(1997) 11 DEL CK 0023

In the Delhi High Court

Case No : Suit No. 780 of 1991

State Bank of India APPELLANT

Vs

J.S. Sohata RESPONDENT

Date of Decision : 12-11-1997

Acts Referred:

Citation : (1997) 11 DEL CK 0023

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : Mr. Sanjeev Saraswat, for the Appellant;

Judgement

Lokeshwar Prasad, J.—The present suit has been filed by the plaintiff Bank for the recovery of Rs. 5,31,552/- averring that the plaintiff Bank is a statutory body, constituted by the State Bank of India Act, 1955, having its Central Office at Bombay and one of its Local Head Office at 11, Parliament Street, New Delhi and amongst others a branch office at Kapashera, New Delhi. It is stated that Shri V.K. Aggarwal, Branch Manager and Principal Officer of the plaintiff Bank is duly authorised to sign and verify the plaint and to institute the present suit on behalf of the plaintiff Bank.

2. It is stated that defendant No. 1 is the sole proprietor of a firm styled as M/s. Solar System, engaged in the business of manufacturing a variety of systems employing alternative sources of energy. It is averred that on 3rd May, 1986, defendant No. 1 being the principal borrower and defendant Nos. 2 and 3 being the guarantors requested for and were granted two loan facilities in the form of cash credit of Rs. 2,45,000/- and a ''Working Capital Medium Term Loan'' of Rs. 88,725/- for the purpose of the business of defendant No. 1 upon executing the relevant and necessary documents including the Demand Promissory Note, Guarantee Agreement, Agreement for Cash Credit etc. It is stated that after the execution of the necessary documents the facilities thereby granted were availed of by defendant No. 1.

3. It is further the case of the plaintiff Bank that at the request of the defendants two further facilities in the form of ''Machinery Medium Term Loan'' of a sum of Rs. 18,000/- and a ''Medium Term Loan'' for the purchase of Scooter of Rs. 8,000/- were granted to the defendants on 13th December, 1986 and 4th August, 1986 on the execution of the necessary documents. It is alleged that defendants No. 2 and 3 also signed the loan documents as guarantors and thus made themselves liable for the repayment of the loan amount. It is stated that the above mentioned two facilities were also utilised by defendant No. 1.

4. It is stated that under the terms and conditions of credit, the ''Cash Credit Advance'' was payable on demand and the three term loans in installments. Interest on the above said loan facilities was payable as per details given below:

S.No. Nature of Loan Facility Interest payable

i) On cash credit facility 16.25% per annum

ii) On vehicle term loan 12.5% per annum

iii) On machinery term loan 13.5% per annum

iv) On working capital term loan 13.5% per annum

It is stated that having utilised the above said loan facilities, the defendants failed to comply with the terms and conditions of the above said loans and also failed to maintain the financial and operational discipline stipulated therein. It is also stated that the defendants also failed to respond to plaintiff''s requests and demands for repayment. It is stated that as the defendants are in breach of contract the plaintiff bank has to file the present suit against the defendants for the recovery of the amount due and payable to the plaintiff Bank by the defendants jointly and severally under the above said four loan facilities totaling to Rs. 5,31,552/-. The plaintiff Bank has prayed that -

(a) a decree for Rs. 3,35,240/- be passed in favor of the plaintiff and against the defendants jointly and severally with costs and pendentelite and future interest @ 16.25% per annum in respect of amount due and payable to the plaintiff Bank on account of Cash Credit Facility availed of by defendant No. 1;

(b) a decree for Rs. 1,65,382/- be passed in favor of the plaintiff and against the defendants jointly and severally with pendente lite and future interest @ 13.5% per annum in respect of facility availed of by defendant No. 1 on the Working Capital Term Loan Account;

(c) a decree for Rs. 18,163/- be passed in favor of the plaintiff and against the defendants jointly and severally with pendente lite and future interest @ 13.5% per annum in respect of the facility availed of by defendant No. 1 on the Machinery Term Loan Account;

(d) a decree for Rs. 12,767/- be passed in favor of the plaintiff and against the defendants jointly and severally with pendente lite and future interest @ 12.5%

per annum in respect of the facility availed of by defendant No. 1 on the Vehicle Term Loan Account.

The plaintiff has also prayed for costs and has also prayed that the hypothecated vehicle i.e. Bajaj Scooter bearing No. DEV 4860 be ordered to be sold in satisfaction of the outstanding amount.

5. Since the defendants did not appear despite service, they were directed to be proceeded ex-parte in the present proceedings vide order dated 28th September, 1994 and 11th October, 1995, both passed by the learned Predecessor of this Court and the plaintiff was permitted to lead evidence by way of affidavits.

6. The plaintiff Bank in support of its case has filed the affidavit of Sh. J.P. Sharma, Branch Manager and Principal Officer of the plaintiff Bank by way of evidence. This witness in his affidavit dated the 18th January, 1996, filed by way of evidence, has fully supported the case of the plaintiff Bank and has also proved and exhibited the relevant documents.

7. On the basis of material on record, more particularly the facts disclosed in the affidavit dated the 16th January, 1996 of Shri J.P. Sharma, filed by way of evidence, which has gone on record unrebutted and unchallenged, which I see no reason to disbelieve, in my opinion, the case of the plaintiff Bank stands amply proved.

8. In view of the position explained above, the present suit filed by the plaintiff Bank is decreed for Rs. 5,31,552/- (Rupees five lacs thirty one thousand five hundred and fifty two only) in favor of the plaintiff Bank and against the defendants jointly and severally with costs and pendente lite and future interest @ 12% per annum. As regards the prayer of the plaintiff Bank for the sale of the hypothecated scooter it is directed that the plaintiff Bank may apply on the execution side for that relief. Decree sheet be drawn up accordingly and thereafter the file be consigned to Record Room.