
(2019) 02 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil First Appeal No. 35 Of 2014

Vishal Sachdeva And Ors

APPELLANT

Vs

State Bank Of Bikaner & Jaipur

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Indian Contract Act, 1872 — Section 25(3)

Code Of Civil Procedure, 1908 — Order 41 Rule 11, Order 41 Rule 11(1)

Citation : (2019) 02 RAJ CK 0013

Hon'ble Judges : P.k. Lohra, J

Bench : Single Bench

Advocate : Arvind Samdariya, Jagdish Vyas

Final Decision : Dismissed

Judgement

By the instant appeal, appellant-defendants have challenged judgment and decree dated 4th of October, 2013, passed by Additional District Judge No.2, Bhilwara in Civil Suit No.30/2012 (158/12). Learned trial Court, by the judgment, while granting the relief and partly allowing suit of the respondent Bank directed appellant-defendants to pay a sum of Rs.55,619 jointly and severally with interest thereon @14.85% from the date of filing of the suit till realization so also the costs and accordingly decree was prepared.

Just to shirk-off their responsibility to pay the legitimate dues of Bank, after sanction of loan by putting the bank machinery in motion and getting issued drafts for their purpose, the plea of the appellant-defendants is that the amount sanctioned by the Bank was never utilized and the drafts got issued were deposited back and not encashed. On account of non-payment of the dues of interest etc the bank was constrained to file a civil suit to recover its amount but despite a decree passed against them they have not paid the outstanding amount of Bank and have preferred the present appeal.

The facts, apposite for the purpose of this appeal, are that respondent-plaintiff

Bank filed a suit against appellant-defendants for recovery of Rs.63,003 on the ground that it had sanctioned study loan of Rs.6 lakhs in the year 2003 in favour of defendant Nos.1 & 2 and defendant Nos.3 & 4 stood as guarantor to the said loan and they entered into agreement and completed guarantee formalities. Thereafter, at the instance of defendants the Bank issued two drafts on 10.12.2003 and 13.04.2004 in Canadian Dollars but the draft were later on returned back to the Bank on 18.12.2003 and 02.03.2006 respectively. The Bank owed a sum of Rs.63,003 to the defendants and for its realization, notice was issued but the defendants failed to discharge their liability. When the amount due to the Bank was not paid, the Bank ultimately filed the civil suit against them on 27.04.2012 for recovery of the outstanding amount and interest thereon till realization.

Defendant Nos.1 & 2 filed joint written statement refuting all the averments made in the plaint and stating inter-alia that the drafts got issued from the Bank were never utilized and they did not use money of the Bank as such they are not required to pay any amount to the Bank. It was further pleaded that the latter draft was returned back to the bank on 11.04.2006 but the same was deposited in the loan account of defendants on 20.08.2006. They denied their liability for the interest of this period of about four months. Likewise, defendant Nos.3 & 4 also filed their joint separate written statement echoing the averments of defendant Nos.1 & 2 and they also denied their liability to the outstanding sum of the Bank.

Learned trial Court, on the basis of pleadings of rival parties, settled issues for determination, and the parties led their evidence. The plaintiff-Bank, in support of its case, examined PW1 Sunil Kumar Garg and exhibited 35 documents. In defence, from the side of appellant-defendants, DW1 Tarsem Kumar appeared in witness box, however, no document was tendered in evidence.

Learned trial Court, thereafter, heard final arguments and after discussing the evidence threadbare decided both the issues framed for determination, i.e., Issue Nos.1 & 2 in favour of respondent-plaintiff and against the appellant-defendants. Upon appreciation of evidence and other materials available on record and relying on documentary evidence tendered by respondent-plaintiff, the learned trial Court completely repudiated the stand of appellant-defendants

I have heard learned counsel for the parties and perused the impugned judgment.

Upon examining the findings recorded by learned trial Court on Issue Nos.1 & 2, I find no perversity in appreciation of evidence. As a matter of fact, the suit for recovery was filed by respondent-plaintiff Bank for the dues pertaining to loan sanctioned in favour of appellant-defendants, who after sanctioning of loan, got issued drafts for their purpose though the same were later on deposited back in the Bank without use or encashment. As the bank had sanctioned the loan and set apart/disbursed the requisite amount to the appellant-defendants after completion of requisite formalities, it was obligatory for the appellant-defendants

to make payment of interest and other charges. After issuance of drafts pertaining to sanctioned loan amount, the aforesaid money became fragile/non-yielding for the bank and therefore its claim of interest upto drafts were redeposited by the appellants was rightly found genuine in the impugned judgment. Money lying in financial institutions like public sector banks is a public money which cannot be allowed to go unproductive/non-yielding. The appellant-defendants despite notices and demand did not pay the outstanding amount and in such circumstances the Bank was forced to file the suit.

