(1992) 12 BOM CK 0016

In the Bombay High Court

Case No : First Appeal No. 324 of 1990

State Bank of India APPELLANT

Vs

Vishwanath and another RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

Citation : (1994) 80 CompCas 9

Hon'ble Judges : H.W. Dhabe, J;B.U. Wahane, J

Bench : Division Bench

Advocate : A.J. Pophaly, for the Appellant;

Judgement

B.U. Wahane, J.—The only question raised in this appeal is whether the creditor bank can levy the guarantee fees or charges from the borrower and debit such amount to the account of the borrower ?

2. Before dealing with the submissions made by learned counsel for the appellant, it is necessary to give some facts. The appellant/plaintiff-bank had advanced an agricultural term loan of Rs. 45,600 to respondent No. 1/defendant No. 1, Vishwanath S/o. Motiram Lothe, on May 5, 1982, for purchase of the tractor. Respondent No. 1 had executed an agreement of hypothecation and agreed to the terms and conditions contained in the said agreement. Respondent No. 2/defendant No. 2 is the guarantor, who executed the deed of guarantee and thereby guaranteed the repayment of the loan advanced by the plaintiff-bank to defendant No. 1. Defendant No. 1 agreed to pay interest at 12.5% per annum minimum 4% below the State Bank of India advance rate. The loan amount was to be repaid in installments of Rs. 6,514 payable in March, 1983, to March, 1989. In case of default in payment of any installment as mentioned above, the entire balance in the account then outstanding with interests, costs, commissions and charges was to become payable, if the bank so chose.

3. Respondent No. 1/defendant No. 1 has failed to pay the installments regularly as agreed. The defendants had also acknowledged their liabilities on July 9,

1984, and July 20, 1984, by executing revival letters in favour of the bank. Respondent No. 1/defendant No. 1 had also executed the declaration u/s 5 of the Maharashtra Provision of Facilities for Agricultural Credit by Banks Act, 1947, creating a charge on agricultural land having Survey Nos. 166, 155, 128 and 97 of village Cawarra. As defendant No. 1 was not regular in making payments of installments, a registered notice was issued by the bank to the defendants. On August 31, 1987, the outstanding amount against the defendants was Rs. 56,566 including interest up to September 15, 1987. As the defendants failed to clear the dues the plaintiff-bank filed the suit against the defendants.

4. The defendants have filed a joint written statement at exhibit 18 and in general denied the allegations. They have not disputed their signatures on the hypothecation agreement, declaration, deed of guarantee, and revival letters. They have admitted that the loan amount was to be repaid by yearly installments of Rs. 6,514 as claimed by the bank. The respondents/defendants contended that they had signed blank documents which were subsequently filed up by the bank. The correctness of the statement of accounts has been denied. Their contention is that the plaintiff-bank has charged interest at excessive rates and more than that prescribed by the Reserve Bank of India for agricultural loans.

5. It needs mention here that though the defendants had disputed the correctness of the accounts, they failed to point out any mistake in the accounts. It is further contended by the defendants that the loan advanced by the plaintiff-bank was insured with the insurance company and illegally the insurance fees have been debited to their account. During the pendency of the suit, the defendants have deposited Rs. 33,500 and claimed set off of the same amount while passing the decree.

6. After scrutinising the oral and documentary evidence, the learned trial judge has disallowed the guarantee fees of Rs. 2,464.92 (debited from time to time) and the legal expenses of Rs. 3,045.80. After giving credit for the above-mentioned amount towards guarantee fees and legal expenses, and amount of Rs. 21,976.88 was found due from the defendants. Guarantee fees and legal expenses were deducted from the claim amount of Rs. 27,487.65 and a decree was passed for Rs. 21,976.88 against the defendants, vide judgment dated June 14, 1989. The decretal amount was directed to be paid in two equal installments with interest.

7. The respondents were served but none appeared for them.

8. Shri A. J. Pophaly, learned counsel for the appellant took us through the record of the case including the deed of hypothecation, deed of guarantee and revival letters, the provisions of the Deposit Insurance and Credit Guarantee Corporation act, 1961, and also the Manual of Small Industries and Small Business Schemes, Volume II. According to learned counsel for the appellant, the learned trial judge has committed an error while rejecting the claim of the plaintiff-bank regarding the guarantee fees and legal expenses. The learned trial

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judge committed an error in observing that the guarantee fees and legal expenses are neither included in the agreement of hypothecation as also not mentioned in the note number 10 of Chapter XVIII of the Rules as framed by the bank under the directives of the Reserve Bank of India. The Deposit Insurance Corporations established under the Deposit Insurance and credit Guarantee Cooperation Act, 1961, transact the business of insuring deposits with banks. The objects of the corporations are cognate as they seek to protect both banks and depositors. Chapter III-A of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, deals with the credit guarantee functions. Section 21A(3) deals with the guarantee fees. It reads as under :

"The board may levy, on every credit institution availing itself of the guarantees or indemnities provided by the corporation, a fee at such rate or rates as may, with the previous approval of the Reserve Bank, be notified by the Corporation to the credit institutions from time to time and different rates may be notified for different categories of credit institutions, for different types of credit facilities, for different areas where the credit facilities are utilised, or for different categories of beneficiaries of the credit facilities."

