HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.5993 of 2014
Date of decision:14.7.2017

Ved Parkash

...Appellant

Versus

State Bank of India and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Arun Bansal, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendant No.2 is in the regular second appeal against the impugned judgment of reversal dated 18.4.2014 passed by the learned first appellate court, whereby first appeal of the plaintiff-bank was allowed, decreeing the suit for recovery.

Brief facts of the case, as noticed by the learned first appellate court in paras 2 and 3 of the impugned judgment, are that plaintiff bank is a corporate body constituted under the State Bank of India Act 1955. Shri OP Mittal the branch Manager and principal officer of the State Bank Raman Branch was fully authorized and competent to sign and verify all types of pleadings, vakalatnama, affidavit, execution and various other apparitions to do all acts necessary for proper conduct of legal proceedings filed by and on behalf of the plaintiff bank in terms of Gazette notification dated 26-.03.1959 and 29-6-08-1972 issued by the Executive Committee of Central Board in exercise of powers conferred on it under General regulations No.76 and 77 of State Bank of India General Regulations 1955.

It had been pleaded by the plaintiff bank that defendant No.1 was the partnership firm carrying on business of Commission Agency at Raman Mandi. Defendant No.1 had been enjoying demand cash credit facilities up to the limit of Rs.1,75,000/- (Limit upto Rs. 50,000/- was demand cash credit (lock and key type) limit, whereas, limit up to the extent of Rs.1,25,000/- was demand cash credit (Factory Type limit) with the plaintiff bank, but on the request of Ved Parkash and Bhushan Kumar, defendants No.2 and 3, partners on M/s Brij Lal Ved Parkash, defendant No.1, Raman Mandi, the plaintiff bank on 16.5.1981 granted demand cash credit facilities up to the limit of Rs. 2 lacs out of which limit up to the extent of Rs.50,000/- was lock and key type cash credit facility and while limit up to the extent of Rs.1,50,000/- was factory type cash credit facility to defendant No.1 and its partners(defendant Nos.2 to 4). Defendants No.1 to 4 agreed to pay interest @ 2.35% per annum, on the amount which was to be advanced to defendants No.1 to 4 under the above said limit. Defendants No.1 to 4 further agreed to pledge with the plaintiff bank machinery and other goods worth Rs.1,07,000/- belonging to them and lying in their factory, as an additional security for the repayment of the advance and interest thereon. Defendants No.2 and 3 executed all relevant documents. It had further been pleaded that as per the terms and conditions of agreement for demand cash credit all the goods produce like grams etc, belonging to defendant No.1 and lying in premises of the factory of defendant No.1, and lying in the premises of factory of defendant No.1 or which might be from time to time during the continuance of this agreement brought in the premises of the factory of defendant No.1, stood hypothecated with the plaintiff bank. According to the terms and conditions of the agreement, defendant No.1 and its partners were required to submit daily stock statement to the plaintiff bank, duly verified by theme to be correct. Similarly, on the request of defendants No.2 and 3 partners of defendant No.1, the plaintiff bank granted a demand draft purchase facility up to limit of Rs. 8 lacs to defendants No.1 to 4. Defendants No.1 to 4 agreed to pay interest on the amount so advanced under the above said limit @ 3% over the State bank Advance rate minimum 19.50% per annum. Defendants No.1 to 3 also executed all relevant documents, in favour of the plaintiff bank. Defendants No.1 to 3 also executed in favour of defendants No. 6 & 7 demand promissory notes dated 15.3.1982 in the sum of Rs. 8 lacs and delivered by defendants No.6 & 7 to the plaintiff bank, duly endorsed in favour of the plaintiff bank as security for the advance under the above said limit. Defendants No.2 and 3 executed a demand promissory note in the sum of Rs.10,000,000/- and defendant No.5 delivered the same to the plaintiff