Learned trial Court, taking into consideration all these facts and circumstances of case and appreciating the evidence in right perspective, has rightly arrived at a conclusion on Issue No.1 favoring the Bank. It is also noteworthy that the learned trial Court has taken a very benevolent view while granting relief to the respondent-Bank inasmuch as it has slashed the amount of interest for the interregnum period of date of redeposition of drafts with the Bank and the entries made regarding the said deposit in the loan account.

As regards findings on Issue No.2, suffice it to observe that the learned trial Court has discussed the evidence and other materials on record threadbare and while relying on Ex.14, showing acknowledgment of the debt of the appellants as on 1st of June, 2011 treated the suit to be within limitation. The contention of the learned counsel for the appellant that learned trial Court has erroneously romped in Section 25(3) of the Indian Contract Act, 1872 (for short, 'Act of 1872') appears to be alluring but not of substance and the judgment relied on by learned counsel in this behalf in *Union of India Vs. Bikaner Textiles* [1961 R.L.W. 148] is also factually distinguishable. A bare reading of Clause (3) of Section 25 of the Act of 1872 makes it abundantly clear that it operates as an exception to the law of limitation and where there is an agreement between the parties under which there is an express promise to pay the time-barred debt, the suit cannot be held to be barred by limitation. The conditions necessary to make it a promise within Section 25(3) of the Act of 1872 are that it should be an express promise made in writing, be signed by the persons to be charged therewith; and be a promise to pay wholly or in part a debt, of which the creditor might have an enforced payment but for the law for the limitation of suits.

The learned trial Court, while construing Ex.14 has given due credence to all these conditions for extending benefit of limitation to the respondent-Bank. Therefore, the finding recorded by the learned trial Court on Issue No.2 cannot be faulted and the same also warrants no interference.

Although, in first appeals, normally the Courts summon the record of the trial Court but looking to the peculiar facts of the case and considering the amended provisions under Order 41 Rule 11 CPC, it is not necessary to call for the record of the learned trial Court. Reliance, in this behalf, can be placed on *U.P. Avas Evam Vikas Parishad Vs. Sheo Narain Kushwaha & Ors.* [(2011) 6 SCC 456], wherein the Hon'ble Apex Court, while interpreting the amended Rule 11(1) of Order 41 CPC, has held that dismissal of first appeal in limine is permissible, but

has put a rider that it is required to be dismissed by a reasoned order. The Apex Court made following observations in Para 7, 9 & 10:

7. It is evident from sub-rule (1) that an appellate court can dismiss an appeal after a preliminary hearing without calling for the records of the trial court and without issuing notice to the respondent, if it is satisfied that the appeal has no merit. Sub-rule (1) does not however state that such dismissal can be without assigning any reasons.

9. Sub-rule (4) of Rule 11 does not enable the High Court to dismiss first appeals by one-line orders to the effect that "appeal is dismissed" or by non-speaking orders. The order of the High Court dismissing the first appeal should be sufficiently reasoned to disclose the application of mind to the grounds of appeal and make out that the High Court was resorting to dismissal in limine as it found the appeal either to be vexatious or wholly without merit. Order 41 Rule 11 of the Code, while relieving the High Court from the obligation to write a "judgment", does not dispense with the obligation to assign reasons in brief, when summarily dismissing the appeal.

10. Unless the order is reasoned, there will be no way of knowing whether the appellate court has examined the appeal before deciding that it did not deserve admission. As a limited right to appeal to the Supreme Court is available against the appellate judgments of the High Court, unless there are reasons in the order of dismissal, it will not be possible for the Supreme Court to examine whether the High Court has rightly rejected the appeal. The appellant who has filed the first appeal in pursuance of a statutory right to file such appeal, paying necessary court fee, can legitimately expect reappreciation of the evidence and redetermination of the questions raised, unless the statute providing for the appeal provides otherwise.

While it is true that in first appeal, it is obligatory for appellate Court to re-appreciate evidence but then in the event of affirming finding recorded by trial Court, appreciation of the evidence by it need not be elaborated or with detailed discussion.

The appellate Court is simply required to weigh the evidence and not to encumber judgment with unnecessary details. A finding of the first appellate Court, agreeing with the trial Court on a particular issue, need not to re-appreciate evidence or its effects.

Reliance in this behalf can be placed on a judgment of Supreme Court in case of *Girja Nandini Devi and Ors. vs. Bijendra Narain Choudhury* (AIR 1967 SC 1124), wherein the Court held:

"It is true that the High Court did not enter upon a reappraisal of the evidence, but it generally approved of the reasons adduced by the Trial Court in support of its conclusion. We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of

the appellate court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

In totality, upon objective analysis of the evidence, unhesitatingly, in my opinion, the learned trial Court has meticulously discussed the entire evidence for recording its affirmative finding on Issue Nos.1 & 2 in favour of respondent-plaintiff. The findings and conclusion on both these issues is based on sound reasonings and therefore cannot be faulted.

In view of foregoing discussion, I feel disinclined to interfere with the impugned judgment and decree passed by learned trial Court.

Resultantly, the appeal fails and same is hereby dismissed.

Costs are made easy.