
(2000) 05 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal 1787 of 1997

Punjab Tractors Ltd.

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Citation : (2000) 3 RCR(Civil) 549

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

Advocate : Mr. I.P. Singh, Advocate, Mr. Sanjiv Pabbi, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.—M/s Punjab Tractors Limited has filed the present appeal and it has been directed against the judgment and decree dated 20.12.1996, passed by the Addl. Distt. Judge, Ropar, who affirmed the judgment and decree of the trial court dated 10.2.1995 vide which the money suit of Punjab and Sind Bank was decreed for a sum of Rs. 92,97610 along with interest at the rate of 17 1/2 % payable on the principal amount of Rs. 71,28388 from the date of the institution of the suit till payment.

2. The brief facts of the case are that Punjab and Sind Bank filed a money suit against M/s Punjab Tractors Ltd. and M/s Sirocco Auto Pvt. Ltd. and others, by alleging that the defendant No. 2 had been enjoying and availing various credit facilities from the plaintiffBank and one of the facilities being enjoyed was discounting or advancing against the bills drawn on various parties accompanied by railway receipts or goods receipts of approved transport companies and against bills of exchange accepted by the third party or against the clean bills. Defendant No. 2 approached the plaintiffBank in the year 1975 for the above mentioned facilities and accordingly a limit to the extent of Rs. 9 lacs was sanctioned on execution of necessary documents. Defendants 3 to 7 stood guarantors for the said amount. It was pleaded by the plaintiffBank that the above mentioned facility was enhanced to Rs. 12 lacs in the year 1976 and to Rs. 20 lacs in the year 1978. It was further pleaded that on 5.2.1980, limit for bills

of exchange was further enhanced to Rs. 55 lacs and another limit of Rs. 15 lacs was sanctioned. Ultimately, on 10.2.1983, the aforesaid limits were further enhanced to Rs. 80 lacs on execution of necessary documents. Defendants No. 3 to 7 stood guarantors for this amount also.

3. The case set up by the Bank further is that on 13.5.1995, a sum of Rs. 73,74,240 was standing due against defendant No. 2. This balance was acknowledged. Defendant No. 2 used to supply finished products to various customers and one of its customer was defendant No. 1, the present appellant. The goods were used to be manufactured by defendant No. 2 at Faridabad and supplies were made to defendant No. 1. Defendant No. 2 used to draw bills of exchange accompanied by invoice, transport receipts and other documents containing the prices of the goods and, in turn, defendant No. 1 used to get the bills of exchange discounted from the plaintiff Bank. As per the agreement, defendant No. 1 used to accept the bills of exchange and on acceptance of Hundis, the goods used to be released to defendant No. 1 at the place of destination. In this place, the plaintiff became holder of the document of bills of exchange in due course. According to the plaintiff, the bill of exchange amounting to Rs. 71,28,388 was got discounted by defendant No. 2 which were drawn by them and the same were discounted by the Bank and were accepted for payment by defendant No. 1 and on the basis of the acceptance, the amount of Rs. 71,28,388 was advanced. When the Hundis were presented for payment to the present appellant, they did not honour it for the reason that the goods supplied by the defendant No. 1 were substandard.

4. Notice of the suit was given to the defendants and the plea taken up by defendant No. 1 was that since there is no privity of contract between it and the Bank, therefore, it is not liable to pay the amount. Moreover, the acceptance of the Hundi was subject to the condition that the goods would be supplied in accordance with the order and, in these circumstances, defendant No. 1 is not liable to pay the amount and interest as claimed by the Bank.

