(1998) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1479 of 1981

State Bank of India APPELLANT

Vs

Jamalwala Industries and Others RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Citation : (1999) 122 PLR 171 : (1999) 4 RCR(Civil) 238

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : R.K. Chhibber and Anand Chhibber, for the Appellant; Sanjay Bansal, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The plaintiff is the appellant.

2. The plaintiff, namely, State Bank of India filed the suit for recovery of a sum of Rs. 56,151/- from the defendants. The facts leading to the filing of the suit, out of which this appeal arises, may briefly be summarised as follows.

3. The first defendant entered into a milling contract with Food Corporation of India (hereinafter referred to as ''the FCI'') for conversion of gram into gramdal. The FCI required the first defendant to furnish a bank guarantee for fulfilment of the contract. Accordingly, the first defendant approached the plaintiff-bank to furnish the bank-guarantee. The bank agreed to the same on certain conditions and also on furnishing guarantee of third party. The first defendant complied with the conditions stipulated by the bank and accordingly the plaintiff-bank stood as a guarantee for the due performance of the contract by the first defendant in favour of the FCI. The bank furnished four different securities for the fulfilment of the contract with the FCI; one for a sum of Rs. 72,000/- on 4.7.1973, second one for Rs. 96,000/- on 20.8.1973, third one for Rs. 64,000/- on 5/6.11.1973 and the fourth one for Rs. 30,000/- on 4.2.1974. Defendants Nos.2 and 3 and the first defendant created an equitable mortgage by deposit of title in favour of

the plaintiff-bank. According to the terms of the security furnished by the bank on behalf of the defendants, the bank undertook to indemnify the FCI against any loss in case of failure of performance of the contract by the first defendant entered into with the FCI. There is no dispute with regard to the security furnished by the bank in respect of the guarantees created on 20.8.1973, 5.11.73 and on 4.2.1974, but the first defendant did not fulfil its contract/ obligation for the supply of gram-dal to the FCI. The dispute is in respect of the terms covered by the first security furnished by the bank for Rs. 72,000/- to the FCI on 4.7.1973. Since there is a failure on the part of the first defendant to fulfil the contract with the FCI, the FCI invoked the security furnished by the bank and demanded the bank to remit the loss incurred by the FCI in respect of the said contract. On account of this the bank paid a sum of Rs. 50,645/- to the FCI. The bank filed the suit for recovery of this amount along with interest amounting to Rs. 5,506/against all the defendants.

4. The defendants contended, inter alia, in their written statement that the plaintiff-bank is not entitled to proceed against the defendants since it paid the amount to the FCI after expiry of the period mentioned in the security bond furnished in favour of the FCI. Therefore, the defendants are not liable for any payment made by the bank after the date mentioned in the security bond executed by the bank in favour of the FCI. They also contended that the plaintiff-bank is not entitled to the interest and, therefore, the suit is liable to be dismissed,

5. On the basis of the pleadings, the trial Court framed appropriate issues and on consideration of the evidence, the trial Court decreed the suit against defendants 1 and 2 and dismissed the suit against the third defendant. Future interest at the rate of 18% per annum was awarded till the date of realisation. Aggrieved by the decree and judgment of the trial Court, defendants No. 1 and 2 preferred an appeal to the District Judge, Hissar, who by the impugned judgment and decree dated 16.3.1981 allowed the appeal and dismissed the suit filed by the plaintiff-bank. Hence the bank preferred this second appeal.

6. The only controversy in this appeal is whether the plaintiff-bank is entitled to recover the amount which it paid to the FCI under the contract of guarantee which is furnished to the FCI for fulfilment of the contract which the first defendant entered into with the FCI. There is no dispute of the fact that the plaintiff-bank parted with the money. The only question is whether the plaintiff-bank paid the money to the FCI under the terms of the guarantee bond which it executed with the FCI for fulfilment of the contract by the defendants with the FCI. The learned District Judge, Hissar, took the view that the plaintiff-bank was not entitled to invoke the guarantee bond executed by the defendants. Exhibit P.3 is the agreement of guarantee executed by the defendants in favour of the plaintiff-bank. According to the learned District Judge, the plaintiff-bank committed an error or mistake in encashing the bank-guarantee to the FCI without getting the period of guarantee extended or without obtaining the

written consent of the contractor i.e. the first defendant and accordingly allowed the appeal filed by the defendants and set aside the decree and judgment of the trial Court. I am constrained to say that the learned District Judge has not fully understood the terms of the agreement of guarantee furnished to the plaintiff-bank as a security to the FCI for fulfilment of the terms of the contract which the first defendant entered into with the FCI. In fact the learned District Judge though extracted a part of Exhibit P.3 yet did not refer to the relevant portion of that agreement (Exhibit P.3) and failed to consider the effect of the same. The relevant clause in Exhibit P.3 reads as follows:-

