IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 594 of 1991 (O&M)
Date of Decision: 25.4.2017

Bank of India
.....Appellant

Vs.

Thakur Singh Nain
.....Respondent

RSA No. 596 of 1991 (O&M)

Bank of India
.....Appellant

Vs.

R.K. Kaura
.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora Advocate
for the appellant.

Mr. Malkiat Singh Hundal, Advocate for
Mr. R.S. Bains, Advocate
for the respondents.

****

RAMESHWAR SINGH MALIK J. (ORAL)

These two identical regular second appeals bearing RSA Nos. 594 and 596 of 1991, at the hands of plaintiff-Bank in both the cases, are being decided vide this common judgment, with the consent of learned counsel for the parties, as both these appeals are arising out of same set of facts and also against the identical impugned judgments passed by the learned courts below.

Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts, whereby learned District Judge, vide two identical impugned judgments and decrees of even date i.e. 5.11.1990, dismissed two first appeals of the plaintiff and upheld the impugned judgments and decrees dated 20.1.1989 in RSA No. 594 of 1991 and dated 26.9.1988 in RSA No. 596 of 1991 of the learned trial court, dismissing the suits for recovery. However, for the facility of reference, facts are being culled out from RSA No. 594 of 1991.

Brief facts of the case, as noticed by learned first appellate court are that plaintiff-Bank of India, Branch Ambala Cantt., had on 9.5.1986 brought a civil suit against Thakur Singh Nain defendant for recovery of ₹7732.09 paise with the allegations that M/s Simla Fruit Agency had been allowed a demand loan facility to the tune of ₹5,000/- on 24.1.1977 when its partners Mulakh Raj and Kartar Singh executed various documents, including demand promissory note and Sh. Thakur Singh Nain-defendant alongwith one Krishan Chand who had since then died, executed a joint and several continuing guarantee letter dated 24.1.1977 thereby guaranteeing the repayment of the entire balance in the demand loan account of M/s Simla Fruit Agency. The said demand loan account became irregular since August, 1977 and S/Shri Mulak Ram and Kartar Singh neglected even to deposit quarterly interest. Sh. Thakur Singh-defendant was served with registered A.D. notices dated 1.7.1983, 30.6.1984 and 30.5.1985 calling upon him to adjust outstanding loan amount but the borrower as well as the defendant failed to do so. Hence this suit for recovery of ₹7732.90 paise filed only against the guarantor Sh. Thakur Singh Nain on the basis of letter of continuing guarantee dated 24.1.1977.

Having been served, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues:-

> *1) Whether the suit has been filed by a duly authorised person?OPP*
>
> *2) Whether the plaintiff bank is entitled to recover a sum of Rs. 7732.09 paise from the defendant?OPP*
>
> *3) Whether the suit is bad for non-joinder of parties? OPD*
>
> *4) whether the suit is time barred?OPD*
>
> *5) Relief.*

With a view to prove their pleaded case, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has failed to prove its case for recovery of ₹7732.09 paise in RSA No. 594 of 1991 and the same was dismissed by the learned trial court vide impugned judgment and decree dated 20.1.1989. Similarly, suit for recovery of ₹3876.87/- paise in RSA No. 596 of 1991 was dismissed by the learned trial court, vide impugned judgment and decree dated 26.9.1988. Feeling aggrieved, plaintiff-Bank filed two first appeals against the abovesaid judgments and decrees, which also came to be dismissed vide separate impugned judgments of even date i.e. 5.11.1990. Hence these two regular second appeals at the hands of plaintiff-Bank.

RSA No. 594 of 1991 was admitted for regular hearing vide order dated 18.4.1991 whereas RSA No. 596 of 1991 was admitted on 26.5.1992. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare combined reading of the impugned judgments and decrees would make it crystal clear that issue No.4 was rightly decided against the plaintiff and in favour of the defendants. In fact, the learned trial court was justified in deciding issues No. 2, 3 and 4 by recording cogent findings, strictly in accordance with true facts of the case as well as evidence brought on record. It was not disputed that loan transaction was only one and not a series of transactions.

It is also not in dispute that period of limitation for filing the suit for recovery was three years from the date of advancement of the loan. It is also a matter of record that period of limitation had already expired before filing the suit for recovery. Why the suits for recovery could not be filed within the period of three years, reasons were best known to the plaintiff-appellant. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned judgments and decrees, dismissing both the suits for recovery as time barred and the said impugned judgments and decrees were rightly upheld by the learned District Judge. In this view of the matter, no fault can be found with the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, learned District Judge examined, considered and appreciated true facts of the case as well as evidence brought on record in correct perspective. Relevant findings recorded by learned District Judge in para 6 of the impugned judgment, which deserve to be noticed here, read as under:-

> *"The defendant contends that it is not a case of continuing guarantee but a case of one single transaction. Continuing guarantee as defined under Section 129 means a guarantee which extends to serious of transactions. In the case in hand the evidence on the file shows that Mulakh Raj and Kartar Singh partners of Simla Fruit Agency had executed a demand promissory note for Rs. 5,000/- with stipulation to pay interest at 11% per annum from the date of the note executed agreement of hypothecation Ex.P2, loan bearer letter Ex.P3 and letter of instalments Ex.P4 to repay the loan amount thorough 25 instalments of Rs. 200/- each commencing from 1-3-1977. All these letters as well as letter of guarantee Ex.P5 were executed on 24.1.1977 stipulating payment of interest of Rs. 5000/- running from that date. Perusal of statement of account Ex.P14 shows that a sum of Rs. 5,000/- advanced as loan was transferred to current account of Simla rut Agency on 24.1.1977 and said current account was operated by the borrower up to Rs19.4.1979. Thereafter the plaintiff bank has been debting interest in the said account till the filing of the suit.*

It was a simple case of single transaction of borrowing. The guarantee furnished cannot be called a continuing guarantee irrespective of the fact that in the letter of guarantee Ex.P5 there is mention that it will be a continuing security. There is no agreement to satisfy the bank for all future times on demand the general balance due from the borrower. The liability of the guarantor in the instant case was therefore co-extensive with the principal debtor. That being the position, the suit is barred by limitation against the defendant as well. There is no merit in this appeal and the same is rejected as dismissed with costs."

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these appeals are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

25.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No