bank, as security for the advance by the plaintiff bank to defendants No.1 to 3 under both the above mentioned limits. Defendants no. 6 & 7 in consideration of the plaintiff having agreed to advance to defendants No.1 to 4 the demand draft purchase facility up to limit of Rs. 8 lakhs, guaranteed the plaintiff for the repayment of the advances along with interest thereon and other miscellaneous expensed under the above said limit. Defendant No.5 vide agreement dated 23.8.1982 stood guarantee for the repayment of advance along with interest thereon to defendants No. 1 to 4 by the plaintiff bank. On 30.08.1982 defendant No. 2 partner of defendant No.1 equitably mortgaged with the plaintiff bank land measuring 0 kanals 15 marlas situated in Raman Mandi and defendant No.2 also equitably mortgaged house No. 8/93 situated at Raman Mandi as an additional security for the repayment of the advance under both the limits. Defendant No.2 also equitable mortgaged with the plaintiff bank house No.8/102 situated at Raman Mandi as an additional security for the repayment of the advances under demand draft purchase limit along with interest thereon. He also executed memorandum of deposits of title deeds in this respect in favour of the plaintiff bank. Similarly, on 15.3.1982 Bhushan Kumar defendant No. 3, partner of defendant no.1 equitable mortgaged with the plaintiff bank land measuring 3 kanals 19 marlas as an additional security for the repayment of the advances under the above said demand draft purchase limit along with interest thereon. Simla Devi wife of Ved Parkash-defendant No.5 also mortgaged ½ share of her land measuring 15 kanals 15 marlas situated at Raman by way of equitable mortgage with the plaintiff bank as an additional security for the repayment of the advances to defendants No. 1 to 4 under the above said both limits. Defendants No.2 and 3 on behalf of defendant No.1 had been operating two cash credit accounts No.2/1 and 2/2 was with regard to demand cash credit limit, whereas cash credit account No.2/1 was with regard to demand cash credit limit whereas cash credit account No.2/2 was with regard to demand cash credit limit. There was debit balance of Rs.49,990/-4 IP in cash credit account No.2/1 on 16.5.1981, whereas there was as debit balance of Rs.1,23,169-0IP in cash credit account No.2/2 on 16.5.1981, but now both the above said accounts has been merged into one account i.e cash credit account no.2/1. The plaintiff bank also debited from time to time interest becoming due on the debit balance standing in the said account. Defendants No.1 to 4 received a sum of Rs.5,77,404/- from the plaintiff bank against the above said bills submitted by them to the plaintiff ban, which were returned unpaid. So, the plaintiff bank was entitled to recover this amount of Rs.5,77,404/- from defendants No. 1 to 4 on account of above said dishonoured and unpaid bills. After adjusting the credit and debit entries in the said cash credit account of defendant No.1, there was a debit balance of Rs.8,19,314-94P, along with interest @ 19% per annum and other charges. Defendants No.5 to 7 stood guarantee for the repayment of the advances under the above said limits. So, all the defendants were jointly and severally liable to pay the above said amount of Rs.8,78,800-93P. The plaintiff bank repeatedly requested the defendant to admit its claim, but the defendants flatly refused to accede to the requests of the plaintiff bank.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed its replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the suit has been filed by authorized person? OPP
2. Whether the plaintiff bank sanctioned demand cash credit facilities up to the amount of Rs.1,75,000/- to defendant No.1 as alleged in para No.4 of the plaintiff?OPP
3. Whether the plaintiff sanctioned a demand draft purchase facility to the amount of Rs.8 lacs to defendants no. 1 to 4? OPP
4. Whether defendants No.1 to 3 executed DP Note dated 23.8.1982 in the sum of Rs.10,00,000/-? If so its effect. OPP
5. Whether defendants no.6 and 7 executed agreement of guarantee dated 15.3.1982 in favour of the plaintiff? OPP
6. Whether defendant no. 5 stood guarantee and executed

