

Allahabad Bank Vs. Anil Kumar and ors.

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Court : Delhi

Decided On : Apr-18-2000

Reported in : 2000VAD(Delhi)647; 2000(3)ARBLR360(Delhi)

Judge : Mukul Mudgal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XXXIV

Appeal No. : Suit No. 1748/95

Appellant : Allahabad Bank

Respondent : Anil Kumar and ors.

Advocate for Pet/Ap. : Mr. T.K. Ganju and; Mr. Vinod Trisal, Advs

Judgement :

ORDER

Mukul Mudgal, J.

1. This is a suit on behalf of the plaintiff-Bank praying for passing a decree of Rs. 5,30,156/- along with pendente liter/future interest and also for passing a preliminary decree of sale in respect of the mortgaged property under Order XXXIV of CPC. The defendants were duly served but did not enter appearance and by the Order of this Court dated 12.11.1998, the defendants have been proceeded ex-parte.

2. The plaintiff-Bank is body corporate, constituted under the Banking Companies Act 5, 1970. The plaint is duly signed and verified by Shri Krishna Kumar Kanshal, Manager and Principal Officer of the plaintiff-Bank. who is authorised to sign and verify the plaint on behalf of the plaintiff-Bank.

3. It is averred in the plaint that the defendant No.1 as principal borrower, approached the plaintiff-Bank for financial assistance in the form of Term Loan Facility in the sum of Rs.2,53,272/- vide loan application dated 07.09.1988 (Ex. PW-1/1) for purchasing a truck. The plaintiff sanctioned a loan facility in the sum of Rs.2,40,000/- vide Sanction Letter (Ex. PW-1/2) duly acknowledged by defendant No.1 vide letter (Ex. PW01/3). The defendant No.1 in consideration of the said loan facility executed the loan documents as a security in favor of the plaintiff-Bank in the shape of medium Term Loan Agreement (Ex. PW-1/4) ; Affidavit (Ex. PW-1/5); Irrevocable Letter of Authority (Ex. PW-1/6); Demand Promissory Note (Ex. PW-1/7); Money Consideration Receipt (Ex. PW-1/8); Letter of Waivement (Ex. PW-1/9); another Demand Promissory Note (Ex. PW-1/10); Money Consideration Receipt (Ex. PW-1/11); Letter of Waivement thereof (Ex. PW-1/12), another Demand Promissory Note (Ex. PW-1/13); Money Consideration Receipt thereof (Ex. PW-1/14) & Letter of Waivement thereof (Ex. PW-1/15). It is also averred in the plaint that defendants 2 & 3 stood as Guarantors and executed Agreement of Guarantee (Ex. PW-1/16-17). The defendants agreed to pay an interest @ 12.5% per annum with quarterly losts. The defendant No.1 agreed to repay the entire loan facility in 36 monthly Installment of Rs. 6,670/- each with interest thereon and the first Installment was to commenced w.e.f. November, 1998. In addition to the above defendant No.1 also undertook to pay the increased rate of interest as per the directions of R.B.I and also agreed to produce the truck once in a month for inspection before the plaintiff-Bank.

4. It is also the plaintiff's case that as a security, defendant No. 3 with an intention to create Equitable Mortgage deposited Sale Deed (Exs. PW-1/20 & 21) with the plaintiff-Bank and mortgaged his property bearing No. B-927, Shastri Nagar, Delhi, Being Plot No. 26 measuring 200 Sq, Yds. situated in Village Neemri, Shastri Nagar, Delhi, In favor of the plaintiff-Bank by an Agreement of Mortgage dated 13.10.1988 (Ex. PW-1/18). The undertaking given by defendant No. 3 with respect

to mortgage aforesaid mortgage property is Ex. PW-1/19. Thereafter the loan facility was availed by defendant No.1 at different intervals and he purchased the Truck bearing No. DIG-7266 out of the loan facility availed from the plaintiff-Bank.

