
(2005) 11 CHH CK 0010
In the Chhattisgarh High Court
Case No : First Appeal No. 321 of 1996

State Bank of India

APPELLANT

Vs

Shankar Lal and Another

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 4
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2(1), Order 37 Rule 2(3), Order 37 Rule 3(6)

Citation : (2006) 3 MPHT 70

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : Kunal Das and Kasif Shakeel, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shrivastava, J.—This appeal is directed against the judgment and decree dated 13-3-1996 passed by IInd Additional Distt. Judge, Rajnandgaon, in Civil Suit No. 18-B/94 whereby the suit filed by the respondents for recovery of Rs. 71,607/- alongwith interest, has been dismissed.

2. For disposal of this appeal materials facts, in brief compass, are that the appellant invoking the provisions contained in Order 37 of the Code of Civil Procedure, 1908 instituted a Civil Suit for recovery of Rs. 71,607/- alongwith interest. The claim was made on the averment that the respondent No. 1 applied for a medium term commercial loan of Rs. 37,500/- in the shape of term loan facility for purchase of new Bi-cycles and accessories. After due processing of the application, the above term loan was sanctioned and on 28-9-1989 the loan was disbursed from the loan Account No. T.L./89/13. Respondent No. 2 stood surety for the said loan. Both the respondent Nos. 1 and 2 executed several documents against the grant of the said loan. Respondent No. 1 as his last deposit, made a deposit of Rs. 500/- on 20-5-1992 and thereafter failed to repay the balance

amount together with interest. For repayment of remaining amount legal notices were served on respondents. However, despite that no amount towards balance was paid, therefore, the Bank filed a suit for recovery of balance amount.

3. Respondent No. 1 remained ex parte in the suit. Respondent No. 2 obtained permission to defend the suit, but failed to file written statement or objection against the appellant's claim and later on also remained ex parte. Appellant in support of his claim filed original documents and adduced oral evidence, but learned Court below held that, on evidence of bank employee- namely, Anil Kumar Mishra, the suit filed by the appellant could not be held proved and accordingly dismissed the suit.

4. Vide this Court's order dated 28-11-1997 service of notice on respondents has been dispensed with and as a result thereof none of the respondents has made enter appearance.

5. Learned Counsel for the appellant heard, record of Trial court perused.

6. Rule 2(3) of the Order 37 of the CPC, reads as below:

2. (3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of the entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

7. In the instant case, respondent No. 1 did not enter his appearance, therefore, it was incumbent on the Court to hold against respondent No. 1 that he has admitted the claim of the appellant and accordingly appellant was entitled for a decree against respondent No. 2 as prayed for by him.

8. Rule 3(6) of Order 37 of the CPC reads as below:

(6) At the hearing of such summons for judgment-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

9. In the instant case, respondent No. 2 was permitted to defend the suit, but respondent No. 2 did not file his written statement or any objection to the claim

and on subsequent stages also remained ex parte. Therefore, the appellant was entitled for judgment against him.

10. Learned Court below ignoring both the above provisions, has dismissed the suit and has thereby committed a gross error of law.

11. Suit has been filed accompanied with certified copy of statement of account and statement of account is admissible in evidence u/s 4 of the Bankers' Books Evidence Act, 1891, therefore, when the statement of account was there and which was not required to be proved by any evidence, learned Court below ought to have accepted it and treating the statement of account to be correct, should have decreed the suit.

12. Anil Kumar Mishra, an employee of State Bank of India, has been examined by the appellant, who in his statement deposed that in the year 1989 medium term loan of Rs. 37,500/- was paid to Shankarlal Dewangan. General agreement and guarantee agreement were executed. In general agreement Shri Bhatia, Branch Manager has also signed and in guarantee agreement Shri Durga Dongre and P.L. Sahu have signed and he knows the signatures of these persons. Anil Kumar Mishra (P.W. 1) in his statement has specifically deposed that from the documents kept by the Bank, a balance Rs. 71,254.30 was lying due for recovery against the respondents. His statement has not been challenged by the opposite party. Therefore, his evidence was to be accepted as correct.

13. From the aforesaid discussion, it is apparent that the learned Court below neither appreciated the intent of legislation in its true perspective nor appreciated the evidence on record and has committed gross illegality in disallowing the claim of the appellant which was not only liable to be decreed under the provisions of Order 37 of the CPC, but also was liable to be decreed on evidence.

14. In the result, the appeal succeeds, the judgment and decree passed by the Lower Court are set aside and respondents are ordered to pay severally and jointly Rs. 71,607/- (Rupees seventy one thousand six hundred and seven) with interest @ 13.5% per annum from the date of institution of the suit i.e., 7-5-1994 till its recovery.