(2004) 11 DEL CK 0005

In the Delhi High Court

Case No : CS (OS) 1610 of 1995

SBI Capital Market Ltd. APPELLANT

Vs

Malook Chand Agroils Ltd. and Others RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Citation : (2004) 11 DEL CK 0005

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : S.L. Gupta, for the Appellant; Ex Parte, for the Respondent

Judgement

H.R. Malhotra, J.—This is a suit for recovery of sum of Rs. 1,94,44,430/-filed by the plaintiff against the defendants. Summons of the suit were sent to the defendants. Though they were served for 6th May,1996 but did not come forward to contest. Therefore they were proceeded ex parte on that date. In the meantime it came to the notice of this Court that defendants have since gone into liquidation and company petition No. 93/94 was pending before the Punjab and Haryana High Court. The plaintiff however sought time to ascertain the correct position. On 18th December,1997 the plaintiff brought to the notice of this Court that plaintiff may be permitted to lead ex parte evidence and Therefore this Court permitted the plaintiff to lead ex parte evidence as defendants have already been ex parte earlier i.e. on 6th May,1996. Before dealing with the ex parte evidence adduced by the plaintiff it is necessary to narrate the facts of the case. They are as under:-

In the year 1992 the defendants conceived an idea to issue shares of defendant No.1 to the public. For the purpose the defendants decided to spend the money to be collected through the shares issued for acquisition by purchase or otherwise of land, building, plant and machinery and such other assets as were necessary for setting up a factory for the manufacture of Vanaspati Ghee.

2. The defendants approached the plaintiff for sanction and grant of short term

loan to the tune of Rs.1 crore repayable within 5 months. The plaintiff considered and examined the request of the defendants and sanctioned a short term loan of Rs. 1 Crore in the name of defendant No.1 repayable within 5 months from the date of disbursement of loan together with interest at the rate of 3% over the cost and funds with the minimum of 23% per annum payable by quarterly rests. The said short term loan of Rs. Crore was disbursed by the plaintiff by Demand Draft No. 180510 dated 12th November,1992 drawn on State Bank of India, Sirsa (Haryana). The defendant No. 1 received the said Demand Draft against receipt dated 12th November,1992 and defendant No.1 executed a Demand Promissory Note dated 12th November,1992 in favor of defendant No.2 who in turn endorsed the same in favor of the plaintiff thereby promising to pay on demand a sum of Rs. 1 Crore to the plaintiff together with the interest at the rate of 4% per annum.

3. Defendants also executed a loan agreement dated 12th November,1992 promising to pay the entire loan amount within 5 months from the date of disbursement of loan and further agreed to pay interest at the rate of 3% over the cost of funds subject to the minimum of 23% per annum. They further agreed to pay an additional interest at the rate of 2% per annum in the event of default or delay in making repayment of the said loan. The defendants also agreed to pay all taxes, levies, cess, dues and duties including all interest tax payable by the plaintiff or by the defendants.

4. Defendant No.2 in consideration of plaintiff''s sanctioning loan in the name of defendant No.1, executed Guarantee Agreement dated 12th November,1992. The defendants failed to repay the short term loan of Rs. 1 Crore together with interest within the agreed time of 5 months from the date of disbursement despite requests of the plaintiff to pay the said amount.

5. The defendants also admitted and acknowledged their liability vide letter dated 8th February,1994 and promised to pay the outstanding amount. They again assured the plaintiff of repayment of loan vide their letter dated 14th February,1994 but did not pay a single paisa to the plaintiff thus necessitating the plaintiff to issue legal notice to the defendants dated 22nd August,1994 but of no avail. By filing the present suit the plaintiff has claimed Rs. 1 Crore towards principal loan besides a sum of Rs. 89,01,360/- towards interest and another sum of Rs. 3,18,070/- being interest and surcharge thereon right from 12th November,1992 till 25th May,1995.

6. plaintiff has also claimed another sum of Rs. 1,12,500/- from the defendants towards fee for managing the said public issue of the defendants as its Lead Manager. This is in short the case of the plaintiff. Since the defendants were proceeded ex parte Therefore plaintiff was called upon to prove its case by adducing evidence in support of their case to which the plaintiff filed an affidavit of Ms. Neera Sahai, Assistant General Manager of the plaintiff I have read her affidavit. It is in the form of evidence. The said witness by filing affidavit, exhibited loan documents, promissory notes and other correspondence

exchanged between the parties before grant of loan and during the continuation of loan. This witness deposed that she had worked as Chief Manager at its Delhi Office from 19th June,1989 to 30.7.1995 and being the Chief Manager she was looking after the loan accounts of defendant No.1 and as such familiar with the facts of the case. The further stated in her affidavit that in the year 1992. the defendants had approached the plaintiff for grant of short term loan of Rs. 1 Crore which request of the defendants was acceded to and loan to the tune of 1 Crore was sanctioned vide sanction letter dated 11th November,1992 which letter was exhibited by this witness as Ex. PW 1/1 and it was bearing her signatures. She further testified in her affidavit that defendant No.1 had accepted the terms and conditions contained in the sanctioned letter Ex. PW 1/1 and gave its acceptance by signing a copy thereof and a certificate Ex. PW 1/2 issued by Chartered Accountant of the defendants. The witness also deposed that on the aspect of executing Promissory Notes which is brought on record as Ex. P 1/4 loan agreement which was executed between the plaintiff and the defendant No.1 was also proved by this witness as Ex. PW 1/7. The bank guarantee executed by defendant No.2 in favor of the plaintiff was proved as Ex. PW 1/9. This witness further testified the acknowledgment sent by defendant No.1 admitting their liability towards the plaintiff. The same was accepted as Ex. PW 1/21. Legal Notice dated 22nd August,1994 served on the defendants through the plaintiff''s counsel was proved on record as Ex. PW 1/23 and another notice of the similar nature dated 9th September,1994 was proved on record as Ex. PW 1/26. To sum up the plaintiff was able to prove its case on the strength of various documents detailed above which documents were duly proved by the witness of the plaintiff who sworn an affidavit in that regard. There is no assail to the claim of the plaintiff, defendants being ex parte. Having looked into the plaint and also taking into consideration the acknowledgment of liability made by defendant No.1 in favor of the plaintiff and also there being guarantee agreement executed by the plaintiff and defendant No.2, the plaintiff is entitled to the decree for the sum claimed in the suit as the case of the plaintiff stands established fully from the direct evidence adduced by them. Consequently the plaintiff company is entitled to the decree for the sum claimed in the suit. Accordingly a decree for a sum of Rs. 1,94,44,430/- is passed in favor of the plaintiff and against the defendants with the costs of the suit.

7. The plaintiff shall also be entitled to pendente lite and future interest at the rate of 12% per annum. Decree sheet be drawn accordingly.

