

Canara Bank Vs. Perpetual Beers and ors.

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Court : Delhi

Decided On : Sep-20-1991

Reported in : I(1992)BC64; 45(1991)DLT549

Judge : Mohd. Shamim, J.

Acts : Banking Companies (Transfer Acquisition of Undertakings) Act, 1970

Appeal No. : Suit No. 133 of 1990

Appellant : Canara Bank

Respondent : Perpetual Beers and ors.

Advocate for Pet/Ap. : J.N. Aggarwal and; Mantsha Tyagi, Advs

Judgement :

Mohd. Shamim, J.

(1) This is a suit for recovery of a sum of Ri. 3,17,833.90 P. together with pendente life and future interest at the rate of 19% per annum. Brief facts which gave rise to the present suit are as under : that the plaintiff is a banking company duly constituted under the Banking Companies (Transfer Acquisition of Undertakings) Act of 1970 with Its head office at Bangalore in the State of Karnataka. It is as such entitled to acquire, hold and dispose of properties and to contract and sue and to be sued in Its own name. Sbr J. Ramani and Shri R. Ramchandran are Principal

Officers and the Managers of the plaintiff bank situated at R.K. Puram, New Delhi. They are as such duly authorised to sign and verify the present plaint and to institute the present suit. The said power has also been given to them through a power of attorney duly executed in their favor. Defendant No. 1 is a partnership firm consisting of Defendants Nos. 2 to 5. Defendant No. 1 is dealing with sale and trade of beer as well as in the collection and supply of empty beer bottles to various breweries. The defendant No. 6 is a guarantor in as much as he executed a personal guarantee in favor of the plaintiff bank for the repayment of the loan granted to the defendants Nos. 1 to 5. Consequently, all the defendants are jointly and severally liable for the suit amount. The defendants approached the plaintiff Bank in March, 1980 for the grant of a loan facilities as they wanted to augment their working capital for carrying on the business. Defendants Nos. 1 to 5 in connection therewith offered the personal guarantee of the defendant No. 6 for the repayment of loan to be granted to the defendant No. 1 and its partners. The plaintiff bank after having considered the request of the defendants agreed to grant loan facilities in the form of over-draft to defendant Nos. 1 and 5 on the personal guarantee of defendant No. 6. The defendants Nos. 1 to 5 in connection therewith executed a Demand Promissory Note to the tune of Rs. 100,000.00 on 16.3.1980 repayable with interest at 8% per annum above the Reserve Bank of India rate with a minimum of 17% compounded quarterly. The said Demand Promissory Note was delivered to the plaintiff Along with a letter dated 16.3.1980. Subsequently a request was made for the enhancement of the above said limit to the tune of Rs. 50,000.00. Request to that effect was made on 17.4.1980. The said request was acceded to and the loan was made repayable with interest at 17% per annum plus 2% over and above the agreed rate in case of default. The defendant No. 5 as partner of defendant No. 1 executed a Demand Promissory Note on 17.4.1980 in the sum of Rs. 1,50,000.00 in token thereof. The said loan was repayable with interest at 8% per annum above the Reserve Bank of India rate, and that with a minimum of 17% with quarterly rests. The defendant No. 6 guaranteed the repayment of the said loan up to the limit of Rs. 20,00,000.00 together with interest thereon at the rate of 8% per annum above the Reserve Bank of India rate, with a minimum of 17% per annum with quarterly rests in cases of default. In this connection defendant No. 6 executed and delivered the

