(2001) 10 DEL CK 0020

In the Delhi High Court

Case No : Suit No. 1598/88

State Bank of India APPELLANT

Vs

Narender Anand and Others RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2001) 10 DEL CK 0020

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Mahinder Singh, for the Appellant; Nemo, for the Respondent

Judgement

V.S. Aggarwal, J.—The State Bank has filed the present suit against the defendants for recovery of Rs. 1,31,765.83 and further for a preliminary decree under Order 34 of the CPC for sale of the mortgaged property with interest at 12.5% from 30th June, 1988 till realisation. It is further claimed that in case there is any shortfall to adjust the bank dues out of the sale proceeds of the properties mortgaged the plaintiff would be at liberty to recover the balance amount.

2. The facts alleged are that Shri H.S. Thakural at the time when the suit was field was the Branch Manager of Kamla Nagar Branch of the plaintiff and that he had been authorised to be the principal officer of the bank to file the suit. Defendant No. 1 (Narender Anand) requested the plaintiff bank to grant him loan in the category of medium term loan facility for purposes of purchasing a new Tata diesel truck chassis model LPT 1210 SE/42 for fabrication of body on chassis and for purchase of extra tyres. Defendant No. 1 had requested for a loan of Rs. 1,85,000/. On 29th June, 1985 defendant No. 1 was granted a cash credit limit of Rs. 1,85,000/- for purposes of purchasing a Tata diesel truck, fabrication of body and for purchase of extra tyres. Defendant No. 1 opened a saving bank account No. 9029 with the plaintiff bank and availed the aforesaid medium term loan facility. Smt. Ram Piari stood as the guarantor along with defendant No. 3

for payment of the money and the interest. For this purpose Ram Piari deposited title deeds of property No. A-115 Indra Nagar, Delhi with an intention to create an equitable mortgage by way of collateral security. Smt. Ram Piari had since died and defendants 2A to 2C are the legal representatives.

3. The defendants had executed documents disclosing terms and conditions of the loan which included (a) agreement for medium term loan hypothecation of vehicles which was executed by defendant No. 1 (b) transport operators 3rd party guarantee agreement of the same date executed by Smt. Ram Piari (c) transport operators 3rd party guarantee agreement of the same date executed by defendant No. 3 (d) undertaking of 29th June, 1985 by defendant No. 1 (e) letter of 29th June, 1985 written by defendant No. 2 for issuing the cheque for Rs. 1,93,487/-. The said medium term loan was repayable in 40 Installments of Rs. 4625/- commencing from 15.9.1985 besides interest. Defendant No. 1 is alleged to have committed default in repayment and did not adhere to financial discipline. The amount withdrawn by defendant No. 3 were duly debited in the account. On 15th January, 1987 defendant No. 1 promised the plaintiff to regularise the position. He also acknowledged the liability by executing a confirmation slip on 17.2.1988 thereby confirming the balance amount of Rs. 1,29,514.65. It is claimed that amount has not been paid besides the interest. Hence the present suit.

3. The civil suit had been contested in the separate written statement filed by defendant No. 1. It is denied that the present suit u/s 34 of CPC is not applicable because the loan was not secured by mortgage of any immovable property. Agreement of 29th June, 1985 was stated to be a void and inoperative document. The civil suit was stated to be pleaded not to have been filed by duly authorised person. It was pleaded that in May 1985 the defendant No. 1 had requested the plaintiff bank for a loan of Rs. 1,85,000/-. Defendant No. 1 was to purchase a truck for his transport business. Due to some mistake in the application another application was given and along with the defendant submitted the photocopy of the title deeds with respect to the property owned by Ram Piari. After giving the application for loan with the title deeds the defendant No. 1 enquired from the Manager about the loan application and was informed and orally that defendant has also to first deposit 25% of the loan amount as margin money and he had to arrange for another guarantee since Ram Piari could not create charge over her property and no transfer could take place without the permission of the President of India. It is even denied that the amount claimed is due.

4. In the written statement filed by defendant No. 3 it is denied that any cash credit limit was sanctioned to defendant No. 1. It is stated to be only a loan of Rs. 1,85,000/-. Defendant No. 3 denied his liability because it was alleged that there was no default and in any case it was not a valid or an enforceable contract.

