

(2011) 11 DEL CK 0215

In the Delhi High Court

Case No : Regular First Appeal No. 347 of 2007

M/S. Atlinga Builders Pvt Ltd and Others

APPELLANT

Vs

Catholic Syrian Bank Ltd and Others

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Evidence Act, 1872 — Section 85

Citation : (2011) 11 DEL CK 0215

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajiv Bakshi, for the Appellant; Rajan Sabharwal with Ms. Rashmi Srivastava for R.1, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 of the CPC (CPC), 1908 is to the impugned

judgment of the Trial Court dated 23.3.2007. By the impugned judgment, the Trial Court decreed the suit of the respondent no.1-bank against the

appellants inasmuch as the respondent no.1-bank had paid amounts under two bank guarantees issued by it on the request of the appellants in

favour of the beneficiary-M/s. Kisan Sehkari Chini Mills Ltd.

2. The facts of the case are that at the request of the appellants, the respondent No.1-bank issued two bank guarantees, one dated 10.3.1984 and

other dated 8.5.84 in favour of M/s. Kisan Sehkari Chini Mills Ltd. These two bank guarantees were invoked by the beneficiary-M/s. Kisan

Sehkari Chini Mills Ltd. vide its letters dated 16.8.1985. Since the respondent no.1-bank did not release the amounts under the bank guarantees

to the beneficiary, purportedly because the bank guarantees were invoked beyond the period specified therein, the said beneficiary filed a civil suit

for recovery making the respondent no.1-bank and the appellants herein as parties to the said suit. That suit was decreed by the Court of the

Additional Civil Judge, Lakhimpur Kheri, UP vide judgment dated 29.9.1998 and the respondent no.1-bank was ordered to pay a sum of Rs.

2,34,297/- in one suit pertaining to one bank guarantee and a sum of Rs. 1,20,000/- in the other suit pertaining to the second bank guarantee along

with interest at 18% per annum from 16.9.1985 till realization. The respondent no.1-bank therefore paid a sum of Rs. 12,66,169/- on 3.1.2000 to

the beneficiary and thereafter filed the subject suit for recovery.

3. Before the Trial Court, the appellants contended that they were not liable to make payments of the amounts because the bank wrongly paid the

amounts to the beneficiary under the bank guarantees whose validity period had expired as the invocation was beyond the period as specified in

the bank guarantees. It was also contended on behalf of the appellants in the Trial Court that the respondent no.1-bank had self-inflicted the losses

and therefore the appellants were not liable for the amounts claimed, much less with interest at 18% per annum which was prayed for.

4. Before the Trial Court, it was not disputed that the bank guarantees were issued by the respondent no.1-bank in favour of the beneficiary and

which were exhibited as Ex.D.2W1/P1 & Ex.D.2W1/P2. It was also not disputed that counter guarantees were executed by the appellants in

favour of the respondent no.1-bank and which were exhibited as Ex.PW2/1 and Ex.PW2/2. The judgment of the Civil Court at Lakhimpur Kheri,

UP has been exhibited as Ex.PW2/6. The invocation letters dated 16.8.1985 by which the beneficiary claimed the amounts of the bank guarantees

were exhibited as Ex.C.1 and Ex.C.2.

5. Before this court, learned counsel for the appellants laid stress on two main points:-

i) The first point of argument is that though the bank guarantees were invoked by the beneficiary beyond the period as specified in the bank

guarantees, however the appellants never objected to payments of the bank guarantees and therefore the respondent no.1-bank ought to have

made payments of the bank guarantees on the letters of invocation being

received by it. It is argued on account of the failure of the respondent no.1-bank to appropriate the margin monies and make payments of the bank guarantees resulted in the decree being passed by the Civil Court and whereby, huge liability has been fastened upon the appellants.

ii) The second argument which is raised is that the suit has not been properly instituted and filed.

6. Taking the second arguments first, this argument is an argument of desperation to say the least. The Trial Court has exhaustively dealt with filing and institution of the suit in paras 11 to 16 of the impugned judgment by referring to Order 29 CPC, the exhibited power of attorney as Ex.PW1/2, and Section 85 of the Indian Evidence Act, 1872. Therefore the notarized power of attorney can be looked into in the facts of the present case.

