

(2001) 07 KAR CK 0014

In the Karnataka High Court

Case No : Regular First Appeal No. 481 of 1998

Union Bank of India

APPELLANT

Vs

Monin Enterprises and Another

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Contract Act, 1872 — Section 127

Citation : (2001) 4 KCCR 2408

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : R. Chandrashekar, for the Appellant;

Judgement

K.L. Manjunath, J.—This appeal is by the Plaintiff-Bank. Plaintiff-Bank filed a suit for the recovery of Rs. 1,13,401.57 with cost and future interest at 16.5% p.a., compounded quarterly from the date of suit till the date of realization of the decretal amount.

2. According to the plaint averments, that the 1st Defendant has availed the cash credit loan facilities from the Plaintiff-Bank. According to the plaint averments, Bank extended the facility to the 1st Defendant on 17.11.1981 for a sum of Rs. 10,000/- and the same was enhanced to Rs. 25,000/- on 15.7.1982 and from 25,000/- to 30,000/- on 27.4.1983 and finally, it enhanced the amount to Rs. 45,000/- on 8.12.1983. On 14.5.1984, the 2nd Defendant stood as a guarantor for due payment to be made by the 1st Defendant. Since the Defendants did not pay the amount, the suit has been filed for the recovery of the said amount. The Defendant No. 1 entered appearance and filed the written statement. He has denied the whole transaction and according to him, he has not availed the said facilities. Alternatively, he pleaded to permit him to pay the decretal amount on easy instalment at Rs. 100/- per month. The Defendant No. 1 has also denied the execution of balance confirmation letter dated 8.3.1984, 9.7.1984, 26.7.1984, 9.7.1987 and 25.6.1988.

3. The 2nd Defendant appeared before the Court and filed the written statement contending that he has not stood as a guarantor in favour of the 1st Defendant. According to him, he has not executed the guarantee deed dated 14.5.1984 in favour of the Bank or on behalf of the 1st Defendant. It is contended by him that the Plaintiff has not granted the loan facilities to the 1st Defendant based on the deed of guarantee executed by the 2nd Defendant. He further says that his signatures have been obtained by the Bank when he approached the Bank for grant of loan for his business. By misusing the innocence of the Defendant No. 2, Plaintiff has filed the suit contending that he has stood as guarantor for the 1st Defendant. Alternatively, he also feels that there is a gross negligence on the part of the Bank in not taking suitable steps to recover the money from the 1st Defendant and that the confirmation letter even if it is executed by the Defendant No. 1, the same is not binding on him.

4. Based on the above pleadings, the following issues were framed by the trial Court:

ISSUES

1. Whether the Plaintiff proves that Defendant-1 availed cash credit facility on 17.11.1981 to 8.12.1983 amounting to Rs. 45,000/- as principal borrower?

1(a). Whether Plaintiff proves that Defendant No. 2 is a guarantor to the said loan transaction?

Note: Issue No. 1 is recast now as Issue No. 1 and 1(a).

2. Whether the Plaintiff-bank further proves that the 2nd Defendant, has executed the suit guarantee bond on 14.5.1984 in respect of the suit loan transaction, admitting his joint and several liability with Defendant No. 1?

3. Whether Plaintiff-Bank further proves that the 2nd Defendant is bound by the alleged execution of the balance confirmation letters dated 3.8.1984, 9.7.1984, 26.7.1984, 7.7.1987 and 23.6.1988 by the 1st Defendant?

4. Whether the 2nd Defendant proves that the Plaintiff-bank is guilty of gross negligence in not taking timely action against the 1st Defendant to recover the suit loan?

5. Whether the suit of the Plaintiff -bank is barred by time?

6. Whether the Plaintiff-bank is entitled to the reliefs sought?

7. What order or decree?

Additional Issues:

1. Whether Defendant No. 2 proves that Plaintiff--bank obtained his signatures on guarantee bond by mis-representation and fraudulently without binding on him?

2. Whether the Defendant No. 2 proves that the alleged guarantee bond is void inoperative and not binding on him?

5. The Plaintiff examined three witnesses and 2nd Defendant has been examined as PW-1. After appreciating the oral and documentary evidence of the parties, the trial Court has decreed the suit against the 1st Defendant only for a sum of Rs. 1,13,401.57 and the cost of the suit was not awarded in favour of the Plaintiff-Bank. Therefore, being aggrieved by the Judgment and Decree of the trial Court, the present appeal is filed requesting this Court to grant the decree against the 2nd Defendant also and to award the cost of the suit.

6. I have heard the learned Counsel for the parties. According to the learned Counsel for the appellant-Bank that the deed of guarantee executed by the 2nd Defendant on 14.5.1984 is in respect of past consideration. So, any document executed by the 2nd Defendant-Bank in respect of the past consideration passed on to the 1st Defendant has to be considered as valid consideration and the said document has to be treated as a valid deed of guarantee. He relied upon a Judgment of this Court reported in Jayakunvar Manilal Shah Vs. Syndicate Bank, . Learned Counsel, relying upon the said Judgment and also considering the fact that the 2nd Defendant has admitted his signature on Ex.P.3, he contends that the trial Court has committed an error in holding that Ex.P-3 has not been executed by the 2nd Defendant to advance the loan by the Bank in favour of the 1st Defendant.

7. Per contra, learned Advocate for the Respondent contends that Ex.P-3 cannot be considered as a deed of guarantee as the said document has not been executed by the 2nd Defendant to confirm the past consideration and to indemnify the Bank on behalf of the 1st Defendant. According to the learned Advocate for the 2nd Defendant that the Ex.P-3 has been obtained by the Bank in the circumstances narrated by the 2nd Defendant in the written statement and the said document cannot be considered as a deed of guarantee in view of Section 127 of the Indian Contract Act.

