
(1986) 09 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 1205 of 1984

S.K. Engineering Works and Others

APPELLANT

Vs

New Bank of India, Batala

RESPONDENT

Date of Decision : 05-09-1986

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 34
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4

Citation : AIR 1987 P&H 90 : (1989) 65 CompCas 474

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. This judgment will also dispose of R. F. A. No. 1139 of 1984, as both these appeals have been filed against the judgment and decree of the Additional Senior Subordinate Judge, Batala, dt. Feb, 7-1984.

2. the Batala branch of the New bank of India filed the suit against the defendants for the recovery of Rs. 6,87,908.86 on the allegations that defendant 1. i.e. M. s S. K. Engineering Works (Regd.) G. T. Road, Batala, had at all material times been dealing with the plaintiff as a partnership firm comprising of defendants 2 to 4 as its partners. On Aug. 21, 1976, the plaintiff Bank on the request of the defendants, agreed to grant A limit of Rs. 350.000/- under C.C. hypothecation and Rs. 30.000/- under B. P. Limit was granted on that date. With respect to the hypothecation limit of Rs. 8,50,000/- the defendants executed on Aug. 21, 1976, the loaning documents such as promissory note, binding themselves jointly and severally for the payment of the amount of loan on demand by the plaintiff Bank with interest at the rate of 6 1/2 percent. Above the Reserve Bank of India rate subject to a minimum of 15 1/2 per cent; letter of waiver, deed of hypothecation of goods and general lien agreement. Similarly, with respect to the term loan of Rs. 1, 50,000/-, the defendants executed promissory note, voucher showing receipt, letter of wavier, deed of hypothecation and general lien agreement. The plaintiff Bank opened the cash credit hypothecation account on Aug. 21, 1976 the name of defendant 1 with an

initial debit of Rs. 2.25 on account of stamp paper. This account had continued to be operative by the defendants up to the date of the-suit, i.e., Feb. 18, 1982. It was alleged that in this account, the plaintiff Bank was entitled to the recovery of a sum of Rs. 5,62,768.85 as on Feb. 15, 1982. As regards the term loan, it was stated that a sum of Rs. 1,25,040.01 as on Feb. 15, 1982 was out standing against the defendants. On Oct. 11, 1976, Shrimati Raj Kumari, defendant 4, created an equitable mortgage in favour of the plaintiff in respect of the factory. land, building and one ahata by depositing her title deeds with the Bank. It was also pleaded that the defendants acknowledged their liability to pay the amounts due under the aforesaid two accounts signing and delivering the balance confirmations on different dates as detailed in the plaint. Besides, the defendants had also promised to clear the term loan by deposit of the quarterly interest of Rs. 12,500/-, but they-failed to clear the dues despite repeated demands by the plaintiff Bank; hence the present suit In the written statement, the defendants pleaded inter alia that the suit was barred under the provisions of O. II. R 4. Civil PC, and since no details of pledged property or reference to any document of equitable mortgage had been given, the suit was liable to be dismissed. As regards the loaning documents, the-plea of the defendants was that their signatures on the blank documents had been obtained and that the contents of the documents were never explained to them. As such. they denied the valid execution of those documents. They also denied the acknowledgments as alleged in the plaint. On the pleadings of the parties, the trial Court framed the following issues

1. Whether the suit is barred under O. II R. 4, CPC?
2. Whether the suit is not properly valued for the purposes of Court-fee and jurisdiction?
3. Whether the plaintiff has locus standi to file the suit?
4. Whether the plaintiff is entitled to the Suit amount?
- 4A. Whether the defendant is a small scale industry? If so, whether it is entitled to any reduced rate of interest as claimed?
5. Whether the suit has been filed through a duly authorised person?
6. Whether the suit is not maintainable in the present form?
7. Relief.

Issues 1, 3, 4A. and were decided in favour of the plaintiff and against the defendants. On the most material issue, the trial Court found that a sum of Rs. 5,62,768.85 was due in the C.C. hypothecation account and another sum of Rs.. 1,25,040.01 was due in the term loan account of the defendants on Feb. 15. 1982. Issue of was also decided in favour of the plaintiff and against the defendants though there was no specific issue with regard to the bar of limitation, yet the trial Court found that the suit was within a period of three

years from Dec. 31, 1980 and, was, therefore within limitation. As a result, the trial Court decreed the plaintiffs suit for the recovery of Rs. 6,87,808.86 with costs. It was further directed that the plaintiff shall be entitled to future interest at the rate of 12 year per cent. per annum on the decretal amount from Feb. 18, 1982, till realisation. Dissatisfied with the said judgment and decree of the trial Court, Regular First Appeal No. 1205 of 1984 has been filed by the defendants whereas Regular First Appeal No. 1139 of 1984 has been filed by the plaintiff Bank.

3. The learned counsel for the defendants appellants submitted that the suit was barred by time as the so-called acknowledgments, Exhibits PW4/A and PW4/B, were only signed by one partner and, therefore, it did not extend the limitation as such. Admittedly, no such plea was taken by the defendants in the written statement. Therefore, no issue as such was framed in this behalf. The reason is also quite obvious. In the documents, Exhibits P. 6, P. 7 and P. 11, it was clearly provided that one of the partners could sign the documents on behalf of the partnership firm.

