
(1998) 09 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2440 of 1998

Shri Jagdish Chander

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, 115

Citation : (1998) 120 PLR 832 : (1999) 1 RCR(Civil) 92

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Arun Bansal and Sandeep Bansal, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—5th defendant is the petitioner herein, originally he was proceeded ex-parte and an ex-parte order having been set

aside he filed his written statement and applied for framing of additional issues under O.14, R.5, Code of Civil Procedure. That application has

been dismissed by the trial Court. Hence, the present revision petition.

2. The plaintiff bank filed a suit for recovery of money on the ground that the Ist defendant had obtained a loan from the plaintiff-bank, and

defendants 2 and 3 are the partners of Ist defendant-firm and defendants No. 4 and 5 are guarantors for repayment of the loan. The 5th defendant

after getting the ex parte order set aside filed a written statement contending inter alia that defendant No. 2 and 3 are not the partners of Ist

defendant and, therefore, the suit is bad and that he never executed any guarantee deed in favour of the plaintiff bank. After he filed his written

statement, the trial Court framed an issue, namely ""whether defendant No. 1 is

a partnership firm and defendants No. 2 and 3 are the partners of defendant No. 1 firm?" and placed the burden of proof on 5th defendant regarding this issue. In this revision petition, the grievance of the petitioner is that the burden of proof was wrongly placed on the 5th defendant, and, according to him it is for the plaintiff to prove that defendants no. 2 and 3 are the partners of Ist defendant. Defdts. No. 2 and 3 did not deny in their written statement that they are the partners of the Ist defendant-firm. It is not the case of the 5th defendant that he is the partner of the firm or any other persons are the partners in the firm. In the written statement he did not name any other person as partner of the Ist defendant-firm. When the loan was obtained by the Ist defendant, and defendant Nos.2 and 3 admit that they are the partners of Ist defendant and when that fact is disputed by the 5th defendant, it is for him to prove that defendants No. 2 and 3 are not the partners of the Ist defendant-firm. In this view of the matter, I am of the view that the trial court rightly placed the burden of proof of the 5th defendant in respect of this issue.

3. The 5th respondent further seeks to frame three more issues. One of them is "whether the guarantor should be set free as the loan has been advanced in variance of the terms of the agreement and the sanction order?" This issue does not arise on the pleadings of the 5th defendant. He has not averred in the written statement that his liability under the contract of guarantee for any acts or omissions or violation of its provisions by the plaintiff bank. 5th defendant has not given any instances which discharge him from the liability as a guarantor. In the absence of any averments as to how he has been discharged from the liability under the guarantee deed, the issue which is sought to be framed does not arise.

4. The petitioner further seeks the framing of the issue "whether defendant No. 5 stood as guarantor of defdts. No. 1-3 and also signed various documents of the plaintiff for the purpose of securing the loan by defendant No. 1/ firm from the plaintiff and also made equitable mortgage on 16.4.1986 in favour of the plaintiff." I am of the opinion that this issue will certainly arise in view of the averments made in the written statement, the petitioner has categorically stated in paragraph 25 that he has not gone to the bank and has not executed any guarantee deed in favour of the plaintiff bank. It is further averred that he has no concern with defendant

Nos.1-3 who are strangers to him. From the averments made in the written statement, the issue which is sought to be framed as referred to above will certainly arise in this case.

5. The petitioner further seeks framing of issue namely ""whether the payment of loan was made to defendant No. 1/firm" by the plaintiff bank and the same was withdrawn by the former through its authorised agent. In fact, the 5th defendant has got no concern with this issue. On the pleadings of defendants No. 1-3 an issue to the effect, ""Whether the plaintiff is entitled to recover a sum of Rs. 9,81,202-91 as alleged"" has already been framed. Therefore, issue No. 4 which is sought to be framed by the petitioner is covered under issue No. 1 as originally framed. Therefore, there is no need to frame the above issue as prayed for by the petitioner.

6. In view of what has been stated above, I allow the revision petition partly and direct the trial Court to frame the following issue :-

Whether defendant No. 5 stood as guarantor of defendants No. 1-3 and also signed various documents of the plaintiff for the purpose of securing the loan by defendant No. 1 from the plaintiff and also made equitable mortgage on 16.4.1986 in favour of the plaintiff? OPP"".

The plaintiff has already adduced his evidence which also covers this issue. The learned counsel for the plaintiff states that he does not propose to adduce any further evidence on this issue. The trial Court after framing the issue as stated above shall record the evidence of defendants and after giving an opportunity to the plaintiff to lead evidence in rebuttal, shall decide the suit as expeditiously as possible, preferably within six months.

There will, however, be no order as to costs.