

Syndicate Bank Vs. Kumar Industries and Others

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Court : Delhi

Decided On : Mar-25-1992

Reported in : [1993]76CompCas591(Delhi)

Judge : Usha Mehra, J.

Acts : [Bankers' Books Evidence Act, 1891](#) - Sections 2(8); [Evidence Act, 1872](#) - Sections 34

Appellant : Syndicate Bank

Respondent : Kumar Industries and Others

Advocate for Def. : R.L. Kohli, Adv.

Advocate for Pet/Ap. : M.S. Dewan, Adv

Judgement :

Usha Mehra, J.

1. Syndicate Bank, through Shri N. S. Karjagi, the principle officer and attorney of the plaintiff, has instituted the suit against Messrs. Kumar Industries, through its proprietor, Shri S. C. Gupta, an also against the guarantor, Smt. Suman Gupta, for the recovery of Rs. 1,24,613.89.

2. According to the plaintiff, defendant No. 1 through defendant No. 2 approached the plaintiff-bank for the grant of an overdraft limit of Rs. 27,000 and a loan of Rs, 20,000 for purchase of machinery and a loan of Rs, 13,000, for a which defendants NO, 2 execute the documents as borrower and defendant No. 3 executed the documents as guarantor. The agreed rate of interest to be charged for the overdraft limit was 4.5 per cent per annum above the bank rate with a minimum of 13.5 per cent per annum compounded quarterly. The defendants had been jointly and several liable to repay these loans. They had acknowledged their liability up to July 19, 1979, but have failed to repay the outstanding amounts in spite of notice, hence the suit.

3. Summons in the suit were issued to the defendants who filed the written statement taking the plea, inter alia, that the suit is barred by time and that the documents for the overdraft limit and for the loans were got singed by the plaintiff-blank. The signature of the defendants have been utilised of the bank for fabricating the documents The rate of interest was never agreed to with quarterly rests. The loan for the purchase of machinery and the other loan had to carry simple interest at the rate of 13.5 percent. per annum.

4. Replication was filed, refuting the allegations made in the written statement.

5. On the pleadings of the parties, the following issues were framed :

(1) whether the suit has been filed by a duly authorised person

(2) whether the suit is barred by limitation

(3) whether the defendants had singed the documents in suit filed by the plaintiff with blanks unfilled If so, to what effect

(4) To what amount, if nay, is the plaintiff entitled on account of principle and interest

(5) Relief.

6. I have heard Mr. Dewan, counsel for the plaintiff, and Mr. Kohli, counsel for the defendants and have perused the documentary and the oral evidence placed on

record and my considered views on the above issues are as under :

Issue No. 1 : The burden of this issue was on the plaintiff and to my mind the plaintiff has discharged the same by proving on record the power of attorney, exhibit PW-1/14, executed by the bank in favor of Mr. N. S. Karjagi. Clause 15 of exhibit PW-1/14 empowers Mr. Karjagi to sign and verify the pleadings and file the same in court. This part of the testimony of PW. S. R. Ballar, that the bank had authorised Mr. Karjagi to verify and institute the suit has remained unrebutted and uncontroverted on the record. Mr. Kohli's contention that the original minutes book had been produced, to my mind, has no force. In fact, PW-1 was never subjected to any cross-examination when the power of attorney was exhibited, which is duly notarised. Therefore, I find that in view of exhibit PW-1/14, Mr. N. S. Karjagi was duly authorised and competent to sign, verify and institute this suit on behalf of the bank. Even otherwise being the principle decide this issue in favor of the plaintiff.

Issue No. 2 : So far as this issue is concerned it was not for the defendant to prove that the suit was not within time. But, to my mind, the defendant miserably failed to discharge the burden of this issue. On the contrary Mr. S. R. Ballar, PW-1, appearing as a witness for the plaintiff has proved that the defendants acknowledged their liability, vide exhibit PW-1/8 to exhibit PW-1/8 to exhibit PW-1/10, dated July 19, 1979, The suit has been filed on October 17, 1981. The loans were alleged to have been taken in October-November, 1976. The acknowledgment has been made during the limitation period. Therefore, under the law, the limitation gets extended and even otherwise the defendants have been repaying the amounts during this period after the acknowledgment on July 19, 1979, the plaintiff-bank could file the suit within three years and the suit having been filed on October 17, 1981, is, to my mind, within time. This issue is decided against the defendants.

