

(1999) 08 DEL CK 0055

In the Delhi High Court

Case No : Suit No. 97/92

State Bank of India

APPELLANT

Vs

Avon Automotive Components Pvt. Ltd.

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Citation : (1999) 6 AD 174 : (1999) 82 DLT 101 : (2000) 1 RCR(Civil) 100

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Ravi Varma, for the Appellant;

Judgement

Mukul Mudgal, J.—The plaintiff State Bank of India filed the above suit for recovery of Rs. 2,17,037.48 in the court of the Senior Sub Judge, Faridabad. The defendant No. 1, Avon Automotive Components Pvt. Ltd. & Ors. is a company incorporated under the Companies Act, 1956. The defendant No. 2 Shri S.K. Budhiraja is its Managing Director. In October, 1974, the defendant No. 1 as borrower through the defendant No. 2 and the other Director Sh. Pritpal Singh Arora (Sh. P.P. Arora) approached the plaintiff for taking credit facilities. The plaintiff granted them Cash Credit (Bills) facility to the extent of Rs. 50,000/- for which the defendants 1,2, and Sh. P.P.Arora executed various documents viz. Demand Promissory Note, Take Delivery Letter, Agreement of Cash Credit, Agreement of Guarantee etc. On the strength of the necessary documents, the defendant No. 1 availed the said credit facility. The defendant No. 7, Raunaq Singh had stood surety from the repayment of the due amount of the term loan for defendant No.1 and had executed an Agreement of Guarantee dated 14.11.973. Accordingly his liability to pay the due amount of the term loan is joint as well as several Along with defendant No. 1.

2. In September 1975, the defendants 1 & 2 again requested the plaintiff to grant them another credit facility of Rs. 65,000.00 against hypothecation of their stocks, raw material, finished goods etc. The plaintiff accepted the request and granted to the defendant No. 1 another Cash Credit facility (Hypothecation) of

Rs. 65,000.00. For this facility also, on 4.9.75, the defendant No. 1, 2 and Sh. P.P. Arora executed the necessary documents viz. Demand promissory Note, Delivery Letter, Agreement of Hypothecation, Agreement of Guarantees etc. For both the facilities, the defendant No. 2 and Sh. P.P. Arora stood guarantee for the repayment of all outstanding of defendant No. 1 and rendered themselves personally liable in case of default by defendant No. 1. Their guarantee is a continuing guarantee and their liability is coextensive with that of defendant No.1.

3. That defendant No. 1 availed of both credit facilities as per true copy of statement of account duly certified under Bankers Books Evidence Act, which have been filed.

4. The defendants executed Balance confirmation letters and Revival letters on various dates i.e. 8.10.77, 15.6.78, 9.3.79, 31.12.79, 15.2.80, 1.10.80, 8.6.81, 10.9.83, and 31.12.83. The suit was filed on 10.4.86 on 10.4.86 and is within time.

5. Sh. P.P. Arora who was the Director of defendant No. 1 died on 25.12.82 leaving behind the defendant Nos. 3 and 4 as his heirs and legal representatives. They have inherited the estate of Sh. P.P. Arora and his shares of the defendant No. 1 were also transferred in their names. The defendant Nos. 5 and 6 are also additional Directors of defendant No. 1 and are liable to pay their dues to the plaintiff.

6. Defendant No. 1 in its Balance Sheet as of 30.9.82 (Ex. P.38) and 30.9.83 (Ex. P. 39) has admitted its liability towards the plaintiff bank. These documents Along with other suit Documents have been filed in this Hon"ble Court.

7. During the pendency of suit at Faridabad, the learned Company Judge of this Court appointed Official Liquidator of defendant No. 1 company. Hence u/s 446 of Companies Act, the learned Company Court vide order dated September 9, 1988 directed that the present suit Along with another one pending against the company and its directors be transferred to this Court and tried. The suit has accordingly come to trial to this Court.

