(2012) 09 DEL CK 0123

In the Delhi High Court

Case No : CS (OS) No. 445 of 2004

Rashtriya Mahila Kosh APPELLANT

Vs

Society For Rural Development and Another RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Limitation Act, 1963 — Section 18, 19

Citation : (2012) 09 DEL CK 0123

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Ankur Goel, for the Appellant;

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 34,92,475/-. The plaintiff is a registered society controlled by Department of Women and Child Development, Ministry of Human Resources Development, Government of India and one of its activities is to advance loan to the poor women through Non-Governmental Organizations (NGOs). Defendant No. 1 is a registered society and defendant No. 2 is its Secretary-cum-Executive Director. Defendant No. 1 society was sanctioned a loan of Rs. 10 lakhs under Main Loan Scheme of the plaintiff Society. Pursuant to sanction of loan, defendant No. 1 through defendant No. 2 executed various documents including Memorandum of Agreement, Guarantee Letter and demand promissory note in favour of the plaintiff, on the basis of a resolution passed by defendant No. 1. Defendant No. 2 stood as guarantor for repayment of loan advanced to defendant No. 1. The loan extended to defendant No. 1 was to carry interest at the rate of 8% per annum. It was also stipulated in the sanction that in case of default in repayment of loan, penal interest would be charged by the plaintiff, at the rate of 8% per annum.

It is alleged that the plaintiff disbursed Rs. 5 lakhs to defendant No. 1 vide disbursement advice dated 08.11.1995 and another Rs. 5 lakhs vide disbursement advice dated 26.02.1996. The payment was made vide two separate demand drafts one dated 08.11.1995 and the other dated 26.02.1996.

Thereafter, defendant No. 1 again approached the plaintiff No. 2 for grant of additional loan and was sanctioned a repeat loan of Rs. 30 lakhs vide sanction letter dated 27.08.1996, out of which Rs. 25 lakhs was sanctioned as short-term loan and Rs. 5 lakh as Medium Term Loan. Defendant No. 1 through defendant No. 2 executed a Memorandum of Agreement dated 14.09.1996 and defendant No. 2 stood as guarantor for defendant No. 1 in favour of the plaintiff. The interest agreed between the parties was the same as was agreed at the time of the first loan. The plaintiff disbursed Rs. 15 lakhs vide two demand drafts dated 18.11.1996. It is alleged in the plaint that the defendant became irregular in making payment of the loan taken by it and, therefore, the second installment of the second loan was not disbursed by the plaintiff. A sum of Rs. 16,66,680/- is stated to be due from the defendants towards principal sum of Rs. 18,25,795/- towards interest and penal interest upto 31.12.2003, thereby making a total sum of Rs. 34,92,475/-. Vide order dated November, 24, 2005, the suit was treated as an ordinary suit and the suit summons were issued to the defendants accordingly. Since the defendants did not appear despite service, they were proceeded ex-parte vide order dated 25th August, 2008. The plaintiff has filed the affidavit of K.V.R. Murthy, Deputy Director, by way of evidence. In his affidavit, Mr. K.V.R. Murthy, has supported on oath the case set out in the plaint and has proved various documents filed by the plaintiff. He has stated that defendant No. 1 was sanctioned a loan of Rs. 10 lakhs vide sanction letter dated 25.08.1995 and the said amount was disbursed in two installments of Rs. 5 lakhs each. He has further stated that a repeat loan of Rs. 30 lakhs was also sanctioned to the defendant vide sanction letter dated 27.08.1996 and out of that amount, a sum of Rs. 15 lakhs was disbursed of to the defendant on 18.11.1996. He has further stated that the amount advanced by the plaintiff and the interest accrued thereon was duly debited in the account of defendant No. 1 and the amount received from the defendant No. 1 was also duly credited in that account which the plaintiff was maintaining in the regular course of its business.

2. Ex. PW-1/5 is the sanction letter dated 25.08.1995 whereby financial assistance of Rs. 10 lakhs was sanctioned to defendant No. 1. The rate of interest stipulated in the sanction letter was 8% per annum. One of the special conditions stipulated in Annexure II to the sanction letter provided for payment of penal interest at the rate of 8% per annum in case of any delay in refund of the amount taken from the plaintiff. Ex. PW-1/6 is the agreement executed by defendant No. 1 with the plaintiff through defendant No. 2 who is its Secretary-cum-Executive Director. Ex. PW-1/7 is the guarantee letter executed by defendant No. 2 whereby he stood as guarantor for the loan extended by the plaintiff to defendant No. 1 and he became liable jointly with defendant No. 1 for repayment of the loan taken from the plaintiff society. Ex. PW-1/9 is the demand promissory note of Rs. 5 lakhs executed by defendant No. 2 on behalf of defendant No. 1, in favour of the plaintiff society. Ex. PW-1/10 is the disbursement advice whereby Rs. 5 lakhs were released to defendant No. 1 and Ex. PW-1/12 is the receipt acknowledging payment of Rs. 5 lakhs from the

