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Court : Jharkhand

Decided On : Nov-24-2000

Reported in : 2001(49)BLJR1055

Judge : Gurusharan Sharma, J.

Acts : Banking Law; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 52 - Order 20, Rule 11

Appeal No. : Appeal from Original Decree No. 111 of 1981(R)

Appellant : Md. Ehsan Khan and ors.

Respondent : Bank of Baroda

Advocate for Def. : P.C. Roy, Adv.

Advocate for Pet/Ap. : N.K. Prasad, Sr. Adv. and; Vijay Gopal, Adv.

Disposition : Appeal dismissed

Judgement :

Gurusharan Sharma, J.

1. One Gulam Murtaza approached Bank of Baroda, branch office at Ramgarh, for financial assistance in his Fireclay business. On 29.1.1993, the Bank sanctioned a cash credit limit of Rs. 20,000/- to him on execution of necessary documents and

on giving security for due repayment of the advance/outstandings to the Bank. Subsequently, on his approach the Bank raised limit of aforesaid cash credit advance to Rs- 30,000/- with effect from 11.6.1974.

2. A Demand Promissory Note for Rs. 30,000/- payable together with interest at the rate of 4-1/2% OBR, minimum 12-1/2% per annum with quarterly rests was executed by him alongwith an Agreement of Hypothecation of Goods. One Durlabhji Kotecha the guarantor, simultaneously executed a letter of continuing personal guarantee for Rs. 30,000/-.

3. Under the aforesaid account Gulam Murtaza availed of the said Cash Credit facilities advances and made certain part payments thereto from time to time. By letter dated 28.2.1977 both loanee and guarantor while confirming execution of securities by them, acknowledged their respective liability for a sum of Rs. 50,861.22 paise as on that date to the Bank under the aforesaid account.

4. However, Gulam Murtaza failed to operate the account satisfactorily and did not make payments to liquidate outstanding dues. Hence, on 3.1.1980, the Bank sent a Lawyer's notice, which was duly served on both the loanee and guarantor, respectively on 15.1.1980 and 7.1.1980. In reply to the said notice Gulam Murtaza said that the aforesaid account with the Bank would be paid by guarantor but none of them liquidated the same. Hence the suit.

5. Both Gulam Murtaza and Durlabhji Kotecha, defendant Nos. 1 and 2 appeared in the suit and filed separate written statements. Defendant No. 1 raised question of limitation and also alleged non-credit of certain amounts paid by him. It was asserted that sufficient materials already hypothecated were already available with the Bank for its satisfaction of the principal amount and, even if, it was not satisfied, the plaintiff-Bank could realise it from the guarantor, defendant No. 2.

6. Defendant No. 2 on the other hand pleaded that since he was running fireclay business on the strength of a written agreement executed in his favour by defendant No. 1, he was agreeable to make payment of the sum, which defendant No. 1 had taken from the Bank in Cash Credit Advance, in easy instalments of Rs. 1000/- per month, provided the plaintiff agreed to forego interest, which was

calculated on the loan amount upto the date of filing the suit as also future interest to be calculated thereon.

7. The trial Court decreed the suit, holding that Bank was entitled to get declaration that hypothecated goods would be the first charge for satisfaction of its dues and to get declaration that both defendants jointly and severally were liable to pay aforesaid sum of Rs. 80,714.32 paise to the Bank. Accordingly, it was held that Bank was entitled to realise the aforesaid amount jointly and severally from both the defendants and on failure, the hypothecated goods shall be the first charge for satisfaction of the decreetal dues. It was further held that the Bank was entitled to realise pendente lite and future interest till realisation @ Rs. 6% per annum on the decreetal amount of Rs. 80,714.32 paise.

8. Defendants, therefore, jointly filed present appeal. During the pendency of appeal defendant No. 1, who was appellant No. 1 herein, died and his heirs were duly substituted in his place.

9. Mr. N.K. Prasad, Sr. Counsel for appellants submitted that suit was barred by time and details of dues of Rs. 80,714.32 paise was also not given in plaint. It was further submitted that under Section 52 of the Code of Civil Procedure, the decreetal amount can be realised from heirs of deceased defendant No. 1 only to the extent, they inherited his assets. Lastly, it was submitted that under Order XX, Rule 11 of the Code, appellants may be given facility to pay decreetal amount in easy instalments.

10. So far as question of limitation in filing the suit was concerned, I find that on 28.2.1977, defendant Nos. 1 and 2 acknowledged their liability for Rs. 50,861.22 paise and, thereafter, the suit was filed on 25.2.1980. Hence, it was not barred by time, as limitation of 3 years would start from the date of aforesaid acknowledgement made by principal borrower and his guarantor.

11. So far as non-mentioning of details of total demand in plaint was concerned, I find that entire extract of ledger right from the day, cash credit facility was granted to defendant No. 1, till the date of filing of suit was brought on record and was marked Ext. 10. Defendants never challenged the entries made therein to be

incorrect.

12. It is not in dispute that after death of principal borrower all his heirs and legal representatives have been substituted in his place and all of them together have inherited estate left by him. So they are liable to satisfy the decree in full.

13. Present suit was filed in the year 1980 and decree under appeal was passed in 1981 and not a single paise has been paid towards Bank's due for such a long time. So at this stage appellants are not entitled to claim facility of paying decretal amount in easy instalments.

14. In the aforesaid circumstances, I find no reason to interfere with the impugned judgment and decree.

15. This appeal is, accordingly, dismissed, but without costs.

16. Appeal dismissed.