**(1997) 07 DEL CK 0081**

**In the Delhi High Court**

**Case No :** Suit No. 736 of 1985

State Bank of India APPELLANT

Vs

Prem Dass and Others RESPONDENT

**Date of Decision :** 23-07-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 3 Rule 2, Order 6 Rule 15
Contract Act, 1872 — Section 124, 128
State Bank of India Act, 1955 — Section 50(3)

**Citation :** AIR 1998 Delhi 49

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** Rajiv Sharma, for the Appellant;

**Final Decision :** Allowed

## Judgement

K.S. Gupta, J.—Suit was filed on the allegations that the plaintiff-bank is a body corporate constituted under the State Bank of India Act, 1955, having its central office at Madam Cama Road, Nariman Point, Bombay. One of the branches of the plaintiff-bank is situated at Chandni Chowk, Delhi. S.K. Burman, Manager (SIB) and Principal Officer posted at Chandni Chowk Branch is competent to sign and verify the plaint on behalf of the plaintiff-bank under the General Regulations No. 76-77 of the State Bank of India General Regulations, 1955, made in exercise of the powers conferred by Sub-section (3) of Section 50 of the State Bank of India Act, 1955, with the previous sanction of Central Government read with the notification published in the Gazette of India dt. September 26, 1959 and August 26, 1972. Defendant No. 1 was granted Rs. 1,36,000/- by way of Medium Term Loan for purchase of a bus on June 20, 1979, on his agreeing to pay interest on the amount so advanced @ 2% below the State Bank advance rate minimum 11 % per annum rising and falling therewith calculated on the daily balance of the amount due. Defendant No. 1 further agreed to repay the loan in 42 monthly installments with interest and the first Installment was to be paid on September 20, 1979. By way of security Bus No. DEP-2742 (Chasis No. 344050059592) was

Hypothecated by defendant No. 1 with the plaintiff-bank. It is further alleged that defendants 2 to 4 stood guarantors for defendant No. 1 and agreed to pay the loan amount with interest in case defendant No, 1 failed to pay the same. Defendant No. 1 executed agreement for the Medium Term Loan dt. June 20, 1979, letter dt. June 20, 1979 and an affidavit. Third Party Guarantee Agreement was also executed by the defendants. Defendants availed of the facility of the total loan amount sanctioned. It is stated that defendant No. 1 made deposits on May 27, 1981, June 16, 1981, January 20, 1982, March 17, 1982 and May 5, 1982 in the loan account. He further executed revival letter dt. November 29, 1983. It is stated that a sum of Rs. 1,38,307/69P is due from the defendants Along with interest up to April 20, 1985. It was prayed that a decree for recovery of the aforesaid amount of Rs. 1,38,307/69P with interest @ 18% per annum beyond April 21, 1985, may be passed in favor of the plaintiff and against the defendants.

2. Defendants 1 to 4 filed a joint written statement. It is alleged that the Central Government/Delhi Administration framed a scheme to raise the economic condition of the SC/ ST and Weaker Section people living in Delhi. The Scheme envisaged that the Central Government/Delhi Administration would provide to persons, who may apply for bus, loan from nationalised banks against hypothecation of the buses. Scheme further envisaged that such buses would operate under Delhi Transport Corporation and the bus owners would be paid Rs. 5,000/- per month. Loan advanced through nationalised banks was to be repaid in installments after the expiry of period of five years from the date of disbursement. Thus, repayment was to commence after April 1985 and the plaintiff-bank has no cause of action to file the present suit. It is denied that the plaint has been signed and verified by a proper person. It is further pleaded that the plaintiff-bank has failed to fulfill its part of the agreement by not keeping the insurance policy alive. It is stated that under the aforesaid scheme rate of interest chargeable from the defendants was to be 4-1/2% instead of 11% per, annum. plaintiff-bank has not given credit for the entire amount deposited by defendant No. 1. It is also pleaded the the loan against hypothecation was advanced to defendant No. 1 only to the extent of 50% of the sanctioned loan amount of Rs. 1,36,000/-. It is alleged that defendants 2 to 4 did not stand guarantors for the re-payment of the loan amount and they were mere witnesses. It is denied that the defendants'' executed any documents, as alleged. Liability to pay interest @ 18% per annum beyond April 20, 1985, is denied.

3. In the replication filed to the joint written statement of defendants 1 to 4, the plaintiff-bank has reaffirmed the averments made in the plaint.

4. On the pleadings of the parties following issues were framed on September 17, 1987 :

1. Whether the plaintiff has no cause of action ?

... OPD

 

2. Whether the plaint has been signed and verified by a proper and duly authorized person ?

... OPP

3. Whether the plaintiff has not fulfilled its part of contract by not keeping the insurance policy of the bank alive ?

... OPD

4. What amount, if any, is due and payable by the defendants to the plaintiff ?

... OPP

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

... OPP

6. Whether defendants Nos. 2 to 4 are the guarantors and was there any privacy to contract between them and the plaintiff or were they only witnesses to the documents ?

7. Whether defendants Nos. 2 to 4 are not liable to pay any amount to the plaintiff ?

... OPD

8. Relief.

5. Statement of Prem Dass, defendant No. 1, was also recorded by the Court on September 17, 1987 and in view of the admission made by him that a sum of about Rs. 90,000/- was still due from him, a decree for that amount was passed against the defendants under Order XII, Rule 6, C.P.C.

6. Defendant No. 3 was proceeded ex-parte on July 22, Since September 7, 1993 onwards none put in appearance in the case on behalf of remaining defendants 1, 2 & 4 nor they lead any evidence.