"In consideration of the Food Corporation of India having at our request agreed to accept this guarantee by State Bank of India deposit required from M/s Jamalwala Industries (hereinafter called the Contractor) for the due fulfilment by them of the terms and conditions of the agreement made between the contractor and the Food Corporation of India for conversion of gram into gram-dal (hereinafter called the agreement) during the period commencing from 4.7.93 and ending on 3.1.1974 or the extended period, if any. State Bank of India do hereby undertake to indemnify and keep indemnified the Food Corporation of India (hereinafter called the Corporation'') to the extent of Rs. 72,000/- (Rupees Seventy two thousand only) against any loss, claim, suit, proceedings for damages, costs, charges and expenses caused to or suffered by the Corporation by reason of any breach of the said Contractor of any term or condition of the said agreement and authorise the Corporation to recover the same directly from us. We agree to pay the Corporation on demand any sum which may become payable to the Corporation under the said agreement and in respect of which we State Bank of India hereby give this guarantee for payment of Rs. 72,000.00. We State Bank of India further agree that the Corporation shall be the sole judge whether the said terms and conditions of the agreement and the extent of losses, damage, costs, charges and expenses suffered or incurred by the Corporation on account thereof. We State Bank of India further agree that the guarantee herein contained shall remain in full force and effective upto and inclusive of the 3.1.1974, the date referred to above or the expiry of the extended period, if any, and that it shall continue to be enforceable till all the dues of the Corporation under or by virtue of the said agreement have been fully paid and its claim satisfied or discharged or till the Regional Manager under the Food Corporation of India certified that the terms and conditions of the said agreement have been fully and properly carried out by the said Contractor and accordingly discharges the guarantee subject however that the Corporation shall have no rights under this bond after the expiry of (period) six months from the date of termination of the contract. We State Bank of India undertake not to revoke this guarantee during its currency except with the previous consent of the Corporation in writing. The guarantee herein contained shall not be effected by any change in the Constitution of the said Contractor of the Bank.

We State Bank of India further agree that the giving of time by Corporation to the said Contractor for performing the said agreement or any other matter or thing whatsoever which under the provisions of the Tender No. D-22(1) Jamal Sirsa/APO/73 dated the 29.6.73 Indian Contract Act or any other law for the time being in force relating to the sureties would but for this provisions have the effect of releasing the guarantee shall not in any way effect the liabilities of State Bank of India."

7. It is not disputed that this bank guarantee has been extended upto 3.5.1974. From a reading of the clause in the bank guarantee, referred to above, it is clear that the FCI can invoke the bank guarantee for a period of 6 months from the termination of the contract. Therefore, the FCI is within its limits to invoke this bank guarantee for a period of 6 months from the date of its termination. When it was extended upto 3.5.1974, the FCI is within is limits to invoke the bank guarantee within a period of 6 months from the date of extended period. The FCI made a demand and the bank paid the amount under the guarantee furnished to the FCI on 11.6.1974. When the guarantee bond is in force upto 3,5.1974, the FCI is within its limits to invoke the terms of the guarantee bond within 6 months from the date of termination of the contract. In other words the FCI can invoke the terms of the bank guarantee on or before 3.11.1974. Admittedly, the FCI made a demand before 11.6.1974 and the bank was made to discharge its liability to the FCI under the guarantee on or before 3.11.1974. When the FCI invoke the bank guarantee prior to 3.11.74 to bank paid amount covered by the guarantee bond on 11.6.1974. i.e. within the period stipulated under the contract of guarantee furnished by the bank to the FCI. Thus, the plaintiff-bank discharged its liability under the contract of guarantee furnished on behalf of defendants 1 and 2 to the FCI for the fulfilment of the contract which the first defendant entered into with the FCI.

8. The learned district Judge has not referred to in his judgment the clause of agreement which enables the FCI to invoke its rights under the bond after the expiry of a period of 6 months from the date of termination of the contract. According to the learned District Judge, since the FCI has not invoked the terms of the guarantee within the period before the termination of the contract and since the bank paid the amount demanded by the FCI after the termination of the contract, the bank is not entitled to recover the amount. This is totally a misreading of the terms of the contract which the State Bank of India entered into with the FCI for and on behalf of defendants 1 and 2. The learned District Judge did not even refer to this particular clause in the contract which the Bank entered into with the FCI at the instance of defendants 1 and 2. The contract gives a right to the FCI to enforce the bank guarantee within 6 months from the date of its termination. Therefore, the bank is bound to reimburse the FCI for any loss incurred by it due to the non-performance of the contract which the first defendant entered into with the FCI for milling the gram into gram-dal. There is no dispute that the first defendants failed to fulfil its part of the contract which entered into with the FCI. Therefore, the plaintiff-bank is within its limits in discharging the liability of the first defendant. I am, therefore, of the opinion that the learned District Judge erred in dismissing the suit while reversing the decree

and judgment of the trial Court.

9. The learned counsel for the respondent argued that the interest at the rate 18% per annum awarded by the trial Court is excessive and though this appeal was filed in the year 1982, the bank has not taken any steps to have the second appeal decided at an early date. Even now it is only on the application filed by the second defendant for early hearing of the appeal that the appeal has been taken up for hearing. The learned counsel for the bank is fair enough to concede the rate of interest chargeable on cash paid loans was 10% in case of excellent and good credit rating, 10.25% in case of minus rating and 10.5% on average B rating. He also filed the circular issued by the State Bank of India dated 16.8.1973 in C&I 35 of 1973. He also agreed that the rate of interest may be awarded against the defendants as 10.5% per annum.

10. I accordingly allow the appeal, set aside the decree and judgment of the learned District Judge, Hisar, and restore that of the trial Judge, subject to the modification to the rate of interest of the rate of 10.5% per annum on the principal amount of Rs. 50.645.00 (fifty thousand six hundred forty five only) from the date of filing of the suit till realisation.

