**(2002) 04 RAJ CK 0055**

**In the Rajasthan High Court**

**Case No :** Civil First Appeal No. 4 of 1983

Omprakash Har Narain and Sons and Others — APPELLANT

Vs

Vijaya Bank Ltd. — RESPONDENT

**Date of Decision :** 02-04-2002

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 35A, 96
Evidence Act, 1872 — Section 3

**Citation :** (2003) 1 CivCC 4 : (2003) 1 RCR(Civil) 648 : (2003) 2 RLW 1220 : (2002) 4 WLC 516 : (2002) 5 WLN 636

**Hon'ble Judges :** P.C. Tatia, J

**Bench :** Single Bench

**Advocate :** K.C. Samdariya, for the Appellant; P.K. Bhansali, for the Respondent

**Final Decision :** Dismissed

## Judgement

Prakash Tatia, J.—Heard learned Counsels for the parties. Perused the record.

2. This is an appeal against the judgment and decree passed by the Addl. District Judge No. 2, Jodhpur in Civil Original Suit No. 27/80 whereby the Trial Court decreed the suit of the plaintiff for principal amount of Rs. 25,000/- along with interest @ 17% per annum. The Trial Court granted interest @ 17% per annum till date of filing of the suit and interest was granted @ 12% per annum from 5.2.1979.

3. Brief facts of the case are that the plaintiff in plaint alleged that defendant No, 1-firm is having partners defendant Nos. 2 and 3. The defendants are doing the business of dying and printing at Jodhpur. The defendants obtained credit facility of Rs. 50,000/- as documentary bills purchase facility and credit facility of Rs. 10,000/- in the category of bills purchase facility. The plaintiff granted this facility to the defendants with a condition of minimum rate of interest of 17% per annum. On 15th October, 1975 the defendants executed promissory note for Rs. 5(),000/- in favour of the plaintiff and agreed to make pay ment @ 17% per annum. The defendants also executed other documents mentioned in the plaint

 

and started availing this facility. The present suit is with respect to the dispute, which arose because the bills, which were presented by the defendants to the plaintiff-Bank of Rs. 37143.40 were not accepted by the prospective buyers of the goods of the defendants. The plaintiff paid the above amount to the defendants in view of the contract of the facility given to the defendants by the plaintiff. It was stated in the plaint that when goods were not accepted by the prospective purchaser of the defendants at destination then goods were brought back through transport company and in the presence of defendant No. 2 delivery was taken after physical verification from the transport company. It was stated that with the consent of the defendants, the above goods were sold for Rs. 6895/- on 31.1.1977 and 8th July, 1977 to different traders. The defendants deposited Rs. 5248.40, which was also adjusted in the credit limit of the defendants. Therefore, total amount of the plaintiff for Rs. 25,000/- was due in the defendants for which the present suit was filed by the plaintiff.

4. The defendant No. 3 submitted written statement and stated that defendants did not sought any credit facility from the plaintiff-Bank nor they executed any documents. They never executed promissory note of Rs. 50,000/- nor they executed any agreement or mortgage deed, etc. In substance, the case of the defendants was that they never requested for the above facility. In written statement the defendants stated that the plaintiff by putting undue pressure and by inducement obtained signature of the defendants on some papers, which are now being used after filling up as documents for loan or limit transaction. It is also stated in the written statement that the defendants signed the documents without reading and understanding the documents and the defendants assured by the plaintiff-Bank that these documents will not be used to harm the defendants. In para No. 16 of the written statement, the defendants submitted that despite several requests from the defendants, the plaintiff did not send the bills and kept the defendants in dark to harm the defendants. It is also stated in subsequent para that when defendants again and again contacted with the officers of the plaintiff-Bank, the officers of the Bank persuaded defendants to sign more blank papers by giving assurance that the Bank will obtain the payment of the bills. Thereafter, at page No. 5 the defendant stated that goods were not sent as mentioned in the bills. It is also stated by the defendants that the goods of the defendants were sold by the plaintiff without prior notice to the defendants and the goods were also sold at very low price, in fact, goods was available of the full value. On these submissions, the defendants prayed that the suit of the plaintiff be dismissed.

