

(1991) 05 DEL CK 0027
In the Delhi High Court

New Bank of India

APPELLANT

Vs

Roshan Engineering Industries and others

RESPONDENT

Date of Decision : 13-05-1991

Acts Referred:

Citation : (1993) 76 CompCas 670

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : J.R. Goyal, for the Appellant; S.P. Chuch and Arun Kathpalia, for the Respondent

Judgement

P.K. Bahri, J.—This is a suit for recovery of Rs. 3,03,731.58. Defendants Nos. 1, 5 and 6 have suffered ex parte proceedings during the pendency of the suit although earlier they had appeared for contesting the suit. The facts of the case in brief are that defendant No. 1, a partnership firm, initially comprised defendants Nos. 2 to 4 as partners and had in November/December, 1973, approached the plaintiff-bank for grant of a term-loan of Rs. 50,000 against hypothecation of new machinery worth about Rs. 1.10 lakhs to be purchase from Messrs. Niranjana Singh Kartar Singh of Ludhiana. The head office of the plaintiff-bank sanctioned the aforesaid loan vide letter dated December 7, 1973, issued to the Ghaziabad branch of the plaintiff-bank. On December 8, 1973, the bank gave a loan of Rs. 50,000 to defendant No. 1 thought its partners defendants Nos. 2 to 4 and they executed a demand promissory note for Rs. 50,000 and agreed to pay interest at the rate of five per cent. above the Reserve Bank of India rate subject to a minimum rate of 12 per cent. per annum. They signed a voucher showing issuance of a draft for Rs. 50,000 in favor of Messrs. Niranjana Singh Kartar Singh in the account of defendant No. 1. They gave an undertaking to pay back the loan by monthly Installments of Rs. 2,000 plus interest. They also executed a letter of continuing security and a letter of waiver in Form L-24 waiving necessity of presentment of the demand promissory note and executed a deed of hypothecation whereby the machinery purchased from Messrs. Niranjana

Singh Kartar Singh was hypothecated too secure repayments of the said loan. It is provided in the hypothecation agreement that the amount of the loan was payable either at the Ghaziabad branch of the plaintiff-bank or at the head office of the plaintiff-bank at New Delhi. The defendants have been executing balance confirmation slips in the aforesaid loan on different dates, i.e., they admitted the balance as Rs. 28,278.94 as on June 30, 1974 and Rs. 41,893.75 as on December 31, 1977, and Rs. 55,380.03 as on December 31, 1979 and Rs. 82,855.73 as on December 31, 1982. At the time of the filing of the suit, the amount due in this account is stated to be Rs. 92,533.40.

2. Defendant NO. 1, through its partners defendants No. 2-4, had again approached the plaintiff's head office in September/October 1974, for grant of a cash credit limit of Rs. 50,000 against hypothecation of stocks of copper and brass and a bill purchase limit of Rs. 50,000 against documentary bills accompanied by R/Rs and G/Rs of approved companies and another bill purchase limit of Rs. 20,000 against third party cheques and drafts. These limits were sanctioned vide letter of the head office dated October 15, 1974, issued to the Ghaziabad Branch of the plaintiff-bank. In pursuance of the aforesaid sanction, the said limits were allowed to defendants Nos. 1 to 4 on October 31, 1974, when the loan documents, i.e., demand promissory note, letter of waiver, letter of continuous security, a deed of hypothecation, an agreement of cash credit, a general lien agreement in respect of the first limit, a presentment letter of waiver, letter of continuous security, an agreement regarding inland bills purchase and agreement in Form L-35, a letter of request for discounting third party cheques in respect of other limits were executed. All documents were executed by defendants Nos. 2 to 4 for the partnership firm, defendant No. 1. Accordingly, a cash credit account No. 37 was opened on October 30, 1974, with the initial debit of Rs. 19,196.79, and amounts were then withdrawn from time to time and were debited in the account and certain amounts were transferred from this account to the current account and other accounts of the defendants and the same were debited in the account. At the time of filing of the suit, a sum of Rs. 1,96,712.58 stood due from the defendants in the said account.

3. The plaintiff discounted various bills of defendant No. 1 from time to time and a sum of Rs. 4,380 still remains to be due in that account and interest of Rs. 2,959.04 is stated to have become due on the said amount. So, the total amount due is Rs. 7,340 in this account. The defendants are stated to have been confirming the debit balance in the cash credit loan by signing the balance confirmation memos showing a balance of Rs. 76,845.05 due as on June 30, 1975, Rs. 74,467.79 due as on December 31, 1977, a sum of Rs. 84,458.36 due as on December 31, 1978, Rs. 99,775.76 due as on December 31, 1979 and lastly Rs. 1,76,196.75 due as on December 31, 1982. Defendant No. 1 is stated to have executed and delivered to the plaintiff, through defendants Nos. 2 to 4, fresh loan documents on May 31, 1975, in respect of the aforesaid limits mentioned above on the same lines as before. They had executed fresh deeds of hypothecation mentioning the machinery and the goods hypothecated in the said

account. On October 30, 1975, the defendants again executed a hypothecation deed and declared that they have hypothecated the machines mentioned therein.

