

of P.W.1 was treated as closed and the matter was posted for final hearing, since the Plaintiff had no further witness to offer. Even today when the matter is called out, none appears for the Defendants.

2 I have heard Mr Kapadia, learned Counsel for the Plaintiff. Apart from the Plaintiff's oral evidence, there are seven documents already marked in evidence as Exhs P-3 to P-7 in proof of the Plaintiff's case (three cheques dated 15 September 2000, 30 September 2000 and 15 October 2000, all of which were dishonoured, being marked as Exh P-4 collectively). The Plaintiff's case against Defendant No.1 is based on Term Finance Agreement and Agreement / Deed of Compromise executed between parties. Under this Agreement or Deed of Compromise the Plaintiff had extended a term loan of Rs.4 Crores to Defendant No.1. This Agreement / Deed is at Exh P-3. On the same date, a deed of guarantee was executed in favour of the Plaintiff by Defendant Nos.2 and 3, who are Directors of Defendant No.1. The Deed of Guarantee was tendered in evidence and was marked 'X-7' for identification. The Plaintiff's witness, Rakesh Devan, has deposed to this Deed in paragraph 15 of his affidavit dated 8 October 2014. The witness has deposed to the execution of this document by Defendant Nos.2 and 3. The witness has also referred to the circumstance that despite diligent search, the original of the Deed of Guarantee could not be found. In the premises, the Plaintiff has sought leave to lead secondary evidence in the form of a photocopy. There is no cross examination of the Plaintiff's witness in this behalf. Considering the fact that the Defendants' Written Statement (paragraph 54) merely contains a bare denial of the execution and since the execution is proved by means of oral evidence of the Plaintiff's witness and also considering the fact that there is no cross-examination on the Plaintiff's case for leading of secondary evidence as also the genuineness of the secondary evidence offered, the photocopy of the Deed of Guarantee, marked earlier as 'X-7' for identification, is now admitted in evidence and marked as Exh **P-8**. Apart from these two documents, namely, the agreement and personal guarantee executed by parties on 29 August 2000, there are three cheques aggregating to a sum of Rs.4 Crores issued by Defendant No.1 towards repayment of the Plaintiff's dues. These cheques were dishonoured. The dishonoured cheques are marked as Exh P-4

(colly) as noted above. Besides, as many as three letters were addressed by the Plaintiff or their Advocates to the Defendants in connection with the dues of the Plaintiff, all of which have been duly received by the Defendants and yet there is neither compliance nor reply to these letters on the part of the Defendants. In the premises, the Plaintiff has duly proved its case both against the principal borrower, namely, Defendant No.1, and also against the guarantors, namely, Defendant Nos. 2 and 3.

3 There will, accordingly, be a decree in favour of the Plaintiff and against Defendant Nos.1 to 3 jointly and severally in terms of prayer clause (a) of the plaint. The Plaintiff is also awarded costs of the suit, which shall be taxed by the Taxing Master. The Court Receiver, who was appointed as a Receiver of the assets described in prayer clauses b(i) and b(ii), shall stand discharged without passing accounts but subject to payment of his costs by the Plaintiff. The costs of the Court Receiver shall be recovered firstly from the funds lying with the Receiver and balance, if any, shall be paid by the Plaintiff / Court Receiver to the other, as the case may be. The Court Receiver shall submit a final statement of account and communicate his outstanding bill, if any, to the Plaintiff, who shall pay the same within three weeks of such communication. The suit is disposed of accordingly.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.