(1997) 09 DEL CK 0004

In the Delhi High Court

Case No : Suit No. 1665 of 1987

Punjab and Sind Bank APPELLANT

Vs

Hira Poultry Farm and Others RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Citation : (1997) 70 DLT 52

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : A.S. Chandhiok, Satinder Singh and R.L. Lamba, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The plaintiff has filed this suit for recovery of Rs. 1,25,214.00 with costs and interest thereon.

(2) The plaintiff is a body corporate with perpetual succession, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act (40) of 1980. It has its Head Office at 21, Rajendra Place, New Delhi and can sue and be sued in its name and has a branch office at G.T. Road, Alipur Block, Singhola, Delhi. Shri Narinder Bir Singh and Shri Ram Singh, Regional Manager and Manager respectively and principal officers of the plaintiff-Bank are fully conversant with the facts of the case and they hold Powers of Attorney and are duly authorised and empowered by the plaintiff-bank to sign and verify the pleadings, file and suit and documents. The defendant No. 1 M/s. Hira Poultry Farm, is the proprietorship firm of the defendant No. 2, Mr. Balvinder Jit Singh.

(3) It is alleged that defendant No. 1 through its proprietor, introduced itself to the plaintiff-Bank in April, 1981 as a firm engaged in the business of poultry. The defendants requested the Bank to grant them financial facilities to enable them to carry on their business activities. They agreed to offer security by way of mortgage of immovable property measuring 2 bighas 8 bids was bearing Khasra No. 57/11/3(1-0) and 57/12/(I-8) with the superstructure thereon, situated at

Village Mamoorpur, Narela, Delhi and hypothecation of entire stock of birds (livestock), poultry equipment, machineries, instruments, feed, medicines other materials and accessories besides the personal surety and guarantee of the defendants 3 and 4, for the repayment of such loans as would be granted by the Bank. It is further alleged that defendant Nos. 1 and2beingthefirmand its proprietor, requested for financial assistance to the extent of Rs. 44,000.00 and for grant of the same, mortgaged the aforementioned immovable property with the Bank by a registered mortgaged deed dated August 25,1981.The Bank considered the request of the said defendants and granted facilities by way of Terms Loan to the extent of Rs. 30,000.00 and Cash Credit to the extent of Rs. 14,000.00 .The defendants started availing of the cash credit first and operation of this account began in November, 1981. In consideration of the grant of this facility, defendant No. 2 as proprietor of and for on behalf of the defendant No. 1, executed and delivered the following loan documents :

"(A)Demand Promissory Note : Dated November26,1981,for Rs. 14,000.00 (Rupees fourteen thousand only) agreeing to pay the sum due on demand with interest at the rate of 3.5% per annum over and above the Reserve Bank of India''s rate, subject to a minimum of 12% per annum, with half yearly rests;

(B)Letter of Waiver on Bank''s Form No. 106 : Dated November 26,1981, waiving expressly the right of presentment of relative Pronote and other negotiable instruments;

(C)Agreement on Bank''s Form No. 126: Dated November 26, 1981, agreeing that the credit facility shall continue during the Bank''s pleasure;

(D)Letter of Continuity : Dated November 26, 1981, confirming that the aforesaid Promissory Note would be a security with the Bank for repayment of the ultimate balance sum remaining unpaid on the cash credit and that the defendants would be liable on the said Promissory Note notwithstanding the fact that by payments made into the said account from time to time, the said cash credit may from time to time be reduced or extinguished or even that the balance of the said account may be at credit; and

(E)Deed of Hypothecation : Dated November 26, 1981, hypothecating in favor of the plaintiff stocks of feeds, medicines, sheds, etc. and all other related or allied items that shall be brought into, stored or be in or about the defendant''s godowns or premises during the currency of the account and/or facility."

(4) It is averred that defendant Nos. 1 and 2 availed of the term loan also, beginning from February, 1982. In consideration of the grant of this (to the extent of Rs. 30,000.00), defendant No. 2 as proprietor of and for and on behalf of the defendant No. 1, executed and delivered the following loan documents :

"(A)Demand Promissory Note : Dated February 4,1982, for Rs. 30,000.00 (Rupees thirty thousand only) agreeing to pay the sum due on demand with interest at the rate of 2.5% per annum over and above the Reserve Bank of

India''s rate subject to a minimum of 12.5% per annum with half-yearly rests;

(B)Agreement on Bank''s Form No. 103 : Dated February 4,1982, agreeing to pay back the advance in monthly installments of Rs. l,000.00 each without prejudice to the right of the Bank to demand adjustment as it pleases;

(C)Letter of Waiver on Bank''s Form No. 106 : Dated February 4, 1982, confirming the express waiver regarding presentment of relative pronote and other negotiable instruments;

(D)Agreement on Bank''s Form No. 291 : Dated February 4,1982, agreeing to pay interest at the rate of 2.5% per annum in addition to the agreed rate, in the event of any default, delay or irregularity in the repayment; and

(E)Deed of Hypothecation : Dated February 4,1982, hypothecating in favor of the Bank stocks of chicks, layer, machinery, poultry equipment, etc."