plaintiff vide demand draft dated 26.02.1996. Ex. PW-1/13 is the second disbursement advice dated 08.11.1995. Ex. PW-1/15 is the receipt of payment of Rs. 5 lakhs by defendant No. 1 by a demand draft dated 26th February, 1996 and this receipt was submitted with forwarding letter Ex. PW-1/14. Ex. PW-1/8 is the second Memorandum of Agreement between the parties. Ex. PW-1/20 is the demand promissory note of Rs. 5 lakhs executed by defendant No. 2 on behalf of the defendant No. 1 in favour of the plaintiff whereas Ex. PW-1/19 is the second guarantee letter executed by defendant No. 2 in favour of the plaintiff executed on 14.09.1996. Ex. PW-1/17 is the sanction letter in respect of the repeat loan of Rs. 30 lakhs sanctioned to defendant No. 1. This loan also carried interest at the rate of 8% per annum as is stipulated in the sanction letter. Special condition No. 4 which forms part of Annexure II to the plaintiff stipulate that any delay in refund of the demand would attract penal amount at the rate of 8% per annum. Ex. PW-1/23 is the disbursement advice dated 22.11.1996 vide which plaintiff disbursed the first installment of loan i.e. Rs. 15 lakhs in favour of the defendants and Ex. PW-1/24 is the receipt acknowledging the payment of the said amount. Ex. PW-1/13 is the statement of accounts evidencing the transaction between the plaintiff and defendant No. 1.

3. It has come in the affidavit of Mr. K.V.R. Murthy, Deputy Director of the plaintiff, that all the payments received from the defendants were duly entered in the account of defendant No. 1 maintained by the plaintiff society. The statement of account shows payments of Rs. 25 lakhs to defendant No. 1 between 08.11.1995 to 22.11.1996. It further shows that defendant No. 1 continued to make payments either towards part-payment of the principal sum or towards interest from 23.01.1996 to 07.17.1999. For the purpose of this suit, it would be sufficient to take note of the payments made towards the interest between 1997 to 1999 by defendant No. 1:-

S. NO.	INTEREST RECEIVED DATE	INTEREST RECEIVED (in Rs.)
1	07.04.1997	5774/-
2	12.03.1998	31250/-
3	12.05.1998	

572/-

4

10.06.1998

20,000/-

5

15.02.1999

10,000/-

6

16.02.1999

10,000/-

7

08.03.1999

10,000/-

8

06.07.1999

15,000/-

As noted earlier, the first disbursal to defendant No. 1 was made on 08.11.1995. Section 19 of the Limitation Act to the extent it is relevant provides that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The Learned Counsel for the plaintiff states that since the plaintiff is a society formed by the Government, all payments by the defendants means to be made only by way of cheque pay order/demand draft. A fresh period of limitation started from the date on which payments were made towards principal sum or towards interest. The period of limitation in respect of the first loan expired on 08.11.1998. The defendants made a number of payments to the plaintiff before the date on which the period of limitation was expired, one such payment being on 07.04.1994 and another such payment being on 06.07.1999.

4. Section 18 of the Limitation Act to the extent it is relevant provides that where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when

the acknowledgment was so signed.

Ex. PW-1/25 is the letter dated 18.01.2001 sent by defendant No. 1, through defendant No. 2, to the Executive Director of the plaintiff company, stating therein that the amount sent by them was being adjusted towards interests and requesting that the interest part may be deleted. A specific promise was made in this letter to repay the principal amount within one week. The letter, therefore, constitutes an acknowledgment of liability on the part of the defendants. Ex. PW-1/27 is another letter written by defendant No. 2 to the plaintiff on behalf of the defendant No. 1 seeking deletion of the interest part. It is further stated in the letter that if commitment letter was sent in this regard, they will start repayment of principal amount and then for repayment of interest amount. This letter is yet another acknowledgment of liability on the part of the defendants not only in respect of principal sum but also in respect of interest. Both these acknowledgments were made within three years of making last payment to the plaintiff society. A fresh period of limitation, therefore, starts from the date these acknowledgments were made. Computed from 23rd September, 2001 when the second acknowledgment was made by the defendants in writing, the period of limitation would expire on 23rd September, 2004. Having been filed on 22nd January, 2004, the suit is, therefore, well within limitation.

5. The undemanded deposition of Mr. K.V.R. Murthy, Deputy Director, coupled with various documents executed by the defendants when read with the statement of the account show that a sum of Rs. 16,66,680/- was payable to the plaintiff from defendant No. 1 as principal sum, when this suit was filed. Since defendant No. 1 did not re-pay the loan in time, it also became liable to pay penal interest at the rate of 8% per annum in addition to normal interest at the same rate. The defendant No. 1, therefore, also became liable to pay Rs. 18,25,795/- to the plaintiff towards penal interest upto 31.03.012. Since defendant No. 2 has stood as guarantor for defendant No. 1 for repayment of loan advanced to defendant No. 1, he is jointly liable with defendant No. 1 for the loan extended to defendant No. 1 society. For the reasons stated hereinabove, a decree of Rs. 34,92,475/- with costs and pendente lite and future interest at the rate of 6% is hereby passed in favour of the plaintiff and against both the defendants.

Decree sheet be drawn accordingly.

