(2010) 10 DEL CK 0118

In the Delhi High Court

Case No : C.S. (OS) 1631 of 2003

Pashupati Fincap Ltd. and Another — APPELLANT

Vs

Ganga Automobiles — RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4

Citation : (2010) 10 DEL CK 0118

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Nikhil Rohtagi, for the Appellant; Nemo, for the Respondent

Judgement

S. Ravindra Bhat, J.—The plaintiffs seek a mortgage decree for the sums of Rs. 44,58,072/ - and Rs. 42,00,760/ - against the defendant.

2. The facts necessary for deciding the suit are that on 17.02.1995, the Citi Bank N.A. granted loan of Rs. 7.87 crores and certain credit/overdraft facilities upto Rs. 2.10 crores to the defendant. The latter secured the advance and the credit facilities by creating a mortgage through deposit of title deeds in favor of the creditor, i.e. Citi Bank. The property is a 1030 square yard plot, bearing MCD No. 80, Khasra No. 210, Village Adhchini, Tehsil Mehrauli, New Delhi. The plaintiffs, in addition to the title deeds, which have been produced as Ex. PW-1/11, also rely upon two deeds of Power of Attorney executed by the defendant, favoring the Citi Bank, empowering the latter to deal with the said immovable properties, including demising it and creating tenancies. The said deeds are exhibited as PW-1/1. The plaintiffs also rely upon a Memorandum of Entry, evidencing deposit of title deeds, executed for that purpose on 17.02.1995 - marked as Ex. PW-1/2. It is further stated that the defendant''s Managing Director, one Sh. Ashwini Suri, on 18.02.1995 issued letter of confirmation stating that the original title deeds of the property had been handed-over to Citi Bank. That letter is produced as Ex. PW-1/3:

XXX XXX XXX

LETTER OF CONFIRMATION

This is to confirm that on 18/2/95 I Ashwini Suri, mg. Director of M/s. Ganga Automobiles Limited in my capacity as a representative of M/s. Ganga Automobiles Limited and as in my personal capacity had handed over the original title deeds of property bearing MCD No. 81 measuring 1030 sq. yards Khasra No. 210 in village Adhchini, Tehsil Mehrauli, New Delhi to an Officer of Citibank N.A. with the intention of creating an equitable mortgage in favor of the Bank to secure repayment of term loan facility amounting to Rs. 7.87 crores in terms of agreement dated 17/2/95 and the overdraft facility of Rs. 2.10 crores in terms of agreement dated 17/2/95 being granted to M/s. Ganga Automobiles Limited.

The equitable mortgage can be foreclosed in the event of any of the financial facilities being xxxx (not legible) xxxxxx by the Bank.

XXX XXX XXX

3. The plaintiffs submit that they approached the Citi Bank for a loan totaling Rs. 2.53 crores and agreed to secure the advance by charging certain Fixed Deposits and also standing surety -for repayment of the defendant''s liabilities through a corporate guarantee. The plaintiffs executed a corporate guarantee on 18.12.1997. The same has been marked as Ex. PW-1/5. The relevant extracts of the said document are as follows:

XXX XXX XXX

2. We wish to inform you that we guarantee the loan amount of M/s. Ganga Automobiles Ltd. outstanding, upto a maximum of Rs. 60 lacs only, against the rentals for the basement of 81, Adchini (herein after referred to as Basement).

XXX XXX XXX

4. If M/s. Ganga Automobiles Ltd. clears their obligation towards their loan, you are requested to prematurely liquidate these fixed deposits alongwith the interest earned thereon, and apply the proceeds towards the partial liquidation of the loan facility that we are availing from yourselves and from that date no further Fixed Deposits should be done.

XXX XXX XXX

5. In case the loan outstanding in the name of M/s. Ganga Automobiles Ltd. against the rentals of the basement has not been cleared till it''s date of maturity (i.e. October 31,2000, you may liquidate this cash collateral (not exceeding Rs. 60 lacs) alongwith any interest thereon and apply the proceeds towards liquidation of balance outstanding against the facility availed by M/s. Ganga Automobiles Ltd. limited to Basement only. After liquidating outstanding loan availed by M/s. Ganga Automobiles Ltd. the Citibank shall transfer the mortgage right in respect of Basement as held by the bank in our favor to facilitate to

recover the amount paid by us to Citibank from Ganga Automobiles Limited.

