(2008) 04 J&K CK 0002

In the Jammu And Kashmir High Court

State Bank of India APPELLANT

Vs

Trishui Pickle Indus. and Others RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Citation : (2008) 2 JKJ 221

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—This civil first appeal is directed against the exparte judgment and decree dated 14th of May, 1999, (for short the

impugned judgment) passed by learned District Judge, Udhampur, in a suit titled State Bank of India, Branch Udhampur v. Trishul Pickle

Industries Garhi, Udhampur and Ors. whereby and where-under, suit came to be dismissed as time barred.

2. The short controversy involved in this appeal is whether the suit filed by the appellant-plaintiff bank is time barred?

3. In order to return finding, it is necessary to notice the brief facts of the case herein:

4. Appellant-plaintiff bank filed a suit for recovery of Rs. 11,97,9347- against the defendants on 51h of May, 1994 before this Court-came to be

transferred to the trial court-District Court Udhampur. The trial court diarized it on 12th of May, 1994 and dismissed it vide impugned judgment as

time barred.

5. The case of the appellant-plaintiff bank is that defendant No. 1 -respondent No. 1, M/s Trishul Pickle Industries Garhi, Udhampur through its

sole proprietor, Sh. Dwarka Nath Koul (deceased) sought and obtained financial assistance-cash credit limit of Rs. 1, 50,000/- and also availed

bill limit of Rs. 1,00,000/-. He had executed documents described in the plaint as well as in the impugned judgment. Defendant No. 5 executed

guarantee deed for re-payment of the loan granted to defendant No. 1 as an additional guarantee and defendant No. 1, Late Dwarka Nath Koul,

also executed a mortgage deed in favour of the plaintiff bank.

6. It is also averred in the plaint that defendants failed to liquidate the loan amount and committed default and thereby an amount of Rs. 11,97,934

became due from them and suit came to be filed for recovery of the said amount. As per the plaint, cause of action accrued to the plaintiff bank on

10th of January, 1993-date of execution of the mortgage deed and on 151h of June, 1984-the date of execution of loan documents.

7. Defendants resisted the suit by the medium of written statement. Issues came to be framed and parties were directed to lead evidence.

8. Plaintiff examined PWs RC Sharma, Rakesh Kumar and Om Parkash. Defendants have not led any evidence in rebuttal.

9. It is necessary to give brief resume of the plaintiff s evidence herein:

10. The witnesses of the plaintiff have deposed that respondent-defendant No. 1 M/s Trishul Pickle Industries, was granted loan of Rs. 1,50,000/-

as cash credit facility and Rs. 1,00,000/- as bill limit and deceased Dwarka Nath Koul executed the documents as mentioned in para-5 of the

plaint including the deed of guarantee. Mortgage deed was executed on 10th of January, 1983 and registered on 11th of January, 1983. Defendant

No. 1 did not keep its account well and despite being repeatedly asked, no repayment of the loan was made. The statement of accounts came to

be exhibited EXPW-RC and EXPW-RC1. Witness Om Parkash, admitted his signatures on the mortgage deed and also proved the contents of it

and came to be exhibited as EXPW-OP.

11. While going through the plaint and the evidence led by the plaintiff bank, one comes to an inescapable conclusion that deceased Dwarka Nath

was the sole proprietor of M/s Trishul Pickle Industries and had obtained two loans of Rs. 1,50,000/- and Rs. 1,00,000/- on 161h of April, 1984

but he had not made any repayment and thereby committed default.

12. The crux of the plaint as well as of the evidence of the plaintiff bank is that

defendant No. 1 failed to liquidate the amount of loan obtained by

him despite repeated demands. The trial court discussed only issued No. 2 and dismissed the suit as time barred.

13. Learned Counsel for the appellant-plaintiff bank argued that suit is not for recovery of money but is for sale of mortgage property. Thus suit

was within time.

14. It is apt to reproduce the title and relief clause of the plaint herein:

Suit for recovery of Rs. 11,97,934/- value for the purpose of court fee and jurisdiction Rs. 11,97,934/-

Relief:

The plaintiff, therefore, most humbly prays that a decree for Rs. 11,97,934/- with interest @ 15% p.a. with quarterly rests from 1.4.1994 and

costs be passed in favour of the plaintiff:

a/By sale of mortgaged property Land and building measuring one kanal 8 marlas under Khasra No. 498 min, situated at vill. Rehamble Teh.

Udhampur

b/By sale of the hypothecated goods of voice Shelter hypothecated in favour of the plaintiff. c/From the other properties of the defendants.

And if the decretal amount still remain unsatisfied then it be further decreed that the remaining decreetal amount be recovered from the defendants

personally. For such other and further reliefs to which the plaintiff is found entitled thereto or the facts of the case may deem fit and proper be

allowed to the plaintiff Bank.

