IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA-3277-2017 (O&M)
Date of decision: August 13, 2018

Samarjit ...Appellant

Versus

Oriental Bank of Commerce ...Respondent

CORAM: **HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. Birender Singh Rana, Sr. Advocate with
Mr. Gagandeep Rana, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff bank (respondent herein) filed a suit for recovery of Rs.4,16,498/- against one Sukhbir Singh and others including appellant being defendant No.2 (guarantor), with the averments that the plaintiff bank is a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act 40 of 1980, having one of its branch at Manesar, District Gurgaon. On the request of defendant No.1 Sukhbir Singh, a term loan of Rs.6,75,000/- was sanctioned in his favour for purchase of a Swaraj Mazda Bus against hypothecation of the said vehicle, bearing interest @ 3% over prime lending rate of bank with a minimum of 14% per annum with quarterly rests and other bank charges. Certain documents were also executed by the defendant No.1 against the loan granted by the bank. Defendant No.2 (appellant herein) stood as a guarantor for repayment of the loan alongwith interest and executed agreement of guarantee on 28.01.2003, therefore, his liability was co-extensive with that of the borrower. Defendant No.1 also mortgaged his land measuring 02 Kanals 03 Marlas against the aforesaid loan to the extent of 1/2 share. However, said land was already mortgaged against housing loan account on 17.9.2002 for Rs.2.00 lacs and the charge was extended for Rs.6,75,000/- on 28.01.2003. However, later on it was revealed that no vehicle was delivered to the defendant No.1 against the loan amount received by defendant No.3, as on receipt of a request for cancellation of the vehicle, the company i.e. Swaraj Mazda Ltd. had refunded the amount directly to the defendant No.2. It all happened on account of collusion of defendants No.1 & 2 with defendant No.3 company. Suit was resisted by defendant No.2, who filed his written statement alleging that he never stood as guarantor of defendant No.1 and denied his liability to pay the loan amount. He also denied the factum of the aforesaid loan. Issues were framed by the trial court. After hearing both the parties and perusing the records, the trial court decreed the suit filed by the plaintiff bank alongwith interest against defendants No.1 and 2 jointly and severally. It observed that the bank has been able to prove its case by oral and documentary evidence and defendants No.1 and 2 are liable to repay the loan to the bank alongwith interest. Findings were affirmed by the lower appellate court.

Learned senior counsel for the appellant has relied upon judgment reported as ***Salt Tarajee Khimchand and others Vs. Yelamarti Satyam and others, 1971 AIR (SC) 1865,*** to contend that a document, which is not exhibited, could not have been relied upon by the courts below. However, it is evident that there was enough material on record for the trial court to return the findings against the appellant. The argument is, thus, misconceived. I find no infirmity with the findings arrived at by both the courts below. Plea of the appellant that a fraud had been played by the bank officials in collusion with defendant No.3, is not tenable. There was privity of contract only between the bank and the principal borrower and the dealer had only to provide the vehicle to the borrower. Thus, the courts below have rightly held that defendants No.3 and 4 were neither necessary nor proper party to the lis and borrower as well as guarantor are liable to repay the loan amount. I find no substance in the plea raised by the appellant. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

(RAJAN GUPTA)
JUDGE

August 13, 2018
'Rajpal'

Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No