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(1999) 08 DEL CK 0090

In the Delhi High Court

Case No : Suit No. 2135 of 1987

Oriental Bank of Commerce APPELLANT

Vs

Darshan Lal Gaba and Others RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Citation : (1999) 5 AD 539 : (1999) 81 DLT 447

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. Sandeep Gupta, Ad, for the Appellant;

Judgement

Vikramajit Sen, J.—The plaintiff, Oriental Bank of Commerce, has filed this suit for recovery of Rs. 2,22,289.31 together with pendente lite and further interest from the date of the filing of the suit till realisation of the decretal amount at the rate of 14.5 % per annum, inter alia, for the sale of hypothecated Tata bus model LP 121 OE/52, chasis No. 344-050-I-61340 bearing registration No. DEP 5782. Defendant No. 1 was the principal borrower and Defendant No. 2 is the guarantor. The Defendants had filed Written Statements wherein they had denied their liability towards the plaintiff Bank on various grounds.

2. The following issues were framed on 21.1.1991.

"1. Whether the plaint is signed, verified and the suit instituted by a duly authorised person ?

2. Whether the suit is not maintainable against the defendant No. 2 ?

3. Whether the suit is barred by limitation ?

4. Whether the suit is bad for misguide of the parties?

5. Whether the plaintiff bank got signed blank printed forms from the defendants? If so its effect ?

6. What rate of interest the plaintiff is entitled to ?

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

8. Relief."

3. During the pendency of the suit a statement was made on 11.11.1992 by counsel for Defendant No. 1 to the effect that Defendant No. 2 had died in September 1991. Over ten opportunities were granted to the plaintiff for impleading the legal representatives of Defendant No. 2 but none of these opportunities were availed of and finally by order dated 15.3.1996 the suit stood dismissed against Defendant No. 2. Subsequently on 12.5.1998 ex parte orders was passed against Defendant No. 1 and the plaintiff was given an opportunity to lead evidence by way of affidavit. The affidavit by way of evidence dated 4.8.1998 was filed on 7.8.1998. This affidavit has been sworn by Shri Vijay Sehgal who has deposed that at the material time he was working in the loan department and that Shri K.K. Kapoor was working as Manager and Principal Officer of the plaintiff Bank and he is fully conversant with the facts of the case.

ISSUE NO. 1

4. It has been deposed that Shri K.K. Kapoor was the Bank Manager at the time when the plaintiff-Bank released the loan to Defendant No. 1 and Shri Vijay Sehgal (hereinafter referred to as PW1) was then working in the Loan Department. The signatures of Shri K.K. Kapoor have been duly proved as well as the authorisation letter in his favor (Exhibit P1) and the general power of attorney (Exhibit P2) dated 26.5.1997 executed in his favour. Signatures of Shri K.K. Kapoor on the plaint and the vakalatnama have also been proved. This issue is, Therefore, decided in favor of the plaintiff.

ISSUE NO. 2.

5. This issue does not fall to be determined since the suit against Defendant No. 2 has already been dismissed.

ISSUE NO. 3

6. The plaintiff has proved the loan account which is Exhibit P-14. This was a current account and the period of limitation would be computed from the last transaction. The last withdrawal from this account was on 29.1.1987 and the last credit was made on 11.4.1987. Thereafter interest charges have been debited. Even if these interest charges are not taken into consideration, since it is arguable that there may not be any mutuality in these transactions, limitation would commence from 11.4.1987, i.e. within the prescribed period of limitation. Exhibit P-15 is a confirmation letter dated 30.6.1985 countersigned by Defendant No. 1 acknowledging his indebtedness for a sum of Rs. 2,27,427.27. The liability of the Defendants was, Therefore, coextensive, several as well as joint. The plaintiff can also base the suit on this acknowledgement and would, Therefore, be entitled to file the plaint on or before 28.8.1988. This issue is also decided in favor of the plaintiff.

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ISSUE NO. 4

7. The Defendant No. 1 was the principal borrower and the deceased Defendant No. 2 was the guarantor in accordance with Exhibit P-10. Although this issue is not of importance since the suit as against Defendant No. 2 has been dismissed, this issue is also decided in favor of the plaintiff.

ISSUE NO. 5

8. No evidence is forthcoming on behalf of Defendants that the plaintiff Bank had got signed blank printed forms from them. Exhibit P-6 is a letter signed by Defendant No. 1 acknowledging the advance granted to him on the loan account. Exhibit P-7 is a receipt issued on 4.10.1983 by Shitla Body Builders. Exhibit P-11 which is the delivery challan of the vehicle duly mentions the chasis number and registration number of the bus which was purchased from the loan. Although the Defendant should have proved this issue in his favor I find there is sufficient evidence to substantiate that this was not a sham transaction. There is no evidence in support of the contention that the documents were signed blank. This issue is decided against the Defendant and in favor of the plaintiff-Bank.

ISSUE NO. 5

9. Exhibit P-8 states that interest at the rate of 12.5 percent per annum shall be payable from the date on which demand for payment shall have been made on the borrower. Clause 12 of the Hypothecation Deed, Exhibit P-9, witnesses that interest at the rate of 2.5 percent per annum over the Reserve Bank rate with a minimum of 12.5 percent per annum shall be calculated and charged on the daily balance in the Bank''s favor due upon the said loan. The deed of undertaking/ guarantee, Exhibit P-10 further mentions that the Bank shall be entitled to charge penal interest on the rate of 14.5 percent per annum or any other rate applicable from time to time with monthly/quarterly rests over and above the normal rate of interest charged in the account. It has been stated by PW1 that the rate of interest was to vary from time to time as per Reserve Bank of India directives, however, the same was agreed at the rate of 12.5 percent per annum with quarterly rests together with penal interest at the rate of 2 percent per annum. Defendant No. 1 has not stated in the written Statement what rate of interest was agreed to but has merely denied the claim of the plaintiff. I hold that the plaintiff is entitled to interest at the rate of 14.5 percent per annum as claimed in Para 14 of the plaint.

ISSUE NO. 7.

10. As stated hereinabove the plaintiff has duly proved that an amount of Rs. 2,15,700.81 was outstanding in its favor and against Defendant No. 1 on 30.7.1987. Thereafter it was entitled to claim interest at the rate of 14.5 percent per annum. Accordingly the plaintiff is entitled to claim a sum of Rs. 2,22,289.31 as stated in the plaint together with interest thereon at the rate of 14.5 percent per annum.

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ISSUE NO. 8.

11. I accordingly pass decree for a sum of Rs. 2,22,289.31 together with interest thereon. Since the Hypothecation Deed, Exhibit P-9, was also executed between the parties the plaintiff will additionally be entitled to take possession and thereafter sell hypothecated Tata bus model LP 121 OE/52, chasis No. 344-050-I-61340 bearing registration No. DEP 5782. The plaintiff shall also be entitled to costs.

12. Decree sheet be drawn up accordingly.

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