
(2005) 07 CHH CK 0020
In the Chhattisgarh High Court
Case No : First Appeal No. 236 of 1990

State Bank of India	Vs	APPELLANT
Laxminarayan and Another		RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 5 Rule 17, Order 6 Rule 14, Order 6 Rule 15
Evidence Act, 1872 — Section 4, 56, 57
State Bank of India General Regulations, 1955 — Regulation 76

Citation : (2006) 3 CGLJ 7 : (2005) 4 MPHT 52

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : N.K. Agrawal and Kamrul Azia, for the Appellant; A.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shrivastava, J.—This appeal is directed against the judgment and decree dated 18-7-1990 passed by the Vth Additional District Judge, Bilaspur in Civil Suit No. 24-B of 1989 (State Bank of India v. Laxminarayan and Anr.) by which the suit filed for recovery of loan together with interest has been dismissed.

2. Plaintiff/appellant filed a suit for recovery of Rs. 88,276.81 against the defendants/respondents by sale of mortgage and hypothecated property on the ground that the respondent No. 1 applied for a loan of Rs. 73,400/- for purpose of tractor and trolley and other agricultural implements on 7-2-1981, that loan was sanctioned by the Branch Manager on 11-2-1981 and the debt of Rs. 73,400/- was paid to respondent No. 1 with interest @ 6% above the bank rate with a minimum of 10.5% per annum or at such rate which may be prevalent at the bank for such loans and in default of payment of instalment, penal interest @ 2% was stipulated. Both the respondents executed the loan documents including the deed of hypothecation and instrument of guarantee. Respondent No. 1 also mortgaged his agricultural land as security for due repayment of the loan dues.

The amount having not been paid by the respondents, therefore, for recovery balance of the loan amount, i.e., Rs. 88,276.81 together with interest @ 12.5% a suit had been filed, with additional relief of sale of mortgaged and hypothecated property.

3. Both the respondents filed their written statements separately. They did not dispute the grant of loan or signatures on documents. Respondent No. 1 pleaded that his signature has been obtained in the blank forms and no separate agreement for payment of interest was made. Respondent No. 2 pleaded that he" had signed some papers as witness.

4. Trial Court held that the suit loan was paid to respondent No. 1, but neither it was proved that the defendant/respondent No. 2 had furnished guarantee in favour of the Bank, nor creation of mortgage of the suit land has been proved. The Trial Court further held that Bank Manager was authorised to institute the suit, has also not been proved. In view of the entire findings vide impugned judgment and decree the entire suit has been dismissed.

5. Learned Counsel for both the parties are heard at length and record of Trial Court perused.

6. Shri S.V.B.S. Sharma (P.W. 3) deposed that he was posted as Branch Manager in Slate Bank of India, Janjgir Branch. He was the Principal Officer of the Bank and according to notification published he was authorized to sign and present the plaint. No evidence to rebut the same has been adduced by the defendant.

7. Learned Trial Court referred to Order V Rule 17 of the CPC (henceforth, "the Code") and held that the Branch Manager had no right to sign the plaint. Order V Rule 17 of the Code does not apply to pleading. Order V Rule 17 prescribes the procedure for service of summons when defendant refuses to accept service or can not be found. Order VI of the CPC deals with pleading. Order VI, Rules 14 and 15 of the Code read as below :--

"14. Pleading to be signed.-- Every pleading shall be signed by the party and his pleader (if any); Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

15. Verification of pleadings.-- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the number paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

8. It is apparent that the pleading and verification may be signed by any person duly authorized to sign the same. Admittedly, the plaintiff is a Body Corporate and, therefore, Order XXIX Rule 1 of the Code, which reads as below shall also apply to the instant case :--

"Subscription and verification of pleading.-- In suits by or against a corporation any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

9. The principal officer who is able to depose the facts of the case has been authorized to sign and verify the pleading. Although learned Trial Court in his judgment has referred the Bank regulation and stated that the regulation has been published in Gazette on 26-8-1972, photocopy of the same has been filed yet held that notification has not been proved by producing a copy of the Gazette. Learned Trial Court ignored the provisions of Sections 56 and 57 of the Evidence Act vide which he was empowered to take judicial notice of the regulation published in the Gazette.

10. From the evidence on record, it is apparent that by oral evidence the Branch Manager proved the fact that he was the principal officer and was also authorized to sign and verify the pleading, and accordingly he signed and verified the plaint. Plaintiff/appellant pleaded in plaint Para 2 that Branch Manager has been authorized to sign the plaint vide Regulation 76 of the State Bank of India, General Regulation, 1955, the Court was bound to take judicial notice of it. It must be remembered that mere technicalities do not take away the right of a party and if Court finds any technical error, the party should be asked to remove it.

