(1995) 02 DEL CK 0082

In the Delhi High Court

Case No : Suit No. 420 of 1978

Punjab and Sind Bank Ltd.	APPELLANT
Vs	
Labh Singh and Another	RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Citation : (1996) 1 BC 228 : (1995) 58 DLT 668

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Ajit Singh, for the Appellant; K.C. Dua, for the Respondent

Judgement

Jaspal Singh, J.—Mr. Jaspal Singh, J.--History of this case starts from June 21, 1994 when defendant No. 1 took a loan of Rs. 56,000/- for purchase of a truck against its security and hypothecation and on surety and guarantee of defendant No. 2. Whereas defendant No. 1 executed the agreement of hypothecation, Demand Promissory Note besides other documents undertaking thereby to pay the loan amount on demand together with interest, defendant No. 2 executed letter of guarantee standing surety and guarantor for the refund of the loan amount and interest thereon at the agreed rate. The grievance of the plaintiff Bank is that defendant No. 1 made only two payments one of Rs. 2,200/- on December 17, 1974 and the second of Rs. 2,500/- on July 1, 1976 and thus committed default in payment of the amount of the Demand Promissory Note, interest and other charges. Hence this suit for the recovery of Rs. 1,09,991.50p. inclusive of interest.

2. Defendant No. 2 was proceeded against ex-parte.

3. Defendant No. 1 has contested the suit.

4. Though the pleadings of the parties led to the framing of as many as nine issues, at the time of arguments the suit was contested only on the plea that at the time of the agreement, that is, June 21, 1974, defendant No. 1 was a minor and as such the entire transaction was unenforceable as against him and further

that he was made to sign the documents by defendant No. 2 who alone had taken the truck. However, for the sake of facility. I may reproduce below the issues framed:

"1. Is the suit time barred? (OPD)

2. Whether defendant No. 2 is the person who obtained loan from the plaintiff Bank? OPD

3. Whether defendant No. 1 was a minor on the date loan was granted and given to him? If so, its effect? OPD

4. Whether defendant No. 1 received any advantage out of the loan granted? OPP

5. Did defendant No. 1 adopt the agreement of loan? If so, its effect? OPP

6. Relief."

Additional issues framed on 15.4.85:

(1) Whether the defendants have not derived benefit under the transaction, if so, its effect.

(2) Whether defendant No. 1 was only a name lender as alleged? Its effect.

(3) Whether defendant No. 2 had represented that defendant No. 1 was major at the time of transaction? Its effect.

5. Before I proceed further, I may well mention here that the plaintiff-Bank does not admit that defendant No. 1 was minor at the relevant time. However, it was argued that even if it be taken that he actually was minor, he having received advantage out of the transaction, the Bank was entitled to the relief though it may also be mentioned that during arguments, it was not admitted on behalf of defendant No. 1 that he had derived any benefit.

6. For what has been recorded by me above I need not pause to deal with issue No. 1. Not only because nothing was said in support but also because there is nothing to sustain the objection leading to the framing of the issue.

7. The rest of the issues need to be clubbed and discussed together.

8. Was defendant No. 1 minor on the date loan was granted to him? This, I feel, is the principal question. The agreement, as we know by now, was executed on June 21, 1974. Defendant No. 1 claims that he was born on December 27, 1957 and in order to prove the same he has examined his elder brother Niranjan Singh (DW-1) besides examining himself as DW 2.

9. What does the evidence led by defendant No. 1 show?

As per Niranjan Singh defendant No. 1 was born on 27th December, 1957. He gave his own age as "about 40 years" and claimed to be the eldest child of his parents while defendant No. 1 was stated to be the fifth. As per him a sister was born to him after "about 21/2 years" of his own birth. She died. After 21/2 years of the birth of that deceased sister yet another sister was born. After a further passage of 21/2 years a brother by the name of Ram Singh was born followed 21/2 years thereafter by the birth of defendant No. 2. He further claims that no other child was born between Ram Singh and defendant No. 1. If all this is accepted, Niranjan Singh was ten years old when Labh Singh defendant No. 1 was born. On October 29, 1986 (the date he entered into the witness box) he gave his age as 40 years whereas, as per the data supplied by him he ought to have been 39 years old. I am mentioning all this only to show that it would be too risky to rely upon his oral testimony. Let me prove it further. As per Niranjan Singh in 1974 defendant No. 1 was 161/2 years old. If so, he being elder to Labh Singh by 10 years, his own age in 1974 would come to 261/2 years. If that be so he would be less than 39 years of age in October, 1986. By giving his age as 40 years in October, 1986 does he not reveal himself to be undependable? Can such a person be relied upon with regard to the date of birth of his brother more so when he was only 10 years old at the time of that brother''s birth?

