(2002) 08 DEL CK 0042

In the Delhi High Court

Case No : Suit No. 1080/96

Punjab National Bank APPELLANT

Vs

R.S. Industries and Others RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0042

Hon'ble Judges : Shamik Mukherjee, J

Bench : Single Bench

Advocate : Amitabh Narain, for the Appellant; Nemo, for the Respondent

Judgement

S. Mukerjee, J.—This suit for recovery of Rs. 6,79,973.43, Along with pendente light and future interest is coming up for consideration as an ex parte matter in which all the three defendants were proceeded against ex parte vide order dated 4.3.1999.

2. Thereafter, the affidavit by way of ex parte evidence, as directed by this Court, has also been filed and bank''s documents duly exhibited but only to the extent of Ex. PW1/1 to PW1/3 and PW1/7 to PW1/9, since the originals of the remaining documents were not brought before the Court for purposes of exhibiting thereof.

3. The plaintiff bank is a body corporate constituted under the Banking Company''s (Acquisition and Transfer of Undertakings) Act, 1970. Shri K.K. Malhotra is the Manager of the concerned branch of the bank, who is stated to be duly authorised to institute the suit and verify the pleadings.

4. The defendant No.1 is stated to be a proprietorship concern of which defendant No.2 is the proprietor.

5. It is the case of the plaintiff bank that the defendant No.2 opened a current account with the plaintiff bank at its Shahdra Branch in december, 1992 in the name and style of defendant No.1.

6. Defendant No.1 through its proprietor sold goods to defendant No.3 vide bill

dated 29.1.93 for Rs. 3,99,963.20 in respect of which transaction, the documents were to be presented to the plaintiff bank.

7. It was stipulated that if the payment is made beyond 26.2.1993, then interest at 24% per annum would also become payable. Defendant No.1 drew a hundi No.19 dated 29.1.93 upon the defendant No.3, with the due date being 26.2.93. The said hundi was to be presented through Bank of India, Khan Market Branch. It was accepted by defendant No.3 on 29.1.93.

8. That defendant No.1, through defendant No.2, requested the plaintiff bank to discount the said hundi, which request was granted and thereby the plaintiff bank credited a sum of Rs. 2,83,153/- into the current account No. 5720 of defendant No.1 after keeping margin money, interest, commission and other bank charges.

9. The agreed condition No.4 of the pay-in-slip stipulated that in case of said hindi/bill of exchange being returned unpaid, then the amount would be recoverable from defendants No.1 & 2.

10. Upon hundi No. 19, being forwarded for payment by Bank of India, Khan Market branch, New Delhi, the payment was not made received and the Bank of India formed the plaintiff bank accordingly by returning back the said hundi. As such, the hundi stood dishonoured on presentation. Rs. 750/- was also paid by the plaintiff bank to the said Bank of India towards handling charges.

11. The plaintiff bank sent an intimation letter dated 23.6.93 informing defendants No.1 & 2 about dishonouring of hundi dated 29.1.93 and demanding payment Along with interest and other charges.

12. Since payment was not made, the outstanding amount Along with interest and quarterly rests, had been transferred to the protested account wherein, an amount of Rs. 5, 37, 291.00 accumulated as the outstanding as on 21.1.1996 leading to the plaintiff filing the present suit.

13. Defendant No.3 being the person who has purchased the goods, as such, is also liable for Rs. 3,99,962.20 being the amount of the accepted hundi along with 24% interest and other charges thereof. According to the plaintiff bank, compound interest at rates specified by Reserve Bank of India from time to time at quarterly rests has become payable pendente lite and future interest at 21.75% per annum.

14. The plaintiff bank has claimed a decree against defendant No.3 for Rs. 6,79,937.43 Along with pendente lite and future interest @ 24% per annum to be appropriated to the extent of Rs. 5,38,041 being the amount inclusive of Rs. 750/- handling charges paid Bank of India Along with interest at 21.75% per annum with quarterly rests to be paid to the plaintiff bank. The balance amount being receivable by the defendant 1 & 2.

15. The affidavit of Shri P.M.K. Gupta, Manager of the plaintiff bank, Shahdara

branch has been filed. He has deposed to the above facts, and has also proved the original documents such as original bill which is Ex. Pw1/1/, original challan is Ext. PW1/2, Ext. PW1/2, Hundi No. 19 dated 29.1.1993 is exhibited as Ext. PW1/3, which mentions that if the amount is not paid on due date, it would carry interest at 24% per annum. The pay-in-slip dated 29.1.93, by which the hundi was discounted and a sum of Rs. 2,83,153/- was credited in the account of defendant No.1 is Ext. PW1/4. Copy of the Statement of Account duly certified under bankers book evidence Act in relation to current account No. 5720 is Ext. PW1/6 and of account No. PA - 726, is Ext. PW1/7. The letter dated 23.3.1993 of Bank of India returning hundi dishonouring is Ext. PW1/9.

16. From the aforesaid unrebutted testimony of the plaintiff bank, it has been able to prove its case. A decree for a sum of Rs. 5,38,041 is passed in favor of the plaintiff and against defendants No.1 & 2. The plaintiff bank will also be entitled the pendente lite and future interest at 21.75% per annum with quarterly rests till the actual payment of decretal amount, subject however to the condition that in case defendants No.1 & 2 pay the suit amount within 4 months from the date of this judgment, then the pendente lite and future interest will be payable only at 18% per annum.

17. In so far as defendant No.3 is concerned, said defendant is liable to pay the amount on account of dishonour of hundi Along with interest at 24% per annum. Accordingly decree for rs. 6,79,967.43 is passed against defendant No.3 Along with pendente lite and future interest at 24% per annum with quarterly rests subject to the condition that if the amount of Rs. 6,79,967.43 is paid within 4 months from the date of this judgment, the pendente lite and future interest will be payable only at 18% p.a. with quarterly rests.

18. If the plaintiff bank is able to recover from defendant No.3 any amount in excess of the decree passed against defendant No.1 & 2, then the balance amount shall be credited/paid by the plaintiff bank to the defendants No.1 & 2.

19. The plaintiff shall also be entitled to its costs. The suit stands disposed of as decreed with cots.