These findings are sufficient to hold that the suit is validly instituted. In fact, the Trial Court need not have gone into such detailed findings inasmuch

as now it is settled law vide the judgment of the Supreme Court (given 10 years prior to passing of the impugned judgment) in the case of United

Bank of India Vs. Naresh Kumar and others, that the very fact that the suit by bank is contested to the hilt right till the stage of final judgment is

itself enough to hold that the suit is in terms of Order 29 CPC validly instituted. This argument raised on behalf of the appellants is therefore

rejected.

7. The first argument raised on behalf of the appellants equally is without merit for the reason that firstly I find that the counsel for the appellants is

not correctly stating the facts that the appellants never objected to the respondent no.1-bank for paying the amounts under the bank guarantees to

the beneficiary. On the contrary, I find from the Trial Court record an admitted document Ex.P6 being a letter dated 18.9.1985 by the appellant

no.1 to the respondent no.1-bank that the bank guarantees have been invoked after the validity period had expired and therefore the respondent

no.1-bank has no liability in this regard. By this letter, it was therefore stated by the appellants that the margin monies in fact should be transferred

back to the current account of the appellant no.1. I therefore hold that the appellants are deliberately stating incorrect facts. It is quite clear that in

fact the appellants objected to making payments under the bank guarantees.

8. So far as the argument that the respondent no.1-bank has caused huge losses

to the appellants by not making payments of bank guarantees, the same is already covered in the above paragraph, however, I note that the appellants were very much parties to the suit which was filed by the beneficiary for payments of the amounts under the bank guarantees, and the said judgment also binds the appellants, as it binds the respondent no.1-bank. The said judgment is res judicata against the appellants with respect to valid invocation of the bank guarantees and the consequent liability of the respondent no.1-bank to make payments to the beneficiary. Admittedly, the appellants have till date never challenged the said decree by the Civil Court at Lakhimpur Kheri, UP passed against them. The amount which is paid by the respondent no.1-bank to the beneficiary is exactly in terms of the decree passed by the Civil Court at Lakhimpur Kheri, UP, and therefore, the amounts claimed in the suit were payable by the appellants to the respondent.

9. I must also note that the Trial Court has referred to two important aspects for granting a decree for the complete amounts as prayed for by the respondent no.1-bank. The first aspect which is referred to by the Trial Court is that in the bank guarantees issued by the respondent no.1-bank in favour of the beneficiary showed that the respondent no.1-bank was in fact liable to pay interest at the prevailing bank rate in case of delayed encashment thereof. In this case, delay in encashment of bank guarantees was not on account of the respondent no.1-bank, and in fact the respondent no.1-bank had sought to help the appellants by not making payments of the bank guarantees, but was ultimately forced to pay on account of the decree passed by the Civil Court at Lakhimpur Kheri, UP, and as already stated, to which legal proceedings, the appellants were defendants but they chose not to appear and contest the proceedings.

10. The second aspect that the Trial Court has noted for passing the decree is that the indemnity bonds i.e. counter guarantees, exhibited as Ex.PW2/1 and Ex.PW2/2, before the Trial Court, show that the appellants had agreed to indemnify the respondent no.1-bank against all losses, damages, etc. which the respondent might incur on account of the guarantees Ex.D2W1/P1 and Ex.D2W1/P2. The Trial Court has therefore rightly decreed the suit of the respondent no.1-bank for the complete amount paid as the decree obtained by the beneficiary.

11. A resume of the aforesaid facts show that the respondent no1-bank tried at the outset to help the appellants by not making payments under the bank guarantees, and in fact the appellants themselves vide Ex.P6 dated 18.9.1985 informed the bank that the bank guarantees had expired and therefore the margin monies be paid back to the appellants, i.e. in effect the claim of the beneficiary-M/s. Kisan Sehkari Chini Mills Ltd. be not entertained. The respondent no.1-bank however had no option thereafter but to comply with the decree of the Civil court at Lakhimpur Kheri, UP and therefore it paid the amounts and thereafter filed the subject suit.

12. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.