(2001) 08 DEL CK 0207

In the Delhi High Court

Case No : Suit No. 2442 of 1994

State Bank of Mysore APPELLANT

Vs

Precision India and Others RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Citation : (2001) 08 DEL CK 0207

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Madhu S. Dahiya, for the Appellant;

Judgement

V.S. Aggarwal, J.—The present suit has been filed by the State Bank of Mysore, hereinafter described as the plaintiff against the defendants M/s Precision India & Ors. for recovery of Rs. 7,69,831.45.

2. The facts alleged are that defendant No. 2 is the proprietor of defendant No. 1. Defendant nos. 3 and 4 are the guarantors in respect of the dues of the plaintiff. Defendant no.1 through its proprietor was availing the cash credit (hypothecation) limit from the plaintiff bank. It was enhanced to Rs.3 lakhs on 21st September, 1983. To avail of the said limit defendant No. 2 had executed the documents (a) a demand promissory note for Rs. 3 lakhs (b) DPN delivery letter and (c) agreement of hypothecation executed by defendant Nos. 1 and 2 hypothecating goods stated in schedule in favor of the bank valued approximately at Rs. 4,20,000/-. Defendants 1 and 2 had also given a letter of revival of the said cash limit on 21.5.1990 in the prescribed form. It was confirmed. In this process Rs. 5,49,943.00 were due to the plaintiff besides interest of Rs.6104/- from 1.0.1994 till the date of the filing of the suit. Another cash credit limit for Rs. 70,0000/- was granted to defendants 1 and 2, with defendants 3 and 4 as guarantors. Similar documents were executed and facility was availed. Hence the present suit has been filed. Notice had been issued but the defendants had been proceeded ex parte. The evidence has bee led by way of filing of the affidavit.

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3. The affidavit has been filed of Shri J K Dubey, Chief Manager, State Bank of Mysore. He has stated that he has seen Shri N.K. Sen Gupta write and sign and he was the Chief Manager of the plaintiff. He identified his signatures on the plaint. This indicates that suit has been filed by the Chief Manager who ad been so authorised.

4. The evidence further indicates that defendant No. 1 is the proprietary concern of defendant No. 2. Defendant Nos. 3 and 4 had stood as the guarantors. Defendant No. 2 had been granted enhanced cash credit limit of Rs.3 Lakhs for which he executed a promissory note Ex. P2 signed by defendants 1 and 2. The Agreement of Hypothecation is Ex. P2 to Ex. P4. The amount as such had been withdrawn and is due to the plaintiff. The regular accounts book also lend support to this fact, a copy of which was Ex. P12. These facts clearly indicate that the amount as such is due which has not been paid despite the service of notice.

5. For these reasons the civil suit is decreed ex parte against the defendants for sum of Rs. 7,69,891/- on basis of the first cash credit and the second cash credit facility with interest at the rate of Rs.18% per annum from the date of the filing of the suit till the payment is made.

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