
(2012) 03 DEL CK 0660

In the Delhi High Court

Case No : Regular First Appeal No. 581 of 2003

M/s B.R. Metal Corpn. and Others

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 4, 34, 96
Punjab High Court Rules and Orders — Rule 15

Citation : (2012) 5 AD 358 : (2012) 188 DLT 359 : (2012) 129 DRJ 61

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.K. Singla, with Mr. J.K. Sharma, for the Appellant; Sanjay Bajaj and Mr. Ajay Bahl, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree of the trial Court dated 27.3.2003 decreeing the suit of the respondent-bank under Order 34 CPC. The suit has been decreed for an amount of Rs. 3,58,689.17/- alongwith pendente lite and future interest at the contractual rate of 16.5% per annum. The impugned judgment and decree is a preliminary decree under Order 34 Rule 4 CPC and a period of six months has been granted for payment of the decretal amount, failing which, the final decree would be passed directing sale of the mortgaged property.

2. The subject suit was filed by the respondent-bank, which is successor in interest of M/s New Bank of India which had given a cash credit facility in question. The cash credit facility was sanctioned for a sum of Rs. 2,25,000/- in the name of defendant No. 2/appellant No. 2 and who was the sole proprietor of defendant No. 1/appellant No. 1. The defendant Nos. 3 and 4 were the guarantors in the suit and are the appellant Nos. 3 and 4 herein. Defendant Nos. 1 and 2/appellant Nos. 1 and 2 had on the grant of the facility executed the

security documents for Rs. 2,25,000/- in favour of the bank on 5.11.1988. The security documents executed were a promissory note and various agreements including the cash credit hypothecation agreement. Defendant Nos. 3 and 4/ appellant Nos. 3 and 4 executed the guarantee agreement of the same date i.e 5.11.1988 in consideration of the grant of the loan to the appellant Nos. 1 and 2. Defendant No. 2 being the Karta of defendant No. 3 created an equitable mortgage by deposit of title deeds of the immovable property admeasuring 1200 sq. yds. of agricultural land forming part of Khasra No. 14/14/1 situated at village Nangli Puna, Delhi. Equitable mortgage was created by deposit of title deeds of the mortgaged property. The appellant Nos. 1 and 2 had also executed balance confirmation letters on 29.10.1991 and 31.3.1994 for amounts of Rs. 4,79,898.03/- and Rs. 5,55,181.03/-. Appellant No. 2 deposited the sum of Rs. 7,28,956.03/- on 3.9.1994 leaving the balance due at Rs. 1,82,180.56/-. Since this amount was not paid, a notice was sent by the bank dated 16.9.1996, and whereafter the subject suit came to be filed.

3. All the appellants/defendants filed a joint written statement. With respect to one other facility being the letter of credit facility granted, certain disputes had arisen and which disputes were the subject matter of separate legal proceedings in this Court, and which is not the subject matter of the present suit and the appeal. The basic defence of the defendants in the written statement pertained to the bank taking blank documents.

4. After the completion of pleadings, the trial Court framed the following issues:-

1. Whether the suit as framed is not maintainable as alleged in preliminary objection No. "A" of the Written statement? OPD

2. Whether the plaint does not disclose any cause of action as alleged in Para "B" and "C" of the preliminary objections of the written statement? OPD

3. Whether the suit is barred by period of limitation? OPD

4. Whether the suit is bad for mis-joinder as alleged in para "G; and "I" of the preliminary objections of the Written Statement? OPD

5. Whether the plaint has been signed, verified and suit file was competent by various persons? If not, its effect? OPP

6. To what amount if any is the plaintiff entitled? OPP

7. Whether the plaintiff is entitled to any interest if so at what rate, for what period, and to what amount? OPP

8. Relief.

5. The relevant issue with respect to the amount being due to the plaintiff-bank is issue No. 6. While dealing with this issue No. 6, the trial Court has referred to various exhibited documents of the grant of loan, acknowledgement of debt, the title deeds and the balance confirmation letters. These documents have been

exhibited as Ex. P.1 to Ex. P.25 and Ex. PW3/5 (statement of accounts). This issue has been dealt with by the trial Court in the following manner:-

