

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 01, 2018

1. R.S.A.No.1810 of 2015 (O&M)

State Bank of Patiala, Ambala Cantt

...Appellant

Versus

M/s Matta Electronics, 187-188, Railway Road Ambala Cantt & others

...Respondents

2. R.S.A.No.1818 of 2015 (O&M)

State Bank of Patiala, Ambala Cantt

...Appellant

Versus

Daljeet Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Anil K. Ahuja, Advocate,
for the appellant in both the appeals.

Mr.R.K.Garg, Advocate,
for the respondents in both the appeals.

AMIT RAWAL, J.

CMNo.4869-C of 2015 in RSA No.1810 of 2015

For the reasons mentioned in the application, which is
supported by an affidavit, delay of 34 days in filing the appeal is condoned.

CM stands disposed of.

CMNo.4883-C of 2015 in RSA No.1818 of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 34 days in filing the appeal is condoned.

CM stands disposed of.

RSA Nos.1810 & 1818 of 2015

This order of mine shall dispose of two Regular Second Appeals bearing No.1810 and 1818 of 2015 preferred by the appellant-plaintiff against the judgment and decree of the trial Court dated 9.9.2013, whereby the suit for recovery of ₹79,518/- was partly decreed along with interest at the rate of 9% per annum from the date of filing of the suit till realisation against the claim of ₹5,66,545/-, which was assailed by both the parties, i.e., the Bank and the legal representatives of defendant No.3 Rajinder Kaur. The Lower Appellate Court, vide judgment and decree dated 11.12.2014, dismissed the appeal of the Bank and allowed the appeal preferred by the legal representatives of defendant No.3.

Before advertng to the arguments of the respective counsel, it would be apt to give brief preface of the matter.

Appellant-plaintiff instituted the suit for recovery of the aforementioned amount on the premise that defendant Nos.1 and 2 M/s Matta Electronics, 187-188, Railway Road, Ambala Cantt through its Proprietor Tejinder Singh Matta, who was arrayed as defendant No.2, approached the Bank for availing the cash credit/hypothecation limit of ₹1,25,000/- by offering the guarantee of Rajinder Kaur-defendant No.3. The Bank sanctioned the aforementioned facility on 2.1.1997 for carrying on the business of electronic goods, T.V., Tape Recorder, Two in one and Radio etc. and defendant Nos.1 and 2 executed various documents in favour of the

Bank as referred to in Paras 3 and 4 of the plaint, whereas defendant No.3 created equitable mortgage in respect of her property by depositing original title deeds with the Bank as a collateral security. The rate of interest agreed to be paid by the defendants was 14% per annum with quarterly rests, which was further agreed to be revised from time to time when notified by the Reserve Bank of India.

In addition to the equitable mortgage, defendants No.1 and 2 hypothecated electronic goods with the Bank. Defendants No.1 and 2 again approached the Bank for availing the facility of overdraft of ₹2,50,000/- vide letter dated 3.3.2001 and application dated 20.6.2001 for enhancement of cash credit limit from ₹1,25,000/- to ₹2,50,000/-, which was enhanced vide order dated 20.6.2001 and the defendants executed various documents.

Defendants No.1 and 2 again approached the Bank for temporary overdraft of ₹25,000/- for one week which was sanctioned. However, defendants No.1 and 2 submitted letter dated 20.7.2003 for adjustment of the amount within one month and also executed the balance confirmatory-cum-acknowledgment of security letter on 5.2.2004, but when failed to adhere to financial discipline, instituted the suit.

Defendants No.1 and 2 by filing a joint written statement contested the suit by taking customary pleas. On merits, it was stated that defendant No.3 Rajinder Kaur (since deceased being represented through legal representatives), filed a writ petition before this Court, wherein she was directed to approach the Debt Recovery Tribunal. An application was filed, which was pending adjudication.

Defendant No.3 filed independent written statement and stated that a sum of ₹4.00 lacs had been deposited with the bank, therefore,

recovery amount in question was disputed one. Since the parties were at variance, the trial Court framed the following issues:-

- a) *Whether plaintiff is entitled to recover Rs.5,66,545/- from the defendants with interest @ 14% p.a. with monthly rests from the date of filing of the present suit till the date of actual realization? OPP*
- b) *Whether the suit of the plaintiff is time barred? OPD*
- c) *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- d) *Whether the plaintiff has not come to the Court with clean hands and suppressed true and material facts from the Court? OPD*
- e) *Relief.*

The Bank in support of their case, brought on record documents Ex.P1 to Ex.P40. Defendant No.3 Rajinder Kaur, through her affidavit, reiterated the stand taken by her in the written statement and placed on record order Ex.DW1, account statement Ex.DW2, letter Ex.DW3 and also tendered order Ex.D4, which was also Ex.D1. Ex.D5 and Ex.D6 are account statements and closed the evidence. In additional evidence, judgment Ex.D7 was also tendered.