4. Defendant No. 1-firm is stated to have opened current account No. 906 on January 22, 1990, in which various payments were drawn and made from time to time and, in this account, Rs. 7,145.65 is stated to be due at the time of filing of the suit.

5. It was mentioned in the plaint that defendants Nos. 3 and 4 had claimed to have retired from the partnership of defendant No. 1 sometime in or about 1978 but the plaintiff had not released them from their joint and several liabilities incurred which are the subject-matter of the present suit. Defendants Nos. 5 and 6 are stated to have joined as partners sometime after defendants Nos. 3 and 4 retired and they are stated to have taken over all the liabilities and assets of defendant No. 1 firm. So they are also stated to be jointly and severally liable for the claim in the suit. It is averred that defendant No. 1, acting through defendants Nos. 2 and 5, on June 9, 1983, requested the plaintiff-bank for waiving the interest for the year 1982-83 and agreed to pay the entire outstanding balance amount within two months and they also confirmed the debit balance of Rs. 1,94,468.58, Rs. 91,635.40, Rs. 4,380.96 and Rs. 7,047.60 in the said accounts, vide letter dated June 9, 1983, but the plaintiff wanted the defendants to make some substantial payment immediately to enable the plaintiff-bank to consider the request of the defendants but, thereafter, as the defendants did not pay anything, nothing more happened on the request of the defendants. However, despite repeated has sought a decree for recovery of the aforesaid amount with costs and pendente lite interest and future interest at the rate of 18 per cent. per annum.

6. Defendants Nos. 3 and 4, in their written statements, have pleaded that no part of the cause of action has arisen at Delhi as the defendants are not residing within the local jurisdiction of Delhi and all transactions took place at Ghaziabad, so the Delhi court has no territorial jurisdiction to try the suit. They also pleaded that the suit is bad for multifariousness of causes of action and parties and the suit is bad for multifariousness of causes of action and parties and the suit is bad for multifariousness of causes of action and parties and the suit is hopelessly barred by limitation against defendants Nos. 3 and 4 inasmuch as defendants Nos. 3 and 4 had retired as partners on July 31, 1978. They also pleaded that the suit is not properly valued for the purpose of court fee and the requisite court fee has not been paid. They pleaded that the plaintiff-bank has acted upon the dissolution of defendant No. 1 whereby defendants No. 3 and 4 had retired and, thereafter, the plaintiff-bank has been dealing with defendant No. 1 as a sole proprietorship of defendant No. 2 and had allowed the opening of a current account in the name of defendant No. 1 through defendant NO. 2 as sole proprietor and thus defendants Nos. 3 and 4 stand discharged from every liability. They also pleaded that Mr. B. D. Dhawan who has signed and verified the plaint has no authority to do so and institute the suit on behalf of the plaintiff-

bank. They also pleaded that they had never executed any confirmation of balance made after these defendants retired from the partnership is not binding on them. They also pleaded that the plaintiff-bank has got signed certain printed documents which were blank from the defendants. They did not disputed the factum of obtaining the various loans and facilities from the plaintiff-bank when they were the partners of defendant No. 1.

7. Defendant No. 2, in a separate written statement, has taken similar pleas as raised by defendants Nos. 3 and 4. As a matter of fact, defendant No. 2 was examined by the court under Order 10 of the CPC on July 10, 1987, and he admitted the liability of defendant No. 1 and defendant No. 2 and of other partners, namely, defendants Nos. 5 and 6, for paying the plaintiff bank a sum of Rs. 3,03,731.58 as claimed in the suit.

8. In replication to the written statement of defendants Nos. 3 and 4, it was reiterated that the Delhi courts had territorial jurisdiction to try the suit. The preliminary objections raised in the written statement were controverted. It was pleaded that defendants Nos. 3 and 4 continued to remain liable for the whole amount claimed in the suit.