ISSUE NO.6

It is the admitted case of the defendants that defendant Nos. 1 & 2 had availed the aforesaid facilities on 5.11.1988. DW.1/defendant No. 2 Sh. Baldev Raj Aggarwal in his deposition as DW.1 has not disputed that the documents from Ex. P.1 to P.9, the documents Ex. P.10 to P.15, Ex. P.18, P.19 to P.21 and Ex. P.22 to P.25 do not bear his signatures. His deposition is only to the effect that he had signed the blank printed forms at the time of grant of loan and his signatures were obtained on blank printed forms and have been misused by the bank officials by filling up the gap and dates according to their own convenience. PW. Sh. T.C.Arora also deposed that all these documents were executed and signed by defendant No. 2 in his presence. In his cross-examination, there is nothing except bare and bald suggestions that signatures of defendant No. 2 on the said documents were obtained by the bank officials on blank printed forms. As already mentioned above, there is no substance in that plea and the said plea is not believable. So the statement of PW. Sh. T.K.Arora with regard to those documents is unrebutted and unchallenged. Even in his own cross-examination, defendant No. 2/DW.1 Sh. Baldev Raj Aggarwal has admitted that all those documents bear his signatures at different portions therein. As already discussed above, there is no substance in that plea for want of any evidence by the defendants and the said plea is not believable at all. In view of these admitted facts the onus stands shifted to the defendants to disprove the contents of all the aforesaid documents. Except the oral testimony of defendant No. 2/DW.1 Sh. Baldev Raj Aggarwal, there is no evidence at all by the defendants and as already discussed above, the said evidence by the defendant does not inspire confidence. Besides, there is no explanation by the defendants No. 1 kept silence from 1998 onwards till he filed Written Statement in this case and why he did not lodge any police complaint, complaint to higher bank authority or any civil suit for declaration. Besides, there could be no apparent reason for the bank officials of the plaintiff bank to obtain signatures of defendant No. 2 proprietor of defendant No. 1 and other defendants on blank printed forms, as admitted the defendants had availed the aforesaid facilities as mentioned in those documents. As admitted by defendant No. 2 in his Written Statement and also in his deposition as DW.1 he had been operating that account after availing the said facilities from the plaintiff bank.

PW. Sh. V.K.Sharma, the Law Officer of the plaintiff bank has duly proved the statement of account Ex. PW.3/5. It is duly certified under the Bankers Books Evidence Act. In the cross-examination of the witnesses examined by the plaintiff, the defendants have not confronted any of the entries mentioned therein including credit and debit entries, at any point of time from 1988 onwards. It is also not the case of the defendants that any payments made by them have not been credited into their account or that any credit or debit entries

reflected therein are false or incorrect. So there are no grounds to disbelieve the said statements of accounts Ex. PW.3/5. The statement of account Ex. PW.3/5 coupled with other material on record goes to show that as on the day of institution of this suit a sum of Rs. 3,58,689.17 paise was due from the defendants to the plaintiff. The deed of guarantee Ex. P.16 shows that defendants No. 3 HUF through defendant No. 2 as its karta and defendant No. 4 had stood as guarantors for both the aforesaid facilities availed by defendant No. 2 as proprietor of defendant No. 1. Defendant No. 4 has not appeared in the Witness Box to say that he had not stood as guarantor for defendant Nos. 1 & 2 and that his signatures on Ex. P.16 were obtained on blank documents. Therefore, defendant no.3 the HUF and defendant No. 4 being the guarantors are jointly and severally liable alongwith defendant Nos. 1 & 2 to pay the suit amount with interest.

The list of title deeds Ex. P.17 and P.18 shows that defendant No. 2 as proprietor of defendant No. 1 and also as Karta of defendant No. 3 HUF has deposited title deeds of the property comprising one Bigha four Biswas i.e. 1200 sq. yards out of Khasra No. 14/14/1, situated at village Nangli Puna, Delhi by way of equitable mortgage as collateral security for CC limit of Rs. 2,25,000/- as well as LC facility of Rs. 10,00,000/- (Rupees ten lacs) admittedly availed by defendant No. 1 through its proprietor defendant No. 2. The affidavits Ex. P.22 and P.23 executed by defendant No. 2 as proprietor of defendant No. 1 and Karta of HUF defendant No. 3 corporate the same. Ex. P.19 and P.20 are the title deeds of the said agricultural land, deposited vide Ex. p.18 which are in the name of defendant No. 2 and defendant No. 3 through defendant No. 2 as its Karta. Therefore, all the four defendants are jointly and severally liable to pay the suit amount amounting to Rs. 3,56,689.17 paise. In the light of the aforesaid document proved in evidence by the plaintiff, the plaintiff bank is also entitled to a Decree under Order 34 CPC. The issue is accordingly decided in favour of the plaintiff and against all the four defendants.

(underlining added)

6. No fault can be found in the findings and conclusions of the trial Court on the aforesaid issue as the trial Court has rightly decided that the cash credit facility was granted and the plea with respect to the blank documents was a misconceived and a false plea. In any case, I fail to understand what can be a defence of blank documents, once cash credit facility has indeed been availed of.