Mr.Anil K.Ahuja, learned counsel appearing on behalf of appellant-Bank submitted that the findings of the Courts below are totally perverse and unsustainable in law. The stand in the written statement was not only vague but evasive. The trial Court did not frame the specific issues. It is settled law that no party to a litigation is permitted to travel beyond pleadings. Though the defendants had pleaded that a sum of ₹4.00 lacs had been deposited with the Bank during the pendency of the suit on different dates, but the fact of the matter is that the interest which was accruing, has not been into consideration, thus there is travesty of law in illegally adopting a unique method unknown to law by holding that

the Non Performing Asset (NPA) amount of ₹3,49,979.06 as due on 30.9.2003 or a sum of ₹3,99,480/- as due on 30.9.2004 as per the demand notice under Section 13(2) of the SARFAESI Act stood fully paid by the defendants. In fact, the aforementioned amount was between the period ranging from 19.5.2008 to 6.8.2008, therefore, the findings were in contradiction of the law laid down by the Hon'ble Supreme Court in **Central Bank of India Versus Ravindra & Ors., AIR 2001 SC 3095.**

It was further argued that the Courts below erred in law in accepting the incorrect plea that the insurance charges of ₹5,927/- were not required to be credited in the loan account as the shop of defendants No.1 and 2 was closed. Grave miscarriage of justice has been meted out to the appellant-plaintiff. In fact, the impugned findings are contrary to the provisions of Section 70 of the Contract Act, 1872. Concededly, payment of three cheques issued by defendants No.1 and 2 aggregating to ₹81,100/- cannot be said to be in consonance with Section 70 of the Contract Act.

The trial Court, while noticing the contention of payment of ₹4,87,027/-, has totally bye-passed and it was the penal interest on the suit amount at the contractual rate was due. One of the reasons for accepting the appeal was that the DRT in its order dated 26.7.2012 clearly spelled out that an amount of ₹2,60,742.06P was the balance amount due as on 31.8.2008 as per the statement of account filed by the bank after adjustment of the amount paid by the respondent-defendants, but there was a misreading and misdirection.

The interest at the rate of 9% on the decretal amount by the Court below was absolutely contrary to the established law. The liability of defendant Nos.1 and 2 and the guarantor defendant No.3 was coextensive.

Once the notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance 2002 (for short “SARFAESI Act”) was issued, the symbolic possession was deemed to be with the bank of the collateral security. The findings of the Lower Appellate Court that the appellant-plaintiff, who remained in possession, use and occupation of the shop from 17.12.2004 to 26.7.2012 was required to pay mesne profits is also a misdirection because the physical possession of the property was handed over to defendant No.3 in pursuance to the orders of the DRT in proceedings initiated under the SARFAESI Act and, thus, urged this Court for setting-aside the impugned judgments and decrees.\

Per contra, Mr.R.K.Garg, learned counsel appearing on behalf of the respondent-defendants submitted that there is no illegality and perversity in the impugned findings. The act of the Bank is not less than shylock. The entire approach of the bank is to help the people but not to adopt a draconian procedure that too at the cost of the borrower and, thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Ahuja. The Lower Appellate Court has only accepted the appeal qua defendant No.3, whereas the judgment and decree with regard to the partial decretal of amount against defendant No.1 still subsists. Civil suit for recovery was instituted on 3.7.2007 and the possession of the equitable property as per the provisions of SARFAESI Act was taken on 17.12.2004. The legal heirs of defendant No.3 filed a petition before the Debt Recovery Tribunal and vide order dated 26.7.2012 (Ex.D7), the possession notice

dated 17.12.2004 was set-aside and the plaintiff bank was directed to hand over the possession of the shop in question to defendant No.3. In the aforementioned order, the balance NPA amount of ₹2,92,443-87P was outstanding on 31.7.2008. However, the legal heirs of defendant No.3 deposited a total sum of ₹4.00 lacs between the period 19.8.2005 to 6.8.2008 and as such excess amount of ₹10,787/- was recovered from them. Be that as it may, the Bank had basically enjoyed the possession of the property and deprived the guarantor from the use and occupation of the same.

Despite declaration of the account in 2003, the bank kept silent for almost four years for effecting the recovery of amount and approached the Court in 2007. The plea of Mr.Ahuja that the Bank was defending the litigation under the SARFAESI Act, in my view, did not prevent the Bank to initiate proceedings and claim the interest for all this period for no fault of the guarantor. No explanation has come forth as to why the steps have not been taken against the principal borrower as only the guarantor had approached the DRT in pursuance to the proceedings initiated under Section 13(2) of the SARFAESI Act.

In my view, once the guarantor had already paid the amount as reflected in the statement of account, if at all the bank is aggrieved, they can always execute the judgment and decree of the trial Court vis-a-vis defendant No.1 & 2, which still exists. It is the practice with the Bank that all the expenses incurred for causing publication for the sale of the property and other amount are also added in the account of the debtors. In fact, the bank plays with the money of the debtors. The imposition of liability of ₹79,518/- along with interest @ 9% per annum upon defendant No.3 was

not proper as the Bank had enjoyed the possession of the property as indicated above, i.e., from 17.12.2004 to 26.7.2012. It is in this backdrop of the matter, the Lower Appellate Court ordered for issuance of No Dues Certificate.

For the reasons stated above, I do not find any illegality or perversity in the impugned judgment and decree of the Lower Appellate Court and concur with the same, much less any substantial question of law. Resultantly, the appeals are dismissed.

February 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No