(2012) 09 DEL CK 0479

In the Delhi High Court

Case No : CS (OS) No. 25 of 2005

Rashtriya Mahila Kosh APPELLANT

Vs

Vandanmedu Development Society and Another RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (2012) 09 DEL CK 0479

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 33,63,564/-. The brief facts of the case are as follow:

The plaintiff is a registered-society carrying on activities under the directions of Government of India, Department of Women and Child Development, Ministry of Human Resources Development and one of the activities assigned to it is to advance loan to poor women through Non-Governmental Organizations (NGOs). Defendant No. 1 is a registered society and defendant No. 2 is its Executive Director. It is alleged that the plaintiff sanctioned a loan of Rs 30 lakh to defendant No. 1 vide sanction dated 9-13/11/2000 under its Revolving Fund Scheme. Defendant No. 1 executed documents such as agreement, letter-cum-guarantee bond and demand note, for the amount to be disbursed to it. Defendant No. 2 stood guarantor for defendant No. 1 and agreed that in case the defendant No. 1 failed to pay the principal amount, the same would be paid by him along with interest as per terms and conditions of the sanction. An arrangement-cum-guarantee bond was executed by defendant No. 2 as the guarantor of defendant No. 1. The loan amount of Rs 30 lakh was disbursed to defendant No. 1 vide disbursal letters dated 15.12.2000 and 25.07.2001. Defendant No. 1 made some payments towards principal and interest which were duly credited to its account. The principal sum advanced to it and the interest accrued on that amount were debited to that account which the plaintiff was maintaining in regular course of its business.

It is further alleged that defendant No. 1 did not abide by the repayment schedule and the liability towards the plaintiff-company was acknowledged vide letter dated 04.09.2002 The defendants were asked to regularize their loan account, whereupon a further payment of Rs 1,05,362/- was made along with reply dated 09.09.2004. Time was then sought by the defendants for repayment of the loan account, thereby acknowledging their liability. The agreement between the parties stipulated payment of penal interest @ 8% per annum in the event of the defendants not making payment as per agreement between the parties. It is alleged that a sum of Rs 26,12,575/- was due from the defendants on 30.09.2004 along with interest on that amount which comes to Rs 7,50,989/-.

This suit was filed under Order XXXVII of the Code of Civil Procedure. The defendants were granted leave to contest the suit on 18.09.2009. They, however, did not file written statement and did not appear thereafter. The defendants were according proceeded ex parte in vide order dated 09.03.2010.

2. The plaintiff has filed affidavit of Ms Shikha, its Deputy Director, by way of evidence. In her deposition, Ms Shikha has stated that defendant No. 1 was sanctioned a loan of Rs 30 lakh and it executed various loan documents and demand pronote in favour of the plaintiff. She has further stated that defendant No. 2 had stood guarantor for defendant No. 1. According to her, the entire loan amount of Rs 30 lakh was disbursed to the defendant in two equal instalments on 15.12.2000 and 25.07.2001. She has further stated that after giving credit for the payments made by the defendants during pendency of the suit, a sum of Rs 9,75,753/- was due from the defendants as principal sum and Rs 4,60,044/- as interest as on 19.05.2010.

3. Ex.PW-1/5 is the sanction letter dated 9-13/11.2000, whereby a loan of Rs 30 lakh under Revolving Fund Scheme was sanctioned to defendant No. 1. The loan carried interest at the rate of 8% per annum. Clause 8(b) of the General Terms and Conditions attached to the sanction letter shows that every drawal was repayable in four half-yearly instalments after providing an initial gestation period of one year. Penal interest was to the charged at the rate of 2% on delayed repayments up to one month and at the rate of 8% per annum if the delay persisted beyond one month. Ex. PW-1/6 is the letter of guarantee executed by defendant No. 2 George K. Joseph in favour of the plaintiff, whereby he agreed to repay the entire loan advanced to defendant No. 2, in case if he failed to repay the same along with interest and cost. Ex.PW-1/7 is the demand promissory note executed by defendant No. 2 on behalf of defendant No. 1 in favour of the plaintiff. Ex. PW-1/9 is the letter, whereby the General Terms & Conditions annexed to the Sanction Letter dated 09.11.2000 have been accepted by the defendants. Ex.PW-1/12 is the disbursal advice dated 15.12.2000. Ex.PW-1/13 is the letter whereby the defendants acknowledged the receipt of disbursement advice along with demand draft of Rs 15 lakh and sent receipts for

the same. Ex.PW-1/14 is the application of the defendants for disbursal of Rs 15 lakh and Ex.PW-1/15 is the disbursal advice dated 25.07.2001

4. A perusal of the statement of account Ex.PW-1/25, coupled with disbursal advice and the deposition of Ms Shikha shows that Rs 15 lakh was disbursed to defendant No. 1 on 15.12.2000 and Rs 15 lakh on 25.07.2001. This statement further shows that the defendants paid a sum of Rs 15 lakh on 01.02.2002 and Rs 26,932/- on 5.03.2002. Thereafter, there were further payments and the second last payment was made on 02.09.2003, whereas the last payment was made on 14.09.2004. The learned counsel for the plaintiff states that all the payments were made by way of cheques only.

5. Section 19 of 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 period of limitation in respect of the amount disbursed on 15.12.2000 was to expire on 15.12.2003, whereas the period of limitation for the amount disbursed on 25.07.2001 was to expire on 25.07.2004. Since defendant No. 1 made payment of Rs 52,108/- in writing on 02.09.2003 towards interest, a fresh period of limitation commenced from that date and would have expired on 02.09.2006. The suit having been filed on 18.11.04 within limitation.

6. I do not see any reason to disbelieve the deposition of Ms Shikha. Her deposition, coupled with documents proved by the plaintiff clearly show that a sum of Rs 26,12,575/-was payable by the defendants to the plaintiff as principal sum of Rs 75,0,989/- as interest as on 30.09.2004. The account statement Ex.PW-1/26 would show that after filing of this suit, the defendants paid Rs 14,29,543/- on 10.11.2006 and Rs 2,62,950/- on 18.07.2007. After deducting this amount from the suit amount of Rs 33,63,564/- claimed in the suit, the balance amount which remains payable to the plaintiff comes to Rs 16,71,071/- The plaintiff is entitled to recover the aforesaid amount as principal sum in the suit.

For the reasons stated hereinabove, a decree for recovery of Rs 16,71,071/-with proportionate cost is hereby passed in favour of the plaintiff and against the defendants. The plaintiff would also be entitled to pendente lite and future interest at the rate of 6% per annum. Interest on Rs 33,63,564/- would be payable from the date of filing of the suit, till 09.11.2006, interest on Rs 19,34,021/- would be payable from 10.11.2006 to 17.07.2007 and interest on Rs 16,71,071/- would be payable from 18.07.2007 till payment.

Decree sheet be drawn accordingly.

