(2001) 02 DEL CK 0097

In the Delhi High Court

Case No : Suit No. 1656/84

State Bank of India APPELLANT

Vs

M/s Dividya R.K. Paper Board Industries RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Citation : (2001) 3 AD 615 : (2001) 91 DLT 173 : (2001) 58 DRJ 362

Hon'ble Judges : Sharda Aggarwal, J

Bench : Single Bench

Advocate : Mr. Atul Kumar, for the Appellant;

Judgement

Sharda Aggarwal, J.—The plaintiff State Bank of India a body corporate constituted by the State Bank of India Act,1955 having its central office at Bombay and one of its branch situated a Azadpur. Delhi has filed the present suit for recovery of Rs.7,88,515.21 paise against the defendants in October, 1984. Defendant No.1 M/S Dividya R.K.Paper Board Industries is a partnership firm. Shri Kirshan Kumar Mehta, defendant No.2 and Mr. Ram Partap Mehta defendant No.3 are the partners of defendant No.1 firm. The defendant No.1 firm is carrying on its business of manufacturing of Card Board at Khera Khurd, Delhi. Defendants 2 and 3, as partners of defendant No. 1, had approached the plaintiff bank on or about 9th January, 1976 for the grant of loan facilities in connection with their business. The plaintiff bank granted loan facilities to the defendants in the account of Medium Term Loan against pledge/hypothecation of moveable machinery and goods of the defendants for sum of Rs.2,11,000/-. The defendants executed necessary loan documents for the grant of Medium Term Loan and pledged their moveable machinery. The defendants also executed the articles of Agreement for Medium Term Loan on 9th January, 1976 in favor of the plaintiff bank. They had also agreed to pay interest at the rate of 1/2% below the State Bank advance rates with a minimum of 14.5% per annum.

2. The defendants again approached the plaintiff bank on 29th May, 1976 for the grant of Cash Credit Limit. The plaintiff bank granted the aforesaid loan facility to

the defendants on account of Cash Credit Limit of Rs.45,000/- was later on enhanced to Rs.75,000/- on 18th March,1977 subject, of course, to the execution of necessary loan documents, another Medium Term Loan (Clean) of Rs.15,000/- was granted in favor of the defendant on 30th April,1976. However, no amount is due against the loan on this account.

3. The allegation made by the plaintiff in the plaint are that the defendants duly availed the loan facilities, but became irregular in maintaining the aforesaid Medium Term Loan of Rs.2,11,000/- and cash Credit Limit of Rs. 75,000/-. The defendants even singed and executed the balance confirmation slip on 31st December,1978 confirming that as on that date a sum of Rs.2,99,773.58 paise was due and payable by them to the plaintiff bank as regards the medium Term Loan of Rs.2,11,000/-. They also signed and executed balance confirmation slip on that date with regard to the Cash Credit Limit account confirming that as on that date a sum of Rs.71,962.23 paise was due and payable by the defendants to the plaintiff bank. The defendant had also signed and executed another balance confirmation slip on 1st January, 1980 with regard the cash credit limit of Rs.73,380.20 paise. The plaintiff bank had been requesting the defendants from time to time to regulate and maintain the Medium Term Loan as well as the Cash Credit Limit. The defendants in turn continued to assure that they would regularise the accounts at the earliest. The defendants also signed revival letters dated 20th April,1980 and 23rd June,1982 in respect of Medium Term Loan. The defendants also signed the revival letters dated 17th March,1980 and 23rd June,1982 in respect of the Cash Credit Limit. By signing these revival letters, the defendants acknowledged their liability as raised against them by the plaintiff bank for the purpose of Indian Limitation Act, 1908. When the defendants failed to regularise the two loan accounts, they were served with the legal notices dated 21st July, 1983 and 7th February, 1984, but the defendants failed to respond to the same. The plaintiff bank was, Therefore, constrained to file the present suit for recovery against the defendants.

4. That defendants were duly served with the summons of the suit. They filed their written statement wherein they raised various objections alleging that the suit was barred by time and the plaintiff had not carried out its obligations under the Entrepreneur Scheme and the defendants had been accepted as a sick unit and the plaintiff bank had failed to revive the same. On merits the defendants denied having executed any document with regard to the Medium Term Loan and the Cash Credit Limit. They, however, alleged that their signatures were obtained on blank documents by the bank which the bank later on used against them. The plaintiff bank filed replication to the written statement filed by the defendants. On the pleadings of the parties, following issues were framed:

1) Whether the plaintiff carried out all its obligations under the Entrepreneur Scheme for financing qualified and experienced entrepreneurs. It not, its effect?