5. The Trial Court framed the issues. The plaintiff produced several documents and witnesses. The defendants also produced witnesses. The Trial Court after hearing the parties held that defendants failed to prove that signature of the defendants were obtained on blank papers. The Trial Court also held that plaintiff gave the bill purchase facility to the defendants and defendant Nos. 2 and 3 executed promissory note dated 15th October, 1975 for Rs. 50,000/- and other documents. The Trial Court also held that plaintiff proved contract of interest @

 

17% per annum. The rate was not found to be excessive or penal and after considering all of the issues decreed the suit of the plaintiff as mentioned above.

6. Learned Counsel for the appellant vehemently submitted that the plaintiff obtained several signatures on several blank papers from the defendants and, therefore, the documents are void and no liability can be fastened upon the defendants on the basis of these documents. It is also submitted by learned Counsel for the appellant that these documents though signed by the defendants and in some of the documents the date was also written by the defendant himself even then since the documents were filled up afterwards without knowledge of the defendants, therefore, these documents are of no use. Learned Counsel for the appellant further submitted that plaintiff sold the goods of the defendants without notice to the defendants and from the evidence it is fully proved that goods were sold at very low price. It is also stated that the purchaser of the goods himself appeared as witness of the defendant and categorically stated that he purchased the goods at a low rate than the actual market rate of the goods. It is also submitted that the witness of the plaintiff PW-1 Shekhar Singh stated that document Ex.1 was dated 1st July, 1977 and the goods were disposed of on 21.1.1977, but signature of Har Narayan defendant was obtained on 29.1.1977, it shows that the documents were obtained by the plaintiff before or even afterwards.

7. I perused the statement of the witnesses and the documents placed on record. The burden of issue No. 9 was upon the defendants. It was for the defendants to prove that the documents said to be used by the plaintiff against the defendants were obtained by the plaintiff by undue pressure or by giving some inducement. There is only vague allegation but no specific pleading with respect to the pressure exerted by the plaintiff upon the defendants nor there are any circumstances pleaded in the written statement to show that there can be only reason to believe that the plaintiff exerted any undue pressure upon the defendants. Even after perusal of the statement of defendants, it is clear that they could not even give evidence on oath what was the pressure put upon the defendants to sign the documents. So far as inducement is concerned, even if it is accepted that plaintiff gave assurance of recovery of the amount of the defendants from the prospective purchaser by obtaining signature then also the case set up by the defendants, on the face of it, appears to be absolutely false and the evidence of the defendants and their witnesses appears to be not only insufficient to prove the fact but also evidence appears to be false. To judge the credibility of the statement of defendants it is relevant to mention that defendants categorically stated that they never applied for bills purchase facility from the plaintiff. In the entire written statement the defendants tried to suppress the facts rather than to disclose the facts. The defendants denied the execution of the promissory note dated 15th October, 1975. They nowhere stated that what transactions took place between the plaintiff and the defendants and what was the reason for the Bank to enter into transaction with the defendant without obtaining any document from the defendants, contrary to well known

 

procedure of the Banks. They have even not explained how they were permitted to operate the Bank account. They have not given whether they obtained cheque book or not, they received payment periodically or not. Everything given in the written statement is absolutely vague. Even if this pleading of the defendants is looked into in the light of the statement of the defendant himself it is clear that defendant Hari Narain deliberately gave falls evidence on various material points. First of all defendant himself in his examination-in-chief admitted that he had transaction with the Bank since 1974. He also categorically admitted that he was having current account in the Bank. He further admitted that he had a bill purchase facility of Rs. 25,000/-, but at the same time, stated on oath that there was no written document executed for the bill purchase facility. In examination-in-chief, the defendant further stated that in pursuance of the bill purchase facility, the defendants'' firm had good number of transactions and there was no dispute except the bills for which present suit was filed. Thereafter, the defendant admitted that he sent the goods as per the quantity and quality mentioned in the bills and there was no difference in the goods. Therefore, the stand taken by the defendants in the written statement proved to be a false defence. In reply to para Nos. 4, 5 and 6 the defendants virtually denied the entire transaction of the credit facility with the Bank but in his statement admitted all the transactions of the credit facility also. It is admitted fact by the defendants that they had a large transaction under the bill purchase facility and if the contention as mentioned in the written statement of the defendant is read meaningfully, shows total denial of transactions. If it is accepted that defendants never requested for grant of bills purchase facility to the plaintiff then how this facility was availed by the defendants, has not been explained. Therefore, the evidence of the defendants cannot be believed for the purpose of proving that there was any undue influence or force upon the defendants to sign the documents or there was any inducement to the defendants for signing documents.

