(2018) 01 PAT CK 0029

In the Patna High Court

Case No : 14 of 1998

State Bank of India APPELLANT

Vs

Basudeo Prasad Mandal & Ors RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

Code of Civil Procedure, 1908, Order 8Rule 14 -
Specific Relief Act, 1963, Section 34 - Discretion of court as to declaration of status or right
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Citation : (2018) 01 PAT CK 0029

Hon'ble Judges : Jitendra Mohan Sharma

Bench : Single Bench

Advocate : S.D.SANJAY, Alok Kumar Agrawal, R. R.Tiwary

Judgement

1. The instant appeal has been preferred against the judgment dated 18.09.1997 and decree dated 06.10.1997 passed by Shri Satyendra Prasad Singh, Sub-Judge III, Katihar in Money Suit No. 19 of 1995 / 12 of 1995 whereby and whereunder the suit was dismissed on contest but without costs. The plaintiff is the appellant and the defendants are the respondents.

2. The plaintiff Bank has filed the Money Suit for a decree for Rs. 2,09,584.00/- against the defendants including the cost of the suit and other expenses with interest pendente lite and future and contractual rate of interest also on decreetal amount till realization and also for any other relief for which the plaintiff is entitled to get.

3. Briefly stated, the case of the plaintiff is that it is a nationalized scheduled commercial bank constituted under the Bank Companies Act, 1955 and has been carrying on its banking business all over India and abroad and also its branch at Sonaili (Katihar), District- Katihar. The State of Bihar by gazette notification dated 07.03.1976 has exempted all the Banks constituted under the Act from all

provisions of Bihar Money Lenders Act 1976. The Bank Managers are authorized to institute the suit under the Banking Regulation Act, 1965.

4. The defendants first party applied for Medium Term Loan to the plaintiff Bank for purchase of a tractor and the plaintiff Bank after accepting the proposal sanctioned a Term Loan of Rs. 86,600/- and ACC of Rs. 5000/- on 19.06.1987 with condition that the Tractor with Accessories would be hyptothecated in favour of the Bank as a security of the loan. The loan would be repaid in 18 equal installments of half yearly within nine years with interest and charges. The said loan documents would be executed in favour of the Bank and a suitable immovable property would be mortgaged in foavur of the Bank for security of loan. The defendants agreed to the above terms and conditions of the Bank. The defendant no. 1 executed agreement for hypothecation of the Tractor AB/1 Form with Accessories and crop in favour of the plaintiff Bank with stipulation that in case of his failure to repay the Bank dues the hypothecated tractor may be seized and sold and the sale proceed would be applied for satisfaction of the bank dues. The defendant nos. 2 and 3 executed AB/2 the guarantee form on 19.06.1987. The rate of interest for the loan sanctioned to defendant no. 1 was 11.5 % on ACC account and 12.5 % on AT Loan account subject to 4 % above and below as per the said bank rate of interest and as per Reserve Bank of India Rules. The defendant nos. 1 to 3 undertake to pay the loan amount with interest along with other charges. The defendant nos. 1, 2 and 3 undertake to pay the loan with interest jointly and severely and other expenses and they executed the Form AB/2 in favour of the Bank. After the execution of above document by the defendants a loan account was opened in the name of defendant no. 1 from which the loan was advanced to the defendant no. 1 on 25.06.1987. Defendant No. 1 purchased the tractor for his cultivation and developed his cultivation from which his family members were benefited but he did not repay the bank dues in spite of demands and on demands the defendants executed jointly and severally documents of revival and acknowledged the loan advanced to them from time to time. The defendant nos. 1 to 3 executed letter of revival dated 19.08.1992 and 18.09.1992 respectively acknowledging the loan and assured to pay the loan with contractual rate of interest. The borrower hypothecated the tractor etc. so that the tractor be seized and sold by public auction and the sale proceed thereof be adjusted towards the loan.

5. Further the case of the plaintiff is that defendant no. 1 did not deposit the installment thereby violated the terms and conditions of the loan. The plaintiff Bank has been maintaining a regular account for the advance allowed to the defendant no. 1 and all the advance made to defendant no. 1 were debited and deposit made by him was credited in his account from time to time in ordinary course of business in addition to cost and after expenses by the plaintiff and after adjusting the payment made by the defendant no. 1 a sum of Rs. 1,99,734/- in term loan and Rs. 9850-/- in ACC account up to 30.11.1994 remained due and the same is payable by the defendant as per accounts and the ledger of the Bank which is being maintained in ordinary course of business and

the copy of the statements of the account are annexed with the plaint forming part of the same. The defendant nos. 2 and 3 having guaranteed the above loan are also severely and jointly liable to pay the dues of the Bank as they have executed AB-2 Form. The representative of the plaintiff Bank approached the defendant several times for the repayment of the loan and served detailed notice and later on got issued a final demand notice through the Advocate but of no effect. Hence, the suit.

