

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CS (OS) 1517/2001

Reserved on 15.01. 2008

Date of decision : 28th January , 2008

TECHNOLOGY DEVELOPMENT BOARD

.... Plaintiff

Through Mr. Suraj Kumar, Mr. Manik Kapoor, Advocates

:: VERSUS ::

M/S. PUSKAR CHEM LIMITED & ANR.

..... Respondents

Defendants are Ex-Parte

CORAM:

Mr. Justice S. Ravindra Bhat :

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat :

1. The facts of the present suit under Order XXXVII of the Code Civil Procedure, 1908, where the plaintiff seeks to recover a loan amount of Rs. 1, 04, 51, 288 (Rupees one crore four lacs fifty one thousand two hundred and eighty eight only) and interest, are described below.

2. The plaintiff Technology Development Board (hereafter referred to as “TDB”) is a body corporate constituted under Technology Development Board Act, 1995, and has its office

Technology Bhawan, New Mehrauli Road, New Delhi. The Plaintiff is engaged in providing equity capital and financial assistance to industrial concerns and other agencies, for the development and commercial application of indigenous technology. The first Defendant is a limited company registered under the Companies Act, 1956 and has its registered office at 15 Satnam Industries Estate, Andheri, Mumbai. The second Defendant is a Director of the said first Defendant.

3. The plaintiff avers that the first Defendant undertook to develop a project for the commercialization of two butylated phenol anti oxidant. The Plaintiff states that the first defendant approached them for seeking financial assistance for the aforesaid project and that they accepted the proposal. By an agreement dated 7th June 1999 executed at Delhi between the plaintiff and the first defendant, it was agreed that the defendant would be provided a loan assistance of Rs.162/- lakhs in three installments of Rs.80 lakhs, Rs.40 lakhs and Rs.42 lakhs each towards procurement of plant and machinery. The second defendant also signed an agreement of guarantee in favor of the plaintiff as well as an agreement for pledge of shares in relation to the aforesaid transaction. In furtherance of these agreements, the second defendant deposited original equity share certificates held by him in the first defendant company and also gave a non-disposal of shareholding undertaking.

4. The first installment of Rs.80 lakhs was disbursed by the plaintiff on 16th June 1999 vide

DD No.166142 drawn at Union Bank of India, SDA, New Delhi payable at Mumbai. The first defendant company through a receipt dated 25th October 1999 acknowledged the receipt of the aforesaid amount.

5. On 16th January 2000, the first Defendant Company informed the plaintiff about the progress in implementation of the project. After considering the report, the plaintiff through letter dated 13th March 2000 noted that the progress was quite slow and that the first defendant company must take urgent action to keep up with the schedule of activities as per the agreements. In March 2000 the Plaintiff again sought a detailed report of the progress of the project that was made available to it in April 2000. In July 2000 the Defendant Company again informed the plaintiff about the progress of the work and that it would submit a revise proposal for consideration shortly. Thereafter, the plaintiff informed the Defendant Company that on 24th and 25th of August 2000 there would be a meeting of the Project Monitoring Committee (hereafter the “PMC”) constituted under the loan agreement, at the premises of the first defendant company and would also involve a visit to the factory site. Accordingly the meeting was held; the PMC submitted the minutes of the meeting to the plaintiff. It is averred that the PMC found a number of deficiencies and recorded the following:

(i) The progress on the detailed engineering work is totally unsatisfactory.

(ii) Mr. Chaturvedi was requested to show the relevant papers for the

admitted transaction of acquired portion of the plot of M/s Tria Fine Chemicals Ltd at MIDC, Mahad but no such papers/agreement was shown to the PMC.

(iii) No satisfactory explanation was provided by defendant No. 2 to PMC about the expenditure to the tune of Rs. 110 lacs.

(iv) The PMC felt that certain payments were not elated to project implementation and the possibility of the funds having been misutilised cannot be ruled out.

(v) Defendant No. 2 could not produce any evidence for Rs. 40 lacs as promoters equity.

(vi) The company did not have technical staff on its roll and practically no other staff to implement the project.

(vii) The progress of the project is unsatisfactory and the funds disbursed have not been properly utilized.

(viii) The statement of the Bank Account up to 16.8.2000 as requested well in advance were not made to available to the PMC.

5. The plaintiff avers that in view of the aforesaid findings the PMC recommended that no further disbursement to the defendant company must be made, the loan of Rs. 80 lakhs should be called back and the proposal for the upward revision of the project cost should be done only after the recovery of the said amount. Since the recommendation of the PMC was binding on the defendants, as per the terms of the Loan Agreement, it is averred that the plaintiff wrote to the defendant company on 20th November 2000 demanding the return of the said amount along with interest. Since there was no reply from the defendant company the plaintiff sent a legal notice on

5th February 2001, wherein the called upon the defendant to repay the said amount along with an interest of 16% within a period of six weeks, failing which the plaintiff informed that defendants that legal action would be taken. It is submitted that, however, till the filing of the suit no reply was received from the defendants except for letter, whereby they claimed that the allegations made in the legal notice were not true and that a proper reply would be send as and when the person concerned will be back in office.

6. The plaintiff claims that this Court issue a joint and several decree for recovery of the said amount along with *pendente lite* and future interest at the rate of 16% per annum along with costs of the litigation. The plaintiff places reliance on the agreement dated 7th June 1999.

7. On receiving no reply or intimation from the defendants, the plaintiff filed this suit, claiming recovery of the sum of Rs 1, 04, 51, 288 (Rupees one crore four lacs fifty one thousand two hundred and eighty eight only) from the defendants. The suit is premised upon a written agreement and the guarantee executed to secure the loan, released to the defendants, by the plaintiff.

8. After summons were issued in the suit, the defendants entered appearance; the first defendant put in appearance and filed vakalatnama on 8-7-2006; the second defendant caused appearance to be filed on 12-7-2006. The plaintiff alleges, and the record bears out, that the summons for judgment were taken out by it, in terms of Order XXXVII Rule 3(4) and served

upon the defendants on 16-10-2006, at the addresses indicated by the defendant. This was recorded in the order dated 3-9-2006.

9. This court has considered the materials on record. The suit is based on a guarantee and written contract, both of which fall within the description under Order XXXVII Rule 1. According to the agreement, dated 7-6-1999, the amounts were disbursed to the defendants for a specified project; upon being satisfied about proper utilization of the said amounts, they were to be paid further amounts. However, the committee constituted for the purpose reported that the defendants did not comply with the terms of the agreement; the plaintiff recalled the loan, and demanded return of the same, through its notice, dated 20th November 2000 and 5th February 2001.

10. The records reveal that the defendants, despite being issued and served with summons for judgment, did not chose to contest and seek leave to defend these proceedings. In terms of Order XXXVII Rule 6 (a), in such a contingency, a decree has to follow. The said provision is in the following terms:

“(6) At the hearing of such summons for judgment, -

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith..”

11. In view of the above findings, the plaintiff is entitled to judgment in terms of the claim in

the suit, which is accordingly decreed with interest as claimed.

DATED:
28th January, 2008

(S. RAVINDRA BHAT)
JUDGE