8. Considering the rival points urged by the learned Advocates, the only point that arises for consideration in this appeal is:

Whether 2nd Defendant has executed Ex.P-3 confirming the past consideration passed on to the 1st Defendant by the Plaintiff-Bank? If so, 2nd Defendant is also liable to satisfy the suit claim?

9. It is not in dispute that the Plaintiff-Bank has extended the loan facility to the 1st Defendant at the instance for Rs. 10,000/- on 17.11.1981 and the said limit was enhanced to Rs. 25,000/- on 15.7.1982 and further, the same was enhanced to Rs. 30,000/- on 27.4.1983 and on 8.12.1983 to Rs. 45,000/-. As per the plaint averments, it is not the case of the Plaintiff-Bank that the said loan was advanced to the 1st Defendant on the security of any guarantee. While sanctioning the said limits, that the Defendant No. 1 was not called upon to furnish a surety or security. Therefore, it is clear that the loan was not

sanctioned in favour of the 1st Defendant with a specific condition that the 1st Defendant should furnish a guarantor or a security for the due discharge of the said loan amount. Now, in this background, let me examine Ex.P-3. Ex.P-3 is executed by the Defendant No. 2. According to him, his signatures have been obtained by the Bank under different circumstances. However, he has admitted his signatures on Ex.P-3. Ex.P-3 is dated 14.5.1984. According to the plaint averments, the loan limit was enhanced to Rs. 50,000/- on 8.12.1983 itself. PW-1 who has been examined on behalf of the Plaintiff-Bank, has clearly admitted that even before 8.12.1983, the Defendant No. 1 was permitted to draw the said amount and according to him, on 8.12.1983, the Defendant No. 1 had drawn an amount of Rs. 45,637.47. So, it is clear that the Bank has permitted the 1st Defendant to draw an amount of Rs. 45,637.47 even much prior to sanctioning the limit of Rs. 45,000/-. It is not in dispute that on 8.12.1983, the limit is enhanced to Rs. 45,000/-. It is not the case of the Plaintiff- Bank that the 1st Defendant was called upon to furnish any surety or security before sanctioning this loan. Even the PW-1 has not stated any thing about the security to be furnished by the 1st Defendant in favour of the Bank.

10. When we look into Ex.P-3, 2nd Defendant has not executed the deed of guarantee in favour of the Plaintiff of the Plaintiff- Bank admitting the past consideration passed on to the 1st Defendant. Ex.P-3 is a printed form. Except filling the name of the 1st Defendant and the amount, the rest of the document is a printed form. Therefore, Plaintiff-Bank has made use of the printed form in its usual course. Generally, such documents will be obtained along with the other loan forms to be executed by the principal borrower. In the same fashion, Ex.P-3 has come into existence. As per Section 127 of the Indian Contract Act, when a guarantee is executed for consideration, then the same is binding on the guarantor. Section 127 reads as follows:

Consideration for guarantee-Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving guarantee.

11. In the instant case, this Section is relied upon by both the Advocates. According to the Counsel for the appellant-Bank that Ex.P-3 has been executed in accordance with Section 127 of the Indian Contract Act, considering the past consideration passed on to the 1st Defendant by the Bank. According to him, the past consideration is also good and a sufficient consideration to the surety for giving the guarantee. But, in the instant case, before enhancing the limit to Rs. 45,000/-, the Bank has permitted the 1st Defendant to draw the amount and thereafter, on 14.5.1984, namely, five months after 8.12.1983, Ex.P-3 has come into existence. In Ex.P-3, no where it is stated that the said document is executed by the Defendant No. 2 pursuant to the loan sanctioned in favour of the 1st Defendant on an earlier occasion. Therefore, it cannot be said that Ex.P-3 is executed by the 2nd Defendant for the past consideration made by the Plaintiff in favour of the 1st Defendant. Accordingly, the Judgment relied upon by the

learned Advocate for the appellant is of no assistance to the facts and circumstances of this case.

12. I have no quarrel over the legal proposition laid down in the said Judgment. But, in the instant case, Ex.P-3 has not been executed by the 2nd Defendant considering the past consideration. While executing Ex.P-3, it is not the case of the Plaintiff-Bank that the Defendant No. 1 had undertaken to furnish a guarantee or a surety at a later date. Even according to PW-1, the Defendant No. 1 had not called upon to furnish the surety. In the absence of the proper pleadings and evidence, I have to hold that Ex.P-3 has not been executed by the 2nd Defendant acknowledging the past consideration passed on to the 1st Defendant. So, in the circumstances, I find no merits in the appeal.

Accordingly, this appeal is dismissed as against the 2nd Defendant.

The other claim of the Bank is that the cost has not been awarded against the 1st Defendant, is required to be considered. It is not in dispute that the 1st Defendant has availed the loan. Though in the written statement, he has denied, he has not stepped into the witness box. The Bank has proved the loan transaction between the Bank and the 1st Defendant. Since Defendant No. 1 did not discharge the loan amount, the Bank was forced to approach the Court. Therefore, the Plaintiff-Bank is entitled for the cost against the Defendant No. 1. In the result, the appeal is allowed in part and the Judgment and Decree of the trial Court is confirmed in regard to the dismissal of the suit against the 2nd Defendant.

Further, the 1st Defendant shall make good the cost to the Plaintiff only in the trial Court and parties shall bear their costs in this appeal.