(2001) 10 DEL CK 0176

In the Delhi High Court

Case No : Suit No. 2159/88

State Bank of India APPELLANT

Vs

Jay Bee Enterprises and Another RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Citation : (2001) 10 DEL CK 0176

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : S.C. Gulati, for the Appellant;

Judgement

V.S. Aggarwal, J.—The State Bank of India, hereinafter described as the appellant, has filed the present suit for recovery of Rs.1,34,854.72 against the defendants. It has been pleaded that Shri T C Sharma has been duly authorised by the local head office to institute and file and present suit. Defendant no.1 is alleged to be a sole proprietorship firm carrying on business of manufacturing body building of buses and tractors. Defendant no.2 is sated to be the proprietor of defendant no.1 and 3 is the guarantor. Defendant no.3 died on 12.4.1986. Therefore defendants 3 (a) to (d) have been arrayed as defendants.

2. It is the case pleaded that defendant no.2 on behalf of defendant no.1 approached the plaintiff for grant of cash credit facility. The plaintiff considered the application and allowed the cash credit facility to the extent of Rs.1,25,000/-. Defendants 1 and 2 executed an agreement for cash credit limit against hypothecation of goods on 21.1.1983. Tek Chand stood as the guarantors. A promissory note was executed by defendants 1 and 2 to the extent of Rs.1,25,000/-. The deceased Tek Chand endorsed the same as guarantor. When defendants willfully were not depositing the sale proceed a legal notice was issued. The plaintiff was constrained to transfer the outstanding amount of Rs.1,33792.30 to the Protested Bill adding interest from 8.8.88 to 28.8.88. The present civil suit has been filed.

3. Defendants 1 and 2 in their written statement filed took up the preliminary objection that civil suit is bared by time. The plaintiff was alleged to be not entitled to any interest and that it has not been property signed and verified. It has been pleaded that there was no agreement to pay the interest and further that defendant no.1 had started running into heavy losses and was Therefore not in a position to pay the amount.

4. Separate written statement has been filed by the heirs of Tek Chand [defendants 3(a) to (d)]. It is denied that Tek Chand stood as the guarantor and Therefore liability to pay the amount as such was denied.

5. On 21.3.1990 this court had framed the following issues:-

1. Whether the suit has been institute and plaint has been signed on behalf of the plaintiff and verified by a competent person, OPP

2. Whether the suit is within time? OPP

3. Whether the deceased Tek Chand, original defendant no.3 in the suit executed any guarantee on behalf of the principal debtors-defendants 1 and 2 in favor of the plaintiff, if so, on what terms and to what effect? OPP

4. Whether the plaintiff is entitled to any interest. If so, at what rate, on amount and for what period? OPP

5. Whether the plaintiff is entitled to the suit amount? OPP

6. Relief.

6. Subsequently there was no appearance on behalf of the defendants and on 22.2.2000 defendants had been proceeded ex parte. But before that statements of plaintiff witnesses had since been recorded.

7. Issue no.1 : It is in the testimony of Suresh Chand Vaish, PW that branch manager of the State Bank of India was authorised to sign and verify and institute suit on behalf of State Bank of India in terms of Regulations 76 and 77 read with notification dated 26.9.1969 and 26.7.72. He produced copies of the same as Ex. P1 and P3. Perusal of the same clearly show that the branch manager had been authorised to institute the suit which has been signed and verified by T C Sharma. Therefore, it must be held that suit has been properly instituted and verified. Issue is accordingly decided in favor of the plaintiff.

8. So far as issue no. 2 is concerned, the sole contention raised was that the same is barred by time. It transpired in evidence of Suresh Chand Vaish that defendant no.3 had executed guarantee bond Ex. P9, Ex. P10 the revival letter dated 31.10.1985 signed by Jai Bhgwan, proprietor of defendant no.1. Once the revival letter as such had been issued this would entitle a fresh period of limitation and the civil suit has been filed within three years of the letter of revival Ex. P10. Therefore, it must be held that the civil suit is within time. Issue is decided accordingly.

9. The unrebutted testimony of Suresh Chand Vaish clearly that it was defendant no.3 who had executed the guarantee bond Ex. P9 is the guarantor by J N Sharma, the other witness of the plaintiff who also deposed that Tek Chand had stood as the guarantor and he had executed Ex. P9 in his presence and signed at point "A". In other words, the plea of the defendants that Tek Chand deceased had not executed the guarantee bond Therefore does not have any legs to stand. It must be held that Tek Chand stood as the guarantor of defendants 1 and 2 with respect of the amount due. Issue is decided in favor of the plaintiff.

10. Issues 4 and 5 : The evidence on the record establishes that different no.2 was given a loan of Rs. 1,25,000/- on 28th January, 1983 by way of cash credit factory type facility. He executed the demand promissory note Ex. P4. The amount as such is not shown to have been paid. In fact in the written statement of defendant 1 and 2 it has been pleaded that because of losses suffered the amount could not be paid. Therefore, it must be held that amount claimed as such is due which is also borne from the statement of account Ex. P26. So far as interest is concerned as per agreement the same is chargeable at 15% P.A. Issues are decided accordingly in favor of the plaintiff holding that Rs.1,34,854.72 were due on 28th August, 1988. The plaintiff would be entitled to interest on the principal amount of Rs.1,33,792.30 from the date of the filing of the suit till further payment is made at 15% p.a.

11. Relief : For these reasons the suit is decreed for Rs.1,34,854.72 with costs and with interest from the date of the filing of the suit on the principal amount of Rs.1, 33,792.30 till decretal amount is paid and the interest at the rate of 15% p.a. till the payment is made.