ISSUE No. 1.

7. Present suit was filed against the defendants on April 29, 1985. Plea taken by the defendants in the joint written statement is that the repayment of the loan amount was to commence after April 1985 and the plaintiff-bank had, thus, no cause of action to file the suit. Ex. PW 1/1 is the Medium Term Loan Agreement executed by defendant No. 1 in favor of the plaintiff-bank. Clause (2) thereof provides that the borrower shall repay the loan amounting to Rs. 1,36,000/- in 42 installments and the first Installment shall be paid on September 20, 1979 and the remaining installments shall be paid on or before the same day of each succeeding month until the entire loan has been repaid. Defendants have not led any evident whatsoever in support of this issue onus of proof whereof was on them. In view of aforesaid Clause (2) of Ex. PW 1/1 the plaintiff-bank must be held to be having cause of action to file the suit against the defendants. Issue is

 

answered against the defendants.

ISSUE No. 2.

8. Plaint is alleged to be signed and verified by S. K. Burman, who was posted as Manager (SIB) and Principal Officer of the Chandni Chowk Branch of the plaintiff-bank, on the date of the filing of the suit. It is in the deposition of P.W. 1 S. P. Sharma, who remained posted from 1975 to January 1982 as Field Officer and Deputy Manager in Chandni Chowk Branch of the plaintiff-bank, that he identifies the signature of S. K. Burman on the plaint at points A & B and Shri Burman was competent to sign and verify the plaint pursuant to the gazette notifications dt. September 26, 1959 and August 26, 1972. plaintiff-bank has placed on record the photostat copies of State Bank of India General Regulations No. 76 & 77 and both the aforesaid notifications. Deposition of P.W. 1 coupled with the said Regulations and notification prove that S. K. Burman was competent to sign and verify the plaint. Issue is answered in affirmative.

ISSUE No. 3

9. Onus of proof of this issue was on the defendants and they have failed to adduce any evidence that the plaintiff-bank did not fulfill its part of the contract by not keeping the insurance policy alive. Moreover, under Clause (B) of the Medium Term Loan Agreement Ex. P.W. 1/1 it was the liability of defendant No. 1 to have kept the vehicle fully insured against loss or damage from time to time. Issue is answered against the defendants.

ISSUE No''s. 6 & 7

10. Both these issues are inter-connected and may be taken up together for discussion. P.W. 2 R.L. Vig remained posted from July 1977 to March 1985 in Chandni Chowk Branch of the plaintiff-bank as Field Officer and Deputy Manager (Advances). It is in his deposition that defendant No. 1 was sanctioned a sum of Rs. 1,36,000/- by way of loan and the defendants executed documents in favor of the plaintiff-bank in his presence. His signature appears on the letter Ex. PW 1/2 at point A which is part and parcel of the Medium Term Loan Agreement Ex. PW 1/1 on which defendant No. 1 appended his signatures on pages 1 to 4. Contents of Exs. PW 1/1 & PW 1/2 were explained to the borrower as well as to the guarantors by him. It is further in the statement of S. P. Sharma PW 1 that Din Dayal, Jaswant Singh and Shiv Kumar, defendants 2 to 4 were the guarantors of defendant No. 1 and they executed the guarantee agreement Ex. PW 1/3. Contents of Ex. PW 1/3 were explained to the borrower and the guarantors before they appended their signatures thereon. Needless to repeat that in the joint written statement plea taken by the defendants 2 to 4 is that they were mere witnesses and did not guarantee the repayment of the loan amount by defendant No. 1. However, in support of that plea respondents have not adduced any evidence. From the said depositions of PWs 1. & 2 it is fully established that defendants 2 to 4 were not the mere witnesses but were the guarantors for repayment of the loan amount raised by defendant No. 1 from the plaintiff-bank.

 

Defendants 2 to 4 are thus jointly and severally liable to pay the amount due from defendant No. 1 to the plaintiff-bank. Both the issues are answered accordingly.

ISSUE Nos. 4 & 5

11. These issues too can be conveniently taken up together for discussion. Rs. 1,38,307/69 P, are alleged to be due from the defendants after allowing adjustment for the amount deposited by defendant No. 1 with the plaintiff-bank up to April 20, 1985. It is in the statement of S.P. Sharma PW 1 that Rs. 1,38,307/69 P. were due from defendant No. 1 at the time of the filing of the suit; that Ex. PW 1/4 is the statement of account and the amount claimed by the plaintiff-bank is correct. There seems to be no reason to disbelieve that part of the statement made by PW 1. Since the suit was decreed partly for a sum of Rs. 90,000/- against the defendants under Order XII, Rule 6, C.P.C. by the order dt. September 17, 1987, the defendants are liable to pay the balance amount of Rs. 48,307/69 P. up to April 20, 1985 including the interest at the rate (s) agreed to between the parties under Medium Term Loan Agreement Ex. PW 1/1. plaintiff-bank is further entitled to interest pendente lite on the aforesaid amount @ 11% per annum being the minimum rate of interest which the defendants had agreed to pay to the plaintiff-bank under the aforementioned agreement Exs. PW 1/1 & PW 1/ 3. Both the issues are decided accordingly in favor of the plaintiff-bank.

ISSUE No. 8

12. In view of the findings on issues 1 to 7, the suit is decreed with full costs for recovery of Rs. 48,307/69 P. with interest pimento lite @ 11% per annum and future @ 18% per annum which is being presently charged on the advances made, in favor of the plaintiff-bank and against defendants 1 to 4.

 