IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.619 of 2016
C.M.P.No.17347 of 2016

Union Bank of India
Rep.by its Chief Manager,
Mount Road,
Chennai-600 002. ..Appellant/1st Defendant

Vs.

1.Ruchi Soya Industries Ltd.,
(Formerly Ruchi Health Foods Ltd.,)
Rep.by its Authorised Signatory Mr.P.N.Prabhakar
Amended as per order in I.A.No.4366 of 2009 dated 18.09.2009
Royapuram, Chennai-600 002.

2. Mr.Mohan, Proprietor,
Sri Krishna Traders,
Padi, Chennai-600 050. ..Respondents/Plaintiff and 2nd Defendant

Prayer : First Appeal filed against the Judgment & Decree dated 17.10.2012 passed in O.S.No.2503 of 2011 on the file of the learned XV Additional Judge City Civil Court, Chennai.

For Petitioner: M/s.B.Nivedita
for M/s.N.V.S and Associates

For Respondent: Mr.P.B.Balaji for R1
R2-Not ready in notice

ORDER

The appeal suit on hand is directed against the judgment and decree dated 17.10.2012 passed in C.S.No.130 of 2005.

2. The defendant is the appellant and the respondent is the plaintiff in the appeal suit. The case of the plaintiff is that, at the request of the second defendant he offered to supply palm oil at the specified quantities. For supply of palm oil, the plaintiff insisted the second defendant to give security. Accordingly, the second defendant issued bank guarantee and the first defendant bank came forward to execute the bank guarantee in favour of the plaintiff for Rs.15,00,000/- (Rupees Fifteen Lakhs). The bank guarantee was valid from 04.03.2002 to 03.03.2003. Subsequently, after the bank guarantee, the plaintiff supplied palmolein oil under various invoices on 11.04.2002, 13.04.2002, 17.04.2002 and 18.04.2002 for Rs.12,39,700/- in total. The second defendant issued cheques for the said amount. But the cheques were dishonored by the banker with an endorsement 'exceeds arrangement and insufficient funds'. In view of the fact that the cheques were dishonoured, the plaintiff's representative approached the first defendant bank on 02.05.2002 along with a covering letter dated 30.04.2002, expressing their desire to invoke the bank guarantee and also handed over the original bank guarantee to the Manager. When the plaintiff demanded payment for the bank guarantee, the 1st defendant bank refused to pay the amount. Therefore, the plaintiff issued a notice dated 07.05.2002 to the 1st defendant, for which, the bank sent a reply with false allegations on 16.05.2002. The plaintiff lodged a complaint before the Banking Ombudsman on 21.05.2002. But the Banking Ombudsman has not taken up the matter stating that the High Court seized of the issue in a related matter, even though the second defendant has not filed any petition. Thus, the plaintiff is constrained to institute a suit for recovery of Rs.12,39,700/- and Rs.6,94,232/-, towards principal and interest respectively and both the defendants are jointly and severally liable to pay the suit amount together with future interest at 21% per annum.

3. The defendants in their written statement denied the averments made in the plaint by stating that the second defendant requested the first defendant to issue bank guarantee in favour of the plaintiff, for which, the first defendant issued a guarantee dated 04.03.2002, for a sum of Rs.15 lakhs in favour of the plaintiff and the guarantee was in force from 04.03.2002 to 03.03.2003. Though the guarantee was issued on the request of the second defendant, the plaintiff never confirmed the acceptance of the bank guarantee. On receipt of the original bank guarantee and requisition letter for cancellation of the bank guarantee, the 1st defendant canceled the bank guarantee in the normal course of business. It is not true that the Manager Kamarudeen received the representative of the plaintiff and left the bank without informing the arrival of plaintiff's representative and further, he did not report for work for the next two days. It is contended that the plaintiff ought to have approached the Chief Manager or higher authorities of the Bank. It is further stated that the Bank guarantee in question is no longer in force and there was no invocation of the guarantee as alleged by the plaintiff. Accordingly, prayed for dismissal of the suit.

4. The Trial Court framed the issues as to whether the first defendant/Bank committed default in honouring the bank guarantee furnished by them on behalf of the second defendant in favour of the plaintiff? If so, whether D1 and D2 are jointly and severally liable to pay the suit amount?

5. On the side of the plaintiff, the Manager of the plaintiff company was examined as P.W.1 and marked as Ex.P1 to Ex.P21. On the side of the first defendant, the Chief Manager was examined as D.W.1 and marked as Ex.B1 to Ex.B9. The second defendant remained ex-parte.

