

(1991) 02 DEL CK 0048
In the Delhi High Court

Punjab and Sind Bank

APPELLANT

Vs

Ram Parkash Jagdish Chander and others

RESPONDENT

Date of Decision : 16-02-1991

Acts Referred:

Citation : (1991) 02 DEL CK 0048

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : A.S. Chandhiok, for the Appellant; P.R. Aggarwal, for the Respondent

Judgement

R.L. Gupta, J.—The plaintiff- bank a suit under Order 37 of the CPC for recovery of Rs. 3,95,912.70 comprising the principal and interest accused and other charges as on July 8, 1984, against the defendants with costs and pending and future interest. It is alleged that defendant No.1 is a partnership firm with defendants Nos.2 and 3 as its partners. The defendants requested the bank and opened cash credit hypothecation limit with the branch office of the plaintiff bank at H-Block, C-Circus, New Delhi, in February, 1979, to the extent of Rs,1 lakh. Security by way of hypothecation book debts was offered which was accepted during the course of operation of the account. The disbursements and/be transfer made from the account were also confirmed in writing. Defendants Nos.1,2 and 3 also requested the bank to grant them temporary bill discounting cheque purchase facility which was also allowed by the bank from time to time. At the request of the defendants, the plaintiff-bank discounted two cheques dated march 28 and 31 of 1980 in the name of defendant No.1 drawn on the Punjab and Sind Bank, Kalba Devi Road, Bombay, for Rs. 45,000, respectively. The proceeds of these cheques were credited to the cash credit account of defendant No.1, from where these amounts were withdrawn by the defendants during the operation of the cash credit account. Both the cheques were drawn on Nand and Co. favoring defendant No.1. The defendants assured the bank that the cheques, when presented, would be honored and, in the event of their remaining unrealised, the defendants would, without any demur and contest, pay to the

bank the amount of the cheques with interest and other charges. The cheques were dishonoured and the defendants were, accordingly, informed.

2. On November 19, 1982, a sum of Rs. 1,50,518.80 and Rs.1 lakh respectively were due and payable by the defendants in their cash credit account inclusive of interest and as the principal sum in the bill discussion purchase account. In consideration of the aforesaid subsisting advances and their liability which was also acknowledged, defendants Nos.2 and 3, for and on behalf of defendant No.1, executed and delivered various documents including a demand promissory note with interest at the rate of 9.5 percent. per annum over and above the Reserve Bank of India rate subject to a minimum of 19.5 per cent. per annum with quarterly rests. From No.106, waiving the right of presentment of promote and other negotiable instruments, From No.126, i.e. letter of continuity, From No.159, confirming that the promissory note shall continue to be a security with the bank for repayment of the ultimate balance sum remaining unpaid, From No.291m agreeing to pay additional interest at the rate of 2.5 per cent. per annum in case of default or irregularity in repaying the amount due, deed of hypothecating the entire book debt present and future, From No. 216, a certificate of their being non-agriculturist and for-going of rights, etc., available to an agriculturist under any Central or Provincial Act, and a letter of hypothecation for inland bills purchased were all executed on November 19, 1982. It is then alleged that the bank is entitled to recover interest at the rate at which a bank usually grants similar loan facilities to its customers. A sum of Rs.1,31,204.70 is alleged to be due by way of interest on the amount of unrealised cheques. Thus, a sum of Rs.2,31,204.70 is alleged to be due from the defendants jointly and severally including interest up to July 8, 1984. The plaintiff bank also claimed pending and future interest at the rate of 18% plus 2.5% per annum.

3. Defendants Nos.2 and 3, as partners of defendant No.1, operated the cash credit account and all cheques, whenever issued, were duly encased by the bank in the regular course of its banking business and amounts thereof were duly debited to the aforesaid account maintained in the name of defendant No 1 as also the interest, incidental and other charges. Such debits were never objected to by the defendants at any time. A sum of Rs.1,64,708 inclusive of interest is due from the defendants in the aforesaid cash credit account up to 8th July, 1984. Therefore, a total amount of Rs.3,95,912.70 is claimed to be due from the defendants in both the facilities granted to defendants Nos.1d to besides pending and future interest. The defendants failed to keep up their promise of adjusting the account on demand. Registered letters/notice were also sent to the defendants calling upon them to adjust the account, but without success. There was also an agreement between the parties stating that the rate of interest would increase or decrease as and when the Reserve Bank of India increased or decreased it. The plaintiff-bank claims pending and future interest from 9th July, 1984 onwards at the rate of 20.50% (18+2.5) per annum till realisation.