8. That plaintiff Bank is a body corporate under the Companies Act now a Nationalized Bank. It acts through only its officers. Undue pressure, force or inducement can be given by person and not by the body. The defendants did not level any allegation against any of the officers of the Bank, who has exerted pressure or made inducement for obtaining the documents. Not only this and any reason for exertion of the pressure or inducement was also not pleaded. Therefore, also the contention of the defendants cannot be accepted.

9. So far as obtaining signature on blank sheets of the defendants is concerned, the defendant himself admitted signature on almost all the documents in his statement on oath before the Court below. Ex. 22 is a document dated 29.1.1977. This document is hand written document. On this document signature of defendant is admitted and defendant stated on oath that he put date by his own handwriting. In plaint the defendant stated that several sheets were got signed from the defendant by the plaintiff though it is not mentioned that whether these sheets were got signed at the time of first transaction or if not, then on what subsequent dates. In either case if the documents were signed on

 

a single day then from perusal of the documents itself it is clear that defendant himself admitted that he put his signature and dates on the sheets. No reason has been given why he gave different sheets with signature with future dates. If these documents were signed with date mentioned on the documents then also it is clear that these documents are starting from 1975 to 1977 for two years. The defendant is a businessman dealing with Bank since years before the disputed transaction then it is absolutely unbelievable that defendant will go on signing the blank sheets, that too, in such a manner that signature may not come in sequence at same place on all the sheets but at different places on different sheets. It is clear from the various documents that Ex. 19 is a document containing the signature of seven persons. Ex. 21 is sheet of particulars of the goods, which are containing signature of Harinarayan and two other persons with date with an endorsement that ''I confirm the above goods''. This confirmation was followed by another confirmation letter Ex. 22 bearing date 29.1.1977. This document is also totally handwritten document. Before this date dispute arose between the plaintiff-Bank and the defendants with respect to the goods mentioned in the Ex. 22 itself. By Ex. 22 the defendant requested the plaintiff-Bank to hand over the goods of M/s. Ramchandra Harinarayan Jaju and admitted that the value of the goods received is the actual value of the goods and no more money can be fetched by these goods. The defendant requested that goods be delivered to the purchaser. Ex. 20 is a letter said to be written by the defendant, which is dated 21.1.1977 by which the defendants admitted his liability of Rs. 31,000/-. If the defendant signed blank sheets on 22.1.1977, what was the reason to sign another blank sheet on 31.1.1977 has not been explained by the defendant by any pleading or any evidence. The defendant though pleaded that the document Ex. 22 was blank at the time of signing, but he nowhere stated that what has been written in the handwriting of the defendant himself or he was not made known of the contents of the letter. Defendant in cross-examination admitted his signature on Exs. 12, 17, 30, 63 and also admitted seal of the firm on some of the documents. He also admitted his signature over back of the Ex. 21 along with the date. It is unbelievable that the large number of persons will join hands to fabricate the document as alleged by the plaintiff without there being any reason either to gain money or the cause harm to the defendant. A mere word of mouth contrary to all the circumstantial evidence is not sufficient evidence to hold that the plaintiff obtained the signature on any blank sheets.

10. When defendant can plead in Court of law absolutely false facts and can verify it and, thereafter, can give statement on oath contrary to his own pleading then the evidence of the defendant cannot be relied upon. The defendant also produced witness Kamalkant DW-3 to prove that plaintiff obtained blank signed sheet from the defendant, who is none else than the employee of the defendant. In reply to the Court question, the witness could not identify the handwriting of Ex. 21 nor he could disclose where this Ex. 21 was written. From the entire reading of the evidence it appears that this witness is interested in the defendant. In examination-in-chief he stated that Exs. 21c to d contain the

 

signature of Omprakash. He could not explain how he was present at all the time when the blank sheets were signed by the defendant. Therefore, his evidence is of no help to the defendant and when defendant himself is not in position to prove the fact, his witnesses cannot improve the case. Therefore, defendant failed to prove that the documents are void on any count. So far as pronote dated 15th October, 1975 is concerned, this has been proved. The contractual rate of interest is also proved. Therefore, the Trial Court was right in holding that defendants were liable for the amount of Rs. 25,000/-.