9. Following issues were framed:

1. Whether courts at Delhi have jurisdiction to try this case?
 2. Whether the suit is bad for multifariousness of causes of action and parties?
 3. Whether the suit is within limitation as against defendants Nos. 3 and 4 in view of the dissolution of the firm as on July 31, 1978?
 4. Whether defendants Nos. 3 and 4 are not liable for transactions subsequent to their notification of dissolution of the firm to the plaintiff?
 5. Whether the suit is properly valued for purposes of court fee and proper court fee has been paid?
 6. Whether defendants Nos. 3 and 4 stand discharged of all the liabilities prior to and after the dissolution of the firm as the plaintiff had acted upon the dissolution and dealt with defendant No. 1 as a proprietorship concern?
 7. Whether the plaint has been signed and verified and the suit filed by a competent and authorised person?
 8. Whether the plaintiff is entitled to interest, if so, at what rate and to what amount?
 9. To what amount is the plaintiff entitled and from whom?
 10. Whether the documents were blank at the time of execution and if so to what effect?
 11. Relief.
10. Issue No. 1 : The promissory notes and the hypothecation deeds executed by

the defendants clearly show that defendants were liable to make the payment in the various loans not only at the Ghaziabad branch of the plaintiff-bank but also at the head office of the plaintiff- bank located in New Delhi. As the payments in the transaction in question could be made at Delhi, a part of the cause of action in respect of the various transactions which are subject-matter of the suit has arisen at Delhi. Hence, the Delhi courts have jurisdiction to try the suit. Issue is decided in favor of the plaintiff.

11. Before taking other issues, I will deal with issues Nos. 3, 4 and 6.

12. Issues Nos. 3, 4 and 6 : It is indeed admitted before me by learned counsel for the plaintiff that defendant No. 1, partnership firm, was dissolved and defendants Nos. 3 and 4 retired from the partnership and the dissolution deed was executed on August 1, 1978, and the plaintiff had approved the copy as P-32. The document revealed that defendant No. 1 stood dissolved with effect from July 31, 1978, and that all assets and liabilities of the firm stand taken over by Shri Om Prakash Gulati, who is now defendant No. 2 in the suit and even the goodwill of the firm was taken over by him and all the books of account and other documents of the partnership were also handed over to him. Partners, Dharamvir and Padma Taneja, who were defendants Nos. 3 and 4 before me, were absolved from all liabilities in respect of the said partnership firm. There were no space (sic) indicated in the issuance of deed which were to be taken by defendant No. 2 for winding up the affairs of the partnership. I am high-lighting this aspect because a contention has been raised before me that, in view of section 47 of the Partnership Act, any act performed by the continuing partner binds the other retiring partner if the same is done for winding up the business of the dissolved partnership firm. Thus, the claim of the plaintiff-bank is that, after dissolution of the partnership which was duly intimated to the plaintiff-bank, defendant No. 2 has signed acknowledgments of balances in respect of the transactions which took place prior to defendants Nos. 3 and 4 retiring from the partnership, so the same bind defendants Nos. 3 and 4 and thus the suit is within limitation against defendants Nos. 3 and 4. It is true that there is no evidence led by defendants Nos. 3 and 4 to show that, at any time, the plaintiff-bank had absolved defendants Nos. 3 and 4 from the liabilities of the loan and the cash credit limits sanctioned to defendant No. 1 during the period defendants Nos. 3 and 4 were the partners of defendant No. 1. It is also clear that, after a copy of the dissolution deed had been given to the plaintiff-bank, the plaintiff-bank had allowed an account to be opened in the name of defendant No. 1 as the sole proprietorship of defendant No. 2, but it does not lead to any inference that the plaintiff-bank had absolved defendants Nos. 3 and 4 of their liabilities in respect of the loans taken earlier.

13. Be that as it may, a question still arising for decision is whether the suit filed against defendants Nos. 3 and 4 is within limitation. The suit definitely is barred by time against defendants Nos. 3 and 4 unless and until it is to be held that defendant No. 2 had the authority to acknowledge the balance due in the said

accounts on behalf of defendants Nos. 3 and 4 as well. Counsel for the plaintiff has referred to section 47 of the Partnership Act which lays down:

"After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent, but this proviso does not affect the liability of any person who had after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent."

14. I have already referred to the contents of the dissolution deed which do not contemplate any acts to be performed by the partners for winding up the partnership business or for completing any transactions of the partnership firm. In *Sheonarain v. Babulal* AIR 1925 Nag 268, it was laid down that where a partnership is dissolved, the surviving partners cannot bind the legal heir of the deceased partner by executing acknowledgment of balances on behalf of the firm unless they are specially authorised to do so. It was laid down that an acknowledgment made by one partner does not bind the other partners in the absence of proof that they authorised such an acknowledgment and such authority cannot be presumed. In *B.S. Mahadeva Iyer and Others Vs. Ramakrishna Reddiar and Others*, it was laid down that, after dissolution, no ex-partner has power to do any act binding another ex-partner. In *Bhishun Ram v. Jiwanda Ram*, AIR 1926 Lah 522m it was held that, after a partnership was dissolved and accounts settled, any balance struck by a partner is one without authority and consideration and does not create any liability on the firm. In the present case, the plaintiff-bank had notice of dissolution inasmuch as a copy of the dissolution deed was furnished to the plaintiff-bank.

