
(2011) 05 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3320 of 2007

M/s. Avtar Singh and Sons and Others

APPELLANT

Vs

Bimla Devi and Others

RESPONDENT

Date of Decision : 17-05-2011

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31, 31A

Citation : (2011) 163 PLR 751

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—By this common judgment, I am disposing of two appeals i.e. RSA No. 3320 of 2007, titled M/s Avtar Singh & Sons and Others v. Bimla Devi and Others and RSA No. 2690 of 2007, Bimla Devi and another v. Oriental Bank of Commerce and Others because both these appeals have arisen out of a single suit. Hereinafter facts are being taken from RSA No. 3320 of 2007.

2. Respondent No. 10 - plaintiff Oriental Bank of Commerce filed suit against defendants No. 1 to 3/appellants as principal debtors and against respondent nos. 1 to 9 (defendants No. 4 to 12) as guarantors. Defendants No. 2 and 3 are partners of defendant No. 1-Firm. The plaintiff alleged that defendants No. 1 to 3 availed of cash credit clean over draft facility for Rs six lakhs from the plaintiff on the guarantee of defendant No. 4 and Sham Lal (since deceased and represented by defendants No. 5 to 12). Defendants committed default in repayment of the loan amount. Ultimately suit amount of Rs 7,01,337/-remained due from the defendants to the plaintiff for recovery whereof plaintiff filed the instant suit.

3. Defendants No. 1 to 3 pleaded that recovery of the suit amount be firstly made from defendants No. 4 to 12 (guarantors) and if still some amount remains due, the same may be recovered from defendants no.1 to 3 (principal debtors). It was also pleaded that plaintiff is claiming penal interest which is not recoverable.

Plaintiffs account statement was also pleaded to be incorrect.

4. Defendants No. 4 to 9 contested the suit and denied that defendant No. 4 and Sham Lal had stood guarantors for defendants No. 1 to 3. Various other pleas were also raised.

5. Learned Additional Civil Judge (Senior Division), Faridkot vide judgment and decree dated 02.6.2004 decreed the plaintiffs suit with pendente lite and future interest holding all the defendants to be jointly and severally liable to pay the decretal amount. Only defendants No. 5, 6 and 8 preferred first appeal. Learned District Judge, Faridkot vide judgment and decree dated 9.4.2007 dismissed the said first appeal but also ordered that the plaintiff shall first recover the amount from the properties of the principal debtors and if there is any difficulty in realising the decretal amount from the principal debtors, only then the plaintiff shall resort to recover from the properties of guarantors. Feeling aggrieved, defendants No. 1 to 3 have filed RSA No. 3320 of 2007 whereas defendants No. 5 and 6 have filed RSA No. 2690 of 2007.

6. I have heard learned counsel for the parties and perused the case files.

7. Taking up RSA No. 2690 of 2007 filed by defendants No. 5 and 6, learned counsel for the said appellants contended that defendant No. 4 and Sham Lal predecessor of defendants No. 5 to 12 had not stood guarantors for loan taken by defendants No. 1 to 3 from the plaintiff-Bank. The contention cannot be accepted. The plaintiff has led sufficient evidence to prove its case that defendants No. 4 and Sham Lal had stood guarantors. There is concurrent finding by both the courts below to this effect. The said finding is based on appreciation of evidence and is not shown to be perverse or illegal nor it is based on misreading or mis-appreciation of evidence so as to call for interference in exercise of second appellate jurisdiction. No question of law much less substantial question of law arises for adjudication in the instant second appeal. Accordingly, RSA No. 2690 of 2007 is found to be meritless and is, therefore, dismissed.

8. Now coming to RSA No. 3320 of 2007 preferred by defendants No. 1 to 3, learned counsel for the said appellants contended that first appeal against judgment and decree of the trial court could be preferred before Debts Recovery Tribunal (in short, the Tribunal) constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short, the Act) because by the time the first appeal was preferred, decretal amount exceeded Rs. ten lakhs. It was accordingly contended that first appeal before District Judge was not competent and therefore, judgment and decree of the District Judge are nullity. Reliance in support of this contention has been placed on C.J. Glenny v. The Catholic Syrian Bank Ltd. 2004 AIHCC 9, Full Bench judgment of Kerala High Court, Punjab National Bank, Dasuya v. Chajju Ram and Others, AIR 2000 SC 2671 and Allahabad Bank Vs. Canara Bank and Another, . These judgments relate to jurisdiction of the Tribunal under the Act. Reliance has also been placed on

judgment of Hon''ble Supreme Court in Sarwan Kumar and Another Vs. Madan Lal Aggarwal, wherein decree passed by civil court against heirs of the tenant was held to be without, jurisdiction and in-executable as jurisdiction of the civil court was barred by Rent Control Act.

9. I have carefully considered the aforesaid contention but the same cannot be accepted. In so far as judgment in the case of Sarwan Kumar's case (supra) is concerned, the same has no applicability because in that case jurisdiction of civil court was barred by Rent Control Act. However, it goes without saying that decree passed by a court lacking inherent jurisdiction or whose jurisdiction is barred by any Statute would be nullity. Judgments in other three cases are not applicable to the instant case. u/s 31 of the Act, pending suit or other proceedings were to be transferred from civil court to the Tribunal if the same would have been within the jurisdiction of such Tribunal if cause of action had arisen after the establishment of the Tribunal. In the instant case the suit was filed on 29.1.2000 i.e. long after the Act had come into force and long after the establishment of the Tribunal under the Act. The suit when filed was for recovery of Rs 7,01,337/- only and therefore, Tribunal had no jurisdiction to adjudicate upon the suit and only civil court had jurisdiction to adjudicate upon the suit. Consequently, question of transfer of the suit to the Tribunal or institution of the suit before the Tribunal did not arise. Since the suit was within the jurisdiction of the civil court, first appeal was also, therefore, maintainable before the District Judge and not before the Appellate Tribunal constituted under the Act. It is correct that u/s 31A of the Act, execution may lie before the Tribunal if the amount under the decree sought to be executed exceeds Rs 10 lakhs. In the instant case, however, the question of jurisdiction regarding execution proceedings is not to be adjudicated upon. On the other hand, the first appeal was competent before District Judge and therefore, the question raised in the instant second appeal is answered against the appellants. It is held that the appeal was rightly filed before the District Judge and the appeal did not lie before the Appellate Tribunal under the Act.

10. The solitary question of law raised in the appeal having been answered against the appellants, the appeal has to be dismissed.

11. Accordingly, both the appeals, are hereby dismissed. Appeal dismissed.