4. On being served in the suit with notice firstly for putting in appearance and, thereafter, with summons for judgment, the defendants filed is No.896 of 1986 for leave to defend the suit under Order 37, rule 3(5) read with section 151 of the Code of Civil Procedure.

5. The pleas taken up by the defendants in their application for leave to defend the suit been controverted in reply on behalf of the plaintiff-bank.

6. I have heard the arguments advanced by learned counsel for the parties and have given my careful consideration to all the raised during the course of the arguments.

7. The first point raised on behalf of the defendant is that as per the averments made in the plaint itself there is no allegation that at the time of initially taking the facilities from the plaintiff-bank the defendants executed any documents. Initially, the facilities were taken in February, 1979, as alleged in para 3 of the plaint. Therefore, learned counsel for the defendants has urged that it was not possible to believe the plaintiff-bank when in the plaint it is nowhere stated that any documents were executed at the time of initially taking the loan in 1979. This argument on the face of it seems to be quite plausible. In fact, as per the normal practice prevailing in banks, loan facilities of any type are generally not granted to a party without the due execution of any document. However, the court is not debarred from looking into subsequent circumstances. It is clearly alleged in para 7 of the plaint that at the request of the defendants the plaintiff-bank had of the plaint that at the request of the defendants the plaintiff-bank had discounted two cheques dated March 28 and 31, 1980, in the name of defendant No.1 drawn on the Punjab and Sind Bank, Kalba Devi Road, Bombay, for Rs.55,00 and Rs. 45,000, respectively. The bank further stated that the proceeds of these two cheques so purchased by the plaintiff-bank were credited to the cash credit account maintained in the name of defendant No.1 from those amounts were withdrawn during the operation of the cash credit account by the defendant. The defendants do not say in their application that they did not withdraw these amounts from the plaint that, on November 19, 1982, when a sum of Rs. 1,50,518.80 was due and payable by the defendants in the cash credit account and another sum of Rs.1,00,000 was due in the bill- discounting facility account, defendants Nos.2 and 3, as partners of defendant No.1, executed various documents including a demand promissory note. In this respect, the defendants do not deny that they did offer for purchase the aforesaid two cheques to the plaintiff- bank. they further admit that, in November,1982, they did sign certain printed performs on assurances given by the then manager of the plaintiff-bank, when the defendants approached the plaintiff-bank for grant of credit facilities. However, it is not stated what assurance was given to the defendants by the manager. The defendants' signatures were obtained on blank performs is not only entrust worthy but also does not raise any tripe issue. u/s 20 of the Negotiable Instruments Act, 1881, it is provided that when a person signs and delivers to another a paper stamped in

accordance with the law relating to negotiable instruments either wholly blank or having written thereon an incomplete instrument, he gives prima facie authority to the holder of such an instrument to complete upon it a negotiable instrument for any amount which may be covered by the stamp affixed on it. The person so signing is made liable upon such an instrument in the capacity in which he signed it to any holder in due course. The defendants did not raise a little finger to point out whether their signatures were obtained on any blank documents by the then manager of the plaintiff-bank. The present suit was filed in 1984, Till then, the defendants chose to keep silent about their signatures having been obtained on blank documents. The only irresistible conclusion therefore is that the plea now sought to be raised by the defendants to the effect that their signatures were obtained on blank documents is merely a sham plea, devoid of any force and, as such, cannot be deemed to raise any triable issue. Therefore, simply because no documents were got executed by the plaintiff-bank from the defendants in 1979 it will not give rise to a presumption that, even in 1982, that initial mistake was not rectified by the bank authorities when they purchased the two cheques from the defendants for being credited in the bills-discounting facility and also got executed the demand promissory note and other documents in the cash credit account facility. Therefore, I do not see any merit in this defense raised by the defendants.