agreement of guarantee dated 6.3.1980 to the plaintiff. The defendant-No. 2 furthermore a partner of defendant No. 1 executed and delivered a Demand Promissory Note dated 10.3.1983 continuing the overdraft facility. The amount outstanding against the defendants in connection with the said overdraft facility was to the tune of Rs. 1,74,598.13 P. on 12.2.1984, including interest at 17% per annum. The defendant No. 2 who is a partner of defendant No. 1 duly acknowledged the said liability to the plaintiff. The defendants further acknowledged and accepted their liability on 4.1.1987 towards overdraft facility in the sum of Rs. 2,15,415.45 P. together with Interest for the period ending 31.12.86 at 19% per annum with quarterly costs and agreed to pay, the same. Defendant No. 2 acknowledged the said liability on the said score also vide bids letter dated 12th October. 1989. A sum of Rs. 3,23,462.27 P. including ' telerestattherateofl9^ per annum with quarterly costs was outstanding against the defendants for the period ending 10.9.1989. The defendant No. 2 in his letter assured the plaintiff Bank that the said amount would be cleared In Installments by 30.10.89. However, despite several assurances and several reminders the defendants did not clear the said amount. A sum of Rs. 1,37,677.17 P. including Interest was outstanding against the defendants up to 8th. December, 1989. Since the defendants failed to clear the said amount the aforesaid liability was transferred to the Loan Post Due account on 19.12.1989 maintained by the plaintiff. The defendants were time I lable to pay a sum .of B& 3,17,833,90 P. on 7.1.1990 including interest at the rate of 19% per annum with quarterly costs. A copy of the Statement of account has been filed in token thereof. The defendants were served with notice dated 10.11.1989 by registered post by the plaintiff through their Counsel. The defendants have failed to pay the said amount despite repeated demands and the service of the notice. Hence, arose the necessity for the institution of the present suit.

(2) The defendants did not Just in any contest and the suit proceeded ex-parte against them.

(3) The plaintiff have filed an affidavit from by Shri N. Anand, Manager of the plaintiff Bank situated at R.K. Puram, New Delhi, wherein be has reiterated all the above averments mentioned In the plaint. Besides, the said affidavit the plaintiffs

have placed on record a power of attorney executed by the plaintiff bank in favor of Shri J. Ramani vide Ex. P. 1. Ex. P. 2 is a power of attorney executed by the Bank in favor of Shri R. Ramchandran. Ex. P. 3 is a Pronote executed by the defendants firm in favor of the plaintiff dated 16.3.1980. It is in the sum of Rs. 1,00,000.00 . Ex. P. 4 is letter from the defendant No. 5 in favor of the plaintiff bank. Ex. P. 5 is again a letter from Air Vice Marshal S. Raghavendran addressed to the plaintiff bank where through he has enclosed an agreement of guarantee executed by him in favor of the Bank whereby he held himself liable up to a limit of Rs. 2,00,000.00 . Ex. P. 6 is an agreement dated 16th March, 1980 executed by Air-Vice Marshal S. Raghavendran in favor of the Bank, where through he again held himself liable up to Rs. 2,00,000.00 to the bank in case of the failure of the other defendants. Ex. P. 7 is request for over draft facility. Ex. P. 8 is again a Pronote executed by the defendants in favor of the Plaintiff Bank, to the tune of Rs. 1,50,000.00 . Ex. P. 9 is a letter from the defendants to the plaintiff Bank where through they prayed for enhancement of overdraft facility by Rs. 50,000.00 . Ex. P. 11 is a Pronote in the sum of Rs. 50,000.00 executed by defendants in favor of the plaintiff. Ex. P. 13 is again a request for an overdraft facility up to a limit of Rs. 1,50,000.00 . Ex. P. 12 is a Pronote in the sum of Rs. 1,50,000.00 executed by the defendants in favor of the plaintiff. Ex. P. 14 is a letter from the defendants to the plaintiff where through they have delivered the Demand Promissory Note in the sum of Rs. 1,50,000.00 . Ex. P. 15 is an acknowledgement of the debt. It is dated 12.2.1984. It bears the signatures of Shri K.T. Abraham a partner of the firm, through which he acknowledged the liability of the defendants to pay to the plaintiff a sum of Rs. 1,74,895.12 P. Ex. P. 16 is again an acknowledgement of the debt by the defendant. It bears the signatures of Shri K.T. Abraham. By the said letter he undertook to pay a sum of Rs. 2,15,425.47 P. This is dated 4.1.1987. cc There is again a letter from Mr. Abraham to the plaintiff bank dated 12.10.89. Mr. Abraham through the said letter made himself liable to pay Rs. 3,23,462.27 in Installments to the plaintiff bank. There is absolutely nothing to rebut the above testimony as the defendants did not put in any contest. Hence, the plaintiffs are entitled to succeed. The suit for recovery of a sum of Rs.- 3,17,833.90 P. is hereby decreed with ex-parte costs in favor of a sum of Rs 3,17,833.90 p. is hereby decreed with ex-parte costs in favor of the plaintiff. The

plaintiff shall be entitled to pendente lite and 'future interest at the rate of 18% annum.

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