(2006) 02 CHH CK 0039

In the Chhattisgarh High Court

Case No : First Appeal No. 545 of 1996

State Bank of India APPELLANT

Vs

J.C. Industries and Others RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:
Bankers Books Evidence Act, 1891 — Section 4

Citation : (2006) 1 CGLJ 464

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal and Sourabh Sliarma, for the Appellant; Ratan Pusti, and Yogesh Pandey, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shrivastava, J.—This appeal is directed against the judgment and decree dated 23-09-1996 passed by District Judge, Raigarh, in Civil Suit No. 44-A/1194 by which Appellant''s suit for recovery of balance amount, has been partly allowed and decreed.

2. Brief facts for disposal of this appeal are that on 08-11-1992 a commercial loan of Rs. 2,00,000/- (Rupees two lakhs) was sanctioned by Appellant/Bank to Respondents No. 1 and 2 in the shape of working capital through cash credit facility. Respondent No. 2 executed various loan documents and Respondent No. 3 furnished his guarantee to secure the said loan and guaranteed due repayment of the said loan. Respondent No. 3 towards security of the loan mortgaged his immovable properties by delivering the title deed of those properties. To avail the aforesaid loan facility, Respondent No. 1 and 2 opened account on 11-01-1993 and from time to time they withdrew amounts from the account and deposited amount towards repayment of the loan. When Respondents No. 1 and 2 made default in repayment of the loan, they along with Respondent No. 3 were served with legal notice, but the balance of Rs. 2,01,431/- was not paid by the Respondents. Hence, the Bank/Appellant filed the suit for recovery of the said

amount with interest accrued thereon.

3. Respondents No. 1 and 2 denied the claim and pleaded that after their depositing Rs. 40,000/- Appellant stopped further withdrawal, thereby, they suffered loss in their business. The industry was a small scale industry. Appellant at the time of granting the loan unveiled that interest @ 10% only shall be charged. Respondent No. 3 in his written statement averred that his signatures were obtained by fraud, he never became guarantor for the said loan nor mortgaged his immovable property with the bank.

4. Learned lower Court after appreciating the evidence held that Respondents failed to prove that without filling the column of interest and explaining the contents of all the documents their signatures have been obtained. Learned Court below also held that the Appellant did not tell the Respondent No. 2 that interest @ 10% shall be charged. Learned lower Court held that after 20-04-1993 Appellant did not permit the Respondent No. 2 to withdraw any amount, and considering amount withdrawn and repaid by that time passed a decree for Rs. 1,57,000/- which was outstanding at that time without further interest thereon.

5. Both the parties are heard and record of trial Court perused.

6. Section 4 of the Bankers'' Books Evidence Act, 1891 reads as below:

Mode of proof of entries in bankers'' books - Subject to the provision of this Act, a certified copy of any entry in a banker''s book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transaction and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

7. Duly certified copy of the statement of account is presumed to be correct till it is rebutted. In the instant case, statement of account showing complete details has been filed and exhibited as Ex. P/14. Learned lower Court did not consider the sanctity of presumption attached with the document. Learned Court below also did not appreciate the fact that, in spite of the fact that, the Appellant after 20-04-1993 did not permit the Respondent to withdraw any amount from the account, Appellant was entitled for interest and other incidental charges accruing in their favour on balance of the loan and without assigning any substantial reasons the amount payable to bank after 20-04-1993 has been disallowed.

8. From Ex. P/14, it is established that on 31-10-1994 balance due against the Respondents was Rs. 2,01,431/- therefore, they were entitled for recovery of the said balance amount and were entitled for the decree of the amount claimed by them with interest. So far the direction issued by the Court below that the Bank shall recover interest after 20-04-1993 from his employee A.P. Devasthali, is ipso facto illegal because on the guarantee of Respondent No. 3 the bank advanced loan to Respondents No. 1 and 2, who enjoyed the cash credit facility. Therefore,

they cannot escape from their liability to pay interest over amount due after 20-04-1993.

9. During argument, learned Counsel for the Appellant submitted that so far as stricture passed by lower Court against A.P. Devasthali, is concerned, they or the concerned employee will take appropriate steps by appropriate procedure separately. Taking into account the said statement, the question of quashment of stricture passed against A.P. Devasthali, is left open for consideration by appropriate forum on appropriate proceedings initiated by the aggrieved person/ Appellants. So far as rate of interest is concerned, according to documents executed by Respondent No. 2 minimum rate of interest chargeable was 17.5% but Appellant/ Bank itself has claimed interest @ 15.5%. Admittedly, the sum so adjudged had arisen out of commercial transaction and the contractual rate of interest was @ 17.5%. During arguments, Respondents'' contention was that they were given impression that the industry being a small scale industry interest shall be charged @ 10%. Taking into account all the facts, if interest @ 10% from 07-11 -1994 till final satisfaction is allowed, that will meet the ends of justice.

10. In the result, the appeal is allowed with following modifications:

(a) Amount recoverable from Respondents shall be Rs. 2,01,431/- (Rupees Two lakhs one thousand four hundred and thirty one instead of Rs. 1,57,000/- (Rupees One lakh fifty seven thousand).

(b) The interest @ 10% shall be payable on the above amount by the Respondents from 07-11-1994 till final satisfaction to the Appellant/ Bank.

(c) Rest of the directions contained in the decree shall remain as it is.

11. Cost of the appeal shall be paid by the Respondents to the Appellant. Advocates'' fee as per rules.

