

(2014) 01 DEL CK 0116

In the Delhi High Court

Case No : Regular Second Appeal No. 56 of 2006

Subhash Chand and Another

APPELLANT

Vs

State Bank of Patiala and Another

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 4 AD 552 : AIR 2014 Delhi 82 : (2014) 3 BC 266 : (2014) 208 DLT 339

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Shekhar Prit Jha, Mr. Vikrant Bhardwaj and Mr. Sunil Puri, for the Appellant; Narinder Pal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—In the present Regular Second Appeal, the following substantial question of law was framed on 27.1.2012:-

Whether the acknowledgment of debt by principal debtor would not extend limitation qua the guarantor?

Appellants are the guarantors. Respondent no. 1/plaintiff gave a loan to the principal borrower in the year 1991 for which the appellants signed the deed of guarantee on 31.10.1991. The principal borrower/defendant no. 1 signed the balance confirmatory cum acknowledgment on 21.7.1994 and suit was filed by the respondent no. 1/bank within three years thereafter on 6.6.1997.

2. Appellants who are guarantors contended that the suit against them is barred by limitation inasmuch as prior to the acknowledgment given by the defendant no. 1/principal borrower on 21.7.1994 demands were raised upon the appellants by the respondent no. 1/bank and therefore suit not having been filed within three years from such demands the same is barred by limitation.

3. In the present case, the guarantee in question which has been executed by

the appellants, contains the following clauses:-

2. We the undersigned Sh. Gulab Chand, Subhash Chand and Faujdar hereby guarantee to the said Bank the payment on demand of all moneys at any time and from time to time thereafter due to the said Bank by the Borrower in respect of the said accommodation with interest thereon at 1/2% above/below State Bank of India Advance rate rising and falling therewith, with a minimum of the rate of 18.5 per cent per annum from the date of demand and the due performance and observance by the borrower of all the terms pertaining to the accommodation aforesaid and the payment of all costs and expenses incurred by the said Bank relation to the premises and we/I also agree to pay and make good to the said Bank on demand all losses, costs, damages and expenses occasioned to the said Bank by reason of the non-payment of the said moneys, costs and expenses or any part thereof or the breach or non-performance or non-observance of any of the terms aforesaid.

7. We/I further agree that the guarantee herein contained is a continuing one for all amounts due to the Bank by the Borrower under or in respect of the aforesaid advance granted as aforesaid as also for all interest, cost and other moneys which may from time to time become due and remain unpaid to the Bank hereunder.

10. We/I hereby further agree and undertake forthwith on demand made by the Bank to deposit with the Bank such sum or security or further sums of securities as the Bank may from time to time specify for the due fulfillment of our/my obligations under this guarantee and any security so deposited with the Bank may be sold by the Bank after giving to us/me a reasonable notice of the sale and the said sums or proceeds of sale of the securities be appropriated in or towards satisfaction of the said obligation and liability arising out of non-fulfillment thereof by us/me.

(emphasis added)

4. A reading of the aforesaid clauses shows that not only the guarantee is a continuing guarantee but the payment which is to be made to the bank has to be on demand by the respondent no. 1/bank. In a case such as the present the suit against the appellants/guarantors will be very much within limitation because as against the principal borrower the suit became barred by limitation only on 21.7.1997, and the suit was filed before that date on 6.6.1997.

5. Learned counsel for the appellants sought to place reliance upon para 14 of the judgment in the case of Syndicate Bank Vs. Channaveerappa Beleri and Others, to argue that once the liability against the principal borrower is barred by time, the liability against the guarantor cannot be revived by making of a demand with respect to a time barred debt given to the principal borrower. Para 14 of the judgment in the case of Syndicate Bank (supra) reads as under:-

14. We have to, however, enter a caveat here. When the demand is made by the

creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful:

Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1.4.1991. Let us further say a demand is made by the creditor against the guarantor for payment on 1.3.1993. Though the limitation against the principal debtor may expire on 1.6.1994, as the demand was made on 1.3.1993 when the claim was "live" against the principal debtor, the limitation as against the guarantor would be 3 years from 1.3.1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 1.6.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.9.1994 would not be valid or enforceable.

