
(1999) 08 DEL CK 0122

In the Delhi High Court

Case No : Suit No. 386/96

Punjab National Bank

APPELLANT

Vs

Pioneer Overseas and Others

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Citation : (1999) 5 AD 693 : (1999) 81 DLT 713 : (2000) 1 RCR(Civil) 98

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Jagdeep Kishore, for the Appellant;

Judgement

Mukul Mudgal, J.—This suit was filed by the plaintiff-Punjab National Bank on 5.2.96 against the defendants for recovery of a sum of Rs. 8,93,197.95 with interest @ 20.25 % per annum. The plaintiff is a body corporate under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The defendant No. 1 is a sole proprietorship concern which carries on the business of manufacture & sale of woollen and acrylic yarns used in hand-knitting and machine knitting and the defendant No. 2 Smt. Neelu Singh is the sole proprietor of defendant No. 1.

2. The plaint on behalf of the plaintiff inter-alia avers as follows:-

3. Defendant Nos. 3 to 5 are stated to be the guarantors and defendant No. 4 is also stated to be the mortgagor of property No. 38, DLF Industrial Area, Kirti Nagar, New Delhi. It is also averred that one Smt. Satwant Kaur who was also a guarantor had died and defendant Nos. 2 to 4 are her legal heirs and are also liable in that capacity.

4. It is averred that Defendant No. 1 was earlier a partnership firm and was enjoying credit facilities from the plaintiff. This firm was dissolved on 31.3.1989 and Defendant No. 2 took over the assets and liabilities of Defendant No. 1 as a Sole Proprietor thereof.

5. It is, further, averred that as far back as in 1983 Defendant No. 1 had requested for grant of Term Loan facility of Rs. 6.00 lacs, which was sanctioned and on 18.2.1983 Defendant No. 2 had signed the Term Loan Agreement.

6. The plaintiff has further averred that consequent upon the riots which followed the death of Mrs. Indira Gandhi, in October-November, 1984, in terms of a Central Interest Subsidy Scheme promulgated by Government of India, the defendants had become entitled to certain concessions in the interest charged by the plaintiff. Accordingly, plaintiff gave a credit of Rs. 2,62,785.60 in 1991. A further concession was also granted by the plaintiff to defendant Nos. 1 and 2 in the year 1995. These concessions are described in paras 12 & 27 of the plaint respectively.

7. Consequent upon the grant of concessions and the irregularity of the accounts, the amount due in 1991 under the Term Loan Facility was bifurcated whereby part of it was converted into Funded Interest Term Loan Suit 386/96.

8. Facility to the extent of Rs. 2.82 lacs and the balance of Rs. 1.30 lacs then due remained as a Term Loan. In para 13 of the plaint it is also averred that apart from the above debit balances a further Term Loan of Rs. 4.04 lacs was sanctioned and granted by the plaintiff to defendant No. 1 which was duly availed of by making payment to one M/s. Reliable Engineering Corporation towards purchase of the machinery. It is also averred that in consideration of the grant of these facilities fresh loan documents were signed by defendant No. 2 on 24.12.1991 whereby the plant and machinery was also hypothecated to secure the repayment of the aforementioned loans, besides the mortgage created on 24.12.1991 by defendant No. 4, for the same purpose.

9. Service of summons was effected on the defendants and initially on 13.9.1996 one Ms. Suman Doval, Advocate appeared for the defendants and was directed to file Vakalatnama and written statements within six weeks. The plaintiff was directed to supply copies of documents to her and the matter was adjourned to 19.12.1996. On the said date a further time of six weeks was granted to file written statement and the matter was adjourned to 13.3.1997. On 13.3.1997 neither the Vakalatnama nor the written statement was found to have been filed by the said counsel. However, fresh summons were ordered and eventually after numerous attempts, service was effected which resulted in the filing of the Vakalatnama. A further period of six weeks was granted for filing written statement after the filing of Vakalatnama and the case was listed on 14.8.1998. On the said date neither the written statement was filed nor was there any appearance for the defendants and the suit was posted before the court for 17.9.1998 for appropriate orders. On 17.9.1998 the defendants were directed to be proceeded against ex-parte and the plaintiff was directed to file evidence by means of affidavits.