4. Faced with this situation, the learned counsel further contended that the plaintiff Bank did not produce the necessary evidence and, therefore, no liability could be fastened on the bas of the entries in the account books maintained by the plaintiff Bank. In support of the contention, the learned counsel relied upon Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., .

5. From the pleadings of the parties, it is quite evident that no such plea was taken by the defendants and no such objection was ever raised by them during the trial of the suit. Not only that, the defendants did not appear in the witness-box to deny their signatures on the various documents executed by them. They even did not call upon the plaintiff Bank to produce the details of the accounts which were duly confirmed and admitted by them later on. Under the circumstances, there is no force in this contention either.

6. The learned counsel then contended that the suit as such was not maintainable because the plaintiff Bank was also in possession of the goods pledged and unless those goods were sold, the suit as such could not be filed. In support of this contention, the learned counsel placed reliance on Lallan Prasad Vs. Rahmat Ali and Another, . I do not find any merit in this contention also.

7. In the first place, no such objection was taken in the written statement. Moreover the Supreme Court decision in Lallan Prasad's case (supra), does not support the contention raised by the learned counsel. Rather it was observed by the Supreme Court in para 17 of the judgment in the abovesaid case that once the pawnee by virtue off his right under S. 176 sells the goods the right of the pawner to redeem them is of course extinguished. But as aforesaid the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawner. So long, however, the. sale does not take place the pawner is entitled to redeem the goods an payment of the debt. It follows,

therefore, that where a pawnee files a suit for recovery of debt, though he is entitled to retain the goods he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to redeliver the goods on payment of the debt and, therefore, if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree.

8. No other contention has been raised in the appeal filed on behalf of the defendants.

9. Consequently, the behalf of the defendants dismissed.

10. As regards the appeal filed on behalf of the plaintiff Bank, it has been contended by the learned counsel that the Bank was entitled to future interest at the contractual rates, as agreed between the parties, under S. 34, Civil P.C.. Besides, argued the learned counsel, the trial Court has not given any reasons for not allowing the said rate of future interest. The future interest at the rate of 12 1/2 per cent. per annum has been allowed by it arbitrarily. In support of the contention, the learned counsel relied upon *State Bank of India v. Kashmir Art Printing Press, Sirsa* (1981) 83 Pun LR 300: (AIR 1981 P&H 188); *Shree Bharat Laxmi Wool Store v. Punjab National Bank* (1982) 84 Pur LR 472 ; *State Bank of India Vs. Quality Bread Factory and Others*, and *Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others*, .

10A. After hearing the learned counsel for the parties I find force in the contention raised by the learned counsel for the appellant.

11. Proviso to S. 34 has been added by virtue of the CPC (Amendment Act, 1976, which reads as under:

""Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.""

It has been held by the Division Bench of the Gujarat High Court in *Central Bank of India, Kutch Vs. P.R. Garments Industries Pvt. Ltd., Surendranagar and Others*, , that in commercial transactions by public financial institutions, the contractual rate of interest should be the rule and departure a rare exception. Hence in such cases granting of lesser rate of interest is ordinarily ruled out. Similar view was taken in *Shree Bharat Laxmi Wool Store's case* (1982 (84) Pun LR 472) (supra), wherein it was held that the Banks should have allowed interest at the contractual rate and not at the rate of 6 per cent. per annum. In this view of the matter, the Bank was entitled to the contractual rate of interest. In the present case, the contractual rate is provided at the rate of 15 1/2 per cent. per annum with quarterly rests as regards the C.C. hypothecation account vide, Exhibit P. 3 and so far as the term loan of Rs. 1,50,000 is concerned, it is provided at the rate of 14 per cent. per annum with quarterly rests, vide Ex. P. 9.

Thus, the Bank will be entitled to the future interest on the two amounts as found due according to the contractual rate between the parties. In other words, on the sum of Rs. 5,62,768.85, the plaintiff-Bank will be entitled to the future interest at the rate of 15% per annum with quarterly rests and on the balance amount, the future interest will be at the rate of 14 per cent. with quarterly rests. It is not disputed that the trial Court should have passed the decree in accordance with the provisions of O. XXXIV, R. 4, Civil P.C.

12. As a result of the above discussion, Regular First Appeal No. 1205 of 1984 fails and is dismissed with no order as to costs whereas Regular First Appeal No. 1139 of 1984 filed by the plaintiff Bank is allowed with costs. The decree of the trial Court is modified accordingly. A preliminary decree is passed in favour of the plaintiff Bank for a sum of Rs. 6,87,808.86 with costs. The plaintiff shall be entitled to the future interest at the contractual rates as held in the earlier part of this judgment on the decretal amount from Feb. 18, 1982 till realisation. The defendants are granted time to pay the said decretal amount within three months; failing which the properties hypothecated/mortgaged with the plaintiff Bank will be sold and in case of deficiency in realising the decretal amount with interest, the defendants will be personally liable for the payment of the balance amount.

13. Order accordingly.