9. Learned counsel for the appellant brought to our notice Chapter XXIV of Manual of Small Industries and Small Business Schemes, Volume II, which deals with the Small Loans Guarantee Scheme, 1971. Clause 5.6 deals with the recovery of guarantee fees which reads as under :

"Guarantee fees are recovered from the borrowers having credit facilities above Rs. 25,000. For borrowers having credit facilities below Rs. 25,000, the guarantee fees are borne by the bank."

10. Under clause 5.7, guarantee fees are aid to DI and CGC by debit to LHO charges account under the subhead ''Rent, taxes and insurance''.

11. Shri Pophaly, learned counsel for the appellant, brought to our notice Note No. 10 of Chapter XVIII of the Rules framed by the bank under the directives of the reserve Bank of India. It appears that the Deposit Insurance and Credit Guarantee Corporation is providing guarantee covers to banks on agricultural and consumption loans. Note No. 10 runs as follows :

"While guarantee fees are paid by the bank on the basis of statements submitted by branches, these are not debited to the branches, or required to be remitted by them. However, guarantee fees in respect of borrowers in this slab exceeding Rs. 25,000 should be recovered from them and credited to charges account (rent, taxes and insurance).

12. According to learned counsel for the appellant the bank has charged guarantee fees and it has been debited in the account of defendant No. 1, the borrower. This note and other provisions referred to above cannot be interpreted to mean that the banks are not entitled to charge guarantee fees aid by the branches to the Deposit Insurance and Credit Guarantee Corporation to obtain

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insurance cover on the advancement of loan from the borrowers.

13. The learned trial court has repelled the arguments of learned counsel for the plaintiff in this behalf. It is true that in the hypothecation agreement and also in the deed of guarantee there is no specific clause to the effect that the guarantee fees and legal expenses are borne by the borrowers. The contention of the appellant-bank is that the guarantee fees and legal expenses would stand included in the words "expenses, costs and charges" as mentioned in the agreement for hypothecation. However, the learned trial court did not agree with this submission.

14. Learned counsel for the appellant has placed much reliance on clauses Nos. III and X of the agreement for hypothecation. Clause X of the agreement for hypothecation reads as under :

"That the borrower(s) shall pay all charges and taxes statutory or otherwise in respect of security. The bank may also without being to do so, pay all such charges and taxes at the cost of the borrower(s) and if necessary by debit to the borrower(s)'' account(s)."

15. In view of this, learned counsel for the appellant specifically submitted that the clause of the agreement is very clear that the borrower(s) shall pay all charges and taxes statutory or otherwise in respect of security.

16. Clause III of the agreement for hypothecation reads as under :

"That in the case of cash credit, overdraft and demand loan, the borrower(s) shall on demand forthwith pay to the bank the outstanding(s) owing to the bank in respect of the loans inclusive of interest, commissions, costs, charges and expenses. However, in a case where for any reason cash credit or overdraft is permitted by the bank at its absolute discretion to be repaid in installments and on such terms as may be stipulated by the bank the security as held hitherto shall continue to be subsisting and the conditions as to term loans herein shall apply to the said loan subject to such changes as may be stipulated by the bank. The term-loan will be repayable by installments as stipulated in the Fourth Schedule hereunto attached and provided that in case of default in payment of any of the installments or any part thereof, or any other irregularity on the part of the borrower, the entire balance then outstanding with interest cost, commissions and charges shall, if the bank so chooses, at once become due and payable."

17. In this clause, it is specified that the borrower(s) shall on demand forthwith pay to the bank the outstanding(s) owing to the bank in respect of the loans inclusive of interest, commissions, costs, charges and expenses. To safeguard the loan amount granted to the borrowers, the banks are insuring the loans. The expression "in respect of" is of wider connotation having very wide amplitude. Thus, the loans granted to the borrowers are being insured with the insurance companies, any charges must be borne by the borrowers. Similarly, due to non-

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payment by the borrowers, any expenses incurred by the bankers, the borrowers have to meet the expenses which are incurred. It is, thus, clear that there is sufficient nexus between the borrowers and the Deposit Insurance and Credit Guarantee Corporation as the loan amount is insured with the credit banks. Thus, according to us, the guarantee fees and the legal expenses claimed by the appellant-bank are covered under clause III of the agreement for hypothecation and the borrower is liable to pay the same. In view of this, the appellant-bank is also entitled to recover the guarantee fees of Rs. 2,464.92 and the legal expenses of Rs. 3,045.85 from the respondents.

18. In the result the appeal is allowed. The respondents/defendants are directed to pay jointly and severally the guarantee fees of Rs. 2,464.92 and the legal expenses of Rs. 3,045.85 in addition to the decretal amount of Rs. 21,976.88 to the plaintiff-bank along with interest at 6% per annum from September 22, 1988. It means the claim of the plaintiff-bank of the amount of Rs. 27,487.65 is decreed, after giving credit for Rs. 33,500 deposited by the respondents/ defendants during the pendency of the suit. Under the facts and circumstances of the case, the parties to bear their own costs of this appeal.

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