XXX XXX XXX

4. It is submitted that the defendant turned insolvent and was directed to be wound-up in company proceedings, by this Court by order dated 22.05.1998. It is submitted that on 21.05.2001, the Citi Bank invoked corporate guarantee issued by the plaintiffs. The Invocation Letter has been placed on the record and marked as Ex.PW-1/6; the same pertinently states as follows:

XXX XXX XXX

6. Since Ganga Automobiles has failed to clear its dues and outstandings, Citibank in exercise of its rights under Clause 5 of the Guarantee is invoking the Guarantee.

7. The Cash Collateral as on date in the Escrow account of Pasupati Fincap Ltd. amounts to Rs. 30,89,150.16 (net of TDS) and in the Escrow account of Pasupati Newtec Ltd. amounts to Rs. 27,83,744.92 (net of TDS).

8. In discharge of the joint obligations under the Guarantee, you Pasupati Fincap Ltd. and Pasupati Newtec Ltd. are requested to jointly pay the balance amount of Rs. 127,104.92 to Citibank within 15 days hereof.

9. Upon receipt of the payment, Citibank shall proceed to transfer the mortgage rights in respect of the basement of property bearing No. 81 Adchini as held by the Bank in favor of Pasupati Fincap Ltd. and Pasupati Newtec Ltd.

XXX XXX XXX

5. The plaintiffs, in response to the invocation of the corporate guarantee assured payment of the amount secured, i.e. Rs. 60,00,000/ - as long as the mortgage rights in respect of the suit property were transferred to it in terms of the agreement - with the Citi Bank- dated 18.12.1997. The letter has been produced as Ex. PW-1/7. The plaintiffs contend that they paid the requisite amounts secured through the corporate guarantee of Rs. 60,00,000/ - to the defendant on 31.05.2001. The plaintiffs rely upon Ex. PW-1/8 and PW-1/9 which are Memoranda of Entry and two irrevocable Power of Attorneys issued by the Citi Bank by recognizing their (the plaintiffs'') rights in respect of the suit property and also that the title documents were handed-over to it. The plaintiffs have also placed reliance on letter of confirmation issued by the Citi Bank on 01.06.2001, and marked as Ex. PW-1/10; the same is to the following effect:

XXX XXX XXX

Pasupati Fincap Ltd. and Pasupati New tec Ltd. had jointly executed a Guarantee dated 18 December 99 in favor of Citibank N.A. guaranteeing the repayment of the loan advanced to Ganga Automobiles Ltd., upto a maximum of Rs. 60 lacs only. In terms of the Guarantee, Cash Collateral furnished by Pasupati Fincap Ltd. in the Escrow (Base) Account No. 037117 maintained in Citibank N.A., Jeevan

Bharati Branch (bank) and Pasupati New tec Ltd. in the Escrow (Base) Account No. 037118 maintained in Citibank N.A., Jeevan Bharati Branch (bank) were assigned to Citibank N.A. upto the amount of Guarantee.

This is to confirm that since Ganga Automobiles Ltd. failed to clear its outstandings under the Loan Agreement on the date of maturity i.e. 31.10.2000, the Guarantee was invoked by Citibank N.A. Upon invocation of the Guarantee and discharge of the obligations by Pasupati Fincap Ltd. and Pasupati Newtec Ltd. under the Guarantee, Citibank N.A., in terms of Clause 5 of the Guarantee, is required to transfer its mortgage rights in respect of the Property in favor of Pasupati Fincap Ltd. and Pasupati Newtec Ltd.

This is to confirm that I Rahul Soota, Authorized Officer of Citibank N.A., a body corporate organized and existing under the laws of United States of America and having its principal office at 399, Park Avenue, New York 10043 U.S.A. and operating in India through one of its offices at Jeevan Bharati Building, 124, Connaught Circus, New Delhi-110 001 acting on behalf of Ganga Automobiles Ltd. through power vested in Citibank N.A. vide Power of Attorneys dated 17.02.1995 and in discharge of Citibank N.A. ''s obligation under Clause 5 of the Guarantee, visited the office of Pasupati Group (Pasupati Fincap Ltd. and Pasupati Newtec Ltd.) and met the undersigned, Mr. Ramesh Kumar Jain, Director and handed over the original documents of title in respect of the Property.