2)Whether the suit is barred by time?

3) Whether the unit of the defendants was accepted as "Sick Unit" and the plaintiff had failed to revive the same. If so, its effect?

4)Whether the suit has been signed and verified by a competent person?

5) Whether the goods and machinery as alleged in the plaint were pledged?

6) To what amount, if any, is the plaintiff bank entitled by way of interest and at what rate for what period?

7) To what amount is the plaintiff entitled?

8) Relief.

5. After framing of issues, the case was listed for trial and a Local Commissioner was appointed for recording the evidence of the parties. The plaintiff produced Shri R.C.Chopra and Mr.M.P.Toora, Field Officers of the State Bank of India, Azadpur Branch, Delhi as PW-1 and PW-2, as witnesses. The report of the Local Commissioner shows that despite number of opportunities having been given to the defendants, their counsel failed to put in appearance to cross-examine the witnesses of the plaintiff bank. The defendants also did not lead any evidence in defense. The proceedings before the Local Commissioner for recording of evidence were concluded on 17th December,1999. There after the matter was listed for arguments before Court. On number of dates of hearing, none put in appearance on behalf of the defendants. Defendant were accordingly proceeded ex-parte on 24th January, 2001.

6. I have heard the learned counsel for the plaintiff and perused the record. My issue wise findings are as under:

ISSUES NO. 1 & 3:

7. These issues are inter-linked, Therefore, these issues can be taken up together.

8. The onus to prove these issues was placed on the defendants as they had taken a preliminary objection in their written statement that the plaintiff bank had gone back on their promise to finance the defendants and the obligations under the Entrepreneur Scheme were not carried out by the plaintiff bank. The defendants have failed to discharge the onus placed on them as they did not lead any evidence in support of these issues. On the other hand Shri M.P.Toora appearing as PW-2 has deposed that the plaintiff bank did not commit breach of any terms and conditions of the scheme and carried out all its obligations. There was no cross-examination of this witness and his testimony remained unrebutted and unchallenged. Another objection, which was raised by the defendants in their written statement, was that the plaintiff bank had accepted the defendants as a sick unit, but they had failed to revive the same. The onus to prove this fact was also placed on the defendants, but they failed to discharge the same. On the other hand, Shri M.P.Toora appearing as PW-2 has testified that plaintiff bank had never declared defendant No.1 firm as sick unit and had never agreed to revive the aforesaid unit as the same was not viable. There is no cross-examination of

this witness. Therefore, both these issues are decided in favor of the plaintiff bank and against the defendants.

ISSUES NO.2

9. plaintiffs have filed the present suit in respect of the loan facilities granted to the defendants i.e. Medium Term Loan of Rs.2,11,000/- vide agreement dated 9th January, 1976 and Cash Credit Limit of Rs.75,000/- on the basis of Cash Credit Form ''C'' (General) Agreement dated 18th March, 1977. The agreement for the Medium Term Loan dated 9th January, 1976 has been proved by Shri R.C.Chopra (PW-1) as Exhibit P-1 and the balance confirmation slip dated 31st December, 1978 has been proved as Exhibit PW-2/5. By this balance confirmation slip the defendants had confirmed the balance of Rs.2,99,703.58 paise in the Medium Term Loan as on that date. Further the revival letters dated 20th April, 1980 and 23rd June, 1982 in respect of Medium Term Loan have been proved as Exhibits P-2 and P-3. Similarly the Cash Credit Limit Agreement dated 18th March, 1977 has been proved as Exhibit P-4. The other documents like stock statement, D.P. Note and Delivery letters have been exhibited as Ex. P-5 to P-7. The balance confirmation slips in respect of Cash Credit Limit were executed on 31st December, 1978 and 1st January, 1980 which have been proved as Exhibits P-8 and P-9. The revival letters with regard to this loan facility, executed by defendants on 17th March, 1980, were proved as Exhibits P-10 and P-11. Even Mr.R.C.Chopra (PW-1) and Mr.M.P.Toora (PW-2), Field Officers of the Azadpur Branch of the plaintiff bank have proved the letters dated 14th January, 1977, 14th August, 1978, 7th March, 1979, 6th August, 1980, 14th March, 1981, 5th August, 1983 and 13th September, 1983 written by defendants to the plaintiff bank. These letters have been exhibited as Exhibits PW-2/7, PW-2/8, PW-2/9, PW-1/3, PW-1/4, PW-2/10 and PW-2/11 respectively. The defendants also acknowledged their liability in their balance sheets dated 13th April, 1979, 13th April, 1980 and 13th April, 1981 which were proved on record as Exhibits PW-2/14-15, PW-1/1-2 and PW1/5-6 respectively. The plaintiff bank called upon the defendants to pay the outstanding dues against the two loan accounts vide their letters dated 27th January, 1977 (PW-2/6), 1st March, 1979 (PW-2/12) 16th March, 1979 (PW-2/13) and 11th April, 1981 (PW-1/17). The defendants were also served with two legal notices dated 21st July, 1983 and 7th February, 1984 which were proved on record as Exhibits PW-2/16 and PW-2/17 respectively. The suit was filed on 16th October, 1984. Therefore, the suit has been filed within limitation. The issue is accordingly decided in favor of the plaintiff bank and against the defendants.