5. It is further the plaintiff's case that after availing the loan facility, the defendant No.1 failed to repay the regular monthly installments as undertaken by him, as a result of which plaintiff-Bank sent letters (Exs. PW-2/2, PW-2/3, PW-2/4, PW2/5, PW2/6, PW-2/7) and the copy of legal notices (Ex. PW-2/8, PW2/9, PW2/10) to call upon defendant No.1 to clear up his dues and maintain the financial discipline thereof. The U.P.C. receipt with respect to legal notice (Ex. PW-2/10) is Ex. PW-2/11 and the postal receipt thereof are Exs. PW-2/12, PW-2/13, PW-2/14. In a Balance Confirmation Letter dated 30.03.1990 (Ex. PW-2/15), the defendant No.1 has admitted the debit balance of Rs.2,67,291.70). Hence the plaintiff has filed the present suit under Order XXXIV of the CPC for the recovery of the amount due and for the sale of the mortgaged property against the defendants.

6. The defendant were proceeded ex-parte as per the Court,s Order dated 12.11.1998. Thereafter the plaintiff-Bank has filed evidence by way of affidavits of Mr. Vijay Kumar Rathore, Mr. Krishan Kumar Kansal and Mr. Jatinder Batra (Exs. PW -1,2 & 3), Officers of the plaintiff-Bank to prove its case. The averments made in the plaint have been supported by the aforesaid affidavits. The plaintiff has proved the following documents relied upon in support of its claim in the plaint, namely :

1. Loan Application dated

07.09.1988 Ex. PW-1/1

2. Sanction Letter Ex. PW-1/2

3. Defendant No.1's letter Ex. PW-1/3

4. Medium Term Loan Agreement Ex. PW-1/4

5. Affidavit Ex. PW-1/5

6. Irrevocable Letter of

Authority Ex. PW-1/6

7. Demand Promissory Note Ex. PW-1/7

8. Money Consideration Receipt Ex. PW-1/8

9. Letter of Waivement Ex. PW-1/9

10. Demand Promissory Note EX. PW-1/10

11. Money Consideration Receipt EX. PW-1/11

12. Letter of Waivement Ex. PW-1/12

13. Demand Promissory Note Ex. PW-1/13

14. Money Consideration Receipt Ex. PW-1/14

15. Letter of Waivement Ex. PW-1/15

16. Agreement of Guarantee Exs. PW-1/16-17

17. Agreement of Mortgage

dated 13.10.88 Ex. PW-1/18

18. Defendant No.3,s

Undertaking Ex. PW-1/19

19. Mortgage Sale Deed Ex. PW-1/20-21

20. Plaintiff's letters Ex. PW-2/2 to PW-2/7

21. Legal Notices Exs. Pw-2/8 to PW-2/10

22. U.P.C. Receipt of PW-2/10 Ex. PW-2/11

23. Postal Receipts Exs. PW-2/12 to PW-2/14

24. Balance confirmation

Letter dt. 30.3.90 Ex. PW-2/15

25. Affidavits of Evidence Ex. PW.1 to PW.3

There is no rebuttal to these pleas.

7. Accordingly, the plaintiff is entitled to a decree. The suit is decreed as prayed. A decree is passed for a sum of Rs.5,30,156/- in favor of the plaintiff-Bank and against the defendants with costs. The defendants jointly & severally are also directed to pay pendente lite interest from the date of filing of the suit, i.e., 25.7.1995 till the date of the decree to the plaintiff-Bank @ 17.50% per annum with quarterly rests in respect of the suit amount of Rs.5,30,156/-. The plaintiff-Bank is also entitled to interest at 12 per cent from the date of the decree till realisation as the transaction is of a commercial nature. This amount be paid within six months from today.

8. It is further directed that if the amount due as per this judgment is not paid by the defendants in terms of the preliminary decree within six months from today, the plaintiff-Bank shall be entitled to apply for a final decree against defendant No.3 for the sale of the mortgaged property bearing No.B-927, Shastri Nagar, Delhi, being Plot No.26, Measuring 200 Sq. Yds. situated in village Neemri, Shastri Nagar, Delhi, The proceeds of sale after the adjustment of the sale expenses be deposited into this Court and applied in Payment of the dues to the plaintiff-Bank with interest, costs as well as subsequent costs, charges, interest etc within six weeks from the date of such deposit. It is further ordered in case the sale proceeds do not satisfy the full decretal amount, the defendants shall nevertheless be jointly and severally liable for the balance decretal amount.

9. Decree sheet be drawn up accordingly.

The suit is thus disposed of accordingly.