(2000) 01 DEL CK 0022

In the Delhi High Court

Case No : S.No. 2534/86

State Bank of India APPELLANT

Vs

Kaushal Plastics and Others RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Citation : (2000) 5 AD 1003 : (2000) 85 DLT 558 : (2000) 54 DRJ 73

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. Jawahar Chawala, for the Appellant; Mr. K.C. Dua, for the Respondent

Judgement

J.B. Goel, J.—This is a suit for recovery of Rs. 3,70,530.95 filed by the plaintiff bank against the defendants, defendant No. 1 a partnership firm and defendants No. 2 to 5 its partners. It is alleged that plaintiff had granted financial assistance to the defendants in the sum of Rs. 20,000/- for working capital. This was extended to Rs. 75,000/- later and again to Rs. 3,10,000/-. The defendants have executed various documents including Demand Promissory Note dated 10.4.1983 in the sum of Rs. 2,50,000/- repayable with interest at a minimum rate of 16% per annum with quarterly rests and Agreement of hypothecation dated 10.4.1983 pledging the stock in trade, machinery etc. as security. Defendant No. 2 had also created equitable mortgage by deposit of title deed in respect of his property No. 3B, Inder Lok, Old Rohtak Road, Delhi. This facility was availed by the defendants. They had executed revival letters dated 23.2.1986 and 27.3.1986 acknowledging their liability to pay thereby extending the period of limitation. The defendants did not make repayment of the dues in spite of notices of demands and a sum of Rs. 3,67,261.30 as balance due on 29.10.1986, Rs. 3,204.65 as interest for 29.10.1986 to 19.11.1986 and Rs. 65/- as expenses, in all Rs. 3,70,530.95 are claimed in the present suit for recovery and also preliminary decree for sale of the mortgaged property.

2. Defendants filed written statement disputing their liability. It is admitted that

they were granted financial assistance of Rs. 20,000/- and then of Rs. 75,000/-. However, it is denied that the limit was extended to Rs. 3,10,000/-. It is admitted that various documents were signed by them. However, it is stated that signatures of defendant were obtained on various blank documents when financial assistance of Rs. 20,000/- was granted. It is also denied that defendants had executed revival letters dated 23.2.1986 or 27.3.1986. It is alleged that the plaintiff is guilty of not making the advances in accordance with the agreement and dishonored the cheques issued by the defendants thereby causing loss to them. It is also alleged that the suit is time barred and is not maintainable. Liability to pay interest is also denied.

3. plaintiff in replication has denied the averments made in the written statement reaffirming their case pleaded in the plaint.

On the pleadings of the parties, the following issues were framed on 22.4.1992:-

1. Whether the suit has been instituted and the plaint has been signed and verified by a duly authorised person? OPP

2. Whether the suit is barred by time? OPD

3. Whether blank documents/Performa were got signed from the defendants? if so, to what effect? OPD

4. To what amount is the plaintiff entitled by way of principal? OPP

5. To what rate of interest is the plaintiff entitled? OPP

6. Relief.

4. plaintiff has led oral and documentary evidence and examined three witnesses whereas defendants have examined only defendant No.3 as their witness.

5. During the trial defendant No.2 has died leaving behind defendants 3, 4 and 5 as his legal representatives as such they would be liable as legal representatives of defendant No.2 also.

I have heard the learned counsel for the parties. Learned counsel for the plaintiff has contended that the case of the plaintiff is proved from the documentary and oral evidence to which there is no rebuttal evidence led by the defendants and in fact the defendants are not disputing their liability and have now come with a new plea that they are entitled to benefit in interest in accordance with the Reserve Bank of India circular Ex. DW-1/1 to which they are not entitled. Learned counsel for the defendants has not contested the case of the plaintiff, during arguments on merit. He has, however, contended that the defendants had approached the plaintiff bank for benefit in interest as permissible under the Reserve Bank of India circular Ex.DW-1/1.