8. Notice of the suit was issued by this Court and was served upon the defendants and no one appeared on their behalf. Vide order dated 24.11.95 this Court proceeded ex-parte against the defendants 1 to 6. Of and on the respondent No. 7 has been represented by counsel. However, none appeared for respondent No. 7 when this case was called out today, i.e. 4.8.99 after passover for respondent No. 7. The plaintiff was directed to produce its evidence by way of Affidavits. The same was compiled with and Affidavits filed on 19.3.96.

9. The plaintiff filed Affidavits of its four officers along with original documents pursuant to the above order of this Court. The Affidavits are filed in Part III file of this Court with original documents. Sh. H.R. Batra the then Principal Officer and Branch Manger has deposed that the plaint was signed, verified and suit instituted by him under powers conferred by Regulations 76 and 77 of SBI

General Regulations 1955 and Gazette of India Notifications issued thereunder. He also proved the copies of statement of accounts which have been certified under Bankers Books Evidence Act as Exhibits P-1 to P-2E. He has proved the sum outstanding against the defendants being Rs. 2,17,037.48 and the interest claimed from the date of suit at 14% p.a. which was prevailing at the time of filing of the suit.

10. Sh. M.L. Arora the Deputy Manager, State Bank of India, Faridabad Branch has deposed about the suit transactions. He is witness to the execution of documents of credit facilities and Agreements of Guarantee and has proved the same as Exhibits P.3 to P.12.

11. Sh. Ved Prakash Chopra has witnessed and has proved the execution by the defendants of the Revival Letters and Balance Confirmations as Exhibits P13 to P27, by which the liability of the defendants stood revived from time to time.

12. Sh. M.L. Mehta has also been witness to execution of Revival Letters and Balance Confirmation by the defendants and has proved them s Exhibits P2 to P33. He has also proved issuance of legal notice which is Exhibit P. 34. Copies of Balance Sheets submitted by the defendant No. 1 have been received and proved as Exhibits P35 to P40. A copy of stock statement filed by the defendant No.1 is Exhibit P41.

13. Hence, the plaintiff has proved the execution of various documents, availing of credit facilities by defendant No. 1 and acknowledgement of liability by the defendants on various occasions through balance, confirmations and balance sheets. The defendant No. 1 had obtained credit facilities for its business.

14. The witnesses of the plaintiff by their affidavit of evidence have affirmed the averments in the plaint and since the matter is ex-parte the plaintiff is entitled to a decree and pendente lite interest.

15. Accordingly, the suit is decreed. A decree for recovery of Rs. 13,54,913.66 in favor of the plaintiff is passed with costs jointly and severally against all the defendants. The suit amount is ordered to be recovered by the sale of hypothecated machinery as detailed in Annexure "A" which reads as follows :

"Hypothecated Goods

Clevis Lower Bush, Clevis Top Bush, Valve Cartridge, Thrust Ring, H.S.S., Tool Bit, Bracket, Push Road Housing, Piston, Intake Manifold, Support, Rocker Hyd., Lift, Intake Pipe, Bearing Housing, L-Slider, Link Limiter, Control Link, Slider, Clutch Engaging Sleeve, Sector Shaft, Tata Gear Fork, Brake Shoe Carrier, Tata Clutch Leaver, M/F Secondary Shaft, Rack 70403 etc."

16. In case the sale proceeds for the same are not found sufficient to satisfy the decree, other properties of the defendants are directed to be sold. The plaintiff has prayed in the plaint that the transaction was to bear interest @ 13.5%. It is also proved that the transaction was a commercial one. Accordingly, all the

defendants jointly and severally are also directed to pay pendente lite interest to the plaintiff @ 13.5% per annum on the suit amount of Rs. 13,54,913.66 from the date of institution of the suit to the date of the decree and interest from the date of decree till realization at 13.5% per annum.

17. Decree sheet be drawn up accordingly.

18. In view of the above, the suit stands disposed of.