(1999) 05 DEL CK 0074

In the Delhi High Court

Case No : I.A.S. 10647 of 1990 and 4693 of 1996 in Suit No. 2198 of 1990

Punjab and Sind Bank — APPELLANT

Vs

Jaimets Pvt. Ltd. and Others — RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Citation : (1999) 49 DRJ 606

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : D.S. Narula, for the Appellant; R.C. Panigrahi and V.K. Verma, for the Respondent

Judgement

Dr. M.K. Sharma, J.

I.A. 10647/1990:

This is an application under Order 22 Rule 4 filed by the plaintiff. I have heard the learned counsel appearing for the parties. For the reasons stated in the application the application stands allowed. Legal representatives of defendant No.3 are brought on record and their names shall be substituted in place of deceased defendant No.3.

This is an application for bringing on record the legal representatives of LR No.4 of deceased defendant No.3 who has died. I have heard the learned counsel appearing for the parties. For the reasons stated in the application the names of the legal heirs stand substituted in place of legal representative No.4 of deceased defendant No.3.

Amended memo of parties shall be filed by the plaintiff in respect of both the aforesaid applications.

Suit No.2198/1990:

1. The present suit was instituted by the plaintiff against the defendant for

recovery of an amount of Rs.7,06,782,90 Along with pendentelite and future interest. The plaintiff bank granted a loan for Rs.5 lac to defendant No.1 and in consideration of the loan the defendant No.1 executed several loan documents in favor of the plaintiff on 26.12.1977 including a demand promissory note for a sum of Rs.5,00,000/-, letter of waiver, letter of assurance in form No.103, letter of grant of over-draft/cash credit limit of Rs.5,00,000/-, letter of assurance in form No.122, letter in bank''s form No.291 and a deed of hypothecation. The defendants No,2 to 4 executed a letter of guarantee whereby the said defendants undertook to keep the plaintiff bank indemnified from and against all claims, demands, damages whatsoever which the bank may sustain or incur in respect of the aforesaid loan advanced to defendant No.l. Subsequently the defendant No.1 requested for a further cash/credit facility from the plaintiff against hypothecation of goods and stocks up to a limit of Rs.3,50,000/- and pursuant to the grant of the aforesaid facility another demand promissory note for Rs.3,50,000/- and other loan documents were executed by defendant No.1 on 25.5.1978.

2. On 7.3.1980 the debit balance shown in the account of defendant No.1 in the books of the plaintiff bank was Rs.3,52,515.51 against the pledge of stock. On 2.4.1980 in consideration of the subsisting advance and in consideration of its liability the defendant No.1 executed fresh loan documents in favor of the plaintiff bank. On 15.6.1984 the defendant No.1 wrote a letter to the plaintiff wherein it confirmed cash credit hypothecation of goods limit of Rs.3,50,000/-, cash credit pledge limit of Rs.2,50,000/-, cash credit bills, documents/clean Rs. 5,50,000/-. In the said letter the defendant No.1 stated that since it was not availing of the aforesaid two facilities namely - cash credit pledge limit of Rs.2,50,000/- and cash credit bills/documents limit of Rs.5,50,000/- it wanted to surrender the two limits and wanted to avail only the cash credit limit and hypothecation limit of Rs.3,50,000/-. Subsequent thereto a fresh set of documents was executed by defendant No.1 for a cash credit loan against hypothecation of goods for a sum of Rs.3,50,000/- and in consideration for said cash credit other set of documents were executed by defendant No.1 for a sum of Rs.3,50,000/- in favor of the plaintiff on 15.6.1984. The defendant No.3 acknowledged and confirmed in writing the balance then due from defendant No.1 and the defendant No.3 created an equitable mortgage of his property at Flat No.22-A and 22-B, New Qutab Road, New Delhi in favor of the plaintiff as a collateral security for repayment of the amount due to the plaintiff from defendant No.l. On 10.8.1984 the defendant No.1 confirmed the debit balance of Rs.3,99,517.62 as on 30.6.1984. The account of the defendant No.1 however, became irregular and the defendant No.1 became irregular in repaying the loan and thus a legal notice was issued to the defendant bringing to its notice about the default committed and that a sum of Rs.7,06,782.90 is due from the defendants as on 12.6.1990 as per regular books of accounts maintained by the plaintiff bank. Since payment was not forthcoming from the defendants the present suit was instituted.

3. The suit was contested by defendants No.1, 2 & 4 by filing written statement. However, during the pendency of the suit in this court the defendants paid an amount of Rs.3,50,000/- in the month of September, 1994 and the balance amount of Rs.3,56,000/- on 12.9.1997. Thus the defendants have in all paid a sum of Rs.7,06,000/- to the plaintiff so far as against the claim of the plaintiff raised in the present suit.

4. The suit was instituted claiming the aforesaid amount Along with the payment of pendentelite and future interest @ 20% per annum with quarterly rests. The suit was instituted in this court on 2.7.1990 and the first Installment of Rs.3,50,000/- was paid in the month of September 1994 and the second Installment of Rs. 3,56,000/-came to be paid on 12.9.1997. The next issue Therefore, which arises for my consideration is at what rate the defendants shall be directed to pay pendentelite and future interest. Considering the entire facts and circumstances of the present case including the fact that an amount of Rs.7,06,000/- stands paid by the defendants as against the claim of the plaintiff raised in the present suit, I am of the considered opinion that ends of justice would be met if the defendants are directed to pay interest @ 9% per annum from the date of institution of the suit till realisation. It is further directed that the initial Installment paid by the defendants shall be adjusted towards costs and payment of interest at the rate of 9% per annum and the balance amount if any, shall be adjusted towards the principle amount. The last Installment paid by the defendants shall also be initially adjusted against payment of interest on reducing balance of the principal and the balance towards the principal amount. The defendant would be jointly and severally liable for satisfaction of the decree.

5. Accordingly, the suit stands decreed for the entire amount of Rs.7,06,782/- with costs. In addition the plaintiff shall be entitled to claim interest @ 9% per annum from the date of institution of the suit till realisation in terms of the order contained herein. Decree sheet be prepared accordingly.