The title documents were handed over with an intention to create an equitable mortgage against the said Property in favor of Pasupati Group in terms of the Guarantee to secure the interest of Pasupati Group.

XXX XXX XXX

6. It is thus asserted that the plaintiffs stepped into the shoes of Citi Bank as mortgagees and were entitled to repayment of the amounts made on behalf of the defendant to the original mortgagee, i.e. the Citi Bank. The plaintiffs claim principal sum of Rs. 60,00,000/ - together with interest with effect from 31.05.2001 at the rate of 18% per annum. It is submitted that the amount due and payable by the defendant, to the plaintiff, as on 01.07.2008 was Rs. 86,58,832/ -. The plaintiffs also claim further plaintiffs at the same rate and pendent lite and future interest at the same rate, as costs.

7. The defendant had been issued summons; but not entered appearance or defended the suit or filed any written statement. In these circumstances, the defendant was proceeded ex-parte on 11.09.2006. The plaintiffs'' ex-parte evidence was recorded and the affidavit evidence on their behalf was tendered on 04.12.2007. Thereafter the suit was listed in the category of Short Causes. The subsequent orders would disclose that arguments were heard and order was reserved. The matter was released from the category of heard cases and was posted before the Court.

8. The suit averments have been affirmed by the affidavit deposition of Sh. Ramesh Kumar Jain, the Power of Attorney holder of both the plaintiffs, who deposed on their behalf in Court and confirmed having executed the affidavits and also marked the relevant documents. The material documents relied upon by the plaintiffs are the Memorandum of Entry (Ex.PW-1/2) whereby the record of deposit of title in respect of 10 Sale Deeds of the suit property in respect of the suit have been established. Likewise Ex. PW-1/3 is the confirmation letter issued by the defendant''s Managing Director vis-a-vis deposit of title deeds.

9. The plaintiffs'' liability towards Citi Bank and its assurance to pay the mortgage amount stands established through corporate guarantee dated 18.12.1997 (Ex. PW-1/5); the relevant extract has been noted in the previous part of the judgment.

10. The plaintiffs have also established that the defendant defaulted in the payment of amount as a result of which the original mortgagee invoked the corporate guarantee, which ultimately led to the payment of money in May 2001. Reliance is placed on Ex. PW-1/7 which are letters dated 22.05.2001 and 31.05.2001 and Power of Attorneys executed in favor of the plaintiffs by Citi Bank subrogating or assigning its rights in respect of mortgage on 31.05.2001 establishing that the mortgage money was paid to Citi Bank in consideration of which the plaintiffs stepped into Citi Bank''s shoes. Ex. PW-1/1 is a letter of confirmation by the Citi Bank establishing that the mortgage money was paid and more importantly that title documents had been handed-over to the plaintiffs.

11. On a consideration of all the above documentary materials, the Court is of the opinion that the plaintiffs have established that they stepped into the shoes of Citi Bank after the mortgage money was paid by them and the title deeds were transmitted on 31.05.2001/01.06.2001 to it. The Power of Attorney and the letters exhibited as PW-1/8 and PW-1/9 establish that the amounts were indeed paid by the plaintiffs to the original mortgagee, Citi Bank. In these circumstances, the plaintiffs have proved that they are entitled to recovery of mortgage amount of Rs. 60,00,000/- which was due and payable as from 01.06.2001. The plaintiffs have claimed 18% interest on the amounts due and payable by the defendant. However, no proof has been adduced in this regard as to what was the arrangement the plaintiffs had with the defendant and whether the mortgage guarantee executed on their behalf was for commercial consideration or for any other reason.

12. Having regard to the overall circumstances, the Court is of the opinion that claim for 18% per annum on the mortgage amount paid by the plaintiffs cannot be granted; however, the plaintiffs are entitled to reasonable interest, which in such case would be 15%. In view of the above discussion, the suit is entitled to succeed. Let a mortgage decree of closure in terms of Order 34 Rule 4 CPC be drawn in favor of the plaintiffs jointly for the sum of Rs. 60,00,000/ - with pendente lite and future interest at 15% on the said amount of Rs. 60,00,000/ -, till date of payment. The suit is decreed in the above terms.