8. The next plea raised on behalf of the defendants is that mere production of the statement of account by the plaintiff-bank showing certain balances against the defendants will not entitle the plaintiff to obtain a decree. In case the veracity of such account is challenged, then the plaintiff has to lead some supporting evidence to prove the authenticity of the account. In my opinion, this argument also does not raise any triable issue. The weight to be attached to a certified copy of entries under the Banker's Books Evidence Act, 1891, came up for consideration in the case of *The Punjab National Bank Ltd., Delhi Vs. Vinod Kumar and Others*, . It was held as follows (headnote of AIR) :

"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 cheques 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."

9. The plaintiff-bank in this case has produced on record copies of the statements of account in respect of the defendants, duly certified under the Bankers' Books Evidence Act. These are from pages 25 to 45 of the documents file. These entries clearly support the claim of the plaintiff-bank as laid in the plaint. Even during the course of evidence, if at all it comes to recording

evidence, some principle officer of the bank enters the witness box and deposes about the correctness of the entries in such certified copies. Beyond that, nothing more is to be deposed by an official of the bank. Moreover, it may also be noted that the defendants were duly supplied with copies of the statement of these accounts. They have not stated anywhere in this application for leave to defend, that those entries did not reflect the true state of accounts. After all, it is the duty of the defendants also to point out discrepancies in the statement of account, if any. They cannot remain silent spectators. If they claimed that they made sine more payments, other those reflected in the statement of account, they could have made such an allegation in their application for leave to defend. They could have also pointed out that the rate of interest calculated by the plaintiff-bank in the statements of accounts is not correct and that a particular entry should have been for a different amount. But, there is no such attempt on the part of the defendants. Therefore, I am of the view that this defense also does not raise any triable issue.

10. Another plea taken up by the defendants is that it is yet to be proved by the plaintiff that the plaint has been signed, verified and filed by a duly authorised agent of the bank. Unless the burden of proof in that respect is discharged by the plaintiff-bank, it is not entitled to grant of a decree. To rebut this argument, learned counsel for the plaintiff has contended that Sh. Gajender Singh who has signed, verified and instituted this plaint as an attorney of the plaintiff holds a valid power of attorney in his favor. Sh. Gajender Sing who has sworn an affidavit in this respect in reply to the application filed by the defendants for leave to defend the suit. He states categorically in his affidavit that he not only holds a valid power-of-attorney in his favor to sign, verify and institute the plaint but the same has the force of a statutory regulation of which even the court can take judicial notice. He further swore in the affidavit that the power of attorney in his favor has been registered under the Registration Act. The plaintiff has also filed an authorisation at page 46 of the documents file in favor of Sh. Gajender Singh and H. S. Rana executed by Sh. Kulwant Singh, general manager (credit). It says that Sh. Kulwant Singh, being authorised by resolution No.1598 of the board of directors, authorised the aforesaid two officers jointly and severally to sign, verify the plaint and institute the present suit against the defendants. In order to be entitled to the grant of leave to defend, I am of the view that the defendants must satisfy the court that they have a good defense to the claim on merits. This they should disclose by stating such facts as may be deemed sufficient to entitle them to defend the suit. This plea raised by the defendants even otherwise is not a plea which affords them a defense to the claim on its merits filed on behalf of the plaintiff-bank. If such a plea is accepted as one raising a triable issue or a good defense to the claim in a suit, then it will not be possible at all in any suit filed by any bank under Order 37 to grant a decree in its favor. Therefore, taking into consideration the totality of circumstances under this head, I am of the view that this plea does not raise any triable issue.

11. Another point urged on behalf of the defendants is that the suit claim was

barred by limitation. This contention also does not appear to be well founded for the simple reason that the various documents which are the basis of this suit are alleged to be executed in November, 1982. The present suit was filed in 1984 and as such is not barred by time and this plea also, Therefore, does not raise any triable issue.

12. No other point urged before me. In view of the aforesaid discussion, I hold that this application does not raise any triable issue and the plaintiff is entitled to the grant of a decree under Order 37, Civil Procedure Code. The plaintiff is, Therefore, granted a decree for recovery of Rs.3,95,912.70 with costs of the suit and pending and future interest at the rate of 12% per annum on the decretal amount.