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(2015) 04 BOM CK 0249

In the Bombay High Court

Case No : First Appeal No. 529 of 1998

Renu and Others APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:
Contract Act, 1872 — Section 128

Citation : (2015) 04 BOM CK 0249

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : Gordey, Advocate H/f A.M. Gordey, for the Appellant; M.D. Samel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.

1. This appeal has been filed by original defendants who are aggrieved by the decree passed by the trial Court, holding said defendants jointly and severally liable to pay amount of Rs. 2,77,789/-with interest at the rate of 16% per annum.

2. The respondent Bank plaintiff, had initially, granted granted credit facility of Rs. 25,000/-to appellant No. 1 defendant No. 1. Said appellant No. 1 was running a proprietary concern and aforesaid facility was guaranteed by appellant Nos. 2 and 3 defendant Nos. 2 and 3. A demand promissory note came to be duly executed by appellant No. 1. Subsequently, on 31.10.1984, appellant No. 1 sought to enhance cash credit facility and limit was enhanced to Rs. 50,000/-by executing fresh set of documents. Similarly, appellant Nos. 2 and 3 also executed fresh documents to stand as guarantors for aforesaid advance. Considering irregular manner of repayment, the respondent Bank called upon appellant Nos. 1 to 3 to execute fresh set of documents which were so executed. However, subsequently, the respondent Bank filed a suit for recovery of balance amount along with interest at the rate of 16% per annum.

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3. The suit, as filed, was opposed by appellant No. 1 by filing her written statement. It was stated that on account of arbitrary acts on the part of the respondent Bank, the appellant No. 1 incurred losses. The fact that aforesaid loan was availed and that appellant Nos. 2 and 3 stood as guarantors was also not disputed.

Appellant Nos. 2 and 3 also filed their written statements opposing the claim as made.

4. The respondent Bank examined about four witnesses in support of its case. Various documents executed by the appellant Nos. 1 to 3 were exhibited. On behalf of the appellants, the appellant No. 2 who was the father of appellant No. 1, alone was examined. In his cross-examination, he admitted that documents at Exhs.61 to 78 were signed by his daughter who was the borrower. Exh.79, which was Deed of Guarantor, was admitted to be signed by appellant No. 2.

5. The trial Court, on consideration of the evidence on record, held that the respondent Bank had proved that appellant No. 1 had initially, sought cash credit facility of Rs. 25,000/- which was, subsequently, enhanced to Rs. 50,000/-. It, therefore, held that the respondent Bank had proved that aforesaid amounts were advanced to the appellant No. 1. Similarly, the fact, that appellant Nos. 2 and 3 stood as guarantors, was also held to be proved. On that basis, the trial Court, by the impugned judgment, decreed the suit.

6. Mrs. Gordey, the learned counsel for the appellants, submitted that the trial Court erred in decreeing the suit as filed. It was submitted that the signatures of the appellant No. 1 were obtained only on the documents which initially showed cash credit facility of Rs. 25,000/- and subsequent enhancement of Rs. 50,000/-. It was further submitted that appellant Nos. 2 and 3 could not be held liable in-as-much as their signatures were also obtained on the documents showing principal amount of Rs. 50,000/-only. The learned counsel placed reliance on the provisions of Section 128 of the Indian Contract Act, 1872 and it was submitted that the liability of appellant Nos. 2 and 3 could not held to be co-extensive with that of the borrower in absence of necessary documents. It was also submitted that the rate of interest, that was levied, was not the agreed rate of interest.

7. Shri M.D. Samel, the learned counsel appearing for the respondent Bank supported the impugned decree. He submitted that the respondent Bank had placed on record all relevant documents that were duly signed by the appellant No. 1 to 3. He further submitted that appellant No. 1 did not examine herself and only appellant No. 2 was examined. The said witness had admitted the signatures of his daughter and had also stated that his daughter was earlier carrying on some other retail business. He, therefore, submitted that there was no reason to interfere with the impugned judgment.

8. The following point arises for consideration in this appeal : Whether the judgment of the trial Court calls for any interference?

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9. I have considered the respective submissions and also gone through the records of the case and the documents duly exhibited viz. promissory notes at Exhs.62 and 76, Agreement of Hypothecation at Exh.78, and the letter of guarantee, duly signed by appellant Nos. 2 and 3 at Exh.79. Subsequently, on 16.11.1984, fresh Agreement of Hypothecation along with letter of guarantee at Exhs.63 and 64 for the maximum principal sum of Rs. 50,000/-have been executed. In these documents it is mentioned that, besides the principal amount, interest was also liable to be paid. Thereafter, a fresh set of documents has been executed on 10.11.1987 at Exhs.65 to 67. On this basis, a legal notice came to be issued on 9.11.1987 at Exh.68. The aforesaid indicates that initially cash credit limit of Rs. 25,000/-was sanctioned and the said limit was, thereafter, enhanced to Rs. 50,000/-. Both sets of documents have been signed by the borrower as well as the guarantors.

10. The respondent Bank also relied upon extract of account at Exh.81. It substantiated the total amount due and payable. This extract of account was relied upon by the trial Court while holding in favour of the respondent Bank. In the cross examination of appellant No. 2 who was father of appellant No. 1 he had admitted that various documents were signed by his daughter and that he had also signed Exh.79 which was the letter of guarantee. The submission, on behalf of the appellants that appellant No. 1 had executed the documents only to the extent of Rs. 50,000/-, cannot be accepted as in very same documents it is stated that the said amount was payable with interest. What is sought to be claimed from the appellants, are the dues for cash credit limit of Rs. 50,000/- with interest. The rate of interest has been agreed to minimum of 16% per annum. The suit, as filed, seeks interest at the rate of 16% per annum. It is, therefore, clear from the entire evidence on record that the trial Court was justified in holding that the respondent Bank had proved the claim as made. The rate of interest charged is also the agreed rate between the parties. The findings recorded by the trial Court are, therefore, based on the relevant evidence on record. The point, as framed, is, therefore, answered by holding that there is no case made out to interfere with the judgment of the trial Court.

11. In view of aforesaid discussion, judgment passed by the trial Court, dated 24.6.1998, does not call for any interference. Hence, the first appeal stands dismissed with no order as to costs.

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