(5) The defendant Nos. 3 and 4 in their personal and individual capacity executed and delivered a Letter of Guarantee on February 4,1982, guaranteeing the repayment of the sums advanced in the name of the defendant No. 1 together with interest, costs and all other charges. This guarantee is a continuing one. The following averments are made in paragraphs 9 and 10 of the plaint which may be reproduced as under:

"9.As on August 10,1984, the Cash Credit Account showed a debit balance of Rs. 37,457.91 (Rupees thirty seven thousand four hundred fifty seven and paise ninety one only), in consideration of the said principal. Outstanding against the defendants then, the defendant No. 2 as proprietor of and for and on behalf of the defendant No. 1, executed and delivered fresh loan documents including a Demand Promissory Note for Rs. 37,457.91 (Rupees thirty seven thousand four hundred fifty seven and paise ninety one only) on August 10, 1984. In the said Promissory Note, the defendants agreed to pay the sum due on demand with interest at the rate of 2.5% per annum over and above the Reserve Bank''s rate, subject to a minimum of 12.5% per annum with half-yearly rests. The hypothecation was effected in respect of livestock, cattle feed, poultry items, etc.

10.As on August 9, 1984, the Laos (Term Loan) Account stood at a debit of Rs. 43,872.03 (Rupees forty three thousand eight hundred seventy two and paise three only). In consideration of the said principal outstanding against the defendants then, the defendants executed fresh loan documents on August 9, 1984, including a Demand Promissory Note for Rs. 43,872.03 (Rupees forty three thousand eight hundred seventy two and paise three only) on August 9, 1984. Deeds of Hypothecation hypothecating livestock, cattle feed, poultry items such as equipment layer, machinery, etc. were also executed. Defendant No. 3 executed a letter of guarantee on the said date reaffirming the guarantee already executed by him Along with the defendant No. 4. The particulars of the mortgage any hypothecation are mentioned in paragraph 12 of the plaint. The following amounts are due from the defendants in their accounts on August 9, 1987 which they are jointly and severally liable to pay: Cash Credit : Rs. 0,55,695.00 Laos (Term Loan) : Rs. 0,69,519.00 Rs. l,25,214.00

(6) Defendant No. 4 was proceeded against ex-parte vide order dated December 5, 1988. Defendants 1 to 3 filed their written statement wherein the following pleas have been taken in the written statement:

"1.That the suit has not been filed by a duly authorised person on behalf of the plaintiff and, as such, the suit is- liable to be dismissed and be dismissed.

2.Most of the documents relied upon by the plaintiff and filed on the record of the suit are not stamped according to law and the same cannot be read in evidence for any purpose whatsoever."

(7) On merits, the defendants have denied the averments as made in the plaint. It is denied that Shri Narinder Bir Singh and Shri Ram Singh hold any Power of Attorney from the plaintiff in their favor or that they stand duly authorised and empowered to institute the suit or to sign the plaint and to verify the pleadings on behalf of the plaintiff. The due execution and the validity of the powers of attorney are denied - The defendants have stated that the relevant documents relied upon the plaintiff are not stamped according to law and the same are not admissible in evidence. The defendants have denied their liability to pay Rs. l,25,214.00 or any other sum to the plaintiff.

(8) Replication was filed wherein the contents of the plaint are reiterated and the averments made in the written statement are denied. On pleadings of the parties the following issues were framed on November 12,1990:

(1)If the suit has been properly instituted ?

(2)If any of the documents is not properly stamped and-if so, to what effect ?

(3)In case of passing a preliminary decree what directions are to be given ?

(4)Relief.

(9) plaintiff-BANK has filed affidavits by way of evidence of Mr. Ram Singh, Manager, Punjab & Sind Bank, Regional Office, Connaught Circus, New Delhi, Mr. Jagjit Singh Gandhi, Managar, Punjab & Sind Bank, Head Office, Inspection Department, 2239, Gurudwara Road, Karol Bagh, New Delhi and Mr. Manjit Singh, Clerk of the Bank, 21, Rajendra Place, New Delhi. Defendant No. 2 Balwinderjeet Singh son of Shri Piare Singh has filed the affidavit by way of evidence. I have heard learned Counsel for the parties and perused the documents on record. Issue No. 1:

(10) Mr. Manjit Singh, Clerk of plaintiff-Bank has proved the Resolution Exhibit Public Witness Public Witness 2/1 to Exhibit Public Witness Public Witness 2/3 by which it was agreed to issue a joint power of attorney to Shri Narinder Bir Singh and S. Ram Singh Jaspal and by resolution No. 1835 dated June 8,1964 the powers were delegated by the Board to sign and verify the plaint and institute

the suits in favor of Officers, Managers and Regional Managers by their designation. Shri Ram Singh, Manage." of Punjab & Sind Bank in his affidavit has stated that the original Power of Attorney in his favor and Shri Narinder Bir Singh has been signed by Shri Avtar Singh Bagga, the then General Manager of the plaintiff-6ank. The photocopy of power of attorney in favor of Shri Ram Singh is Exhibit Public Witness Public Witness 1 /3. Exhibit Public Witness Public Witness 1 /4 is the Authorisation by which Shri Ram Singh and Shri Narinder Bir Singh were authorised to sign and verify the plaint and to file the present suit. In these circumstances it is clear that the plaintiff has proved that the plaint has been signed and verified by a duly authorised person and this issue is decided in favor of the plaintiff. Issue No. 2:

(11) An objection has been raised by the defendants that most of the documents relied upon by the plaintiff and filed on record of the suit are not stamped according to law and the same cannot be read in evidence for any purpose whatsoever. In his affidavit Shri Ram Singh, Manager of the plaintiff-Bank has stated as under:

"THAT the defendants initially requested financial facilities by way of Term Loan to the extent of Rs. 30,000.00 (Rs. thirty thousand) and a cash facility to the extent of Rs. 14,000.00 (Rs. fourteen thousand only) to facilitates their poultry farm business and furtherance thereof. I say that as security for the said financial facilities, defendant No. 2 as sole proprietor of and for and on behalf of defendant No. 1 offered by way of security, hypothecation of entire stocks of birds (live stock), poultry equipment, machineries, instrument;?, feed, medicines and other materials and accessories in addition to mortgage of immovable property measuring 2 Bighas 8 bids was bearing Khasra No. 57/ 111.3(1-0) and 57/12(1-8) with superstructure constructed thereon situated in village Mamoorpur, Narela, Delhi. The personal guarantees of defendant Nos. 3 and 4 were also offered for the repayment of the amounts due from defendants 1 and 2. The said facilities at the request of defendants were considered by the plaintiff and allowed. That in consideration of the same defendant No. 2 as proprietor and for and on behalf of defendant No. 1 executed and delivered to the plaintiff-Bank several loan documents on 26th November, 1981, including a Demand Promissory Note for a sum of Rs. 14,000.00 in the said Cash Credit Account agreeing to pay the said sum on demand with interest @ 3.5% p.a. over and above the Reserve Bank of India rate, subject to a minimum of 12% p.a. with half yearly rests; letter of waiver, waiving the presentment of a relative pronote; An undertaking that the said cr "lit facilities would continue during the Bank pleasure; Letter of Continuity; agreeing that the said cash credit and Promissory Note referred to above would be held as security with the Bank for the payment of entire sum due into cash credit account and further that the facility would continue during the Bank''s pleasure. 10. That defendant No. 2 as proprietor and for and on behalf of defendant No. 1 also executed and delivered a Deed of Hypothecation up to plaintiff Bank of hypothecating stocks of birds and feed and other related items that should be brought into, stored or be around the defendant''s godowns and / or premises. All these documents referred to above were executed on November 26,1981."

(12) Exhibit P-1 is the Demand Promissory Note for a sum of Rs. 14,000.00 Exhibits P-4 and P-5 are the Deed of Hypothecation of Goods to secure a demand cash credit and letter of continuity duly stamped and signed by the defendant No. 2 respectively. Exhibits P-6 to P-13 are the various loan documents in respect of Cash Credit Account showing a debit balance of Rs. 37,457.91 which were duly signed by defendant No. 2 and the stamps were affixed. Exhibits P-14 to P-29 are the documents in respect of the various loan facilities granted to the defendants and the same have been proved on record. Exhibits P-30 to P-33 are the acknowledge receipts in respect of the legal notice dated July 24, 1987 sent to the defendants by the plaintiff''s Advocate. In his affidavit it is further stated that since the defendants had failed and neglected to pay the amount due as on the date of filing of the suit a total sum of Rs. 1,25,214.00 was become payable by the defendants jointly and severally as on August 9,1987. In support of its case the plaintiff-Bank has also filed the affidavit by way of evidence of Shri Jagjit Singh Gandhi who has also reiterated the averments as made by Shri Ram Singh, Manager of plaintiff-Bank. The defendants have also filed an affidavit of Shri Piara Singh, defendant No. 3 who has simply denied the averments as made in the plaint. The objection raised by the defendants is misconceived and has no basis in facts or in law. The defendants asked for loan facilities and submitted the documents of guarantee as well as signed Demand Promissory Notes. Deeds of Hypothecation and other documents, as referred to in the earlier part of the judgment. The defendants cannot now turn around and take a technical plea that the documents are not properly stamped. From the above it is further clear that the defendants had validly executed the various documents in respect of the loans granted to them under various loan facilities and the same are duly stamped. This issue is decided in favor of the plaintiff and against the defendants. Issue No. 3:

(13) This issue was not pressed by the learned Counsel at the time of hearing.

(14) In view of the above, I pass a decree for recovery of Rs. 1,25,214 .00 with costs in favor of the plaintiff and against the defendants. The plaintiff shall also be entitled to interest at the rate of 12 per cent per annum from the date of suit till realisation.