Issue No. 3: The burden of this issue was also on the defendants to prove that the documents were blank and were not filled up when they were signed by the defendants, the defendants never appeared in the witness box to discharge the burden of this issue. On the contrary when Mr. S. R. Ballar, PW-1, was subjected to cross-examination, he refuted the contention of the defendant that the

documents were blank or were filled subsequently. Mr. Kohli contended that these documents were not filled up by the defendants, but were in fact filled up by the bank, which shows that they blank. This argument, to my mind, on the face of it is without force, because Mr. Ballar has explained the reasons why these documents were filled were filled up by the bank officials in order to avoid any mistake or omission in the filling of the forms, and after the forms were filled they were signed by the defendants. Mr. Ballar, PW-1, has further testified that these documents were signed in his presence by the defendants. he denied the suggestion that the blanks were filled up subsequently. As already pointed out above, on behalf of the defendants there is not even an iota of evidence to prove that these were signed by the defendants. the mere contention of counsel at the Bar that same ink has been used in all agreements and promissory note is of no consequence. It was a mater of fact as to whether these documents. The best persons to prove the same were the defendants themselves, but they have chosen not to appear in the witness box. On the other hand, the plaintiff, through PW-1 has denied that theses documents were filled up subsequently. there is nothing on record to disbelieve this part of the testimony of PW-1. I accordingly decide this issue against the defendants.

Issue No. 4 : The plaintiff relied upon the acknowledgment of liability by the defendants. However, in its written statement, the defendants denied the letters or the amount being still due-According to the defendants, the loan amounts were repaid, but the plaintiff has incorrectly depicted the same in the accounts and exorbitant rates of interest have been charged. The charging of compound interest has also been challenged. The correctness of the said accounts has been denied, In order to discharge the burden of this issue, the plaintiff adduced the evidence of Shri S. R. Ballar as PW-1. According to him, the defendants admitted the liability, vide their letters, exhibits PW-1/8 to exhibit PW-1/10. The statement of account he proved on record as exhibit PW-1/11 to exhibit 1/13. In the cross-examination, he admitted that the actual rate of interest mentioned in the agreement, exhibit PW-1/3, is 12.5 per cent. per annum and not 13.5 per cent., which has been charged from the defendants, the Explanationn for charging the interest as the rate of 13.5 per cent. with quarterly rests has been given by Mr. Ballar, it was no account of not going through the contents of the documents. According to him, there are printed

agreement lying in bulk and the officials have not much time to to through the same every time. He was questioned as to how the bank has charged the insurance premium. He could not show the basis for the same. He admitted that the rate of interest was to be charged per annum and that too at the rate of 12.5 per cent, whereas in the statement of accounts, compound interest has been charged on quarterly rest basis.

7. Mr. Dewan, appearing for the plaintiff, contended that under section 4 of the Banker's Book Evidence Act, 1891, the copy of accounts certified in accordance with section 2(8) of the Act is prima facie evidence and it does not require proof by production of cheques and vouchers, etc., relating to each entry, such a copy must be received as a prima facie evidence not only of the existence of such entries but also of the matters, transactions and accounts therein recorded. Since the amounts borrowed by the defendants on different occasions, vide exhibits PW-1/6 and PW-1/7, such a copy is admissible under section 4. It is sufficient compliance with law.

