(1994) 03 DEL CK 0012

In the Delhi High Court

Case No : Suit No. 280 of 1990

Punjab National Bank APPELLANT

Vs

G.S. Industries (India) and Others RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Citation : (1994) 2 BC 16 : (1994) 54 DLT 107

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Anup Bagai, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a suit filed on behalf of the plaintiff-bank against the defendants under Order 34 of the CPC for recovery of Rs.5,59,314.26 with costs Along with future and pendente lite interest @ 18% p.a. It has also been prayed in this suit that a preliminary decree for the aforesaid amount with costs of the suit Along with future and pendente lite interest @ 18% p.a. in favor of the plaintiff and against the defendants be passed and on non-payment of the decretal amount in the Court or to the plaintiff-bank within the time fixed, a final decree for sale of mortgaged property bearing No. E-156, Shastri Nagar, Delhi-52be passed in favor of the plaintiff and against the defendant No. 4 for realisation of the suit amount.

(2) On 1/02/1990 the suit came up for hearing and summons were directed to be issued to the defendants for 10/05/1990. Along with the suit an application bearing is No. 798/90 was also filed. Notice of this application was also issued for 10/05/1990 and meanwhile the defendant No. 1 was restrained from disposing of, alienating, transferring, parting-with possession or encumbering the hypothecated machinery at the factory premises of defendant No. 1 at 20-A, S.P. Mukherjee Market, faiz Road, Karol Bagh, New Delhi and at Khasra No. 363and 342, Village Mangolpur Khurd, New Delhi. Defendant No. 1 was further restrained

from disposing of, alienating or transferring the hypothecated goods excepting in the normal course of the business.

(3) Since the defendants failed to appear despite service, the defendants were proceeded against ex-parte vide orders dated 23/01/1992. On that date, the plaintiff was also directed to file affidavits by way of evidence. Pursuant to the said order ,the plaintiff has filed affidavit of Shri N.K. Garg, Sr. Manager, East Patel Nagar Branch of the plaintiff-bank. All the averments and allegations made in the plaint have been proved by the said affidavit.

(4) Shri N.K. Garg in his affidavit has stated that Shri S.K. Kapoor, Sr. Manager of the plaintiff-bank was holding general power of attorney dated 10th November,1975 and he was authorised to file the present suit, verify the pleadings and engage the Counsel / Advocate for and on behalf of the plaintiff-bank. The general power of attorney in favor of Shri S.K. Kapur is Ex. P-l. It has further been stated that the defendant No. 1 approached the plaintiff for grant of cash credit facility against hypothecation to extent of Rs. 1.50 lacs against hypothecation of costs of raw material ,semi-finished / finished goods as well as the machinery and thereafter the plaintiff-bank sanctioned the said facility after defendants 1 to 3 had executed an agreement of cash credit dated 5/12/1983 for Rs. 1.5 lacs Along with list of hypothecated stocks, a demand promissory note dated 5/12/1983 for Rs.1.50 lakhs, an agreement of hypothecation of goods dated 5/12/1983 and letter of undertaking dated 5/12/1983. The said documents are exhibitsP-2, P-3, P-4 and P-5 respectively.

(5) Shri Gaig has further stated in his affidavit that the interest on the said credit facilities was settled @ 65.% p.a" over the Reserve Bank of India rate subject to minimum of 16.5% p.a" such interest being payable with quarterly rests and the said interest was further increased @ 2% above the rate of interest livable in case of default on the part of the defendants.

(6) It has further been stated in the affidavit of Shri N.K. Garg that the plaintiff bank enhanced the Cash Credit limit from Rs. 1.50 lacs to Rs. 2.00 lacs on the same terms and conditions in July, 1984 and in consideration thereto the defendants executed a demand promissory note dated 7/07/1984 for Rs. 50,000.00,agreement of hypothecation of goods dated 7.7.84and continuity letter dated 7.7.89regarding renewal of documents and confirmation of last balance. The afore said documents are Exs. P-6, Ex. P-7and Ex. P-8.

(7) It has then been stated in the affidavit that the plaintiff-bank increased the above mentioned facility to the extent of Rs. 3.00 lacs on the same terms and conditions and in consideration thereof, the defendants executed a demand promissory note dated 1.12.84 for Rs. 1.00 lac, agreement of hypothecation of goods dated 1/12/1984and continuity letter dated 1/12/1984regardingrenewal of documents and confirmation of the last balance. The said documents are Exs. P-9 to Ex. P-ll. It is also stated in the affidavit that the defendant No. 1acknowledged its liability vide balance confirmation letters dated 11/02/1984,

25/07/1984, 22/01/1985, 12/07/1985 and 25/05/1988. The said documents are exhibits as P-12, P-13, P-14, P-15 and P-16 respectively. A copy of the statement of A/c. in respect of the said Cash Credit A/c. kept by the plaintiff bank in the regular course of its business has been proved and is Ex. P-17. It has further been stated in the affidavit that on the date of filing of the suit, a sum of Rs.5,20,695.16 was due and payable by the defendants to the-plaintiff bank in the aforesaid Cash Credit A/c.

