(1999) 07 DEL CK 0015

In the Delhi High Court

Case No : Suit No. 1499/82

New Bank of India APPELLANT

Vs

M/s Mukesh and Co. and Another RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Citation : (1999) 81 DLT 307

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. H.L. Dhall and Mr. K.K. Jha, for the Appellant;

Judgement

Manmohan Sarin, J.—This plaintiff had instituted this suit for recovery of Rs. 1,68,041.05 together with pendent-elite and future interest @19.5% per annum. The plaintiff had also prayed for pledged goods being attached and put to sale for realisation of the decretal amount.

2. The defendants were duly served and have filed their written statement. Vide order dated 10th April, 1985, in view of the defense taken by the defendants, the defendants were directed to file counter statement of accounts. This order was not complied with. The defendants were proceeded ex-parte vide order dated 23rd August, 1985. However, the ex-parte order was set aside on 24th September, 1985. The following issues were framed on 4th October, 1985.

1. Whether the suit has been signed and verified by a competent person ? OPP

2. Whether the suit is barred by limitation ? OPD

3. To what rate of interest is the plaintiff entitled ? OPP

4. To what amount, if any, is the plaintiff entitled ?

5. Relief.

The following additional issue was also framed on 9th May, 1989 :

6. Whether the defendants were made to sign on blank printed forms, as alleged ? If so, to what effect ? OPD

3. The case was directed to be fixed for trial on 30th April, 1996. On the said date, one PW was examined on behalf of the plaintiff Bank and the plaintiff closed its evidence. As none was present on behalf of the defendants to cross examine the PW, their right to cross examine the PW was closed. Counsel for the defendants appeared on 22nd August, 1996 and submitted that he would be moving an appropriate application since evidence had been recorded. On 14th January, 1998, the application moved under Order 9 Rule 7 C.P.C. by the defendant was dismissed. However, the defendants were accorded an opportunity to lead their evidence. Learned counsel for the defendants undertook to produce the witnesses on his own. The defendants were not present on 8th October, 1998 and evidence of the defendants was closed. It is, in these circumstances, that the suit was directed to be listed for disposal in the category of ''short cause''.

4. The plaintiff Bank has examined its Branch Manager of the Chawri Bazar Branch as PW1. PW1 has deposed that the plaint had been signed and verified by him and the suit had also been instituted by him. At the relevant time PW1 was working with New Bank of India which was amalgamated with Punjab National Bank. The witness duly produced a copy of the power of attorney granted by the New Bank of India i.e., Ex. PW1/1, as well as the power of attorney granted by Punjab National Bank i.e. Ex.PW1/2 authorising him to institute the suit. The plaintiff has according proved that the plaint has been signed, verified and suit instituted by a competent and authorised person. Issue no. 1 Therefore stands decided in favor of the plaintiff and against the defendant.

5. As regards the plea of suit is barred Limitation, the learned counsel for the plaintiff drawn attention to Ex.PW-1/27. The document shows a deposit/credit entry in the account of the defendant with the plaintiff, of Rs 1200/- on 6th December, 1979. Besides, this, there is another credit entry/deposit of Rs 460/- in the second fortnight of December, 1979. As per the plea in the written statement, the last acknowledgement was made on 2nd November, 1979. i.e. PW1/17. The suit has been instituted on 2nd November, 1082, after excluding the date 2nd November, 1979 Because of the deposit made on 6th December, 1979 and second fortnight of December, 1979, the suit had been instituted well within time. The second issue of limitation is also decided in favor of the plaintiff and against the defendant.

6. Issues nos. 3, 4 and 5 are taken up together for consideration. As regards the amount due from the defendant, the witness has deposed that the defendant had been allotted letter of credit cum cash credit limit of Rs 3 lakhs. The limit had been sanctioned in 1976 against the security of the pledge of imported raw material of steel and steel plates. The cash credit limit was to carry interest @ 15% per annum plus service charges. The witness also duly proved the execution of the following documents by the defendants. Ex PW-1/3 being account opening form; Ex.PW-1/4 being the promissory note executed by the defendant''s partner

on behalf of the defendant in the sum of Rs 3 lakhs; Ex. PW-1/5 being the letter of waiver; Ex. PW-1/6 being the letter of forwarding the demand promissory note; Ex PW-1/7 being the original agreement for pledge of goods; Ex. PW-1/8 is the agreement for cash credit limit; Ex.PW-1/9 being the undertaking to comply with all the terms and conditions; Ex-PW-1/11 being the letter in respect of the leased go down ;Ex PW-1/12 acknowledging prior lien to the Bank; Ex.PW-1/13 to Ex PW-1/17 are the balance confirmations executed from time to time. The witness also provided Ex. PW-1/23 and Ex.PW-1/24 being the original applications from the defendant for establishing a letter of credit. The witness also proved the copy of the notice of demand i.e. Ex.PW-1/25 together with the A.D. card. The witness also proved Ex. PW-1/27 being the statement of accounts showing a debit of Rs. 1,68,041.05 being the suit amount certified under the Banker''s Book of Evidence Act. There is a presumption of genuineness and correctness with regard to the statement of accounts duly certified under the Banker''s Book of Evidence Act.

7. There is nothing available to rebut the sworn testimony of PW1 and the contents of documents provided. Contractual rate of interest as per the promissory note was 15%. However, in terms of the agreement between the parties, the same was to vary in accordance with the prevailing Reserve Bank rate. Learned counsel for the plaintiff submits that in the statement of account they have charged the rate as per the Reserve Bank of India''s directives from time to time. Further, at the time of the institution of the suit, the rate of interest was 19.5%. The plaintiff is accordingly held entitled to a sum of Rs. 1,68,041.05 (Rupees One Lakh Sixty Eight Thousand Forty One and Paise Five only). Learned counsel for the plaintiff submits that pendent-elite interest i.e. from the date of institution of the suit till the date of decree and future interest should also be awarded @19.5% per annum. However, having regard to the facts and circumstances of the case, in my view, interest of justice would be met by awarding pendent-elite and future interest @12% per annum. The suit is accordingly decreed in the sum of Rs. 1,68,041.05 together with costs and pendent-elite and future interest @12% per annum.