
(1985) 09 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Rugular First Appeal No. R.F.A. No. 768 of 1985

M/s. Universal Fasteners and Others

APPELLANT

Vs

Bank of Baroda and Another

RESPONDENT

Date of Decision : 25-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 4

Citation : (1985) 09 P&H CK 0104

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : D.S. Bali, for the Appellant; Rajinder Mahajan, for the Respondent

Judgement

J.V. Gupta, J

1. The Plaintiff Respondent Bank filed a suit for the recovery of Rs. 1,38,393 82 against the Defendant-Appellant Messrs. Universal Fasteners and others The suit was filed under Order 37, Code of Civil Procedure, alleging that Defendant No. 1 approached the Plaintiff Bank for the grant of various credit facilities including cash credit limit or Rs. 90,000/- against hypothecation of working capital, stock loan or Rs. 90,000/- against hypothecation of machinery and stocks and Rs. 20,800/- against bill purchases which were allowed. Defendant No. 1 executed two pro-notes for Rs. 90,000/- each agreeing to pay interest thereon. They also executed the letter of continuing security, instrument of hypothecation of goods and movable machinery, and Defendants No. 2 and 3 executed a guarantee deed in favour of the Plaintiff bank undertaking to repay the amount with interest It was pleaded that the amount in question was not repaid by the Defendants and it was on 17th May, 1982 that Defendant No 1 acknowledged his liability and confirmed the balance lying outstanding against him. Thus, the Plaintiff filed the present suit on 31st July, 1981, for the recovery of the said amount of Rs. 1,38.393.82 with interest @ 13% per annum till its realisation.

2. Notice in Form IV, appendix B, Code of Civil Procedure, was issued to the

Defendants. However, they could not be served in the ordinary way and ultimately on 1st February, 1985, the trial court ordered substituted service by publication in the Tribune English Daily for 12th February, 1985. On 7th February, 1985, the Defendants put in their appearance. However, on 12th February, 1985, when the case was fixed, their counsel Shri S.C. Nagpal, Advocate, appeared, as it evident from the power of attorney filed in the court, duly signed by him, dated 12th February, 1985. Notice, as required under Order 37, Rule 4, CPC, was duly served on the counsel for the Defendants, but in spite of that the Defendants did not apply for leave to defend the suit within ten days as provided by Order 37, Rule 3(5). Consequently, on 2nd March, 1985, the trial court passed the decree for the recovery of a sum of Rs. 1,38,393.82, with costs. It was further directed that the Defendants shall pay interest to the Plaintiff bank at the rate of 12% p.a. since the filing of the suit till date with future interest at the same rate till its realisation. Dissatisfied with the same, the Defendants have filed this appeal here.

3. The only argument raised on behalf of the Appellant is that no notice was delivered or served on them on 12th February, 1985 and, therefore, no decree could be passed under Order 37, on 2nd March, 1985 According to the learned Counsel, no one was present on behalf of the Defendants on 12th February, 1985, and therefore, the question of serving any notice on them under Order 37, Rule 3(4), C.P.C., cannot arise. According to the learned Counsel, the ten days period will start from 2nd March, 1985, during which they could file the leave to defend themselves, and, therefore, the whole procedure adopted by the trial court was wrong and illegal.

4. After bearing the learned Counsel for the parties and going through the record of the trial Court, I do not find any merit in the contentions raised on behalf of the Appellants. It is wrong to say that no one appeared on behalf of the Defendants on 12th February, 1985. Of course, in the order dated 12th February, 1984 it was stated that the Defendants have not put in appearance in the Court within the period of ten days as required by law and, thus, the suit was liable to succeed. At the same time, the court observed that the Defendants had already put in appearance within the period of ten days, i.e., on 7th February, 1985, therefore, the case was adjourned for 2nd March, 1985, for service of summons for judgment on them. The record of the trial court further reveals that on 12th February, 1985 Shri S.C. Nagpal, Advocate, put in appearance on behalf of the Defendants in court and he also acknowledged the receipt of certain documents given to him on behalf of the Plaintiff-bank. That being the situation, it could not be successfully argued on behalf of the Defendants that they were not served with the summons for judgment in Form No. IV (A), Appendix B, as provided for by Order 37, Rule 3(4), CPC As a matter of fact, the whole conduct of the Defendants speaks for itself. They avoided their service in the suit and were ultimately served by substituted means by way of publication. Again they appeared on 11th February, 1985 and got the necessary documents received from the bank. In spite of that, no application for leave to defend the suit was filed by them. In these circumstances, the trial court has rightly decreed the suit

under Order 37, C.P.C, on 2nd March, 1985. Consequently, the appeal fails and is dismissed with special costs. Costs assessed at Rs. 3,000/-.