
(2005) 08 DEL CK 0084

Delhi High Court

Case No: CS (OS) 1770 of 2001

All Bank Finance Ltd.

APPELLANT

Vs

Overseas Cables Ltd.
and Another

RESPONDENT

Date of Decision: Aug. 25, 2005

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2005) 08 DEL CK 0084

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: A.N.Tiwari, for the Appellant; Nemo, for the Respondent

Judgement

Anil Kumar, J.

This is a suit for recovery of Rs. 1,28,47,158.08/- filed by the plaintiff against the defendants contending that pursuant to lease financing of Rs. 99.75 lakhs, DP Note dated 14th March, 1997 for Rs. 1,63,09,125/-, lease finance agreement dated 24.1.1997, general lease of hypothecation dated 24.1.1997 and general letter of hypothecation dated 28.2.1997 were executed.

2. On execution of the documents by the authorized representative of the defendant No.1 company, defendant Nos.2 to 4 signed and executed bond of guarantees, on 24.1.1997 by defendant No.2; on 18.2.1997 by defendant No.3 and on 17.2.1997 by defendant No.

4 in favor of plaintiff company and also pledged shares owned by them in defendant No.1 company in favor of plaintiff company. Defendant Nos.2 to 4 also executed general power of attorney dated 28.2.1997 in favor of plaintiff authorizing the plaintiff to sell the shares on their behalf and to appropriate the amount towards repayment of the amounts due from them.

3. plaintiff averred that as per terms of sanction of lease finance of Rs. 99,75,000.00, it was repayable by defendant No.1 in monthly lease rentals of Rs. 2,71,819/- within a period of 5 years. For payment of monthly lease rentals, defendant No.1 had given 59 post dated cheques covering the entire lease rentals.

4. The amount of Rs. 99,75,000/- was lease financed to the defendant No.1 for two machines which were according to the specifications and requirements of defendant No.1 and consequent to lease finance, charge was also created on the assets of defendant No.1 and registered in favor of plaintiff with the Registrar of Companies.

5. The cheques for the lease rental money which were given by the defendant no.1 were, however, dishonoured from 15th January, 1999 on account of insufficient funds and the lease rental has not been paid despite various demands. On failure of defendants to pay the amount of dishonoured cheques, plaintiff has already filed complaints u/s 138 of the Negotiable Instruments Act which are pending before the concerned Metropolitan Magistrates.

6. plaintiff averred that a notice dated 27.3.2001 was given terminating the lease finance agreement dated 24.1.1997 and the defendants were asked to pay the entire amount in terms of agreement and deed of guarantee executed by defendant Nos.2 to 4. As on 4.8.2001 a sum of Rs. 1,28,47,158.05/- was due which had been demanded by the plaintiff from the defendants with future interest at 25% per annum . Thus the plaintiff has claimed for a decree for the sum of Rs. 1,28,47,158.05/- with pendente lite and future interest and for an order of injunction, attachment and sale of machinery and for an injunction, attachment and sale of pledged shares owned by defendant Nos.2 to 4 details of which were given in the plaint in the present suit.

7. The defendants were served by publication in the Daily "The Tribune" dated 14.6.2003. Defendants were also served by way of affixation on the notice board of the Court and their last known address. Since the defendants did not appear nor any one appeared on their behalf, they were proceeded ex-party.

8. After the defendants were proceeded ex-parte, the plaintiff was directed to file his evidence on affidavit. On behalf of plaintiff an affidavit of Sh. J.K. Gupta, s/o. Sh. P.C. Gupta, Assistant Vice President of plaintiff All Bank Finance Ltd was filed.

The witness on behalf of plaintiff deposed that the plaintiff is a company duly incorporated under the Indian Companies Act having its registered office at Allahabad Bank, 15, India Exchange Place (4th Floor), Kolkata and branches at Mumbai and at Parliament Street, New Delhi. It was deposed that the plaint was signed and verified by Sh. A.K. Adak, the President and Principal officer and constituted attorney of the plaintiff and the power of attorney was proved and exhibited as PW1/1. The deponent exhibited the letter dated 19.12.1996 as PW1/2 conveying terms and conditions of the lease finance of Rs. 99.75 lakhs to the defendants. Resolution passed at the meeting of the board of Directors of the

defendant No.1 company held on 30.11.1996 was exhibited as PW/3; the resolution dated 16.4.1990 at the Extraordinary General Meeting of the shareholders as PW1/4. List of Directors given by defendant No.1 as on 27.1.1997 to plaintiff company was exhibited as PW1/5; list of assets of defendant No.2 as PW1/6; detail of assets of defendant No.4 as PW1/7; assets of defendant No.3 as PW1/8; letter of acceptance of terms and conditions of lease finance by the defendant as PW1/9 and letter dated 27.11.1997 by defendant No.1 requesting the plaintiff to release the funds the earliest as PW1/10.

