
(1997) 09 DEL CK 0042

Delhi High Court

Case No: Suit No. 48 of 1992

Punjab National Bank

APPELLANT

Vs

Ravi Metal Industries

RESPONDENT

Date of Decision: Sept. 9, 1997

Citation: (1997) 6 AD 161 : (1998) 44 DRJ 424

Hon'ble Judges: Chander Mohan Nayar, J

Bench: Single Bench

Advocate: Sandeep Kumar, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present suit has been filed against the defendants for recovery of Rs. 7,42,655.33 with pendente lite and future interest.

(2) New Bank of India which has been merged with Punjab National Bank, plaintiff herein, with effect from September 4, 1993 vide Notification No. 1/2/93-B.O.I(ii) was a body corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act having its Head Office at 1, Tolstoy Marg, New Delhi and a branch thereof amongst others is at Kashmere Gate, Delhi-110006. The suit has been signed, verified and filed by Shri Jag Mohan Sharma who at the relevant time was the Branch Manager of the plaintiff bank. It is stated that he is fully conversant with the facts of the case and is in a position to depose the same. He is also constituted General Attorney of the plaintiff Bank and is duly empowered to sign, verify and institute the legal proceedings against the defaulting parties. Shri K.K.Modi, Deputy General Manager who has been empowered by the Board of Directors of the bank vide Resolution No. 12 dated 11.5.1989 decided to file the present suit and authorised the above said Shri Jag Mohan Sharma to file the same on behalf of the Bank vide his orders dated 18.12.1991. Defendant no. 1 is a partnership concern consisting of defendant Nos. 2 and 3 as partners and engaged in the business of manufacture and sale of high class aluminium utensils at Modern Shahdara, Delhi. Defendant No.4 has been impleaded in the suit in the capacity of a

guarantor. Defendant No.1 through its partner Ram Singh approached the plaintiff Bank vide letter of request dated 6.7.1988 and an application of loan of the same date for grant of the credit facilities for smooth running of their business. They offered to hypothecate the stocks of goods, raw material, finished goods and machinery and defendant No.3 agreed to equitably mortgage his immovable property. The details of the request and the resulting transactions between the plaintiff bank and the defendants as well as the security which was offered are referred to in paragraphs 5, 6 and 7 of the plaint which are reproduced as follows:-

"5. That the plaintiff bank considered the said request of the defendants and sanctioned the following facilities on the terms and conditions mentioned in the Letter of sanction dated 26.10.1988:

A. Term Loan for purchase of machinery for a sum of Rs. 1,46,000.00 .

B. Cash Credit Hypothecation for a sum of Rs. 2,70,000.00 .

C. Bill purchased (documentary) Clean for a sum of Rs. 1,00,000.00 .

THE original letter of sanction is filed herewith.

6. That in consideration of the sanction and smooth running of the accounts, the following security documents were executed and delivered by the defendants to the plaintiff bank on 4.1.1989. A. Term Loan for Rs. 1,46,000.00

(i) Demand Promissory Note for Rs. 1,46,000.00 dated 4.1.1989 by defendant No.2 and 3 as partners of defendant No.1 bearing interest @ 3.5 percent over the Reserve Bank of India Rate within minimum of 13.5 Percent per annum with quarterly rests.

(ii) Term Loan Agreement for Rs. 1,46,000.00 dated 4.1.1989 by the defendants No. 2 and 3 as Partners of defendant No.1

(iii) Hypothecation Deed dated 4.1.1989 for Rs.1,46,000.00 by defendant No.2 and 3 as Partners of defendant No.1.

B. Cash Credit Hypothecation Limit of Rs.2,70,000.00

(i) D.P.Note for Rs. 2,70,000.00 bearing interest @ 5.5% per annum over the Reserve Bank of India rate with a minimum of 15.5% with quarterly rests.

(ii) D.P.Note Deliver letter-cum-waivment of presentation of D.P.Note by the defendant Nos. 2 and 3.

(iii) Hypothecation Deed for Rs.2,70,000.00 by the defendant Nos.2 and 3 as partners of defendant No.1.

(iv) Agreement of hypothecation i.e. Cash Credit dated 4.1.1989 by the defendant No.2 and 3 as partners of defendant No.1.

C. B.P.(D.O.C.) Clean Limit of Rs. 1,00,000.00

(i) Letter of Indemnity for lorry/receipts by defendant Nos. 2 and 3 as partners of defendant No.1. Interest @ 15.5%.

(ii) Letter of Undertaking stating that Bank will not be responsible for any loss or non-collection of the amount in case of discount of cheques etc. etc.

(iii) Agreement for advance against bills in the course of collection by the defendant No. 2 and 3 as partners of the defendant No.1.

The original documents in respect of all the three accounts are filed herewith.

7. That the defendant no.4 stood surety for the repayment of the loan amount and executed a continuous guarantee in favor of the plaintiff bank for the amount advanced to be advanced by the plaintiff to the defendants No.1 to 3 and he further assured that the defendants No.1 to 3, in case, fail to pay the amount, the plaintiff bank will be entitled to recover the same from the defendant No.4. The original letter of guarantee dated 4.1.1989 is enclosed herewith."

