(1993) 09 DEL CK 0042

In the Delhi High Court

Case No : Suit No. 3100 of 1988

State Bank of India APPELLANT

Vs

G.G. Foam and Others RESPONDENT

Date of Decision : 01-09-1993

Acts Referred:

Citation : (1993) 3 AD 962 : (1993) 52 DLT 137

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : J.L. Kalra, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a suit for recovery of Rs. 1,76,082.46 together with future interest @ 14% per annum from the date of filing of the suit tillrealisation.

(2) The facts of the case, briefly stated, are that the plaintiff bank isa body corporate constituted by the State Bank of India Act, 1955 having its Central and Registered Office at Bombay and one of its Regional Head Office at 11-Parliament Street, New Delhi. The plaintiff has its branches throughout India and one of its branches is situated at Mayapuri, New Delhi. Shri B.R. Nanda, who has signed and verified the present plaint is duly authorised to institute the present suit and in this regard he holds a Power of Attorney from the plaintiff-bank. As per the averments made in the plaint, defendant No. 2 representing himself as sole proprietor of defendant No. 1 approached the plaintiff-bank for sanction of the Cash Credit facility and agreed to pay to the plaintiff-bank interest @ of 15% per annum on the amount, so advanced. He further agreed to charge, hypothecate/ pledge the goods owned by defendant nos. 1 &2 with the plaintiff-bank. Accordingly, on 12.1.1983,defendant no. 2 on behalf of defendant No. 1 was sanctioned Cash Credit facility to the extent of Rs. 2.00 lacs (Rs. two lacs only) and the defend anted executed various documents, namely, Demand Promissory Note dated12.1.1983 for Rs. 2.00 lacs (Rs. two lacs only), D.P. Note Delivery

Letter dated 12.1.1983 duly signed by defendant no. 2 on behalf of defendant No. 1and Form ''I-Special'' a Guarantee Bond executed by defendant no. 3 on12.1.1983. It has further been stated in the plaint that defendant no. 2 on behalf of defendant No. 1 also submitted statement of stock on 12.1.1983hypothecating the stocks to the plaintiff-bank by deposit of certified copy of the sale deed executed on 3,4.1969 in favor of defendant no. 2. Defendant no .2 also submitted an affidavit duly attested by Metropolitan Magistrate, Delhi deposing therein that he had lost the original title deed.

(3) It is further stated in the plaint that the plaintiff-bank issued an arrangement letter dated 12.1.1983 containing therein the terms and conditions of the Cash Credit limit and the said arrangement letter was signed by all the defendants in token of acceptance of terms and conditions. It is further alleged that defendant no. 2 on behalf of defendant No. 1 agreed to pay interest @ of 15% per annum on the Cash Credit facility (factory type)rising and falling thereto and now is stated to be 14% per annum.

(4) It is further alleged in the plaint that he defendants 1 & 2 have not been routing the sale proceeds through their accounts maintained by the plaintiff-bank and have not submitted the statement of stock for the last more than one year. It is also alleged that defendants have failed to regularise their accounts despite plaintiff''s demands and requests. It is further alleged that defendant no. 2 on behalf of defendant No. 1 admitted the debt in the sum of Rs. 1,84,236.37 by executing the balance confirmation receipt as on 31.12.1983 and again acknowledged the debt for the purpose of Section19 of the Indian Limitation Act, 1963 by executing revival letter dated15.12.1985. It is further alleged that defendant no. 3 also acknowledged the debt for the purpose of aforesaid section of Limitation Act by executing the revival letter on Form-11 on 15.12.1985. Defendant no. 2 again admitted the debt as on 31.12.1985 by executing balance confirmation receipt in a sum of Rs. 1,91,148.43.

(5) Finally it has been alleged that the plaintiff-bank was constrained to transfer the outstanding amount of Rs. 1,76,082.46 in the Cash Credit(factory type) account of defendants 1 & 2 to the protested bill account on8.12.1988 inclusive of interest up to 8 12.1988. Hence, the present suit has been filed for recovery of a sum of Rs. 1,76,082,46 Along with interest.

