

(1998) 11 DEL CK 0049
In the Delhi High Court
Case No : S. No. 2526 of 1993

State Bank of India

APPELLANT

Vs

Prem Sethi and Others

RESPONDENT

Date of Decision : 29-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4

Citation : (1999) 77 DLT 56

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : S.L. Gupta, for the Appellant; None, for the Respondent

Judgement

M.S.A. Siddiqui, J.—The plaintiff Bank has filed this suit under Order 34, Rule 4, CPC for recovery of Rs. 5,14,565/- together with interest thereon @ 17% per annum.

2. Briefly stated, the plaintiff's case is that on 1st December, 1990, the plaintiff Bank granted to the defendant No. 1 Medium Term Loan of Rs. 1,89,000/- and the Cash Credit Limit of Rs. 1/- lac. The defendant No. 1 agreed to liquidate the loan amount in monthly installments of Rs. 3,938/- together with interest. The first Installment became due on 25th December, 1990. In order to secure payment of the loan, the defendant No. 1 executed a demand promissory note and other documents in favor of the plaintiff Bank. The defendant Nos. 2 and 3 guaranteed repayment of the said loan vide agreement dated 28th December, 1990. The defendant No. 3 also created an equitable mortgage by deposit of title deeds in respect to his property bearing plot No. 16, Sanjay Nagar, Part I, Delhi for repayment of the said loan. After availing of the said loan facility, the defendant No. 1 failed to keep the banking discipline and his account had remained very irregular. As per statements of account, a sum of Rs- 5,14,565/- stands due from the defendants to the plaintiff including the interest and other incidental charges charged in the account. Hence this suit.

3. Despite service, the defendants did not appear before the Court and the case proceeded ex parte against them. The plaintiff Bank has filed the affidavits of Shri H.L. Yadav and Shri T.N. Goel in support of its claim. On a consideration of the affidavits of the said witnesses and the documents Exhibits PW1 /1 to PW1/9 and PW 2/1 to PW 2/7, I find and hold that the plaintiff Bank has prima facie proved its case for recovery of Rs. 5,14,565/- with interest thereon @ 17.25% per annum.

4. It is, Therefore, ordered and decreed as follows :

(i) that the defendants do pay into Court on or before 1 st January, 1999 or any later date up to which time for payment may be extended by the Court, a sum of Rs. 5,14,565/-;

(ii) the defendants shall also pay interest to the plaintiff on the amount in suit @ Rs. 17.25% per annum from the date of the suit till realisation of the amount;

(iii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 10 together with such subsequent interest as may be payable under Rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. 3, or to such person as he appoints, and the plaintiff shall, if so required, recovery or retransfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required deliver up to the defendants quiet and peaceable possession of the said property;

(iv) and it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property;

(v) and it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction there from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant

or other persons entitled to receive the same.

(vi) and it is hereby further ordered and decreed that, if the money, realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendants for the amount of the balance; and that the parties are at liberty to apply to the Court otherwise the Court may give such directions as it thinks fit;

(vii) the defendants shall also pay the costs of the plaintiff Bank.