11. The defendants have not disputed the signature on the documents. None of the defendants entered the witness box to challenge the correctness of all these documents. S.S. Karsen (P.W. 1) in his statement deposed that an agreement for hypothecation which is Ex. P-3 has been executed by defendant No. 1 and guarantee Ex. P-4 has been executed by defendant No. 2. Mortgage deed Ex. P-5 has been executed by defendant No. 1. All these documents have been signed by the defendants in his presence. As per law a copy of the mortgage deed has been sent to Sub-Registrar who received the same vide Ex. P-6. A copy of mortgage deed has also been sent to Tehsildar, Janjgir vide Ex. P-7. In cross-examination documents Ex. P-3, P-4, P-6 and P-7 have not been challenged. In cross-examination it has been brought that the mortgage deed does not bear registration.

12. When a loan has been taken from Bank executing mortgage deed by an agriculturist the provisions envisaged in Sections 8 and 9 of the M.P. Krishi Udhart Pravarthan Tatha Prakirn Upbandh (Bank) Adhiniyam, 1972 applies which read as below :--

"8. Registration of charge and mortgage in favour of banks.--(1) Notwithstanding

anything contained in the Indian Registration Act, 1908 (No. 16 of 1908), a charge in respect of which a declaration has been made under Sub-section (1) of Section 5, or in respect of which a variation has been made under Sub-section (2) of that Section, or a mortgage executed by an agriculturist in favour of a bank in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act on the date of such charge, variation or mortgage, as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the land or immovable property charged or mortgaged is situate, within the time prescribed by the State Government for this purpose, by registered post acknowledgment due a copy of the document creating such charge, variation or mortgage duly certified to be a true copy by an employee of the bank authorized to sign on its behalf.

(2) The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in Sub-section (1) shall, immediately as practicable or receipt thereof, record, in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

9. Noting of charge or mortgage created in favour of bank in Record of Rights.-- Wherever, a charge or a mortgage on land or interest therein is created in favour of bank by an agriculturist, the bank shall, within such time as may be prescribed give intimation to Tehsildar within whose jurisdiction the land is situate of the particulars of the charge or mortgage in its favour. The Tehsildar shall, notwithstanding anything contained in the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959), in the prescribed manner cause a note to be made in the prescribed manner of the particulars of charge or mortgage in the record of right relating to the village in which the land over which the charge or mortgage has been created is situate."

13. From the aforesaid provision, it is manifest that disputed mortgaged deed does not require registration in accordance with the provisions of Registration Act and from the evidence on record, the execution of hypothecation agreement, deed of guarantee and mortgage have been duly proved.

14. Learned Trial Court also held that respondent No. 1 took a loan of Rs. 73,400 from the plaintiff and deposited Rs. 15,900/- against the said loan and only remaining amount to be paid is Rs. 57,900/-. Learned Trial Court failed to consider the certified copy of Bank account and oral evidence of S.V.B.S. Sharma (P.W. 3) who deposed that upto 31-10-1984 including interest a sum of Rs. 87,676.21 was due for payment and upto 21-11-1984 the balance due was Rs. 88,276.81. Certified copy of the bank account against the loan upto 31-10-1984 was on record and according to that balance was Rs. 87,676.21. According to Section 4 of the Banker's Books Evidence Act, 1891 which reads as below the certified copy is admissible to prove the balance until contrary is proved.

"4. Mode of proof of entries in bankers" books.-- Subject to the provisions of this

Act, a certified copy of any entry in a bankers' 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, transactions 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."

15. So far as payment of interest is concerned, contractual rate of interest was minimum Rs. 10 1/2 % per annum according to Exs. P-3 and P-4.

16. In the result, the appeal succeeds, the judgment and decree passed by the Lower Court is set aside and instead the suit is decreed as below:--

(a) Defendants shall jointly and severally pay Rs. 88,276.81 (Rupees Eighty eight thousand two hundred seventy six and paise eighty one only) to plaintiff with simple interest @ 10.5% per annum till realization from the date of institution of the suit i.e., 24-11-1984.

(b) The cost of the suit shall also be payable by the defendants to the plaintiff. Counsel fee as per rules.

(c) It is declared that towards principle, interest and cost of the suit, the amount as mentioned above, is due against both the defendants. They shall pay the same on or before 30th December, 2005.

(d) If defendants fail to pay the amount as aforesaid, the plaintiff shall be entitled to apply for a final decree debarring defendants from all rights to redeem the property mortgaged with the bank.

Preliminary decree be drawn accordingly.