5. The legal representative of Ram Piari (Kesar Das Khurana) has also filed the separate written statement. It is denied that Ram Piari had mortgaged the

property with the plaintiff. It is insisted that without permission of the President of India such a mortgage could not have created. Even no such document was executed and the same is stated to be not valid. The liability thus to pay the amount as guarantor was denied.

6. From these pleadings of the parties on 27th October, 1989 this court had framed the following issues:-

1. Whether the suit is not maintainable under Order 34 CPC? OPD

2. In case the Issue No. 1 is proved in favor of defendants 1 and 3, in that event whether the suit is maintainable and decree can be passed like an ordinary Civil suit for recovery? OPP

3. Whether the agreement dated 29.6.85 executed by defendant No. 1 is void for the reasons given in the written statement? If so, to what effect? OPD

4. Whether the plaintiff has no cause of action to file the present suit and the suit was premature on the date of filing? If so, to what effect? OPD

5. Whether the agreement of guarantee executed by defendant No. 3 is void? If so, to what effect? OPD

6. Whether there has been no valid equitable mortgage in the absence of prior permission of the President of India/Lesser of the property mortgage, by deceased Smt. Ram Piari? If so, to what effect? OPD

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

8. Whether the plaintiff is not entitled to charge Compound Interest @ 12-1/4% on the loan amount? If so, to what effect?

9. To what amount the plaintiff is entitled to recover and from whom?

10. Relief."

7. During the pendency of the suit defendant No. 1 had also died and the legal representatives were imp leaded vide the order of this court dated 7th May, 1999. There was no appearance on behalf of defendants or the legal representatives and they were all proceeded ex parte.

8. Issues 1, 3, 4, 5, 6 and 8: Onus of all these issues were on the defendants. There is no evidence on the record and Therefore the issues necessarily have to be decided and accordingly are decided against the defendants.

9. Issue No. 7: It had been pointed that Shri H.S. Thakural was the person conversant with the facts, is the principal officer of the bank and Therefore he is authorised under Regulation 76 and 77 of the State Bank Act 1955 to file the suit. There is no evidence on the record to show that the plaint has been signed and verified by Shri Thakural. The statement of Shri Thakural had been recorded

as PW2 on 22nd November, 1994. He stated that he remained the Branch Manager of Kamla Nagar Branch and he has signed the plaint. There is no other evidence on the record to come to the conclusion to the contrary. Therefore, it must be held that the suit has been property signed and verified.

10. Issues 2 and 9: Both these issues can be taken up together. The evidence on the record particularly of Shri M.N. Khanna indicates that had sanctioned loan in favor of defendant No. 1 since deceased for Rs. 1,85,000/-. It was sanctioned on personal security of Ram Piari represented by legal representatives of defendant No. 3. Smt. Ram Piari had deposited the title deeds. The witness has proved Ex. P1 is the application submitted by defendant No. 1 to the plaintiff bank for obtaining the loan. Ex. P2 is proved to be the agreement of hypothecation executed by defendant No. 1 and particulars of the vehicles were mentioned in Ex. P3. The guarantee was given by Smt Ram Piari who had executed the documents Ex. PW1/X. The loan was sanctioned. The further evidence on the record in this regard can also be taken note of. Shri K.C. Bhatia who was examined in the court on 27th July, 1995 further deposed that Smt. Ram Piari had informed that she had applied to DDA for permission to mortgage the property.

11. These documents clearly show that defendant No. 1 had applied for the loan. Smt. Ram Piari since deceased had created an equitable mortgage by deposit of the title deeds. Ex. PW 3/1 the statement of account further shows that amount claimed is due. However, since as per the lease in favor of Ram Piari she could only mortgage/transfer the property with the permission of the sanctioning authority. Therefore the property could only be sold in execution after taking the necessary permission. In any case it must be held that amount claimed is due to the plaintiff.

12. For these reasons the civil suit is decreed to a sum of Rs. 1,31,765.83 as against all the defendants. The plaintiff would be entitled to interest at the rate of 12% p.a. from the date of the filing of the suit till the entire decretal amount is paid.

13. As against defendant No. 2 the preliminary decree is passed that in case within six months from the date of the decree the defendant No. 2 represented by legal representatives does not pay the entire decretal amount the plaintiff would be at liberty to seek a final decree in this regard but before putting the property to sale in case of failure to pay the amount necessary permission of the competent authority in this regard must be obtained.