6. The defendant no. 1 for the last time paid in Term Loan account amount of Rs. 41,060/- on 22.02.1994 and Rs. 965.43/- in ACC account on 28.02.1989. According to the plaintiff cause of action arose when the loan was advanced and documents were executed on 19.06.1987 and balance was confirmed and acknowledged by the defendants and on day when demand notice were issued and final demand was made through Advocate of the plaintiff Bank and on 22.02.1994 and on 28.02.1989 when part payments were made and lastly on 02.09.1995 when the officials of the Bank approached the defendant nos. 1 to 3 to pay the outstanding amount within the jurisdiction of the court.

7. The defendant nos. 1 to 3 after appearance filed their joint written statement and contested the suit. As per the defendants the suit as framed is not maintainable, the plaintiff has got no cause of action for the suit, the suit is barred by law of limitation, estoppel, waiver and acquiescence. The suit is also barred under Section 34 of the Specific Relief Act, the suit has not been presented by appropriate authority and plaint has not been signed by an appropriate and competent person. The plaintiff has not complied the provisions of order 8 Rule 14 C.P.C. The statements made in paragraph 3 of the plaint is, vague, the plaintiff has purportedly omitted to mention as to when defendant no. 1 applied for loan and when sanction letter was given to him specifying the conditions. According to the defendants, they were directed to put their signatures on blank printed forms and they signed the same as per directions of the Bank officials without knowing the contents of the documents. The defendants are almost illiterate and hardly know to put their signatures. They put their signatures in good faith whenever each of them was directed by the Bank officials. They were asked not to put the dates below the signatures as the same would be filled up later on after sanction of the loan. They have denied that those forms were filled up in their presence or at their instruction or that the matter was explained to them. They have stated that they were assured that the rate of interest would be at the rate of 6 % per annum only. It is wrong to say that the defendant nos. 2 and 3 undertake to pay the cost and all other charges in connection with the loan rather they were asked to be guarantor for repayment of loan with simple interest at the rate of 6 % per annum. As a matter of fact the documents were not executed by them only those forms were filled up at the time of taking their signatures. The defendant no. 1 could not utilise the tractor and developed his cultivation due to heavy flood since 1987 and the crops were damaged due to wrong planning in construction of Bandh which caused default in repayment of installment. The defendants have denied to have executed letter of

revival dated 19.08.1992 and 18.09.1992 thereafter, acknowledging the loan with contractual rate of interest rather the blank form on which their signatures were taken might have been utilized by the plaintiff Bank officials by filling it up at their own convenience. They have alleged that the plaintiff has not specifically mentioned the amount of loan, the payment made therein and the amount over interest charged nor has given the rate of interest charged from time to time besides so many other charges and expenses have wrongly been added to the said account. Besides the certificate appended to the said account is not in conformity with the Bankers Book of Evidences Act. The plaintiff Bank has charged interest arbitrarily and in wrongful way. The defendants have challenged the correctness of statements of account, they have also denied that demand was made to them and notices were issued to them. They have stated that cause of action propounded by the plaintiff in paragraph 16 of the plaint is imaginary and false. They have stated that the plaintiff has not given the principal amount and interest separately posed to make confusion and take undue advantage of the same and as such the suit of the plaintiff is fit to be dismissed with cost.

8. On the basis of the pleadings of the parties learned Sub- Judge framed the following issues on re-cast:- (i) Is the suit as framed maintainable ?

(ii) Has the plaintiff got any valid cause of action for the suit ?

(iii) Is the suit time barred ?

(iv) Is the suit barred by provisions of Rule 14 of the C.P.C. ?

(v) Is the statement of account correct and whether the plaintiff Bank is entitled to charge interest on the principal sum adjusted and also other charges ?

(vi) Have the defendants confirmed the balance due and acknowledged the due of the plaintiff Bank by executing revival letter from time to time or whether their signatures were obtained on blank printed revival letters when the loan was advanced to defendant no. 1 on 19.06.1987 ?

(vii) Whether the court can look into the statement of account in spite of provisions of Section 21 (A) of the Banking Regulation Act or not ?

(viii) Is the plaintiff entitled to get a decree with interest pendente lite and future till realization on contractual rate of interest ?

(ix) To what other relief or reliefs, if any, the plaintiff is entitled to get ?