9. The lease agreement dated 24.1.1997 containing terms and conditions of lease finance was exhibit PW1/12 whereas DP note dated 14.3.1997 for Rs. 1,63,09,125 was exhibited as PW1/11. The plaintiff's witness deposed that lease agreement, DP note, general letter of hypothecation dated 24.1.1997 and 28.2.1997 were executed in his presence in the branch premises and he identified the signatures. The bond of guarantee dated 24.1.1997 executed by Sh. Harjinder Singh, bond of guarantee dated 18.2.1997 executed Sh. K.D. Sharma and bond of guarantee dated 17.2.1997 executed by Smt. Taranjit Singh were also exhibited as PW1/15 to PW1/17. The said witness also proved power of attorneys executed in favor of plaintiff by defendant Nos.2 to 4 dated 28.2.1997 and exhibited them as PW1/18 to PW1/21.

10. The confirmation of installation and operation of the machinery by defendant No.1 by letter dated 12.8.1997 was also deposed and proved and receipt of payment of inspection charges by the respective Chartered Accountants were exhibited as PW1/22 to PW1/27. The plaintiff also proved form No.8 and 13 dated 3.3.1997 and letter dated 12.8.1997 regarding installation of machinery and the machines being operational as PW1/28 to PW1/34 respectively. The witness of the plaintiff categorically stated that after a period of 16 months, the defendant No.1 failed to pay the monthly lease rentals and the cheques given for the monthly rentals bounced for insufficiency of funds from 15.1.1999. The amounts of monthly rental cheques has not been paid to the plaintiff despite the notice and consequently criminal proceedings u/s 138 of the Negotiable Instruments Act are pending adjudication before the Metropolitan Magistrate. The legal notice of the plaintiff demanding the amounts which became due to the plaintiff with their postal receipt and undelivered registered letters were also exhibited as PW1/35.

11. The averment made by the plaintiff in his plaint remained unrebutted, as also the deposition made on behalf of the plaintiff. The lease agreement, DP note and the general lease of hypothecation and bond of guarantee executed by defendant Nos.2 to 4 unequivocally made them liable to pay the amount of lease finance to them under the various documents. A statement of account showing the amounts due as on 15.7.2001 has been filed, however, nothing has been deposed regarding it by the witness of the plaintiff. The witness, however, has stated that Rs. 1,28,47,158.05/- was due to the plaintiff as on 15.7.2001.

12. The plaint has been signed and verified on behalf of plaintiff by a duly authorised person and considering the pleadings and the evidence produced which has remained

unrebutted, the inevitable inference is that defendants are liable to pay a sum of Rs. 1,28,47,158.05/- to the plaintiff. Consequently, the suit of the plaintiff for recovery of Rs. 1,28,47,158.05/- is decreed in favor of plaintiff and against the defendant Nos.1 to 4. Under the agreement dated 24.1.1997 it has been stipulated under clause 10.1 that all the amounts remaining unpaid by the lessee shall carry interest at 25% per annum on compounding basis with monthly rests from the date of payment made/expenses incurred by the Lesser till reimbursement. Though the plaintiff has claimed interest at the rate of 25% per annum that too with monthly compounding, however considering the facts and circumstances, despite the fact that the averments made by the plaintiff and interest claimed has remained un-rebutted, judicial notice can be taken of prevailing bank rates. The rate of interest of 25% with monthly rest is too high and can not be allowed in the facts and circumstances. Consequently considering the facts and circumstances, the plaintiff is allowed pendent title and future simple interest at the rate of 9% per annum from the date of institution of the suit till recovery of the amount. The plaintiff shall also be entitled for the cost of the suit. The suit of the plaintiff is thus decreed in terms hereof. Decree sheet be drawn accordingly the facts and circumstances.