Be that as it may.

6. There is no quarrel to the aforesaid proposition of law but in the present case the suit is very much within limitation so far as principal borrower is concerned. The suit has been filed on 6.6.1997 i.e. before 21.7.1997 being the last date of three year period commencing from acknowledgment of debt by the defendant no. 1/principal borrower on 21.7.1994. In fact, the judgment relied upon by the appellants goes against the appellants themselves and this is clear from paras 9 to 13 of the judgment and which paras read as under:-

9. A guarantor's liability depends upon the terms of his contract. A "continuing guarantee" is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have

referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

10. Samuel (supra), no doubt, dealt with a continuing guarantee. But the continuing guarantee considered by it, did not provide that the guarantor shall make payment on demand by the Bank. The continuing guarantee considered by it merely recited that the surety guaranteed to the Bank, the repayment of all money which shall at any time be due to the Bank from the borrower on the general balance of their accounts with the Bank, and that the guarantee shall be a continuing guarantee to an extent of Rs. 10 lakhs. Interpreting the said continuing guarantee, this Court held that so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation could not be said to have commenced running.

11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.

12. We will examine the meaning of the words "on demand". As noticed above, the High Court was of the view that the words "on demand" in law have a special meaning and when an agreement states that an amount is payable on demand, it implies that it is always payable, that is payable forthwith and a demand is not a condition precedent for the amount to become payable. The meaning attached to the expression "on demand" as "always payable" or "payable forthwith without demand" is not one of universal application. The said meaning applies only in certain circumstances. The said meaning is normally applied to promissory notes or bills of exchange payable on demand. We may refer to Articles 21 and 22 in this behalf. Article 21 provides that for money lent under an agreement that it shall be payable on demand, the period of limitation (3 years) begins to run when the loan is made. On the other hand, the very same words "payable on demand" have a different meaning in Article 22 which provides that for money deposited under an agreement that it shall be payable on demand, the period of limitation (3 years) will begin to run when the demand is made. Thus, the words "payable on demand" have been given different meaning when applied with reference to "money lent" and "money deposited". In the context of Article 21, the meaning and effect of those words is "always payable" or payable from the moment when the loan is made, whereas in the context of Article 22, the meaning is "payable when actually a demand for payment is made".

13. What then is the meaning of the said words used in the guarantee bonds in question? The guarantee bond states that the guarantors agree to pay and satisfy the Bank "on demand". It specifically provides that the liability to pay

interest would arise upon the guarantor only from the date of demand by the Bank for payment. It also provides that the guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Bank by the borrower. The terms of guarantee, thus, make it clear that the liability to pay would arise on the guarantors only when a demand is made. Article 55 provides that the time will begin to run when the contract is "broken". Even if Article 113 is to be applied, the time begins to run only when the right to sue accrues. In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by the Bank and it was refused by the guarantors. When a demand is made requiring payment within a stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

7. A reading of the aforesaid paras shows that in the facts of the present case, the terms of the guarantee which have been reproduced above, is identical with the case of Syndicate Bank (supra) and therefore the liability against the guarantors herein cannot be said to be time barred. Acknowledgment of debt by the principal borrower waives the earlier demands made against the guarantors because by acknowledgment executed there is no default of the principal borrower and existence of which is a sine qua non for the liability of the guarantors to commence. Once the suit against the principal borrower is held to be within limitation, suit against the appellants/guarantors is also within limitation, inasmuch as suit is not filed as against the appellants/guarantors after three years of making of the demand after the signing of the acknowledgment of debt letter dated 21.7.1994.

8. The substantial question of law is accordingly answered in favour of the respondent no. 1/bank and against the appellant. In fact, I may note that this appeal is till date not admitted and therefore no substantial question of law needs to have been framed, but since however the same is framed the same is answered as above. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.