IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : 03.03.2015

1. RSA No. 1279 of 2014 (O&M)

Bikkar Singh @ Bagga Singh and another

....Appellants

versus

Axis Bank Ltd.

...Respondent

2. RSA No. 1297 of 2014 (O&M)

Kuldeep Singh and another

....Appellants

versus

Axis Bank Ltd.

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.S. Nagra, Advocate,
for the appellant(s).

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RITU BAHRI , J.

This judgment shall dispose RSA Nos.1279 and 1297 of 2014 together as common questions of law and facts are involved in both the appeals. For reference, facts are taken from RSA No.1279 of 2014.

Defendants-appellants have come up in regular second appeal against the judgment dated 12.11.2013 passed by the Additional District Judge, Fast Track Court, Ropar, dismissing their appeal against the judgment and decree dated 31.07.2013 passed by the Civil Judge (Senior Division), Ropar.

Axis Bank Ltd.-plaintiff (respondent herein) filed suit(s) for recovery against the defendants-appellants with the averments that Bikkar Singh @ Bagga Singh-defendant No.1 approached and requested the plaintiff bank to grant him crop loan and consumption loan against mortgage of immovable property. He undertook to adhere to the agreed terms and conditions and financial discipline of the bank. Accordingly, on 08.03.2007, the plaintiff-bank granted/sanctioned cash credit of Rs.1 lac and consumption loan of Rs.3 lacs (total amounting to Rs.4 lacs) in the category of agricultural loan in favour of defendant No.1. In this regard, loan account Nos.41010300008433 and 41010600002912 were opened. In order to secure the credit facility, defendant-Bikkar Singh @ Bagga Singh had mortgaged his agricultural land situated at village Sandhuan, *hadbast* No.308, Tehsil and District Roopnagar, vide mortgage deed bearing Vasika No.2034 dated 09.03.2007. Defendant No.1 had also executed demand promissory note dated 14.03.2007, letter of waiver dated 14.03.2007, loan-cum-hypothecation agreement dated 14.03.2007 and D.P. note delivery letter dated 14.03.2007. Defendant No.2 stood as guarantor for the due payment of the loan as well as interest vide guarantee deed dated 14.03.2007. It was agreed in the registered mortgage deed that in case defendant No.1 failed to repay the loan amount along with interest and other charges, the plaintiff-bank could recover the loan amount by sale of land, which was mortgaged in its favour. However, defendant No.1 had failed to adhere to agreed terms and conditions. He had failed to operate loan account in the agreed manner. Therefore, the defendants-appellants were jointly and severally liable to pay the loan amount along with interest.

Upon notice, defendants-appellants filed written statement and took the preliminary objections with regard to maintainability, locus-standi and concealment of material facts. It was submitted that the plaintiff-bank had committed fraud with the defendants and transferred the amount from their account in favour of Ravinder Singh son of Sajjan Singh, Propriator of Sahibzada Tractors, Opposite Aam Khas Bag, Sirhind, who did not supply the Trctor and other agricultural instruments to them. In this regard, a complaint was made to the plaintiff-bank and Senior Superintendent of Police, Fatehgarh Sahib, whereupon a case under Sections 406 and 420 IPC was registered against the aforesaid Ravinder Singh.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled to recover Rs.4,72,114.00 along with interest at the rate of 15% per annum with half yearly rests from the date of filing of suit till realization by sale of mortgaged property? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether plaintiff has no locus standi to file the present suit? OPD
4. Relief.

Trial Court, after going through the evidence led by the parties, held that as per transaction inquiries, Ex.P11 and Ex.P12, there was entries with regard to disbursement of loan of Rs.1 lac of cash credit and Rs.3 lacs of consumption loan. The defendants-appellants had themselves admitted that the loan amount had been disbursed in their account. As per document, Ex.D2, there was an entry with regard to disbursement of loan amount of Rs.3 lacs on 15.03.2007. On the same day, there was an entry with regard to withdrawal of Rs.90,000/- from his account. There was also another entry of withdrawal of Rs.3 lacs from the account of Bikkar Singh-defendant No.1. The defendants-appellants had alleged that the plaintiff-bank had transferred the amount from their account to the account of M/s Sahibzada Tractor. In this regard, they had moved a complaint to the police, on the basis of which, a case under Sections 406/420 IPC was registered against Ravinder Singh. The trial Court had held that if any fraud had been committed by the plaintiff-bank, then why the FIR was not got lodged against the plaintiff-bank. Defendant-Bikkar Singh (DW-1), in his cross-examination had admitted that he had applied for the loan and the same was duly sanctioned. If on 15.03.2007, the plaintiff-bank had transferred the loan amount from the account of Bikkar Singh-defendant without his permission and knowledge to the account of M/s Sahibzada Tractor, then how and why he had approached the said firm i.e. M/s Sahibzada Tractors for purchasing the tractor and other agricultural equipments. Ultimately, the trial Court decreed the suit of the plaintiff for recovery of Rs.4,72,114/- along with pendentelite and future interest at the rate of 11% per annum on crop loan and at the rate of 15% per annum on consumption loan by sale of the mortgaged property. The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal.

After going through the impugned judgments passed by the both the Courts below, the execution of the loan documents had been duly proved by the plaintiff-bank. The defendants-appellants have failed to prove on record, by leading any cogent evidence, that the plaintiff-bank had committed any fraud against them. The suit of the plaintiff-bank has been rightly decreed by the Courts below and no illegality, much less perversity, has been found in the concurrent findings recorded by both the Courts below, warranting interference by this Court.

No substantial question of law arises for consideration in both the appeals.

Resultantly, both the appeals i.e. RSA Nos.1279 and 1297 of 2014 are dismissed.

(RITU BAHRI)
JUDGE

03.03.2015
ajp