ISSUE NO.4:

10. The present suit has been filed by the plaintiff bank and the plaint has been signed and verified by one Shri M.P.Singh, Branch Manager and Principal Officer, Azadpur Branch of the plaintiff bank. Shri M.P.Singh was competent and authorised to institute the suit and sign and verify the plaint on behalf of the plaintiff bank by virtue of Regulations 76 and 77 of the State Bank of India

General Regulations, 1977 and Gazette of India Notifications dated 26th September, 1959 and 26th August, 1972, which have been proved on record as Exhibits PW-2/1 and PW-2/3. The signatures of Shri M.P.Singh on the plaint and vakalatnama have been duly identified by PW-2 who had seen him writing and signing. The suit has thus been filed by a competent person. The issue is accordingly decided in favor of the plaintiff bank and against the defendants.

ISSUE NO.5

11. The articles of agreement of Medium Term Loan (Ex.P-1) clearly stipulates that the machines mentioned in Schedule ''B'' of the agreement stood pledged with the plaintiff bank. The agreement for Cash Credit Limit dated 18th March, 1977 has been proved as Exhibit P-4. Perusal of the same along with the accompanied documents clearly shows that the goods, products and merchandise stood pledged with the plaintiff bank. The stock statement, proved as Exhibit P-5, also shows the pledged stock as on 18th March, 1977. The documents proved by the plaintiff''s witnesses fully establish that the goods and machinery of the defendants were pledged with the plaintiff bank. The issue is accordingly decided in favor of the plaintiff bank and against the defendants.

ISSUES NO.6 AND 7 :

12. These issues are also inter-linked, Therefore, they can be taken up together.

13. The plaintiff has made a claim of Rs.7,88,515.21 paise. This amount was shown outstanding at the time of filing of the suit and was so reflected in the statement of account which is duly certified under the Bankers'' Book of Evidence Act. The statement of account with respect to Medium Term Loan has been proved as Exhibit PW-2/19 and that of the Cash Credit Limit was proved as Exhibit PW-2/20. The statement of account in respect of protested bills account, to which the outstandings in both the accounts were transferred on 28th October, 1983, has been proved as Exhibit PW-2/21. Thus a sum of Rs.7,88,515.21 paise was due and payable by the defendants to the plaintiff bank in respect of the aforesaid loan accounts at the time of filing of the suit. According to the loan agreements, interest at the rate of 14% per annum with quarterly rests was payable by the defendants to the plaintiff bank. The rate of interest mentioned in Exhibit P-1 i.e. Medium Term Loan Agreement is 14.5% per annum with quarterly rests. Shri M.P.Toora (PW-2) has stated on oath that the rate of interest applicable to the account of the defendants was 14% per annum with quarterly rests at the time of filing of the suit and the rate of interest charged by the plaintiff bank is the agreed rate of interest. It is also pointed out that the rate of interest prevalent for both the accounts at the time of filing of the suit was 14.5% per annum with quarterly rests. There is no cross-examination of Shri M.P.Toora (PW-2) and his statement remained unrebutted and unchallenged. In the suit the plaintiffs have claimed pendente-lite interest at the rate of 14% per annum. The plaintiff is accordingly entitled to pendente-lite interest at the rate of 14% per annum on the suit amount from the date of filing of the suit till

realisation. However, during the pendency of the suit, defendants have deposited certain amount with the plaintiff bank. While calculating the amount, the plaintiff bank will give adjustment of the amount already deposited by the defendants.

RELIEF :

14. All the issues have been decided in favor of the plaintiff bank and against the defendants. Accordingly, the suit is decreed for a sum of Rs.7,88,515.21 paise in favor of the plaintiff and against the defendants with costs. The plaintiff bank will also be entitled to pendent lite interest at the rate of 14% per annum from the date of filing of suit till realisation of the amount, subject to the adjustment of the amount already deposited by the defendants during the pendency of the suit.

15. With these observations, the suit stands disposed of.

