IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2042 of 1993
Date of Decision.14.02.2018

Bank of India ......Appellant

Vs

M/s Pitamber Industries and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Hooda, Senior Advocate with
Mr. Naveen Kashyap, Advocate
for the appellant.

Ms. Vanita Sapra Kataria, Advocate
for respondent Nos.2 and 4 to 6.

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AMIT RAWAL J.(ORAL)

The present appeal is directed against the judgment and decree of the lower Appellate Court whereby the judgment and decree of the trial Court decreeing the suit to the extent of a sum of ₹2,28,387.45 along with cost and interest @14% per annum from the date of institution of the suit till realization of the decretal amount has been modified by holding that the Bank was required to bifurcate the principal and the interest from the date of institution of the suit by not clubbing the interest into the principal amount.

Before adverting to the arguments addressed by the counsel representing both the parties, it would be apt to give factual matrix of the controversy involved. The plaintiff instituted the suit for recovery of the aforementioned amount on the premise that defendant No.1-partnership firm through its partners defendant No.2 to 4 applied for a cash credit limit facility on the working capital for manufacturing of synthetic cloth and niwar and a cash credit limit of ₹2 lacs was sanctioned in their favour on

4.12.1984. Defendant Nos.5 to 7 stood as guarantor. Defendant No.2 to 4 executed following documents:-

"*i). Demand Promissory note dated 28.1.85 for Rs.2,00,000/- bearing interest @4% OBR with a minimum of 14% per annum with quarterly rests.*

ii) Letter of lien and set off on Form No.L-478 dated 28.1.1985.

iii) Agreement of hypothecation dated 28.1.1985 of all tangible moveable assets including the stocks of all kinds, raw materials as well as finished goods (synthetic cloth) on form No.L-448.

iv) Letter of continuing security dated 28-1-1985 on form No.L-447.

v) Letter of declaration undertaking dated 28-1-85 on form No.466.

vi) Letter of non-borrowing dated 28.1.85 on form L-486.

vii) Letter of Authority dated 28.1.85 debit the guarantee fee, insurance premium etc.

viii) Declaration regarding change in constitution/business particulars dated 28.1.1985."

In addition to the aforementioned documents, defendant No.4 created equitable mortgage dated 28.1.1985 of a property i.e. house situated at Naya Bazar, Near Mulluwala Talab, Bhiwani Lohar, Bhiwani, Tehsil and Distt. Bhiwani by delivering the original sale deed No.354 dated 28.5.1975. Defendant No.5 also created equitable mortgage deed of the property by delivering the original sale deed No.3425 dated 22.1.1985 of the house constructed on plot No.81, Adarsh Nagar, Bhiwani. However, there was a default, which necessitated the appellant-plaintiff to file the suit.

The suit aforementioned was contested by the defendants by taking customary pleas of maintainability, limitation and locus standi etc. The trial Court on the basis of the preponderance of the evidence decreed the suit along with interest. The lower Appellate Court in appeal preferred by the defendants modified the decree to the aforementioned extent i.e. directing the Bank to segregate the interest from the principal amount from the date of filing of the suit, in essence, not to include interest in the principal amount which was due till the filing of the suit.

Mr. H.S. Hooda, learned Senior Counsel assisted by Mr. Naveen Kashyap submitted that the aforementioned judgment of the lower Appellate Court is not sustainable in the eyes of law as the suit was filed under Section 34 CPC which was decreed by the trial Court in view of the fact that the defendants agreed to pay interest @14% as per the terms and conditions of the documents i.e. hypothecation and mortgage deed. The lower Appellate Court cannot tinker with the terms and conditions, therefore, there is illegality and perversity.

Ms. Vanita Sapra Kataria, learned counsel appearing on behalf of the respondents submitted that despite having written numerous letters to her client, it could not be ascertained whether the compromise arrived at between the parties or not but the fact of the matter is that the trial Court could not have clubbed the interest accrued on the outstanding amount on filing of the suit, therefore, the judgment and decree passed by the lower Appellate Court does not suffer from any illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book. The facts noticed above are not in dispute. The only question which is to be seen is whether the Bank can be ordered to segregate the interest amount which was due from the defendant by not adding into the principal on filing the suit as has been done by the lower Appellate Court. I am of the view that the lower Appellate Court cannot deviate or change the terms and conditions of the hypothecation and terms and condition of the mortgage deed. The documents permitted charging of interest by adding principal, thus, decree of the lower Appellate Court is not sustainable. The appeal is of the year 1993 and both the parties are not able to assist with regard to whether there had been a compromise arrived at between the parties as there was no interim stay granted by this Court.

In view of the handicapness of the counsel, I am of the view that the parties must have reconciled with the situation. Be that as it may, the fact of the mater is that the lower Appellate Court could not have passed the decree in the manner and mode as indicated above.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213,*** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC***

262 on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

> "*Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of* ***Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]*** *cannot be sustained and is thus overruled." [at paras 27 - 29]*"
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> "*27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to*

> *continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Keeping in view the aforementioned, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and decree passed of the trial Court is restored. However, it is made clear that in case parties have already compromised the matter then nothing survives for execution. If otherwise, the natural consequences of the judgment and decree passed by the trial Court, confirmed by this Court, shall follow. The second appeal is allowed in the above terms.

(AMIT RAWAL)
JUDGE

February 14, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No