10. Let me now come into grip with the statement of defendant No. 1 Labh Singh. He has produced a school certificate. It cannot be taken to have been proved as no school authority has been examined. It purports to have been issued by the Principal of the School. No attempt was made to summon him. Even otherwise we know not on what basis his date of birth was mentioned in that certificate. No admission form was summoned. Mere production of a certificate on a plain paper with nothing in support to certify its correctness or to authenticate it would not suffice. A photocopy of matriculation certificate was also tendered but never got the same verified as directed by the Court.

11. In short thus defendant No. 1 has led evidence which not only fails to inspire confidence but cannot even be treated as worthy of reliance. However, this still is not the end of the matter.

12. Niranjan Singh, the elder brother of defendant No. 1 has admitted in his cross-examination that no child was born to his parents between Ram Singh and defendant No. 1 Labh Singh. It is in evidence that Karnail Singh is the name of their father and that their grand father''s name was Harnam Singh. The plaintiff Bank has proved on the record a birth certificate (Ex. P-8) showing that a son was born to Karnail Singh son of Harnam Singh of village Jhati Bhai, District Faridkot on July 19, 1956 and that the new-born child''s mother already had four children. It is true, that it gives the date of registration as December 3, 1986 and records the name of the new born son as Ajmer Singh but then when this certificate was put to defendant No. 1 in his cross-examination he had no Explanation to offer with regard to it. I am thereby inclined to rely upon it. It shows that the statement of Niranian Singh, DW-1 is not worthy of reliance and does cast further doubts on the veracity of defendant''s version. Add to it the evidence led by the plaintiff that the defendants had represented that defendant No. 1 was major.

13. For the reasons recorded above, I hold that defendant No. 1 is not proved to be minor at the time of the transaction in question.

14. It is in the statement of PW 3 Surinder Pal Singh Alag that the defendants had requested for loan which was allowed and that in consequence thereof defendant No. 1 had executed loan application Ex. P.1, Demand Promissory Note Ex. P.2, Agreement of Hypothecation, Ex. P.3, an undertaking to pay at least Rs. 2,200/- per month towards liquidation of the loan, Ex. P.4 and vouchers Ex. P.5, P.6, and P.9 certifying payment of loan amount to defendant No. 1. Defendant No. 2 had executed letter of continuing guarantee Ex. PW 3/1. It is also in the statement of this very witness that truck No. DHG 3887 was purchased from the loan and that it is in possession of defendant No. 1, Significantly, defendant No. 1 admits that two payments were made to the plaintiff Bank towards the discharge of the loan and that the pay-in-slip Ex. P. 6 bears his signatures. He also admits that the truck stood in his name after its purchase and so also the insurance and that it had remained parked "for a considerable period" at his native village. True, he does say that he was made a "scapegoat" by defendant No. 2 and that the truck is in possession of defendant No, 2. However, in view of the overwhelming evidence noticed above I am not inclined to give any credence to the defense version. In short thus I hold that it was defendant No. 1 and not defendant No. 2 who had obtained the loan and that the agreement of loan had been adopted by defendant No. 1 who had received advantage out of the loan granted to him. I decide Issues No. 2 to 5 and Additional Issue No. 2 accordingly.

15. As regards Additional Issue No. 3 we again have the statement of PW 3 Surinder Pal Singh Alag. His claim that it was he who had filled in documents of loan and that the loan transaction had taken place in his presence is not challenged in cross-examination. He thus is a material witness. He has already deposed that in the presence of defendant No. 1 he had been assured by defendant No. 2 that defendant No. 1 was major in age and that defendant No. 1 had shown his driving license in support of the same. Though in cross-examination the assertion that defendant No. 1 had shown his driving license is denied, significantly the statement regarding representation made by defendant No. 2 in the presence of defendant No. 1 that defendant No. 1 was major has not been challenged. Consequently I am inclined to hold that defendant No. 2 had represented at the time of loan transaction that defendant No. 1 was major. Issue No. 3 stands decided accordingly.

16. Though defendant No. 1 has failed to prove that he was minor at the time of the contract, even if it be assumed that he was so, it is proved that he entered into the contract by means of a representation that he was of age. This being the position, he cannot while refusing to perform the contract, claim to retain the benefit he may have derived there from. This being the position, defendant No. 1, even if he is assumed to be minor at the relevant time, has to be held liable in equity to refund the money borrowed by him Along with interests claimed, after adjusting the payments already received by the Bank.

For the reasons recorded above, I hereby pass a decree for the recovery of Rs. 1,09,991.50 with costs in favor of the plaintiff Bank and against the defendants. The plaintiff Bank shall also be entitled to interest at the rate of 16-1/2% on the decretal amount from the date of institution of suit till realisation. The decree is passed exparte against defendant No. 2.