11. So far as sale of the goods by the Bank at low price is concerned, there is evidence of the defendant that Bank sold the goods at low price. Since the evidence of the defendant himself is false on material point, therefore, he loses his credibility. Therefore, his evidence is required to be considered cautiously. In Ex. 22, which is proved to be written by the defendant himself, the defendant admitted that cost of the goods cannot be realized more than Rs. 5095/- and he requested that the goods be delivered to M/s. Ramchandra Har Narain. Goods were, in fact, sold to this firm and defendant''s witness DW-3 is doing the business in the name of this firm. On Ex. 21 defendant admitted and confirmed the goods. When defendant failed to prove that these documents were blank at the time of writing or are void then the defendant is bound by his admission in Ex. 22. Therefore, the defendant cannot raise any grievance that goods were sold at low price. It is further relevant to mention here that after accepting the transactions of the Bank by letter Ex. 22 the defendant further admitted its liability by Ex. 20 dated 31.1.1977. This admission also bounds the defendant.

12. It is submitted by learned Counsel for the respondent that an independent witness, the purchaser of the goods from the Bank, who was not known to the defendant prior to the transaction, stated on oath that he purchased the goods at very low price, one of the items was having the market value of Rs. 2.35 per piece, which was purchased by the DW-2 Harinarayan himself @ 1.10 per piece. He also stated that vial having the cost of Rs. 35 to 36 per kg. was purchased by him @ 8/- only.

13. The witness DW-2 in his cross-examination admitted that he is of the same caste as of the defendant. He in his examination-in-chief and cross-examination virtually supported the defendant on all the counts by saying that at the time of signing of the Ex. 19 there was no other businessman present. Ex. 19 bears the signature of six persons along with the signature of the DW-2. Therefore, the statement of the DW-2 is contrary to the documentary evidence available on record. If a person states that he purchased the goods from the Bank at such a low rate (8/- per kg of the goods having market value of 35/- to 36/- per kg) and could not explain under what circumstances he offered such a low price of the goods then also his evidence is required to be looked with great care. Ex. 19 if had six signatures and the parties were not there why the witness DW-2 put his signature on Ex. 19 has not been explained. Therefore, it appears that he is obliging witness only.

 

14. The defendant even did not choose to place on record any evidence to show what was the market rate of the goods at relevant time nor he took any action against the Bank for selling the goods at low price when it came to the notice of the defendants. Therefore, also the defendant failed to prove that goods were sold at low price. In view of the letter dated 25th June, 1976 Ex. 17, Ex. 21 and Ex. 22 the defendant cannot say that he had no knowledge of the action taken by the plaintiff Bank. A notice of fact is making a party known about the action to be taken by the other party. Here in this case, it cannot be said that the defendant has no notice/knowledge of the events, which took place in sequence and in ordinary course of business. Not only this but also defendant himself accepted and acknowledged the action of the plaintiff. Therefore, the defendant has no right to say that he had no knowledge or notice of the proposed sale of the goods by the Bank.

15. Since the defendant failed to prove any of the defence taken and the plaintiff fully proved that defendant availed the credit facility, got Rs. 37143/-, goods were not realized by the purchaser of the plaintiff and they were brought back and were sold for Rs. 6895/- and the defendant paid Rs. 5248.80, therefore, the amount of Rs. 25,000/- was rightly due on 4.2.1979 in defendants. The plaintiff also proved the rate of interest as per the contract. The learned Trial Court has given cogent reasons for decreeing the suit of the plaintiff. I do not find any force in this appeal. Hence, the appeal of the appellant is dismissed.

16. Learned Counsel for the respondent submitted that the Trial Court has committed error in granting interest @ 12% per annum instead of contractual rate of interest. According to learned Counsel for the respondent, this decree can be modified by this Court, for which learned Counsel for the appellant submitted that the respondents have not submitted any cross-objection, therefore, this relief cannot be granted. Since the transaction was of the year 1979 and the decree was granted in the year 1982 and no cross-objection was filed by the respondents, I am not inclined to interfere in the award of interest passed by the Court below, but looking to the facts of the case and the conduct of the defendant I deem it proper to award special cost of Rs. 5,000/-.

17. Hence, the appeal of the appellant is dismissed with costs along with special cost of Rs. 5,000/-.

 