(2000) 09 DEL CK 0085

In the Delhi High Court

Case No : I.A.No. 1412/92 in Suit No. 3353/90

Oriental Bank of Commerce APPELLANT

Vs

M/s. Eagle Book Binder and Others RESPONDENT

Date of Decision : 11-09-2000

Acts Referred:

Citation : (2000) 88 DLT 277

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. B.L. Anand, for the Appellant; Sh. Mohit Khanna, for the Respondent

Judgement

K.S. Gupta, J.—This order will govern the disposal of I.A. 14121/92 filed by defendant No.3 seeking leave to defend the suit.

2. Suit under Order xxxvII CPC was filed by Oriental Bank of Commerce, inter alia, alleging that it is a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1980 having its head office at Harsha Bhawan, 8E, Block, Connaught Place and, amongst others, a branch at Nehru Place, New Delhi. M.R. Aggarwal has been authorised in terms of letter of authorisation dated 21st September 1990 (Annexure ''A'') issued pursuant to Board''s resolution No.F-11 dated 23rd April 1987, to sign and verify the plaint and institute suit on behalf of plaintiff bank. Defendant No.2 is the sole proprietor of defendant No.1 firm. Said branch of the plaintiff on being approached by defendant No.2, granted overdraft facility up to a limit of Rs. 20,000/- to defendant No.1. In consideration of grant of that overdraft facility, defendant No.2 executed (a) letter of request, take delivery and continuity, (b) letter of waiver and (c) demand promissory note, all in the sum of Rs. 20,000/- in favor of plaintiff bank. Defendant No.3 who stood as guarantor for repayment of the said amount with interest by defendants 1 & 2, also executed agreement of guarantee in favor of the bank on 16th May 1987. It is further alleged that on 10th November 1987 defendant No.1 through defendant No.2 requested the

plaintiff bank to enhance the said overdraft limit by another sum of Rs.50,000/- to meet its urgent financial requirements. On plaintiff''s agreeing to that request, defendant No.2 additionally executed (a) letter of request, take delivery and continuity, (b) letter of waiver and under- taking, (c) demand promissory note and (d) agreement of opening cash credit, all in the sum of Rs. 70,000/- on 10th November 1987 in favor of the bank. Defendant No.3 also gave his personal guarantee in the said sum on 10th November 1987 in favor of plaintiff bank. Rate of interest agreed to be charged was 6.5% p.a. over and above the RBI rate of interest with minimum of 16.5% p.a. with quarterly rests. It is pleaded that the plaintiff bank maintains books of account in usual course of business and a sum of Rs. 1,27,070/- including interest and other charges was due from the defendants up to 30th October 1990 in the said overdraft facility account which they have failed to pay despite request and service of legal notices dated 1st September 1988 and 6th June 1990. It was prayed that a decree for Rs. 1,27,070/- Along with interest pendente-lite and future @ 18.5% p.a. be passed in favor of the plaintiff and against defendants jointly and severally.

3. On failure of defendants 1 & 2 to enter appearance within 10 days time from the date of receipt of summons in Form IV in Appendix "B" of Order xxxvII CPC, suit was decreed against them for the suit amount with cost and interest pendente lite and future @ 18.5% p.a. thereon by the order dated 31st July 1991.

4. In aforesaid I.A.14121/92 it is not disputed that defendant No. 2 is the proprietor of defendant No. 1 firm. However, it is alleged that in consideration of grant of overdraft facility of Rs. 20,000/- defendant No.2 obtained the signatures of answering defendant on one or two blank papers. In case the answering defendant had stood as guarantor for repayment of the amount of overdraft facility of Rs. 20,000/-, it has been revealed on enquiry made by him that the said amount was cleared by defendant No.2. It is denied that the answering defendant executed any agreement of guarantee on 10th November 1987 in favor of plaintiff bank as alleged. Alleged agreement of guarantee is inadmissible in evidence for want of stamps. It is stated that agreement of guarantee dated 16th May 1987 ultimately came to end when the plaintiff and defendants 1 & 2 entered into a fresh agreement of overdraft facility of Rs. 70,000/- on 10th November 1987. It is denied that M.R. Aggarwal is authorised to sign and verify the plaint and institute suit on behalf of plaintiff bank as alleged. It is stated that statement of account filed by the plaintiff is incorrect and present suit is not legally maintainable under Order xxxvII CPC. Suit is alleged to be barred by limitation.

5. Suffice it to say that the plaintiff bank has contested the application by filing reply which is supported by the affidavit of A.D. Mehta, Sr. Manager, Nehru Place branch of plaintiff bank.

