

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

+ **RFA No.828/2003**

% **1st February, 2012**

SYNDICATE BANK Appellant
Through: Mr. Ajant Kumar, Adv.

VERSUS

M/S. CROWN ELECTRO MOTOR WORKS Respondent
Through: Ms.Suman Bagga, Adv.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 16.1.2012. Today, the matter is effective item no.3 on the Regular Board. Counsel for the appellant has been fair in informing the counsel for the respondent of the appeal coming up for hearing. Counsel for the respondent states that her client/respondent no.3 is no longer in touch with her for many years. I have therefore heard the counsel for the appellant and after perusing the record am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned RFA No.828/2003

judgment of the Trial Court dated 3.5.2003 dismissing the suit of the appellant/plaintiff-bank for recovery of ₹3,29,524/-.

3. The facts of the case are that the appellant/plaintiff-bank granted an overdraft limit to the respondent no.1/defendant no.1-partnership firm of which the respondents no. 2 to 4/defendants no. 2 to 4 were the partners. The overdraft limit was granted of ₹40,000/- on 13.5.1980. The defendants/respondents executed the necessary security documents in favour of the appellant/plaintiff-bank on 13.5.1980 including a deed of hypothecation of goods, a demand promissory note and also a deed of guarantee for an amount of ₹1,20,000/-. I may at this stage add that the so-called guarantee letter is a misnomer because the guarantee letter is signed by the partners of the respondent no.1/defendant no.1-firm, and who would be liable as principal borrowers inasmuch as the credit facility is granted to the partnership firm where these persons are partners.

4. The plaintiff-bank averred that the hundis dated 19.12.1980 and 12.1.1981 after being accepted were dishonoured by the acceptors/drawees namely M/s. Bindal Electrical and M/s. Thitta Engineers, and therefore, the respondents/defendants became liable to pay the suit amount.

5. The appellant/plaintiff-bank also averred that the defendants acknowledged the debts on 24.4.1983 for an amount of ₹57,341/- in account ODH 13/80 and for an amount of ₹67,636.55 on 26.4.1983 in OSL account 10/80. The liability was further acknowledged in both the accounts on 23rd December, 1985. Since the defendants/respondents failed to pay the amount, the subject suit came to be filed after sending of the legal notice dated 15.3.1988.

6. The suit was only contested by the defendant no.4 who pleaded that he had retired from the firm long-back and therefore he cannot be liable.

7. The Trial Court has dismissed the suit as being barred by time by making the following observations qua issue no. 1:-

“ISSUE NO. 1 : WHETHER THE SUIT OF THE PLAINTIFF IS WITHIN LIMITATION? OPP.

The onus to prove this issue was on the plaintiff. The counsel for the plaintiff urged that Ex.PW2/18 to Ex.PW2/24 are the acknowledgments of debt given by the defendants as stated by PW 2 Smt. Harjeet Kaur Sodhi. On perusal of the above said documents it is revealed that these are the letters of acknowledgment of debt starting from 18.3.1983 and the last letter is Ex.PW2/24 is dated 23.12.1985. The counsel for the plaintiff urged that the suit has been filed on .12.1988 which is well within the period of limitation. On the other hand the counsel for defendant no.4 urged that no letter of acknowledgment of debt is signed by defendant no.4 as he had already retired from the partnership in the year 1981 to which effect a public notice was also given as required U/S 32 clause (3) of the Indian

Partnership Act. He further urged that even otherwise the suit of the plaintiff is barred by limitation because all the alleged documents have not been proved on record. For this, the counsel for the defendant no.4 referred to the statement of PW2 wherein the said documents were Ex. As PW 2/18 to Ex.PW2/24.

In her cross examination PW2 has deposed that all the documents which have been exhibited by her were executed on the same date and she was personally present in the bank manager's room when these documents were executed and the date of execution of the documents as stated by PW 2 in her cross examination is some-times in the year 1980. PW 2 further stated in her cross examination that she was transferred from the branch sometime in the year 1981 and after 13.5.1980 no documents were executed in her presence till the time she was posted in the said branch and she further stated in her cross examination that she cannot say if any of the defendants executed any other documents after her transfer. From this testimony of PW 2 it is crystal clear that all the documents as exhibited by PW 2 were not executed on the same date because Ex.PW 2/18 to Ex. PW 2/24 were either executed in 1983 or in the year 1985 i.e. much after the transfer of PW 2 from the said branch so it cannot be said that the documents Ex.PW 2/18 to Ex.PW 2/24 have been proved on record as the witness PW 2 was not posted in the said branch and she was not aware of any of the documents having been executed by the defendants after her transfer.

Although the above said documents have been marked as exhibit, the same is only for the purpose of identifying the documents and the same is not its proof. In 1995 R.L.R. 286 titled as Sudhir Engineering vs. Nitco Rodways it was held as follows:-

“If a document is admitted in evidence and is marked as exhibit it is only for identifying the document and is not its proof. Proof of contents of the document must be established by independent evidence.”

The plaintiff in para No.28 of the plaint has stated that the cause of action against the defendant firstly arose on 13.5.1980 when the aforesaid loan/limits were sanctioned by the plaintiff bank and availed by the defendants. It is further stated that the cause of action arose in respect of hundies on 24.4.1981 and 20.4.1981 when the said hundies were dis-honoured. It is further stated that the cause of action arose on 18.4.1983, 26.4.1983 and 23.12.1985 when the defendants executed the acknowledgment of liability. As already observed herein above the plaintiff has failed to prove the documents of acknowledgment which has been Exhibited as Ex. PW 2/18 to PW 2/24. The loan as per the plaintiff was sanctioned in 13.5.1980 and the hundies were dis-honoured on 24.4.1981 and 20.4.1981. IN the absence of acknowledgement on the part of the defendants as the plaintiff has failed to prove the documents of acknowledgment the suit of the plaintiff is barred by limitation as the same has been field on 18.12.1988. The plaintiff has failed to discharge the onus. The issue is therefore decided in favour of the defendants and against the plaintiff.”

8. In my opinion, the Trial Court has clearly fallen into an error in dismissing the suit as being barred by limitation inasmuch as the witness of the appellant/plaintiff, PW 2 deposed that the security documents were executed by the respondents/defendants in favour of the appellant/plaintiff-bank in her presence. Once that is done, the said witness, PW2 can be said to be conversant with the signatures so that she can identify the signatures of the one of the respondents/defendants on the acknowledgments of debts form, though the same were signed during the period when she was not posted in the branch. The Trial Court, in my opinion, has unnecessarily taken hyper-technical approach of the matter, with respect to the bank dues, which were

payable. A person can be conversant with the signatures of a person in terms of Section 47 of the Indian Evidence Act, 1872 although the said documents may not be executed in the presence of a particular person. I have already referred above to the fact that the witness, PW2 the Manager of the appellant/plaintiff-bank, when the original security documents were signed, can be accordingly said to be the conversant with the signatures in terms of Section 47 of the Indian Evidence Act, 1872 for her to prove and exhibit the later acknowledgement of debts. I thus hold that this witness has accordingly duly proved and exhibited the acknowledgments of debts as Ex.PW2/18 to Ex.PW2/24.

9. In view of the above, suit of the appellant/plaintiff-bank is decreed for a sum of ₹3,29,524/- along with pendent lite and future interest at 7 and ½ % per annum simple till payment. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 01, 2012
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