8. On the other hand, Mr. Kohli, appearing for the defendants, contended that even though the defendants have not led any evidence nor subjective PW-1 to any cross-examination regarding the statement of account, exhibit PW-1/11 to exhibit PW-1/13, still the plaintiff bank was under an obligation to prove each entry made in the statement of accounts. It was incumbent on the plaintiff to prove at whose instance the amounts were paid to various parties. Money has not been paid to the plaintiff. The bank cannot make the defendants liable by showing that these amounts have been paid to certain parties. Request of the defendants that amounts be paid to any individual or firm was required to be proved. It is a well settled principle of law that mere entries from the bank's books of account or mere copies thereof are not sufficient to charge the defendants with the liability. It is only when the defendants accept the correctness of such entries that the liability can fastened on them. In this case, the defendants in their written statement have categorically denied the correctness of these entries in the statement of account thereforee, even if these entries have been received in evidence no reliance should be placed on them. I have considered these submission of counsel and have perused the record and the evidence of PW-1, Shri S. R. Ballar. In the

statement of accounts. exhibit PW-1/11 to exhibit to exhibit PW-1/13, a certificate as required under section 4 of the Bankers' Books Evidence against the defendants. But the question still remains, whether these entries have been proved or not and are they sufficient to charge the defendants. The plaintiff has not been able to prove as to how the insurance premium has been charged from the defendants and how the rates of interest of 13.5 per cent with quarterly rest had been charged from the defendants when in the agreement, exhibit PW-1/3, the interest was to be charged at the rate of 12.5 per cent. per annum, but not with any quarterly rest. thereforee, so far as the loan against exhibit PW-1/3 is concerned the plaintiff could not have charged the interest at the rate of 13.5 per cent. with the quarterly rest, but could have charged simple interest only at the rate of 12.5 percent per annum. So far as the insurance premium is concerned Mr. Ballar. PW-1, could not have how the same been charged. thereforee, even though the accounts have been exhibited as prima facie evidence, the mere entries in this regard in the books of account are not sufficient to charge the defendants with the liability, unless the correctness evidence. No evidence has been placed on record, by virtue of which it could be establish that the defendants agreed for payment of insurance premium and for what. thereforee, to my mind, the plaintiff could not charge the insurance premium from the defendants not these have entries been proved by any cogent and reliable evidence. Nor could be bank charged compound interest at the rate of 13.5 per cent. against the loan on the basis of agreement, exhibit PW-1/3 The bank will be entitled to the amount against exhibit PW-1/3. only at the rate of 12.5 per cent per annum interest and not with quarterly rests.

9. It is the defense of the defendants that each and every entry in the books of account has not been proved. The promissory note, exhibit PW- 1/1, indicates that the complete amount, as mentioned therein had been received by the defendants, whereas according to Mr. Ballar PW-1, only an amount of Rs. 3,500 was given to the defendant when this pronote was executed. It was further necessary for the plaintiff-bank to prove each and every entry in the books of account t establish that the amount of the defendants. In this regard, Mr. Kohli, learned counsel for the defendants, has placed reliance on the decision of the Supreme Court in the case of Chandradhar Goswami v. Gauhati Bank Ltd. : [1967]1SCR898a . So far as the

principle of law is concerned there cannot be any quarrel with the same. But the defendant does not realise that in the case in hand, it is not the entries alone which the bank is relying on, but the bank is also relying on the acknowledgment issued by the defendants from time to time, admitting their liabilities which tantamounts to the facts that these amounts were received by the defendants, otherwise why would the defendant admit their liability and execute letters of acknowledgment, exhibit PW-1/8 to exhibit PW-1/10? In the case before the Supreme Court, the bank in order to bring the case within limitation has shown repayment of Rs. 100 on a particular date. This fact was denied by the defendants. The bank as to prove this entry but failed to do so. Similarly, the bank had alleged that a limit loan of Rs. 16,000 was sanctioned, against which the defendants borrowed in their written statement as well as in their evidence and the plaintiff-bank could not prove that the amount of Rs 10,000 was borrowed by the defendants or that they paid Rs. 100 on a particular date. It is in this background that the Supreme court held that the original entries alone, under section 34 of the Bankers' Books Evidence Act, would not be sufficient to charge any person with the liability and as such copies produced under section 4 of the Bankers' Books Evidence Act obviously cannot charge any person with liability. there has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with the liability there under except where the person to be charged accepts the correctness of the books account and does not challenge them. Relying on this last observation of the Supreme Court one can say that in the present case also the defendant had accepted the correctness of the books of account when they issued the acknowledgment of liability letter, exhibit PW-1/8 to exhibit PW-1/10. this was corroborative evidence placed by the plaintiff-bank along with entries in the books of account under section 4 of the Bankers Books Evidence Act where were maintained in due course of business. Mr. Kohli, counsel for the defendants, had no Explanation as to how the defendants could admit the liability if they had not taken the amount or at their instance the amount had not been paid to other parties, as mentioned in the statement of account. The only defense taken By Mr. Kohli, that blank papers were got signed and have been completed into a letter of acknowledgment of liability, does not appeal to reason. As already discussed