7. I have considered the contentions and the material on record. My issue wise findings are as under:-

Issue No.1

8. plaintiff is a Bank constituted under the State Bank of India Act, 1955. P.W. 1 Shri Keshav Rai, Dy. Manager of the plaintiff bank has deposed that Shri Harbans Singh had taken over charge from him as Branch manager in Karol Bagh Branch in 1985 and that under State Bank Regulations, Shri Harbans Singh as Branch Manager was authorised and competent to sign and verify the plaint and institute the suit on behalf of the bank. He has also proved copy of a Gazette Notification Ex. P.1/1. He has also deposed that the plaint is signed and verified by Shri Harbans Singh whose signatures he has identified. He has not been cross examined on this part of his statement. There is no other evidence in rebuttal also. Even no arguments have been addressed to dispute his testimony. There is no reason not to believe this unchallenged testimony of P.W.1. In view of this evidence, Issue No. 1 is held proved and is decided in favor of the plaintiff.

Issue No.2

9. P.W.1/19 is the promissory note date 10.4.1983 signed by all the four defendants, 2 to 5 as partners of defendant No.1. Exs. P.W.1/15, P.W.1/16 and P.W.1/17 are the revival letters dated 23.2.1986, 27.3.1986 and 27.3.1986 signed by defendants as partners of defendant No.1 thereby acknowledging their liability under promissory note dated 10.4.1983. There is no challenge to this evidence. These acknowledgements would extend the period of limitation by three years. The suit was filed on 27.11.1986 i.e. within three years of revival/ acknowledgment and is within time. No arguments were addressed on this issue also. The burden is on the defendants. This issue is decided against the defendants.

Issue No.3

10. P.W.1 has proved documents Exs. P.W.1/2 to P.W.1/10, P.W.1/12, P.W.1/17, P.W.1/19, P.W.20, P.W.27 and P.W.1/28 signed by defendants for availing the credit facilities from the plaintiff bank. He has denied the suggestions that these documents were blank when defendants had signed the same. Two positive suggestion have been put to PW-1 that the goods were hypothecated with the bank by way of primary security and the machinery installed in the premises of the unit was mortgaged with the bank as collateral security apart from the deposit of title deeds of the immovable property. This is an admission that goods and machines were hypothecated and equitable mortgage was created by defendant. He has also deposed that title deed Ex.P.W. 1/11 was deposited. Ex.P.W.1/10 is the memorandum of deposit of this title deed. Ex.P.W.1/18 is the statement of account. He has also proved notice of demand sent through advocate and the postal receipts, Exs.P.W.1/22 to P.W.1/25 and another letter Ex.P.W.1/26. Receipt of this notice is not disputed in cross examination of P.W.1 nor the correctness of statement of account by P.W.1/18 is disputed.

P.W.2 Shri M.L. Pulyani who was Field Officer at the relevant time has deposed that P.W.1/14 to P.W.1/17 were signed by defendants in his presence to which there is no cross examination nor any suggestion that these were blank when signed.

P.W.3 Shri S.K. Jain who was also Field Officer during April, 1980 to December, 1985 has also deposed that documents Exs.P.W.1/12, 1/13, 1/19, 1/20, 1/3, 1/4, 1/6, 1/7, 1/8, 1/9 and 1/10 were signed by defendants in his presence. He is also not cross examined on this aspect nor there is any suggestion to him also that the documents were signed in blank. On behalf of the defendants Shri Satyapal Sharma, defendant No. 3 only was examined as D.W.1. He had not denied that the defendants had not availed the credit facility nor that he or other defendants had signed on blank papers. Other defendants have not appeared as witnesses. No arguments were addressed on this issue also on behalf of the defendants.

The onus of this issue is on the defendants. They have not led any evidence to prove it. This issue is also not proved and is decided against the defendants.