agreement dated 23.8.1982 if so its effect? OPP

7. Whether the plaintiff bank is entitled to recover a sum of Rs.8,78,800-93 from the defendants jointly and severally?OPP
8. 7.A) Whether the plaintiff bank had made unauthorized payments of the amount as alleged in para 7 of the preliminary objections, is so to what effect?OPD
9. Whether the suit is bad for mis-joinder of parties? OPD
10. Whether the suit is not maintainable against defendants?OPD
11. Whether the suit is within limitation? OPP
12. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff failed to prove its case. Accordingly, suit for recovery filed by the plaintiff-bank was dismissed by the learned trial court, vide its judgment and decree dated 18.9.1991. Feeling aggrieved, plaintiff-bank filed its first appeal, which came to be allowed by the learned first appellate court by passing the impugned judgment and decree dated 18.4.2014. Hence this regular second appeal, at the hands of defendant No.2.

Heard learned counsel for the appellant.

It is a matter of record that the suit for recovery filed by the plaintiff-bank was on the basis of two facilities provided by the plaintiff-bank to defendant No.2, on the guarantee of defendants No.6 and 7.

Defendant No.1 was/is a partnership concern, which was carrying on the business of commission agency. Defendant-appellant was enjoying the facility of cash credit limit from the plaintiff-bank. The cash credit facility was initially up to the limit of Rs.1,75,000/- which was later on enhanced to Rs.2,00,000/- on the request made by defendants No.2 and 3, who were partners of defendant No.1. As per the terms and conditions of agreement for cash credit limit, all the goods purchased by the defendant-firm which used to be lying in the factory premises, stood hypothecated with the plaintiff-bank.

Another facility advanced by the plaintiff-bank to defendants No.2 and 3, partners of firm-defendant No.1, was a demand draft purchase facility up to the limit of Rs.8 lacs. In this regard, defendants No.1 to 3 executed a promissory note dated 23.8.1982 for Rs.10 lacs in favour of defendant No.5 who endorsed and delivered the same to the plaintiff-bank as security for the above-said advances under both the limits. Defendant No.5 was none else but wife of defendant No.2. In fact, it was the family business being run by defendant No.2 with the help of his wife, sons and other family members.

This was the reason that when the present appellant-defendant No.2 appeared as DW4, he had to admit all the material facts which were born on record. It was also admitted by the appellant that Bhushan Kumar and Devinder Kumar were his sons. Usha Rani was his daughter and Simla Devi was his wife. When the dispute arose on repayment of the amount in question, defendants started taking shelter under one or the other technicality so as to avoid their financial liability towards the plaintiff-bank. Since this material aspect of the matter could not be properly appreciated by the learned trial court, learned first appellate court was well justified to set aside the judgment of the learned trial court, while decreeing the suit for recovery of the plaintiff by way of impugned judgment and decree. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

It does not appeal to reason that till Devinder Kumar and Bhushan Kumar sons of the appellant were doing the business and earning profits availing the financial facilities from the plaintiff-bank including cash credit limits and demand draft purchase facility, defendant No.2-appellant would have no objection, however, the moment financial liability came on the defendants, appellant-defendant No.2 would try to take a complete somersault turning around to say that his son Devinder Kumar was not authorised to deal with the plaintiff-bank on behalf of the defendants. In fact, defendant No.2 was trying to play smart misusing the process of law with a view to avoid the financial liability of his partnership firm as well as members thereof, who were none else but his own family members. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

The learned first appellate court considered each and every relevant aspect of the matter in minute details. Statement of appellant Ved Parkash as DW-4 has rightly proved to be the clincher against himself. True import of his statement has been discussed and appreciated in the correct perspective by the learned first appellate court in paras 25 to 31 of the impugned judgment. Some of the relevant observations made by the learned first appellate court in paras 26 and 27 of its judgment in this regard, which deserve to be noticed here, read as under:-