10. The plaintiff has filed the affidavit of Shri U.K. Gupta, the Chief Manager of the plaintiff at its B.O: Kirti Nagar, New Delhi. He was proved his Power of

Attorney Ex. AW1/1. He has also affirmed the contents of the plaint and has also proved the loan documents and other documents filed on record which have been marked as Ex. AW1/2 to AW1/38. The supplementary agreement dated 24.12.1991 for Rescheduled Term Loan, the agreements of hypothecation in relation to the Rescheduled Term Loan as also for the Term Loan of Rs. 4.04 lacs are covered by the above mentioned documents. These documents also show payment of Rs. 4.04 lacs by the plaintiff to the supplier for purchase of machinery. The grant of the concessions on account of the scheme of the Government of India is also reflected in the agreement (Ex.-AW1/2). AW1/10 is the Agreement of Guarantee executed by the Defendants 3 to 5, besides Smt. Satwant Kaur who is stated to have died and is represented by Defendants Nos. 2 to 4 as their legal heirs. The liability has also been confirmed by the defendants by signing of the balance confirmation letters (AW1/19 to AW1/22). AW1/11 is the letter confirming the deposit of the title deeds of property No. 38, DLF Industrial Area, Kirti Nagar, New Delhi.

11. The legal notice of demand dated 26.12.1995 was sent and served on all the Defendants. The legal notice is Ex. AW1/23 and the Postal Receipts and A.D. Cards and the UPC are marked as Ex. AW1/24 to AW1/36. Ex. AW1/37 and AW1/38 are the statements of accounts with respect of the Rescheduled Term Loan and the Term Loan Accounts which have been duly certified under the Bankers Books Evidence Act.

12. Since there is no rebuttal of the pleadings contained in the plaint and those pleadings are duly supported by documents tendered in evidence through an affidavit, it is proved by the plaintiff that the facilities were granted to Defendant Nos. 1 and 2, and were availed of by them, guaranteed by Defendants Nos. 2 to 5 and the plant and machinery enlisted in Annexure-A to I.A. No. 1870 of 1996 was hypothecated and the property No. 38, DLF Industrial Area, Kirti Nagar, New Delhi was mortgaged in favor of the plaintiff.

13. The plaintiff has claimed interest @ 20.25% per annum from the date of filing of the suit till the recovery of the suit amount. A perusal of Ex.AW1/2 shows that the rate of interest stipulated was 20.25% per annum with quarterly rests.

14. A preliminary decree is thus passed under Rule 2(b) of Order 34 of the CPC in favor of the plaintiff for the following amounts:

- (i) The decretal amount of Rs. 8,93,917.95;
- (ii) Interest @ 20.25% per annum on the above amount from 5.2.1996 till the date of payment.
- (iii) Costs of the suit.

15. It is further held that the defendants are jointly and severally liable to pay the pendente lite and future interest at the aforesaid rates besides costs. The Registry is directed to calculate the amount due and accordingly draw up a

preliminary decree within a period of eight weeks from today.

16. It is directed in terms of Rule 2(c) of Order 34 of CPC that the defendants are liable to pay into this Court the amount found due as per the calculation of the registry in the above terms on or before a specified date within six months of the date on which it confirms and countersigns the amount taken in terms of clause (a) of Rule 2 of Order 34. It is further directed that the defendants shall be liable, jointly and severally, to pay pendente lite and future interest @ 20.25% per annum and costs. It is further directed that if the amount found to be due as per this judgment is not paid by the defendants in terms of the preliminary decree on or before the date so fixed, the plaintiff-Bank shall be entitled to apply for a final decree for the sale of the hypothecated plant & machinery and the proceeds of sale after the adjustment of the sale expenses be paid into this Court and applied in payment of the dues to the plaintiff with interest, costs as well as subsequent costs, charges, interest etc. It is further ordered in case the sale proceeds do not satisfy the full decretal amount, the defendants shall nevertheless be jointly and severally liable for the balance decretal amount.