9. The learned court below took up issue nos. iii and iv at first and decided the same against the plaintiff and in favour of the defendants holding that the suit is time barred and revival letters have not been legally proved to show the acknowledgment of debts by the defendants. Ext. 5 is not legally admissible in evidence, thereafter, the learned court below took up issue nos. v and vii together and came to the conclusion that statements of account, Ext. 7 and 7/A, are not correct and they have not been correctly maintained nor signed by the competent authority of the plaintiff Bank, so these two statements of accounts

are not admissible in evidence and accordingly, decided those issues also against the plaintiff and in favour of the defendants. Thereafter, issue no. iv was taken up and decided the same in favour of the plaintiff Bank. Thereafter, issue no. viii was taken and decided against the plaintiff Bank holding that the plaintiff bank is not entitled to a decree with interest pendente lite and future till realization on contractual rate of interest as the suit is time barred. Thereafter, issue nos. i and ii were taken and it was held that there is defect in the framing of the suit and the cause of action is time barred and accordingly, these issues were decided against the plaintiff Bank and in favour of the defendants. Thereafter, issue no. ix was taken and it was held that the plaintiff Bank has failed to prove this case and is not entitled to get any dues and accordingly, dismissed the suit on contest but without cost.

10. The plaintiff being aggrieved and dissatisfied with the judgment and decree preferred this appeal challenging the maintainability of the same on the grounds that the judgment and decree under appeal is bad in law, against the materials on record and is fit to be set aside. The learned court below has committed grave error of records which vitiates the impugned judgment. The learned court below has failed to appreciate the evidences with correct angle of vision. The suit should have been decreed. The reasons implied in the impugned judgment are erroneous. The plaintiff has squarely discharged the onus lying on it, the findings recorded by the learned court below are contrary to the materials on record. The learned court below has applied such law which is not countenanced by the statue, pleadings have not been correctly appreciated, Ext. 1 series and 7 series have not been appreciated as they are legally enforceable document and therefore, the findings contrary to it is bad in law and is fit to be set aside. The plaintiff''s witnesses have fully proved the case which is supported by enforceable documents and therefore, the suit ought to have been decreed in toto. The facts stated in paragraph 15 of the plaint regarding payment of dues by the defendant no. 1 has not been denied by the defendants in their written statement and further from Ext. 7 and 7/A, it is proved that the defendant no. 1 has deposited the amount of Rs. 41,060/- in Term Loan Account on 22.02.1994 (Ext. 7) and further Rs. 965.43/- in ACC account on 28.02.1989 and as the defendant no. 1 after accepting the dues deposited Rs. 41,060/- on 22.02.1994 and as such the suit filed on 09.08.1995 is not time barred. But in spite of pleading and evidences available on the record, learned court below has held otherwise and as such the impugned judgment and decree is fit to be set aside.

11. The respondents have appeared in this appeal and the names of learned counsels for the respondents are appearing in the daily cause list but no one turned up on behalf of the respondents to argue in this appeal.

12. The points for consideration in this appeal are as follows:- (i) Whether the suit of the plaintiff is time barred ?

(ii) Whether the plaintiff is entitled to a decree with interest pendentilite and future till realization on contractual rate of interest ?

(iii) Whether the judgment and decree passed by the learned trial court is fit to be maintained ?

Point No. (i) :- The plaintiff in paragraph 15 of the plaint has stated that the defendant no. 1 for the last time paid in Term Loan Account Rs. 41,060/- on 22.02.21994 and Rs. 965.43/- in ACC Account on 28.02.1989. The statement as made in paragraph 15 of the plaint has not been denied by the defendants in their written statement. Further from Ext. 7 it reveals that the defendant no. 1 has deposited amount of Rs. 41,060/- on 22.02.1994 and this suit has been filed on 09.08.1995 and as such the suit filed is within time and on this ground alone it is not time barred. Further in paragraph 8 of the plaint it is stated that a letter of revival dated 19.08.1992 and 18.09.1992 executed by the defendant nos. 1 to 3 respectively and acknowledged the Bank Loan and assured to pay the loan amount with contractual rate of interest. Ext. 1/E is revival letter dated 19.08.1992 executed by Ramlal Mehta the defendant no. 3 whereas Ext. 1/D dated 18.09.1992 is revival letter executed by Basudeo Prasad Mandal the defendant no. 1. Ext. 1/F is revival letter dated 19.08.1992 executed by Sukhdeo Prasad Azad and from these revival letters also it is proved that the defendants have acknowledged the dues amount on 19.08.1992 and 18.09.1992 and thus, the suit filed is within time. Not only that Basudeo Prasad Mandal the defendant no. 1 has written a letter of undertaking dated 07.12.1994 acknowledging the amount of dues and this letter is Ext. 5. From this letter also the suit is within time.