6. I have heard Sh. Mohit Khanna for defendant No.3 and Sh. B.L. Anand for plaintiff bank.

7. In terms of the order dated 22nd April 1996 case was ordered to be listed before the Joint Registrar for admission/denial of the agreement of guarantee dated 10th November 1987 allegedly executed by defendant No.3. Order dated 2nd December 1996 and also the endorsement appearing on said agreement of guarantee dated 10th November 1987, reveal that signatures on said agreement of guarantee were admitted by defendant No.3. According to plaintiff at the request of defendant No. 1 made through defendant No.2 the overdraft facility of Rs. 20,000/- was enhanced to Rs. 70,000/- on 10th November 1987 and defendant No. 3 had given his personal guarantee for repayment of the said amount with interest and also executed agreement of guarantee dated 10th November 1987. Obviously, overdraft facility of Rs. 20,000/- on being enhanced, had merged into overdraft facility of Rs. 70,000/- on 10th November 1987. Needless to repeat that in the application for leave to defend the defendant No. 3 had denied the execution of agreement of guarantee of Rs. 70,000/- dated 10th November 1987. On defendant No. 3''s admitting the signatures thereon on 2nd December 1996 before the Joint Registrar main defense raised by defendant No.3 in the application had vanished.

8. It was urged on behalf of defendant No.3 that said agreement of guarantee dated 10th November 1987 was executed by defendant No. 2 instead of defendant No. 3 and in support of this submission, he invited my attention to sub para (e) of Para 8 of the plaint. It was pointed out on behalf of plaintiff that there has been typographical mistake in line 2 of digit ''2'' in said sub para (e). On a combined reading of said sub para (e) and Para 9 of the plaint it is manifest that digit ''2'' after the word ''defendant'' ought to have been digit ''3'' and there is thus typographical mistake in the said sub para as pointed out on behalf of plaintiff. Moreover, after having admitted the signatures on said agreement of guarantee argument to the said effect is not available to defendant No.3.

9. Plea in regard to overdraft facility of Rs. 20,000/- having been cleared by defendant No.2 is sham as defendant No. 3 has not disclosed the source of information through which it was revealed to him that said amount was cleared by defendant No.2. Even if there was any payment of Rs. 20,000/- by defendant No. 2 the same would not absolve defendant No.3 of his liability under the agreement of guarantee dated 10th November 1987.

10. In the application yet another ground taken by defendant No. 3 is that the plaint has not been signed and verified and suit instituted by a duly authorised person on behalf of plaintiff bank. plaintiff has placed on record extracts of the minutes of Board of Director''s meeting of the plaintiff bank held on 23rd April 1987 duly attested by a Notary Public and also letter of authorisation dated 6th September 1990 (Ann."B"). Said extract of the meeting dated 23rd April 1987 discloses that, amongst others, Chief Manager (REC) had been authorised by the Board of plaintiff bank to sign and verify the plaint and institute suit on behalf of plaintiff bank up to the amount involving Rs. 3 lakhs plus interest up to the date of filing of suit in addition to delegating that power to one or more officers/

Managers of the bank. In terms of the said letter dated 6th September 1990 the Chief Manager (REC) had authorised M.R. Aggarwal, working as Chief Manager of the plaintiff bank to sign and verify the plaint and file suit on behalf of plaintiff bank against the defendants. In the reply to the application which is supported by the affidavit of A.D. Mehta, Sr. Manager of Nehru Place branch of plaintiff bank it is asserted that said M.R. Aggarwal who has signed and verified the plaint and instituted suit, was authorised to do so on the basis of the said Board''s resolution and authorisation letter. In the face of said evidence, bald denial in regard to the plaint having not been signed and verified and suit not instituted by a duly authorised officer on behalf of plaintiff bank cannot be said to give rise to a real triable issue on that score.

11. Yet another ground taken by defendant No. 3 in the application is that the statement of account filed by plaintiff bank is wrong. Statements of account in respect of defendant No. 1 duly certified under the Bankers'' Books Evidence Act are placed at pages 18 to 20 on Part-I file. The weight to be attached to the certified copy of account under Bankers'' Books of Evidence Act, 1981 came under consideration in the decision in The Punjab National Bank Ltd., Delhi Vs. Vinod Kumar and Others, . It was held:-

"Under section 3 of the Bankers'' Books Evidence Act the copy of accounts certified in accordance with section 2(8) is prima facie evidence and it does not require proof by production of cheque and vouchers etc, relating to each entry. The object of the Act is to render the entries in bankers'' books admissible in evidence and to enable copies of the entries to be used instead of compelling the Bank to produce the original entries. Such a copy must be received as prima facie evidence not only of the existence of such entries but also of the matters, transactions and accounts therein recorded."

12. Defendant No. 3 has not stated in the application as to which of the entries recorded in the said statements of account filed by plaintiff bank does not reflect the true state of accounts. It is the duty of the defendant also to point out discrepancies in the statements of ccount. If any. In the absence of details to that effect and also taking note of the ratio in Punjab National Bank Ltd''s case (supra), I am of the opinion that said defense also does not raise any triable issue.

13. Although in the application for leave to defend, it is alleged that aforesaid agreement of guarantee dated 10th November 1987 is inadmissible in evidence for want of stamp and suit is also barred by time yet during the course of argument it was not even remotely pointed out on behalf of defendant No. 3 as to how said agreement of guarantee is deficiently stamped and suit which otherwise seems to be within limitation, is barred by limitation.

14. For the foregoing discussion, the application is dismissed and suit is decreed against defendant No.3 for Rs. 1,27,070/- with costs and interest pendente lite and future @ 16.5% p.a., transaction being commercial in nature.