7. Learned Senior counsel for the appellants raised a single issue before me in support of the appeal and which issue was that the respondent/plaintiff-bank had received an amount from the appellant Nos. 1 and 2 in full and final satisfaction of its claim and, therefore, the suit was bound to be dismissed. It is argued that on this ground itself appeal should be accepted.

8. Since the judgment of the trial Court does not refer to or decide this issue/plea of the appellant Nos. 1 and 2, of making payment in full and final

satisfaction of the account, to the respondent/plaintiff-bank, I put it to Learned Counsel for the appellants as to whether this aspect was argued before the trial Court at the time of final arguments. Learned Senior counsel for the appellants conceded that it appears that no such issue was raised at the time of final arguments. The fact that this issue was not raised or pressed also becomes clear from the fact that even in the grounds of the appeal there is no such ground which has been pointed out to me which specifically takes up the case that before the trial Court an argument was raised of full and final satisfaction, and in spite of the argument having been raised the trial Court has not dealt with such argument. Obviously, therefore no such argument having been raised, the trial Court did not decide this issue and, therefore, it cannot be urged that the impugned judgment and decree is liable to be set aside. Besides the fact that no such plea was taken either in the grounds of appeal or raised at the time of final arguments in the suit, I asked the learned Senior Counsel for the appellants to show me the plea in the written statement of full and final satisfaction. Learned Senior counsel admits that in the written statement there is no such pleading raised with respect to a particular amount having been paid to the bank in full and final satisfaction of the dues. Since, no such pleading existed, obviously, the trial Court did not frame any issue with regard to the respondent-bank having received an amount in full and final satisfaction. A plea of a creditor having received a lesser amount in full and final satisfaction of his claim is a plea which is based on facts, i.e. the same is a factual plea. A factual plea has to be specifically taken in a pleading, so that the opposite party is put to notice of the factual plea and can accordingly defend such plea by appropriate pleading and leading of evidence. Once there is no such plea and no issue was framed on the factual issue of full and final satisfaction, there does not arise any question of permitting the appellants for the first time to raise any such plea in this appeal.

9. It is trite that the object of law of pleadings and framing of issues is to put notice of factual issue to the opposite party so that the same can be rebutted by appropriate pleadings and evidence. I, therefore, disallow the appellants to raise this factual plea for the first time at the time of arguments in the appeal and which, in my opinion, is an abuse of the process of law for the aforesaid reasons.

10. Learned Senior counsel for the appellants then argued that the respondent-bank is only entitled to interest @6% per annum as per Order 34 Rule 11 CPC and not @16.5% per annum which is admittedly the contractual rate. I find this argument raised on behalf of the appellants once again to be wholly without any merit, inasmuch as, the rate of interest which is granted under Order 34 Rule 11(a) (iii) CPC is the rate not with respect to the principal amount due along with the interest due thereon, and the rate of 6% mentioned in this provision is only on the costs incurred with respect to the mortgaged property, and which amounts are added to the moneys due. A constitution Bench of the Supreme Court in the judgment of Central Bank of India Vs. Ravindra and Others, has held that banks are entitled to charge compound interest once there is a contract to the said effect and after the period for which interest is to be paid expires, the

unpaid interest merges into the principal amount. In the present case, admittedly, the amount which is claimed to be due is the total amount after non-payment of interest which has merged into the principal. Thus, the amount which is claimed to be due is the total amount due as per the rate of cash credit account and which will also include interest which will become part of the principal as the same was not paid on the due dates, in view of the ratio of the judgment in the case of Central Bank of India (supra). I may further add that considering the apparent dishonesty of the appellants in failing to pay the amount due to the bank, and contesting the suit as well as this appeal on frivolous grounds, I am not inclined, in exercise of my powers u/s 34 CPC, to reduce the rate of interest. In any case, this issue of claiming a lower rate of interest u/s 34 of CPC was not argued before me.

11. The Supreme Court in the recent judgment in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has held that it is high time that actual costs be awarded. The Supreme Court has observed that unless actual costs are imposed a dishonest litigant will take undue benefit of the false litigation. In the present case, though the aspect of dues would be covered as the respondent-bank in this case is secured by a mortgaged property, and which can be sold for recovery of the dues under the impugned judgment and decree, however, the respondent-bank has been put to costs of this appeal. Earlier a Division Bench of three Judges of the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), had observed that it is high time that actual costs be awarded. I am also empowered to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. Accordingly, considering the facts and circumstances of the present case, I deem it fit to dismiss the present appeal with costs of Rs. 30,000/-, which I assess to be the actual costs. Costs be paid within a period of four weeks from today.

12. In view of the above, the present appeal is dismissed with costs of Rs. 30,000/-. Trial Court record be sent back.