Issue No.4

11. Ex.P.W1/18and P.W.2/1 are the statements of accounts certified under the Bankers'' Books Evidence Act. The Correctness of these statements of accounts have not been challenged in cross examination of P.W. 1., P.W. 2 or otherwise by D.W.1. These are corroborated by documents proved on record. There are corroborated by documents proved on record. There is no evidence to disprove the same. Even D.W.1 has not disputed their liability in his statement. He has stated that he had approached the plaintiff bank for settlement in accordance with Reserve Bank of India circular, Ex. D.W. 1/1. This is also admission of liability. From the documents proved on record, it is proved that a sum of Rs. 3,70,530.95 was due from the defendants on 27.11.1986 when the suit was filed. This includes Rs.3204.65 as interest up to 19.11.1986. The plaintiff is thus entitled to Rs.3,67,326.30 as principal and Rs.3204.65 as interest on 27.11.1986. This issue is decided accordingly.

Issue No. 5

12. The plaintiff is entitled to interest as agreed. In promissory note Ex. P.W 1/19 the rate of interest agreed is 0.5% below SBAR rate with a minimum of 16% p.a. with quarterly rest. This rate of interest was not challenged in cross-examination of P.Ws. nor there is evidence led to the contrary. plaintiff is thus entitled to interest @ 16% P.a. with quarterly rest. This issue is decided accordingly.

Relief:

1

3. Learned counsel for the defendants has contended that the defendant is a small scale industry and are entitled to the benefit of concession in interest as per Reserve Bank of India circular Ex. D.W. 1/1.

This is disputed by the learned counsel for the plaintiff. This is a new case set up by the defendants in evidence. There is no pleading nor any issue on this new case. Any evidence beyond pleading is not admissible. Hence, this plea is not available to the defendants. Even otherwise, this plea has no merit. Clause V of the Circular relied reads as under :

"Having regard to the realisable value of collaterals, held in an account and the time and cost involved in realisation of the collateral, terms of compromise settlement shall include waiver of the compound and penal rate of interest and charging of simple interest appropriately not below 10% per annum from the material date.

All compromise to be approved under the scheme shall normally provide for repayment in one lumpsum. However, in deserving cases where the borrowers are unable to pay the entire amount in one lumpsum, which will depend on case to case basis, we may consider extend the period of time of repayment not exceeding a period of one year from the date of settlement. In such cases also, the borrower should pay at least 25% of the amount of settlement up- from on the date of settlement.

14. D.W.1 has deposed that he had approached the bank for settlement. He has not proved the application if any made to the plaintiff for settlement nor that they were ready and willing to act in accordance with the Circular. The defendants are not automatically entitled to any benefit under this Circular. This was to be considered by the plaintiff, if approached and the defendant had to show their entitlement to its benefit on their willingness and offer to pay 25% of the amount due at the time of settlement as required under this Circular. No such case was pleaded nor put to P.Ws. also. In the circumstances, no case for entitlement to the benefit of this circular is made out.

15. It is also proved that defendant No. 2 had created equitable mortgage by deposit Ex.P.W. 1/9 in respect of property No. 3-B, Inderlok, Delhi. Defendant No. 2 had died during the pendency of the suit and defendants 3 to 5 are his legal representatives (LRs). They having succeeded to his estate are liable as L.Rs. of defendant No. 2 on this mortgage also.

16. In the result the plaintiff succeeds. The suit of the plaintiff is decreed and a decree is passed in favor of the plaintiff and against defendants 1, 3 to 5 for recovery of (1) Rs. 3,70,530.95, (2) interest on the amount of Rs. 3,67,326.30 @ 16% p.a. from the date of institution of the suit till decree and further interest at the same rate till realisation and (3) costs of the suit.

17. A preliminary decree is also passed in favor of the plaintiff and against defendants 3 to 5 for recovery of the aforesaid decretal amount. If the decretal amount is not paid within six months of this decree, the plaintiff will be entitled to final decree for the recovery of the decretal amount by sale of property No. 3-B, Inderlok, Delhi.