15. While going through the plaint, the suit is for decree for recovery of Rs. 11,97,934/- and the consequential relief is to recover the same by sale

of mortgaged property. Thus, the main relief sought for is suit for recovery of Rs. 11,97,934/-.

16. It is beaten law of the land that cause of action accrues from the date when the loan is made or when the demand is made. In terms of Articles

87 and 90 of the first schedule of Limitation Act, suit is to be instituted within six years when the loan is made or when the demand is made. It is

profitable to reproduce Articles 87 and 90 of the first schedule of Limitation Act herein:

Description of suit Period of limitation Time from which period

begins to run

----

87. For money payable Six years When the loan is made

for money lent.

----

90. For money deposited Six years When the demand is

under an agreement that made

it shall be payable on

demand, including

money of a customer in

the hands of his banker so

payable.

----

17. In the instant case, admittedly loan was sanctioned on 16th of April, 1984 and repeatedly demands were made to the borrower - defendant

No. 1 till May, 1986 but no payment was made. The suit came to be filed on 5th of May, 1994. As per the documents and statement of accounts

loan amount was paid on 16 of April, 1984 and the demand was made till May, 1986. Thus, cause of action accrued either on 1984 or after

committing default from the date the demand was made i.e. after May, 1986- either in the month of June, 1985 or October 1986 as per the

account statement EXPW-RC and EXPW-RC1. In the given circumstances, the suit was time barred.

18. The argument of the learned Counsel for the appellant - plaintiff bank is also devoid of force for the simple reason that suit is simply for

recovery of money.

19. Madhya Pradesh High Court in a case titled Smt. Saraswatidevi and Another Vs. Krishnaram Baldeo Bank Limited and Another, , held that

when loan - debt amount is to be paid in installments and if default is committed in payment of installment, the limitation for filing suit for recovery of

loan/debt begins to run from the date the first installment fell due and not from the date of execution of the mortgage deed. It is profitable to reproduce para-l 1.1, herein:

11.1. The aforesaid authorities, relied upon by the appellant Shri Sharma, are distinguishable on facts and do not apply to the present case in view

of the default clause and provision of repayment by installments. In view of this position, the date of deed becomes inconsequential and the date on

which the first installment fell due would be the relevant factor for computation of the limitation. The two Courts below have applied the correct

facts and law. The contention is, thus, found to be inutile and futile. Even when we examine the question from different angle, i.e. the default clause,

becoming operative on non-payment of interest for two months i.e. after 10-8-69,1 find that the suit is within limitation even on this linchpin. The

contention about bar of limitation is firstly without substance on appreciation of factual matrix and secondly is not entertainable in the Second

Appeal in view of the decision of the Apex Court (supra). Admittedly limitation is three years.

20. Applying the ratio of the aforesaid judgment to the instant case, the defendant had to repay the loan amount by installments and even the

borrower has failed to pay the first installment. Thus, thereby committed default and the limitation started to run from the date of first installment i.e.

15th June, 1984.

21. If the decree would be granted then the question of conducting of sale of mortgage property would arise-thus that is an ancillary relief. The

court has to first find out whether suit is maintainable and what amount is due. Thereafter, the next question to be determined is that whether the

decree for sale of mortgaged property is to be granted?

22. When the main relief is time barred, the consequential relief cannot be granted. The main relief as prayed for is time barred. My this view is

fortified by Apex court judgment delivered in case titled State of Punjab v. Balkaran Singh reported as AIR 2007 SCW 240. It is profitable to

reproduce para-17 of the said judgment herein:

17. Once the prayer for declaration sought for in the suits is found to be barred by limitation, it has to be noticed that the prayer that follows is only

consequential on the relief of declaration. That prayer is to the effect that the plaintiff is entitled to the pay scale of Rs. 1200-1850/- as against the

scale of pay of Rs. 940-1850/- with effect from 1.1.1978 and entitled for payment of all other service benefits including yearly increments, arrears

and interest thereon at the rate of 18 per cent per annum up to the date of payment with effect from 1.1.1978. It must be noticed that there is no

independent prayer for recovery of arrears of pay and the prayer is couched in such a manner that it can be understood only as consequential on

the grant of the first relief. In other words, it is not an independent relief that could be granted even if the main prayer is declined. In that view, it has

to be held that a consequential relief could not be granted in view of the fact that the main relief of declaration sought for has been held to be

barred by limitation.

23. Keeping in view the above discussion, the trial court has rightly dismissed the suit as time barred.

24. Accordingly, the appeal is dismissed and the impugned judgment and decree is upheld.

25. Registry to prepare a decree sheet and send down the record along with a copy of this judgment and decree sheets.