(2010) 05 SHI CK 0135

In the High Court Of Himachal Pradesh

State Bank of India APPELLANT

Vs

Prem Lal and Others RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34, 96

Citation : (2010) 05 SHI CK 0135

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is a regular first appeal filed by the appellant u/s 96 of the CPC against the judgment and decree of the court of learned Additional District Judge, Shimla, dated 9.4.1999, vide which the learned trial court has decreed the suit of the appellant partly for recovery of the amount as against the respondents.

2. Briefly stated the facts of the case are that the appellant (hereinafter also referred to as the plaintiff) filed a suit for recovery of the amount alleging that defendant No. 1 applied to the plaintiff Bank for the grant of a medium term loan of Rs. 1,65,000/- for the purchase of Mitushubishi Canter and agreed to get the payment of the amount guaranteed by defendants No. 2 and 3, who stood guarantors for the repayment of the amount. The amount was to be paid in 55 monthly installments alongwith interest. The defendants executed the necessary documents in favour of the plaintiff Bank. Defendants No. 2 and 3 stood guarantor and defendant No. 2 also created equitable mortgage of his property detailed in the plaint in favour of the plaintiff Bank by deposit of his title deeds with the plaintiff Bank. The defendants failed to pay the amount as agreed, hence the suit for recovery of the amount filed by the plaintiff Bank, alongwith interest. The plaintiff has also prayed for passing of a final decree for the sale of the mortgaged property.

3. Defendant No. 1 admitted having applied for the grant of the loan amounting to Rs. 1,65,000/- for the purchase of Mitushubishi Canter and also admitted to have agreed to pay the amount in 55 monthly installments alongwith interest. However, he pleaded that the amount was payable alongwith simple interest at the rate of 4% per annum. Defendant No. 2 denied having stood guarantor on behalf of defendant No. 1 for the repayment of the loan.

4. On the pleadings of the parties, the following issues were settled by the learned trial Court:

1. Whether the suit has been filed by a person competent to institute the suit? OPP

2. Whether the defendant No. 2, 3 had guaranteed the payment of suit amount by defendant No. 1? OPP

3. Whether the suit is within time? OPP

4. Whether the suit is bad for non-joinder? OPD

5. Whether the plaintiff is entitled to recover the suit amount from the defendants? OPP

6. Relief.

5. Parties led their evidence and the learned trial Court, vide its impugned judgment, decreed the suit of the plaintiff, but partly, since it was held that the plaintiff shall be entitled to the principal sum which was adjudged at Rs. 1,65,000/-, instead of Rs. 2,41,879.50, as claimed by the plaintiff alongwith cost and interest.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. The main submissions made by the learned Counsel for the appellant were that the learned trial Court has wrongly determined the principal sum due, relying upon a judgment of this Court reported in Punjab National Bank Vs. Surinder Singh Mandyal and Others, In that case, it was held by a learned Single Judge of this Court that the future interest is payable on the principal sum adjudged. The principal sum adjudged accordingly was the amount due on the date of filing of the suit not including the interest till that date.

8. However, the said point in the above cited case has been clarified by the Apex Court in a judgment reported in Central Bank of India Vs. Ravindra and Others, which is a judgment of the Constitutional Bench, in which a different view has been taken than the one taken by the learned Single Judge in the above referred case. Accordingly, it was held by the Apex Court that the principal sum so adjudged shall be treated as principal sum within the meaning of Section 34 on which interest pendente lite and future interest i.e. post-decree interest at such rate and for such period may be awarded by the Court.

9. Therefore, it follows from the above decision that the principal sum adjudged includes the interest till the date of filing of the suit. Therefore, the findings of the learned trial Court to the contrary are liable to be set aside. The principal sum shall be the sum of Rs. 2,41,879.50, as alleged in the plaint by the plaintiff, and accordingly interest shall be payable on this principal amount as awarded by the learned trial Court. The Bank has charged interest at the rate of 15.5%, as per the instructions of the Reserve Bank of India. However, the learned trial Court observed that there is no evidence available on record suggesting such enhancement and also that the defendants were made aware of the charging of such higher rate of interest. A perusal of the documents in question Exts.PW-1/B, G & H shows that the floating rate of interest has been mentioned, as prevalent at the time of charging of interest as per the guidelines of the Reserve Bank. The defendants had agreed to this rate being charged and accordingly, the plaintiffs are entitled to interest at the rate of 15.5%, as claimed by them. However, in case there is any variation in between, the defendants shall be entitled to the reduced rate of interest accordingly.

10. In view of the above discussion, there is merit in the appeal filed by the appellant and, therefore, the appellant Bank is held entitled to a recovery of Rs. 2,41,879.50 alongwith interest at the agreed rate, say 15.5%, till realization, being the commercial transaction. However, the learned Counsel for the respondent had submitted that the defendants should be given liberty to apply for one time settlement with the plaintiff Bank and the defendants, therefore, are given six weeks time from today to apply for one time settlement and in case such an application is received, it shall be considered sympathetically by the plaintiff Bank in view of the fact that it is a very old loan due to the plaintiff Bank. The said application shall be disposed of and then steps be taken for the realization of the amount, if one time settlement is not arrived at.

11. The appeal is allowed to the extent detailed above and the suit of the plaintiff stands decreed in full alongwith costs and interest at the agreed rate till realization of the amount.