above, the defendants have not come to the witness box to deny these acknowledgments of liability nor have they proved that these acknowledgment of liability when signed were blank. Mr. Ballar, PW-1, on the other hand, in his uncontroverted testimony proved that these letters of acknowledgment of liability were issued by the defendants and they were duly filled in his presence. To this there is no cross-examination. Hence, the letter of acknowledgment of liability having been proved on record, it cannot be said that the defendants are not liable or that the original entries in the books of account have not been properly proved.

10. Now, the question for consideration is to what extent the defendants are liable. On this, reference has been made to the guarantee letter, exhibit PW-1/3 which was executed in relation to the demand promissory note, exhibit PW-1/1. The demand promissory note indicates the rate of interest payable as 13.5 per cent., whereas the guarantee bond indicates the simple interest to be 12.5 per cent. Mr. Dewan, counsel for the plaintiff contended that the interest mentioned in the guarantee bond will be applicable only to the guarantor and not to the principal debtor because the principal debtor will be governed by the interest indicated in the demand promissory note, exhibit PW-1/1. I find no force in this submission of counsel for the plaintiff for two reasons. Firstly, the bank cannot charge different rates of interest from the guarantor and from the principal debtor for the same transaction. Secondly, in the letter of acknowledgment of liability issued on July 19, 1979, it is mentioned that the interest will be as per the agreement, and not as per the demand promissory note. Therefore, the principal debtor will only be entitled to pay simple interest at the rate of 12.5 per cent, as per the agreement, exhibit PW-1/3 and not as per the interest indicated in the demand promissory note, exhibit PW-1/1.

11. During the course of arguments, I had asked counsel for the plaintiff bank to furnish the statement of accounts calculating the simple interest at the rate of 12.5 per cent. Mr. Dewan has furnished the said statement of account, pursuant to which it is clear that the principal debtor will be liable to pay a sum of Rs. 64,731.95 as on October 17, 1981, i. e., the date of institution of the suit. Therefore, so far as defendants Nos. 1 and 2 are concerned a decree of Rs. 64,731.95 is passed against them. So far as defendant No. 3 guarantor, is

concerned, the decree for this amount cannot be passed against her. the guarantee bond, exhibit PW-1/3, clearly indicates that her liability was restricted to Rs. 47,00 including the interest. thereforee, against this transaction, based on the demand promissory note, the liability of the guarantor, defendant No. 3, is restricted only to the sum of Rs. 47,000 as against the liability of defendants Nos. 1 and 2 to the extent of Rs. 64, 731.95.

12. As regards the loan of Rs. 20,000 mentioned in exhibit PW-1/4 and loan of Rs. 13,000 taken, vide exhibit PW-1/5,, the defendants have admitted their liability on July 19, 1979, vide exhibit PW-1/9 and PW- 1/10 , which was during the limitation period, thereforee, all he defendants ar liable to pay the amount admitted, vide exhibit PW-1/9 and PW-1/9 with interest as agreed, vide agreement dated June 15, 1977, i. e., at the rate of 13.5 per cent. with quarterly rests. Vide exhibit PW-1/9 and PW-1/10 they have admitted the liability as on July 19, 1979 to the tune of Rs. 15,571.70 and Rs. 11,810.35 respectively.

13. The suit is accordingly decreed against the defendants for the loan transaction based on the demand promissory note to the tune of Rs. 64,731.95 against defendants Nos. 1 and 2 but for Rs. 47,000 against defendant No. 3, guarantor inclusive of interest As regards OSL(M) loan a decree of Rs. 17,412.50 is hereby passed in favor of the plaintiff and against the defendants with simple interest at the rate of 12.5 per cent pendente lite and future, till realisation.

14. Decree in terms of the above may be prepared.