Learned court below has not considered the pleadings and evidences available on the record properly and correctly and has wrongly come to the conclusion that the suit is time barred. The defendants have deposited heavy amount i.e. Rs. 41,060/- in Term Loan Account on 22.02.1994 and it cannot be termed as showee transaction and as such in any view of the matter the suit is not time barred. The findings given by the learned court below in this regard is imaginary, against the materials available on the record and as such those findings of the learned court below are hereby set aside. In the result, it is held that the suit of the plaintiff bearing Money Suit No. 19 of 1995 is not time barred and accordingly, point no. i is decided in favour of the appellants and against the respondents.

13. Point No. (ii):- The plaintiff to prove his case has examined two witnesses who are Srichand Meena and Srikant Kumar Pandey. Besides the oral evidence, Ext. 1 is the signature of Basudeo Prasad Mehta defendant no. 1 on the application for agricultural loan. Ext. 1/A is signature of Randhir Kumar on proposal form cum pre-sanction survey report. Ext. 1/B is the signature of Sukhdeo Prasad Azad and Ramlal Mehta on the guarantee deed. Ext. 1/c is signature of Ramlal Mehta and Sukhdeo Prasad Azad on revival letter dated 02.06.1990. Ext. 1/D is the signature of Basudeo Prasad Mandal on acknowledgment cum revival letter. Ext. 1/E is signature of Ramlal Mehta on acknowledgment cum revival letter. Ext. 1/F is signature of Sukhdeo Prasad Azad

on acknowledgment cum revival letter. Ext. 2 is loan agreement and condition. Ext. 3 is sanction order. Ext. 4 is Deed of Hypothecation. Ext. 5 is acknowledgment letter of Basudeo Mandal dated 07.12.1994. Ext. 6 is Mortgage Deed. Ext. 7 and 7/A are statements of account.

14. On behalf of defendants only Basudeo Mehta has been examined as DW 1 who is defendant no. 1.

15. PW 1 is the Field Officer. He has proved the document including the statements of account and has fully supported the case of the plaintiff. He has stated that the defendants after fully nderstanding the contents of the documents have signed the documents and the defendants were knowing that they have to repay the loan as per the agreed terms. This witness has stated that the statements of account has been prepared by him and he has signed over the same and further he has given certificate over the same. He has stated that the claim of the plaintiff is correct. He has been cross-examined but nothing has come to disbelieve his testimony. PW 2 has proved Ext. 3, Ext. 4 and further Ext. 6. He has stated that the defendants have signed these forms after understanding the contents of the same. He has been crossexamined but nothing has come to disbelieve his testimony. DW 1 has come to say that the contents of the documents were not read over to him and the Bank officials took their signature on 15-16 documents and Bank officials told that the same will be filled up later on. During cross-examination this witness has admitted that he has taken loan from the Bank and he has deposited the money towards loan and passbook was given to him. He has not made complain anywhere that Bank officials took their signatures on blank paper. He has not informed the Bank officials that due to flood crops were damaged. He did not get knowledge regarding the interest of the Bank. Thus, from the statement of DW 1 it reveals that after knowing the interest of the Bank the defendants took the loan from the Bank, purchased tractor and utilized the same but did not pay the loan amount as per agreement and the Bank dues became over due.

16. In my opinion, PW 1 is legally authorized to give certificate of correctness on the statements of account (Ext. 7 and 7/A). He is competent being the officer of the Bank. The finding of the learned court below not relying upon Exts. 7 and 7/A is otherwise, bad in law and on facts. The plaintiff has succeeded in proving its case and as such the plaintiff Bank is entitled for a money decree for Rs. 2,09,584/- against the defendants but considering the condition of the defendants the interest is granted 6 % simple interest per annum on the decreetal amount till its realization and accordingly, point no. 2 is decided in favour of the appellant and against the respondents.

17. Point No. (iii):- As discussed above, the judgment and decree passed by the learned court below is not fit to be maintained. The learned court below has passed the judgment and decree after ignoring the pleadings of the parties and evidences available on the record. The learned court below has failed to consider that the facts mentioned in paragraph 15 of the plaint has not been denied by

the defendants and further the learned court below failed to consider that the defendants have deposited Rs. 41,060/- on 22.02.1994 in term loan account and as such the suit was within time and it was not time barred but the learned court below after ignoring all these hard facts has passed the impugned judgment and decree and as such the same are hereby set aside.

18. In the result, the judgment and decree passed by the learned court below are hereby set aside and this appeal stands allowed.

19. The defendants are directed to pay the decreetal amount of Rs. 2,09,584/- with 6 % simple annual interest within three months, failing which the plaintiff shall be entitled to recover the same through the process of the court.

