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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.181/2005

Date of decision: 6th November, 2008

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M/S NAROTTAM DASS & SONS & ORS Appellants
Through : Mr. Arvind Pandey, Adv.

versus

STATE BANK OF HYDERABAD Respondent
Through : Mr. Ashish Kalia, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE J.R. Midha

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?

Pradeep Nandrajog, J. (Oral)

1. Heard learned counsel for the parties.
2. Three submission have been made by learned counsel for the appellant at the hearing today.
3. The first submission made is that the statement of account, Ex.PW1/13, cannot be relied upon for the reason it is an incomplete statement of account.
4. Second submission made is that the revival letter,

Ex.PW1/12, dated 04.04.1990, was not proved and hence the claim of the bank is barred by limitation.

5. Last submission made is that the Learned Trial Judge has erred in awarding pendente lite and future interest @ 19.5% per annum.

6. Relevant facts are that the firm Narotam Dass and Sons of which Mr. Narotam Dass, Mr. Ashok Malhotra and Ms. Rita Malhotra were partners availed a bill discounting facility from the State Bank of Hyderabad and while availing the said bill discount facility having a limit of Rs.4.5 Lakhs, executed a demand promissory note dated 13.12.1984 Ex.PW1/2; a DP note of even date, Ex.PW1/3, delivery letter of even dated Ex.PW1/3a, a letter of even date, Ex.PW1/7, a certificate of execution of the DP note, of even dated Ex.PW1/4, a disclaimer letter of even date, Ex.PW1/5, a letter of even date, Ex.PW1/6 offering a FDR as a security for repayment of the loan.

7. According to the bank the account become sticky and on 04.04.1990 the three partners of the firm executed a revival letter Ex.PW1/12.

8. Since after adjusting the FDR which had matured in sum of Rs.6,88,200/-, Rs.3,65,168.84 was due and payable as of

October, 1991 suit was filed claiming a decree in said sum together with pendente lite and future interest @ 19.5% per annum.

9. In respect of the claim for interest it was pleaded by the bank that the defendants had agreed to pay interest @ 3.5% per annum over and above the Reserve Bank of India rate with a minimum interest @ 13.5% per annum with quarterly rests.

10. The defence taken was that the revival letter Ex.PW1/12 was not binding as it was a forged and fabricated document.

11. The bank examined Sh. V.M. Kashyap as PW-1 who stated that he worked in the branch as manager from March, 1983 to November, 1987. He proved the various documents which we have noted hereinabove as also the bank statement Ex.PW1/13. In respect of the revival letter dated 04.04.1990 Ex.PW1/12 he stated that with respect thereto he was deposing with reference to the record of the bank. In his examination-in-chief he deposed : *I state that the defendants agreed to pay interest @ 13.5% per annum with quarterly rests.*

12. The witness was cross examined. Learned counsel for the appellant has not been able to point out any question in

the cross-examination of the witness pertaining to the entries Ex.PW1/13.

13. It is true that the said statement of account shows entries w.e.f. 01.01.1986 onwards and the account commence with a brought forward entry of a debit in sum of Rs.3,90,663.35. In the absence of any cross-examination as to the validity of the brought forward debit entry, we are afraid, no submission can be urged challenging the same.

14. It is settled law that unless an entry in a statement of account is challenged and the witness of the bank is confronted with the same no submission can be made much less a submission that the entry has to be ignored.

15. We are therefore not impressed with the first submission made.

16. Pertaining to the revival letter, Ex.PW1/12, dated 04.04.1990, we note that the witness of the bank stated that he was deposing regarding the said documents as it was in the record of the bank.

17. In this connection, it would be relevant to note that one of the three partners of the firm, namely, Ms. Rita Malhotra had entered into the witness box as DW-2 and in respect of the revival letter had stated that same was forged and

fabricated document, without stated as to in what manner she claim the same to be a forged and fabricated document.

18. It would be of relevance to note that we have compared the signature of Ms. Rita Malhotra and the other two partners of the appellant No.1 on the admitted documents which were signed on 13.12.1984 with the signature on revival letter Ex.PW1/12.

19. A visual comparison shows that the signature on the revival letter tally with the signature of the three partners on the other documents. It is also relevant to note that when admission/denial of the documents was done, Ms. Rita Malhotra admitted the signatures on the revival letter. If this be so, the presumption of law that a document was duly filled up before it was executed arise.

20. Ms. Rita Malhotra having admitted the signatures on the revival letter was thus obliged to lead evidence to show as to under what circumstances the same was a forged and fabricated document. Having not done so, we find no merit in the second contention urged.

21. Pertaining to the last contention urged, we note that in the plaint it is pleaded in para 6 that the defendants agreed to pay interest @ 3.5% per annum over and above the

Reserve Bank of India rate with a minimum interest @ 13.5% per annum with quarterly rests.

22. We further note that PW-1 in his examination-in-chief filed by means of an affidavit himself stated that the defendants agreed to pay interest @ 13.5% per annum with quarterly rests.

23. Witness of the bank did not depose that the defendants agreed to pay interest @ 3.5% over and above the Reserve Bank of India rate subject to a minimum of 13.5% per annum.

24. We further note that the bank has brought no evidence on record pertaining to notification issued by the Reserved Bank of India. We further note that learned counsel for the bank has not been able to point out any ground to us wherefrom the admission of the appellant to pay interest @ 19.5% can be gathered.

25. Thus, it is obviously a case where Learned Trial Judge could not have awarded pendente lite and future interest @ 19.5% per annum. We note that the rate of interest mentioned in the promissory note Ex.PW1/2 is 13.5% per annum.

26. We this partly allow the appeal by reducing rate of interest awarded by the Learned Trial Judge from 19.5% per

annum w.e.f. 01.10.1991 to 13.5% per annum w.e.f. 01.10.1991 till realization. The principal sum adjudged and awarded in the decree is maintained.

27. We note that appellants have deposited Rs.5 lakhs in this Court which has been invested in a fixed deposit. We release the said amount together with accrued interest thereon in favour of the respondent.

28. Needless to state while executing the decree for the balance amount, respondent would give due adjustments of Rs.5 lakhs by adjusting the same first towards the principal sum.

29. No costs.

PRADEEP NANDRAJOG, J

J.R. MIDHA, J

NOVEMBER 06, 2008
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