6. With reference to Issue No.1, the Trial Court made a finding that Ex.A2 to Ex.A5 are the invoice bills and further, the first defendant gave the bank guarantee for a sum of Rs.15,00,000/- on behalf of the second defendant. It is further admitted that the second defendant cheque was not honored and returned. Thus, the plaintiff invoked the bank guarantee and the bank has to pay the amount, as per the bank guarantee. But the first

defendant refused to honour the Bank guarantee and has stated that already the Bank guarantee was canceled. Under those circumstances, the plaintiff raised a dispute by stating that the bank guarantee was very much in force and it was illegally cancelled without the consent of the plaintiff. As per the terms and conditions of the bank guarantee, it was irrevocable for the period, for which, it was granted and even in case, if it is to be revoked, the same must be done with the consent of the plaintiff. However, there was no consent received from the plaintiff and not even information was given to them. Therefore, the Trial Court arrived at a conclusion that the plaintiff could be able to establish that the Bank guarantee was in force and the first defendant canceled the bank guarantee illegally and dishonoured the Bank guarantee. One Mr.Venkataraman was examined as PW1 and Ex.A.1 to Ex.A.21 were marked. Ex.A1 is the copy of the bank guarantee. Ex.A.2 to Ex.A.5 are the invoices. Ex.A.6 to Ex.A.9 are the cheques issued by the second defendant. Ex.A.10 and Ex.A.11 are the copy of lawyer notices. Ex.A.12 is the copy of plaintiff's letter to Banking Ombudsman. Ex.A.13 to Ex.A.18 are the copy of letter correspondences between the plaintiff and the Banking Ombudsman. Ex.A.19 is the authorization letter. Ex.A20 is the covering letter given by the plaintiff to the first defendant. Ex.A.21 is the acknowledgment card. To support the contentions of the first defendant, the Chief Manager, Mrs.Rekha of the 1st defendant bank was examined as D.W.1. The sanction advise is marked as Ex.B1. The original bank guarantee is marked as Ex.B2. The requisition letter sent by the second defendant to the first defendant to cancel the bank guarantee is marked as Ex.B3. Plaintiff's copy of the legal notice is marked as Ex.B4. First defendant's reply is marked as Ex.B5. The complaint copy lodged before the Banking Ombudsman is marked as Ex.B.6. Ex.B.8 is the statement of accounts and Ex.B9 is the Banker's Book Evidence Act.

7. D.W.1, the Chief Manager of the first defendant Bank, admitted that the Bank guarantee Ex.B.2 was given on behalf of the second defendant to the plaintiff. The Trial Court considered the clause in the Bank guarantee Ex.B.2, which states that "whereas the said a Bank undertakes not to revoke the guarantee during its currency i.e. From the date of guarantee to 03.03.2003 and agree that any change in the constitution of the said

supplier, shall not discharge our liability as mentioned herein above".

8. Thus, it is clear that the bank guarantee is irrevocable one, more specifically, during the subsistence of the bank guarantee for a period of one year, it cannot be revoked without the consent of the plaintiff or otherwise. However, the first defendant had not established that they have informed about the cancellation of the bank guarantee in advance or obtained prior permission from the plaintiff for cancellation of the bank guarantee which is otherwise admitted by the Bank Manager/D.W.1 in her deposition.

9. Thus, the Trial Court is able to found that the Bank guarantee was valid from 04.03.2002 to 03.03.2003 through the marked documents. But the first defendant canceled the bank guarantee without the consent of the plaintiff on 02.05.2002. D.W.1 also deposed that the original guarantee was also given by the second defendant and a requisition letter was given to cancel the bank guarantee, and therefore, the first defendant canceled the bank guarantee on 02.05.2002.

10. At this point of time, this Court has to consider that the bank guarantee was made in favour of the plaintiff and therefore, the same cannot be canceled without the consent of the plaintiff. The very contention that the requisition was made by the second defendant and based on such requisition, the first defendant canceled the bank guarantee is unacceptable and is in violation of the terms of the bank guarantee provisions, as per the banking rules in force. Thus, the Trial Court proceeded the discussion in the right perspective and considered the documents as well the evidences in consonance with the principles to be followed. The business transaction of supply of palmoelin oil to the second defendant, as per the invoices Ex.A2 to Ex.A5 was not disputed by the parties. The suit itself is instituted with the issue that the first defendant canceled the bank guarantee without the knowledge of the plaintiff, which caused loss of money as well as reputation to the plaintiff. In this context, this Court is of the considered opinion that P.W.1 also says that "after the cheque issued by the second respondent which was dishonored on 02.05.2002, the plaintiff approached

the first defendant bank and expressed their desire to invoke the bank guarantee, through which, the Manager came to understand that the bank guarantee was canceled." Under those circumstances, based on the evidence of D.W.1 Bank Manager, the bank guarantee was canceled without the consent of the plaintiff and the plaintiff had no knowledge about the cancellation of the bank guarantee till the cheque issued by the second defendant was dishonored. As per the terms of the bank guarantee, the confirmation letter regarding cancellation of the bank guarantee from the plaintiff is mandatory. In the absence of any such confirmation letter given in writing by the plaintiff, it is to be accepted that the first defendant/Bank has committed an error or lapse or some collusion, in this regard. The Trial Court arrived at a conclusion that the bank guarantee was admitted by the Chief Manager and the cancellation of bank guarantee was done without the consent of the plaintiff, under those circumstances, the Trial Court granted the relief as prayed for in the plaint. Under those circumstances, this Court has no hesitation in arriving at a conclusion that the Trial Court has not committed any error or perversity or infirmity in considering the documents as well as the evidences placed before the Trial Court for consideration. Accordingly, the Judgment and Decree dated 17.10.2012 passed in O.S.No.2503 of 2011 is confirmed and consequently, the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

The XV Additional Judge,
City Civil Court, Chennai.

+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.104964

A.S.No.619 of 2016

RR(CO)
CB(26/08/2020)