> *"Cross examination of this witness is very material. In his cross examination, he admitted that his firm is an income tax assessee firm. Their firm maintains account books regularly. He admitted that they submitted partnership deeds to the Income Tax Department. He admitted that Bhushan Kumar and Devinder Kumar are his sons. Uma Rani is his daughter. Simla Devi is his wife. He also admitted tha M/s Brij Lal Ved Parkash their firm had obtained a loan from the plaintiff bank for purchase of a truck. He also admitted that the plaintiff bank filed a suit against their firm for recovery of balance amount of loan plus interest thereon, which was advanced by the bank for purchase of truck. He do not remember whether Bhushan Kumar, Uma Rani were also impleaded as defendants in that case, being partners of defendant firm. He do not remember whether he admitted in the written statement that Bhushan Kumar and Uma Rani are partners of the aforesaid firm. The defendants were not availing any DDP limit with the plaintiff bank. This witness has admitted that their firm had one account with the plaintiff bank which was CC account. He also admitted Ex. P.1 bears his signatures and signatures of his son Bhushan Kumar.* He *admitted that he himself and his wife had deposited title deeds of his house and agricultural land with the plaintiff for creation equitable mortgage as additional security for repayment of advance against limit of Rs. two lac. He was also partner of firm M/s Ganesh Dass Oil and General Mills, Raman. That firm had also account with the plaintiff bank and that firm had also CC Limit with the plaintiff*

bank. He admitted that his both sons had been operating the bank accounts separately of both the firms. He do not remember whether he himself and his son Devinder Kumar had jointly signed cheques issued by defendant no.1 firm. This witness has admitted that only the partners of their firm used to sign hundies which they had been submitting to the plaintiff bank. He do not remember whether the defendant firm had been withdrawing amounts from their CC account against the said hundies. Bhushan Kumar had been operating bank account that is whey he do not know whether the bank had been crediting amount equivalent to the amount of Hundi less bank commission is their CC amount. He also do not know whether Bhushan Kumar been withdrawing amount from CC account. Only Bhushan Kumar knows about is because he had been operating the account of defendant no.1.

"This witness was again recalled for cross examination after framing additional issue No.7-A. He is his cross examination has stated that Devinder Kumar is his son. Bhushan Kumar is also his son. Shimla Rani defendant his wife. Uma Rani his daughter. He admitted that he had two firms namely M/s Brij Lal Ved Parkash and M/s Ganesh Dal and Oil Millls. He admitted that he was partner in both the firms. He also admitted that other members of the above said firms had been availing limits facility from the bank. He admitted that both the firms had accounts with the plaintiff bank. His sons had been operating the accounts separately. In one firm Bhushan Kumar was authorized and in other firm Devinder Kumar is partners. He admitted that they had been purchasing grams from different parties of Raman Mandi for making/grinding is to dal. He do not know whether vide cheques out of the disputed cheques which are singed by Devinder Kumar, Devinder Kumar

had made payments to different parties of Raman Mandi on behalf of defendant No.1. He admitted that they had been paying market fee to the market committee Raman. He cannot tell orally whether he had jointly signed some of the cheques with Devinder Kumar. Similarly, he do not know whether Bhushan Kumar had jointly signed some of the cheques with Devinder Kumar. He admitted that cheque books were being issued by the plaintiff bank. He never complained the plaintiff bank or never lodged any report with the local police with regard to mis utilization of cheques. He did not file any complaint against his sons with the police or with any other authority with regard to the above said unauthorized withdrawals till today."

When confronted with the above-said statement of DW-4 and to reconcile with the same, learned counsel for the appellant had no answer and rightly so, it being a matter of record. It is also pertinent to note here that some bank officials were also found involved in collusion with partners of the firm of the appellant, with a view to help the partners of the defendant-firm, to avoid their financial liability at the cost of the plaintiff-bank. It was being done because of extraneous considerations.

This was the reason that a bank enquiry was conducted. Relevant record in this regard was Exhibits D1 to D4 and some of the bank officials were indicted. In this view of the mater, the inevitable conclusion is that the learned Additional District Judge was well justified in reversing the patently illegal findings recorded by the learned trial court. First appeal of the plaintiff-bank was rightly accepted, decreeing its suit for recovery against the defendant-appellant. No fault can be found with the impugned judgment and decree passed by the learned first appellate court and the same deserve to be upheld for this reason also.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by both the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus 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 the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

14.7.2017 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No