(6) At the initial stage, Mr. O.P. Saxena, Advocate appeared on behalf of defendant No. 1 on 2.3.1989. From 23.8.1989 onwards he discontinued appearing on behalf of defendant No. 1. None appeared on behalf of defendants 2 & 3 despite service. None of the defendants has filed any written statement .Accordingly on 1.11.1989, the defendants were proceeded against ex parte. The plaintiff-bank has tiled evidence by way of affidavit duly signed and sworn by Sh.S.C.Sehgal, Field Officer, Mayapuri Branch of the plaintiff-bank. All the averments and allegations made in the plaint have been proved through aforesaid witness.

(7) EX. P-1 is the copy of the Regulations No. 76 and 77 of the State Bank of India, General Regulations, 1955, Ex. P-2 is the copy of the Notification dated 17.9.1959 and Ex. P-3 is the copy of the Notification dated21.6.1972. In terms of said Exs. P-1 to P-3, Shri B.R. Nanda, who has signed and verified the plaint, is competent to file the present suit. Ex. P-4 is the Demand Promissory Note dated 12.1.83 for a sum of Rs. 2.00 lacs (Rs. two lacs only) duly executed by defendants 1 & 2 in favor of the plaintiff-bank.Ex.P-5 is the D.P. Note Delivery Letter dated 12.1.1983 Along with which Ex.P-4 was delivered by the defendants to the plaintiff-bank P-6 is the agreement for Cash Credit dated 12.1.1983 duly executed by defendants 1&2.Ex. P-7 is the Form I-Special''-Guarantee Agreement dated 12.1.1983 executed by defendant No. 3. Ex.P-8 is the certified copy of the sale deed by which defendant No. 2 created equitable mortgage in favor of the plaintiff-bank by deposit of the same. Ex. P-9 is the letter by which Ex. P-8 was deposited by defendant No. 2 with the plaintiff-banic. Ex.P-IO is the affidavit submitted by defendant No. 2 deposing therein that he had lost the original title deed.Ex. P-11 is the arrangement letter incorporating essential terms and conditions of Cash Credit (factory type) duly signed by the defendants in token of having accepted the terms and conditions mentioned therein. Ex. P-12 is the duly authenticated copy under the Bankers'' Books Evidence Act of statement of account of defendant no. 1 with the plaintiff-bank. Ex. P-13 is the revival letter duly executed by defendant No. 3 and Ex. P-14 is the letter dated 15.12.1985 executed by defendants 1 & 2. Ex. P-1 5 and Ex. P-16 are the balance confirmation receipts as on 24,1.1984 and 31.12.85 respectively All these exhibits iiavi; been proved through the aforesaid witness, namely,Shri S.C. Sehgal. This witness has also proved that defendant No. 1 is a partnership firm and defendant No. 2 is the sole proprietor thereof. He has further proved that defendants 1 & 2 had agreed to pay interest @ of 15% per annum on the Cash Credit (factory type) rising and falling thereof and the rate of interest at the time of filing of the suit was 14% per annum. He has also proved that at the time of filing of the suit a sum of Rs. 76,082,46was recoverable from the defendants.

(8) As stated herein above the defendants have not filed any written statement contravening the averments and allegations made in the plaint. No witness has been examined by the defendants to rebut the averments made in the plaint. However, the plaintiff-bank has proved the averments made in the plaint through its witness, namely, Shri S.C. Sehgal. Hence, the plaintiff-bank is entitled to succeed in this suit. Accordingly, the suit for recovery for a sum of Rs. 1,76,082.46 is hereby decreed with costs in favor of the plaintiff-bank and against the defendants. The plaintiff shall be entitled to pendente lite and future interest @ of 14% per annum. Decree may be drawn, accordingly.

