

(2011) 03 DEL CK 0285

In the Delhi High Court

Case No : Regular First Appeal No. 593 of 2001

State Bank of Bikaner and Jaipur

APPELLANT

Vs

Sh. Mukesh Kumar and Another

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 41 Rule 27, 96

Citation : (2011) 03 DEL CK 0285

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This case is on the "Regular Board" of this Court since 17.1.2011. Today, it is effective item No. 6. Although it is 3.30 P.M. nobody has chosen to appear for the Appellant, the Respondents having not appeared in this appeal in spite of service. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this regular first appeal u/s 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 16.8.2001 whereby the suit of the Appellant/Plaintiff/bank for recovery of Rs. 2,03,181/- was dismissed. The suit was dismissed even though all the security documents, the statement of account and service of the legal notice was proved, on the ground that the Appellant bank had relied upon two acknowledgements of debts dated 16.4.1996 and 30.5.1996, however, only the acknowledgments of debts dated 16.4.1996 were proved as Ex.PW1/9 and Ex.PW1/10, but the acknowledgments of debts dated 30.5.1996 with respect to two accounts was not filed and hence not proved. The suit has been held to be barred by limitation and dismissed. Suit was also dismissed on the ground that the same was not shown to have been validly signed and filed.

3. Before the trial court, the Appellant bank proved the filing of the suit through Sh. H.C. Grover who was the branch Manager. The trial court has held that the suit is not validly instituted on the ground that though the deposition of witness PW-1 proved that he identified the signatures of Sh. Grover on plaint and vakalatnama, but the witness did not identify and prove as to where the same were on the plaint. This logic of the trial court is clearly questionable and erroneous because it is not necessary that the signatures have to be identified by marking of a point "A" and "B" thereon. Once, the signatures have been identified, it should be held that the suit is validly instituted. In any case, Sh. H.C. Grover was the Manager of the bank and therefore a principal officer within the meaning of the expression as found in Order 29 Rule 1 CPC and consequently, the suit has been validly instituted. This issue is no longer res integra and so held by the Supreme Court in the case of United Bank of India Vs. Naresh Kumar and others, wherein it has been held that suits of corporation including banks should not be dismissed on technical grounds more so when the litigation is contested to the hilt. I, therefore, hold that the suit was validly instituted and filed.

4. So far as the dismissal of the suit as being barred by limitation is concerned, I note that the Appellant has filed in this Court an application under Order 41 Rule 27 being CM No. 1610/2001 along with acknowledgments of debts dated 30.5.1996 with respect to both the loan accounts. I accept the application especially as the Respondents were ex parte in the trial court and have also not appeared in this Court after service. The application for additional evidence as also the memo of appeal where the execution of the revival letter/ acknowledgment letter dated 30.5.1996 have been mentioned, are supported by the affidavits of the branch Manager and principal officer of the Appellant bank. I have accordingly, taken these documents in evidence and have today marked the same as Ex.PX-1 and Ex.PX-2. I feel that the application for additional evidence ought to be allowed not only in the interest of justice but also because this Court as an appellate court requires the same so as to clarify the issue of limitation. Once we read Ex.PX-1 and Ex.PX-2 as evidence, quite clearly, the suit is within limitation.

5. In view of the above, appeal is accepted, the suit of the Appellant/bank against the Defendants/Respondents is decreed for a sum of Rs. 2,03,181/-along with the pendente lite and future interest at 12% per annum simple till realization of the decretal amount with costs of the present appeal being the court fees filed. Decree sheet be prepared. Trial court record be sent back.