(3) The Medium Term Loan was to be paid in monthly installments of Rs. 4500.00 plus interest and it was agreed that in case of default in any installments or in the interest, the plaintiff bank was entitled to recover the total amount due in lump sum. In case of Cash Credit Hypothecation Limits, the defendants were to send the stock-statements regularly and all the sales were to be routed through the plaintiff bank and the defendant Nos. 1 to 3 further agreed to keep sufficient stocks to cover the limit advanced by the plaintiff bank. In case of bill purchase, the goods were to be sent through the approved Transporters and in case of dishonouring of the bills, the plaintiff bank was entitled to recover the amount by debiting the account along with expenses and interest. Defendant No.4 also equitably mortgaged the immovable property situated at Dhroati Khurd Pargana, Loni, Tehsil and Distt. Ghaziabad (UP) by depositing the title deeds of the property. The defendants failed to maintain the financial discipline and defaulted to pay the installments and interest in case of medium term loan. The machinery was hypothecated by defendants 1 to 3 with the plaintiff bank as security. The defendants further failed to send the stock-statements to the plaintiff bank in terms of the agreement nor the sales have been routed through the plaintiff bank so much so the defendants have disposed of the goods hypothecated with the plaintiff bank. The defendants having failed to pay the amount in spite of repeated demands, the plaintiff bank sent several registered notices as well as legal notice dated 8.7.1991 through Shri Yogesh Kalra, Advocate but in spite of the same the defendants have failed to pay the amounts as due. The amounts due from the defendants at the time of filing of the suits are specified in paragraph 16 of the plaint which reads as follows:-

"16. That now an amount of Rs.2,21,134.20 paise is due towards Medium Term Loan, a sum of Rs. 4,28,296.13 Paise is due towards Cash Credit Hypothecation Limit and a sum of Rs. 93,225.00 is due towards the Bill Limits which includes interest up to 3.1.92. Thus a total sum of Rs. 7,42,655.33 Paise is due towards the defendants which includes interest up to 3.1.92. The Statements of Accounts duly certified under the Bankers Book Evidence Act are filed herewith."

Therefore, the present suit was filed for recovery of the amount as stated above. Despite best efforts the defendants could not be served in the ordinary way and this Court by Order dated April 12, 1996 directed substituted service by way of publication in a daily newspaper `Statesman" for 10th September, 1996. Despite service there was no appearance on behalf of the defendants in Court on 10th September, 1996 when the following Order was passed:-

Defendants have been served through publication. There is no appearance on their behalf. Accordingly they are proceeded ex-parte. The plaintiff shall file affidavit by way of evidence within six weeks.

List on 28th February, 1997 in the category of Short Cause."

(4) Affidavit by way of evidence has been filed by the plaintiff bank wherein the averments as made in the plaint have been reiterated. The plaintiff Bank has filed the documents which have been duly exhibited and marked as Exhibits Public Witness 1/A to Public Witness 1/R. Exhibit Public Witness 1/A is the resolution by which Shri Jag Mohan Sharma, Branch Manager/ Principal Officer was authorised to sign, verify and institute the present suit. The letter of request dated July 6, 1988 and an application for loan dated July 6, 1988 are Exhibits Public Witness 1/B (coll). The plaintiff Bank considered the request of the defendants and sanctioned the loan vide Exhibit Public Witness 1/C. The Demand Promissory Note for Rs.1,46,000.00 dated January 4, 1989 executed by defendants 2 and 3 as partners of defendant No.1 is Exhibit Public Witness 1/D. Exhibit Public Witness 1/E is the Term Loan Agreement dated January 4, 1989 for Rs.1,46,000.00 . Defendants 2 and 3 also executed the Hypothecation Deed as partners of defendant No.1 dated January 4, 1989 which is Exhibit Public Witness 1/F. Exhibit Public Witness 1/M is the letter of guarantee by which defendant No.4 stood surety for the repayment of the loan amount. Exhibit Public Witness 1/N is the Title Deed by which defendant No.4 has also equitably mortgaged the immovable property situated at village Dharoati Khurd, Pargana Loni, Tehsil and Distt. Ghaziabad, U.P. As the defendants failed to pay the amount the plaintiff got served legal notice dated July 8, 1991 through Yogesh Kalra, Advocate. Carbon copy of the said notice, postal receipts and acknowledgment dues are Exhibits Exhibit Public Witness 1/Q (Coll). The statements of accounts duly certified under the Bankers Book of Evidence Act are Exhibits Public Witness 1/R (coll). legal proceedings The plaintiff bank has given details of the amounts as due from the defendants in the plaint as well as substantiated the same by the documents as referred to above. The defendants have not put in appearance despite service and, Therefore,

have not controverted the averments made in the plaint.

(5) In view of the above the present suit is decreed for a sum of Rs. 7,42,655.33. The plaintiff shall also be entitled to simple interest at the rate of 12% per annum from the date of filing of the suit till realisation.