 and hypothecated the said tractor with the plaintiff bank. It was pleaded that it was agreed by the defendants that loan was to be repaid in 18 half-yearly installments and first installment was to be paid on 30.12.1995 and second installment was to be paid on 30.06.1996 each installment amounting to Rs. 9000/- plus interest. It was further pleaded that defendant No. 1 also mortgaged his land measuring 63 kanals 11 marlas as security and defendant No. 2 stood guarantor for defendant No. 1. It was further pleaded that defendants did not repay the loan amount as agreed and committed default in their obligations under the agreement. Defendant No. 2 Barket Singh died leaving behind his son Manmohan Singh as his legal heir. Vide undertaking dated 10.11.2002, defendant Manmohan Singh undertook to pay up the entire loan outstanding with interest, but defendants failed to pay the same.

5. Upon notice, defendants appeared and filed joint written statement. It was admitted that loan was taken by defendant No. 1 for purchase of a tractor. It was denied that the defendants agreed to pay interest as alleged by the plaintiff. It was also denied that defendant No. 1 revived the loan on 05.05.1998 or on 10.11.2000. It was pleaded that the documents are fake and all the legal heirs of Barket Singh are necessary parties, but they were not made party. It was also denied that Banta Singh and Manmohan Singh are jointly and severally liable to repay the loan amount. All the other averments made in the plaint were denied.

6. On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs. 2,36,926/- from the defendant? OPP

2. Whether the suit is not filed by an authorized and competent persons? OPD

3. Whether the suit filed by the plaintiff is without any cause of action? OPD

4. Relief.

7. The Court of first instance after perusal of the evidence led by the parties, recorded issue-wise findings and decreed the suit for recovery vide judgment and decree dated 29.07.2010. Against that, defendant preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated

05.12.2013. Hence, this second appeal.

8. I have heard learned counsel for the appellant and perused the record.

9. Learned counsel for the appellant submits that he does not press the instant appeal on merits, however, the appellant is a guarantor, his right should be secured to the effect that firstly the recovery should be made from the principal debtor. If any deficiency remains, the appellant is ready to pay the same. Learned counsel has relied upon a judgment of Hon''ble Supreme Court in Ashok Mahajan Vs. State of U.P. and Others, to contend that action for recovery of loan amount cannot be taken against the guarantor until the property of principal debtor is first sold off.

10. In view of this, instant second appeal is dismissed. However, the executing Court shall firstly proceed against the principal debtor for recovery of the amount from his property. Thereafter, if any deficiency remains, the same shall be recovered from the appellant-guarantor.