15. It is evident that the acknowledgments of balance executed by defendant No. 2 were not in the process of winding up of the partnership business, rather they were made when the new partnership was constituted in the name of defendant No. 1 by joining defendants Nos. 5 and 6 as partners. So, the provisions of section 47 of the Partnership Act are inapplicable in the present case. Hence, I hold that the suit against defendants Nos. 3 and 4 is barred by limitation. It is not disputed that defendants Nos. 3 and 4 are not at all liable on the loan taken by defendant NO. 2 when he became the sole proprietor of defendant No. 1. In view of the above, I decide issues Nos. 3 and 4 in favor of defendants Nos. 3 and 4 and issue No. 6 against defendants Nos. 3 and 4.

16. Issue No. 2 : The suit is not bad for multifariousness of causes of action and parties because defendants Nos. 5 and 6 who too become partners of defendant No. 1 have admittedly taken over all the liabilities of the firm, defendant No. 1, when they joined as partners. Issue is decided in favor of the plaintiff.

17. Issue No. 5 : As the liability of defendants Nos. 2, 5 and 6 and defendant No. 1 is joint and several, the whole amount due from them is to be valued for purposes of court-fee and the court-fee has been paid on the said amount. Even the amount due from defendant No. 1 and defendant No. 2 when defendant No. 1 was the sole proprietorship of defendant No. 2 is payable by defendants Nos. 5 and 6 on their taking over liability and so I hold that the suit is properly valued for purposes of court-fee and the requisite court fee has been paid.

18. Issue No. 7 : Necessary resolution of the board of directors of the plaintiff-bank has been proved which is PW-1/1. Mr. B. D. Dhawan has signed and verified the plaint and has also signed the power of attorney in favor of counsel and he proved the power of attorney, copy of which is PW/3/1. The original power of attorney is attested by the notary public. This power of attorney gives authority to him to institute the present suit. So this issue is decided in favor of the plaintiff.

19. Issues Nos. 8 and 9 : The amount claimed in the suit was admitted by defendant No. 2 when he was examined under Order 10 of the Civil Procedure Code. Moreover, the statement of accounts of the defendant, exhibit PW-3/5, also shows the balance amount due from the defendants. Moreover, the various balance confirmation slips signed by defendant No. 2 on behalf of defendant No. 1 also shows the balances due from defendants Nos. 1, 2, 5 and 6 at different times. Exhibit PW-21 is balance confirmation slip dated January 1, 1979. Documents P-2/9 and PW-3/3 and PW-3/4 were executed by defendants Nos. 2 to 4 when the term loan of Rs. 50,000 was obtained and documents No. PW-3/6 dated July 24, 1975, PW-3/7 dated 27th March, 1978, PW-3/8 dated June 12, 1980, and PW-3/9 dated June 9, 1983 are the balance confirmations executed by defendant No. 2 on behalf of defendant No. 1 in respect of the first loan, PW-3/10 and P-10 to P-13 are the documents in respect of the second facility executed by defendants Nos. 2 to 4 and the balance confirmations are exhibits P-18 to P-22, P-24 to P-27 and P-30. Exhibit P-29 is the hypothecation deed executed on October 30, 1975. Documents P-14 to P-17 and P-23 to P-26 were executed regarding daily purchase limits and the balance of confirmations, exhibits PW-3/12, PW-2/1, PW-3/14 and PW-3/15 and PW-3/16 are in respect of the said loan. PW-3/17 is a copy of the account opened by defendant No. 2 when he was sole proprietor of defendant No. 1 and the balance confirmation in that respect is PW-3/18. Defendants Nos. 5 and 6 have taken over the liabilities and thus confirmed the balance due in their letter dated June 9, 1983, which is PW-3/20. So I hold that the amount claimed in the suit is due and interest had been charged by the plaintiff-bank in accordance with the agreement made between the parties at the time when the loan was sanctioned and credit facilities were granted. Issues are held in favor of the plaintiff.

20. Issue No. 10 : No arguments were advanced by counsel for the defendants in support of this issue. Admittedly, the credit facilities were obtained by executing the documents and there can be no occasion for the defendant to sign any blank

documents. Issue is decided against the defendants.

21. Issue No. 11 : Suit is liable to be decreed only against defendants Nos. 1, 2, 5 and 6 liable to be dismissed against defendants Nos. 3 and 4.

22. I decree the suit for recovery of Rs. 3,03,731.58 with costs and grant interest at the rate of 18% per annum from the date of the suit till realisation in favor of the plaintiff and against defendants Nos. 1, 2, 5 and 6. The decretal amount can also be recovered by sale of the hypothecated machinery and goods. The suit against defendants Nos. 3 and 4 is dismissed as being barred by time.