5. Other defendants also filed the written statements.

6. The trial court framed as many as 14 issues in this case and, ultimately, the suit of the plaintiff was decreed by the courts below and in this regard it will be useful to incorporate paras 16 to 18 of the judgment of the first appellate court, which read as under :

"16. There is no quarrel with the proposition of law laid down in this authority but here in the present case the bills of exchange Ex. PW3/57 to Ex. PW3/66, cannot be said to be without consideration. In this respect the statement of DW1 the only witness examined by the appellant in this case is relevant to be referred here in which he admitted having purchased goods from respondent No. 2 Sirocco Auto Pvt. Ltd. He also admitted that the payments of Hundis were not made by the appellant because the goods for which those bills of exchange were issued was rejected. He also admitted that they used to purchase goods from

Sirocco Auto Company and used to accept bills of exchange in respect of those goods. Those bills of exchange were to be sent by Sirocco Auto Company through their Bank to the Banker of the appellant. He also admitted that letter, Ex. PW3/56, was issued by their Banker to the plaintiff Bank (now respondent). He could not deny whether the bills of exchange, Ex. PW3/57 to Ex/PW3/66, were stamped by his company. He next admitted that the payment of bills of exchange, Ex. PW3/57 to Ex/PW3/66, was not made by them to the respondent Bank. In view of this statement of DW1 made on behalf of the defendant No. 1/appellant it cannot be said that the above stated bills of exchange were without consideration.

17. Learned counsel for the appellant also urged that the respondent Bank is not entitled to recover interest more than 6 per cent per annum from the date of suit till payment in this case under the provisions of Section 34, CPC.

18. This contention on behalf of appellant is also devoid of force in the facts and circumstances of the present case. Admittedly, the transactions between the parties were commercial transactions. The agreed rate of interest as mentioned in D.P. Note Ex. PW3/23 and agreement, Ex. PW/29 and various other documents were mentioned as 18 per cent per annum. However, PW5 Shri Jagdish Chander Chawla, Senior Manager of the respondent No. 1 Bank testified that the contractual rate of interest between the Bank and the defendants was 17.5 per cent and that rate of interest was mentioned in various documents executed by the defendants in favour of the Bank. In such circumstances, the findings of the learned trial court awarding interest at the rate of 17.5 per cent as agreed between the parties, cannot be assailed."

7. Counsel for the appellant submitted that there was no privity of contract between the present appellant and the bank. In these circumstances, it is not obligatory on the part of the present appellant to pay the amount to the Bank.

8. The argument of the counsel for the appellant is not acceptable to the court. The bank has advanced the money on the bills of acceptance of the Hundi by the present appellant. There was a valid consideration when the bank released the amount in favour of defendant No. 2 on the undertaking and assurance given by the appellant that on presentation of the Hundi, the same will be honoured.

9. In the alternative, it was argued by the counsel for the appellant that the interest awarded at the rate of 17 1/2% in favour of the Bank is against the law. According to the counsel, the maximum interest which could be awarded to the bank was 6%, as per the provisions of section 34, C.P.C.

10. As against this, it was argued by the counsel for respondent No. 1 that there was an agreement with regard to the rate of interest as is mentioned in D.P. Note, Ex. PW3/23 and the agreement, Ex. PW3/29 and various other documents. According to these documents, the Bank was supposed to charge interest at the rate of 15%.

11. There is merit in the contention of the counsel for the appellant because there was no privity of contract between the appellant and the Bank regarding the rate of interest. As the Bank has not led any evidence as to what was the rate of interest at which the money was advanced by the nationalised banks in relation to the commercial transactions on the date of advancement of the loan, therefore, I award interest to the Bank at the rate of 12% on the principal amount of Rs. 71,28388. The interest will be calculated on this amount from the date of the advancement of the loan upto the date of actual payment.

12. The counsel for the appellant also submitted that the present appellant had obtained a decree against M/s Sirocco Auto Pvt. Ltd and its creditors. The execution is pending and till the amount is realised by the appellant, the decree in favour of the Bank could not be passed.

13. The argument is misconceived. The Bank is not bound by the decree which has been obtained by the appellant against M/s Sirocco Auto Pvt. Ltd. It was an independent transaction. The Bank was never a party to that transaction nor was it a party to the suit filed by the present appellant.

14. Resultantly the present appeal is partly allowed. The judgment and decree of the courts below are modified and now a money decree for a sum of Rs. 71,28388 along with interest at the rate of 12% is granted in favour of the plaintiffBank and the interest shall be calculated from the date of the advancement of the loan till its actual payment.