
Shashi Addi-Chem Industries and Others Vs Punjab National Bank

Regular Second Appeal No. 719 of 1992

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 13, 1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 8 Rule 2#Evidence Act, 1872 " Section 34

Citation: (1995) 2 CivCC 241 : (1995) 111 PLR 129

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: Ashutosh Mohunta, for the Appellant; Surjit Kaur Taunq and K.K. Duggal and Naresh Parbhakar, for the Respondent

Final Decision: Allowed

Judgement

H.S. Bedi, J.

This is a defendants" second appeal against the concurrent findings of the Courts below decreeing the suit filed by the

Plaintiff-respondent and ordering the recovery of Rs. 1,83,737.83 from the defendant -appellants.

2. Appellant No. 2 Raj Kumar Saxena, who was the sole proprietor of firm appellant No. 1 M/s Shashi Addi-Chem Industries, Faridabad, was an

unemployed Chemical Engineer and in accordance with the Government"s policy to rehabilitate such unemployed technically qualified individuals,

raised a Term Loan of Rs. 47,000/- besides obtaining a Cash Credit Book Debt Limit of Rs. 33,000/- and cash Credit Hypothecation Limit of

Rs. 50,000/- from the Punjab National Bank (Hereinafter referred to as the Bank) on November 18, 1980. The requisite pronotes and

agreements were duly executed on November 18, 1980, whereas a guarantee was also given by appellant No. 3 Smt. Savitri Devi on February

27, 1981. As the industrial unit fell into difficulty, it was unable to pay back the instalments of the loan as stipulated in the agreements with the result

that the plaintiff -respondent filed a suit for recovery of the loan amount of about Rs. 1,83,737.83 inclusive of interest. While resisting the suit, the

appellants admitted that Raj Kumar Saxena was the sole proprietor of the appellant-firm and had availed of the facilities from the bank and had

also executed the relevant documents for that purpose. It was claimed that the amounts loaned by the Bank had been returned and that the

statement of accounts that had been tendered in evidence did not reflect the correct position. It was also averred that the Industrial unit set up by

appellant No. 1 was not viable for the reason that the Bank itself defaulted in the payment of instalments to it as per the agreements signed. On the

pleadings of the parties, following issues were framed :-

(1) Whether the plaintiff is a bank duly constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970, and this

suit has been filed through a duly authorised person ? OPP.

(2) Whether the various loan facilities as alleged in the plaint were granted to the defendants No. 1 and 2 against the guarantee of defendant No. 3

and the defendant executed the various documents in favour of the plaintiff Bank in consideration thereof ? OPP.

(3) To what amount the plaintiff-Bank is entitled ? OPD.

(4) Whether the plaintiff is estopped from filing this suit by his act and conduct as alleged in preliminary objection No. 1 ? OPD.

(5) Whether the plaintiff has no cause of action for filing of this suit.? OPD.

(6) Relief.

The trial Court returned its findings on the crucial issues Nos. 1 and 2 in favour of the Bank with the result that the suit of the plaintiff respondents

was decreed. The judgment of the trial Court was affirmed by first appellate Court. Hence the present appeal. The courts below found as a matter

of fact that appellant No. 2 had taken the loans in question and that the fault in repayment of the loan had been committed. It has also held that the

documents executed by appellant No. 2 to secure the loans had been validly executed and his assertion that they had been procured from him

under threat was also disbelieved. The argument of the learned counsel for the appellants which was based on Chandradhar Goswami and Others

Vs. The Gauhati Bank Ltd., , that mere reproduction of the statements of accounts without corroborative and reliable evidence to show their

accuracy could not be relied upon was repelled by stating that appellant No. 2 had himself admitted that the loans in question had been taken and

no further evidence was required.

