
(2000) 07 DEL CK 0163

In the Delhi High Court

Case No : Suit No. 152/87

Union Bank of India

APPELLANT

Vs

M/s. Indian Project Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Citation : (2000) 5 AD 480

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. S.C. Chopra, for the Appellant;

Judgement

Mukul Mudgal, J.—This is a suit on behalf of the plaintiff-Bank under Order xxxvII CPC, seeking recovery of Rs.2,52,166.20/- along with pendente lite interest.

2. The suit arises from a claim by the plaintiff-Bank payable by the defendants for providing Packing Credit Account facility of Rs. 1 lacs on 26.5.1981 and the after from time to time when the defendants operated the account and the cause of action arose in favor of the plaintiff on the failure of the defendants to clear the account. The cause of action further arose on 25th June, 1983 when the plaintiff remitted the Bank Guarantee amount to Dacca and on 10.2.83, 12.1.83, 10.1.84 and on 14.12.85 when the defendants admitted the claim of the plaintiff-bank and failed to honour their commitment of repayment.

3. The defendants 1,3 & 4 had not put in their appearance despite service. Accordingly, an ex-parte decree for Rs.2,52,166.20 with costs Along with interest was passed on 28th April, 1989 in favor of the plaintiff and against the defendants 1,3 & 4. Subsequently a decree was passed against defendant No.2 vide order dated 12.3.1991. Thereafter defendant No.3 moved an application for setting aside the ex-parte decree. The ex-parte decree was set-aside and subsequently on 25th March, 1998 the defendant No.3 was allowed leave to defend the suit. However, the defendant No.3 did not appear thereafter and as such he was proceeded ex-parte by Order dated 13th July, 1998 and the plaintiff-

Bank was directed to file ex-parte evidence by way of affidavit. To prove its case, the plaintiff-Bank has filed the evidence by way of Affidavits dated 3rd March, 1999, 5th March, 1999 & 18th August, 1999, of Shri K.C. Mehrotra, Branch Manager as PW.1 and Shri P.N. Bansal, Chief Manager as PW.2 Along with documents.

4. The plaintiff-Bank has filed the following documents to prove its case:

SL. Description Exhibit Nos. Nos. 1. Credit Information dt. 9.5.81 Ex. PW.1/1 2. Credit Information Ex. PW.1/2 3. Credit Information dt. 7.5.81 Ex. PW.1/3 4. Credit Information dt. 9.5.81 Ex. PW.1/4 5. Memorandum & Articles of Association of Indian Projects Pvt. Ltd. Ex. PW.1/5 6. Power of Attorney dt. 3.9.1974 Ex. PW.2/1 7. Letter of Guarantee dt. 26.5.1981 Ex. PW.2/2 8. Promissory Note dt. 23.6.1985 Ex. PW.2/3 9. Promissory Note dt. 23.6.1985 Ex. PW.2/4 10. Statement of Accounts Ex. PW.2/5

By its affidavit of evidence and the documents exhibited, the plaintiff-Bank has proved the averments made in the plaint. There is no rebuttal of these pleas.

5. Accordingly, the plaintiff-Bank is entitled to a decree with costs. The suit is decreed with costs as prayed. A decree is passed in favor of the plaintiff-Bank and against defendant No.3 in the sum of Rs.2,52,166.20/- with pendente lite and future interest @ 17.5 per cent on Rs.1,98,037.45 and 18% per cent on Rs.54,128.75 from the date of the filing of suit, i.e., 13th January, 1987 till realization & a further interest @ 12% per cent per annum from the date of decree till the date of realization as the suit arises from a commercial transaction. The plaintiff-Bank shall be entitled to costs. Decree sheet be drawn up accordingly.

6. The suit is accordingly disposed of.