(8) It has then been stated in the affidavit that in consideration of the term loan for Rs. 1.00 lac sanctioned/granted to the defendant No. 1, the said defendant executed a demand promissory note dated 5/12/1983 for Rs. 1.00 lac and an agreement of hypothecation of assets dated 5.12.83 and letter of undertaking dated 5/12/1983. The said documents are exhibits P-18, P-19 and P-5. It has also been stated in that affidavit that the rate of interest was settled @6.5% p.a.over the Reserve Bank of India rate with a minimum of 16.5% p.a. with quarterly rests .The defendant No. 1 has admitted its liability in this A/c. and signed balance confirmation letters dated 18/01/1985, 12/07/1985 and 25/05/1988.The said letters are Exs. P-20, P-21 and P-22. A copy of the statement of account in respect of said term loan A / c. kept by the plaintiff in the regular course of business is Ex. P-23. It has then been stated in the affidavit that on the date of filing of the suit a sum of Rs. 38,619.10 was due and payable by the defendants to the plaintiff-bank in the term loan A/c.

(9) It has further been stated in the affidavit that the defendant No. 4 executed an agreement of guarantee in favor of the plaintiff on 5.12.83 under which he guaranteed the entire amounts payable by the defendant No. 1 under the abovementioned accounts. The said agreement is Ex. P-24. The defendant No. 4 further executed agreements of guarantee in favor of the plaintiff on 7.7.84, 1.12.84 and these agreements are Exs. P-25 and P-26 respectively. Defendant No. 4 also deposited with the plaintiff-bank the title deeds i.e. sale deed dated 13/05/1972in respect of his immovable property bearing No. E-156, Shastri Nagar, Delhi and created an equitable mortgage thereof in favor of the plaintiff over the said property to secure the repayment of the aforesaid advance/loan facilities made or to be made from time to time, by the plaintiff bank to defendant No. 1. Sale Deed dated 15.5.72 in respect of the said mortgaged property is Ex. V-17.

(10) It has also been stated in the affidavit that defendant No. 4 executed letters of confirmation regarding execution of agreement of guarantee dated 5.12.93which is Ex. P-28 and dated 1.12.84 which is Ex. P-29. The defendant No. 4 also executed letters of confirmation regarding continuing the guarantee and deposit of title deeds of immovable property as additional security dated 5.12.83,6.7.84 and1.12.84, the same are Exs. P-30 to Ex. P-32.

(11) It has further been stated in the affidavit that a total sum of Rs. 5,59,314.26as on the date of filing of the suit is due and payable by the defendants to the plaintiff-bank and the defendants are also liable to pay interest

@ 18% p.a. from the date of suit till realisation.

(12) On perusal of the documents proved on record, I am satisfied that the plaintiff has proved its claim against the defendants jointly and severally and also the creation of equitable mortgage by defendant No. 4 over the mortgaged property to secure the repayment of its dues. The plaintiff is'' entitled to a decree. Accordingly ,I hereby pass a decree for a sum of Rs. 5,59,314.26p in favor of the plaintiff and against the defendants, jointly and severally, together with interest@18% p.a. from the date of filing of the suit till realisation. I also pass a preliminary decree for payment in favor of the plaintiff and against defendant No. 4 for the aforesaid amount of Rs. 5,59,314.26 together with interest @18%p.a. from the date of institution of the suit till realisation and costs. Defendant No. 4 is given six months time to satisfy the decree. In the event of defendants failure to satisfy the decree within six months, the plaintiff will have liberty to move for final mortgage decree for sale of the mortgaged immovable property being No. E-156, Shastri Nagar, Delhi-52 for realisation of decretal dues. I further order sale of the plant and machinery as well as stocks hypothecated with the plaintiff and the net sale proceeds be applied towards part satisfaction of the decretal dues of the plaintiff. In the even of the net sale proceeds falling short of the decretal dues of the plaintiff, liberty is given to the plaintiff to move for drawing up personal decree for the balance amount against the defendants personally and to proceed to recover the dues under the decree from the defendants personally.