3. Mr. Ashutosh Mohunta, counsel for the appellants, has raised only one argument before me based upon the aforesaid judgment of the Supreme

Court. He has urged that the Supreme Court had positively held that where the statement of accounts was disputed with regard to the factum that

the loan had been taken or with regard to the actual calculations made, it was incumbent on the bank to produce evidence in support of its claim

and as admittedly no evidence, except the statements of accounts Exhibits P-15 to P-17, had been produced, and this evidence had not been

accepted to be correct by the appellants, the suit was not liable to be decreed on that basis alone. He has brought to my pointed attention the

following observations of the Hon^{ble} Supreme Court in Chandradhar Goswami and Ors. case (Supra) :-

Original entries alone u/s 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced u/s 4 of

the Bankers' Books Evidence Act obviously cannot charge any person with liability. Therefore, where the entries are not admitted it is the duty of

the Bank if it relies on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was

advanced as indicated therein and thereafter the entries would be of used as corroborative evidence. But no person can be charged with liabilities

on the basis of mere entries whether the entries produced are the original entries or copies u/s 4 of the Bankers' Books Evidence Act.

He has further urged that even in the cited case, the factum that a loan was taken had at one stage been denied by the borrower, but the finding

had nevertheless been recorded against him. He has urged that the Courts below were, therefore, wrong in decreeing the suit against the appellants

on the ground that the documents had been produced in the course of the evidence. As against this, learned counsel for the respondent has urged

that the denial with regard to the liability of the defendants-appellants in the written statement was evasive and in the light of the judgment of this

Court in The Punjab National Bank Ltd. v. Vinod Kumar and Ors., AIR 1957 Punjab 257, that certified copies of the accounts made u/s 3 of the

Bankers' Book Evidence Act 1891 were admissible in evidence and could be relied upon.

4. I have heard the learned counsel for the parties and have gone through the record of the case. It would be seen that at the initial stage an attempt

had been made by the appellants to deny that any loan had been raised as a result of the agreements that had been signed but it has not been

seriously disputed at the present stage, more particularly in the light of the finding of the courts below that though the entire amount of loan, which

was to be paid to the appellants has not been paid, some instalments had in fact been given. In the written statement filed by appellant No. 2, the

positive stand taken was that no amount had been paid but subsequently this extreme stand was toned down and it was stated that Exhibits P-15

to P-17 did not reflect the true position. It is, therefore, apparent that appellant No. 2 had taken a positive stand in the written statement with

regard to the veracity of the statement of accounts Exhibits P-15 to P-17. In this situation, I am of the view that it was incumbent on the Bank to

produce some other evidence besides the statement of accounts so as to show that the said accounts had been correctly maintained and reflected

the true state of affairs. In the light of this legal position, it is apparent that the judgments below cannot be sustained.

5. Mr. Parbhakar has then argued that the written statement was absolutely vague and gives no particulars. In this connection, it cannot be lost

sight of that the rules of pleadings, are not to be violated but nevertheless if from the reading of the entire pleading," the intention of the person

making the pleading was clear, then merely on account of certain technical defects the pleading cannot be ignored. In the present case, I do find

that though a specific averment had been made that the statement of accounts was not accurate the further details with regard to the amount in fact

due had not been set out as would be the requirement of Order 8 Rule 2 of the CPC but this would nevertheless not absolve the Bank from

discharging its onus in the light of the judgment of the Supreme Court referred to above.

6. The reliance of the learned counsel for the respondent on The Punjab National Bank Ltd. case (Supra) is also misplaced. It is not the case of the

appellants now or at any stage before that the certified copies Exhibits P-15 to P-17 were not admissible evidence.

7. In the light of the observations made above, this appeal has to be allowed, however, as the matter pertains to the recovery of a loan advanced

by a nationalised bank. I deem it appropriate that the Bank be permitted to adduce additional evidence in support of its case. The appeal is

accordingly allowed and the case is remanded to the first appellate Court who would give a chance to the parties to adduce such evidence as they

wish to and to give a fresh finding thereon. The parties through their counsel are directed to appear in the first appellate court on May, 25 1995.

No costs.