IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-6366-2016(O&M)
Date of decision:-23.11.2022

Yashwant and others

...Appellants

Versus

Punjab National Bank and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gautam Goyal, Advocate for
Mr.Deepak Jindal, Advocate
for the appellants.

Ms.Alisha Khan, Advocate for
Mr.H.S. Bhatia, Advocate
for the respondent.

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H.S. MADAAN, J.

CM-16707-C-2016

1. For the reasons mentioned in the application, the same is allowed and delay of 27 days in filing the present appeal is condoned.

RSA-6366-2016(O&M)

2. Briefly stated, facts of the case are that Punjab National

Bank, a body corporate constituted under the Banking Companies (Acquisition and transfer of undertaking) Act 1970 having its head office at Bhikaji Cama Place, New Delhi and one of its Branch Office at village Mokhra, Tehsil Meham, District Rohtak through its Branch Manager Sh.Rakesh Kumar Jain had filed a suit for recovery of Rs.7,47,372/- against defendants i.e. S/Sh.Yashwant, Vishesh, Dinesh and Krishan, all sons of Sh.Joginder Singh son of Musadi Ram, all residents of village Mokhra Khas Pana Shyam, Tehsil Meham, District Rohtak. Such suit was instituted on 1.10.2012.

3. As per the case of the plaintiff, on defendants approaching the plaintiff bank on 28.3.2007 seeking a loan of Rs.3,50,000/- for purchase of a tractor and Rs.50,000/- under Kissan Credit Card Scheme (hereinafter referred to as KCC Scheme), the request of the defendants was accepted and a term loan of Rs.3,50,000/- and Rs.50,000/- under KCC Scheme were sanctioned to defendants on that very date on defendants executing all the security documents in favour of the bank including hypothecation agreement and letter of undertaking dated 28.3.2007 and other collateral security of their agricultural land; the defendants agreed to repay term loan in 14 half yearly installments and KCC loan on demand on next coming crop once in a year with interest at the rate of 12.25% per annum with half yearly rests; the defendants had mortgaged their agricultural land measuring 39 kanals 15 marlas

situated at village Kalanaur Kalan, Tehsil Kalanaur, District Rohtak and such mortgage was entered in the revenue record vide report No.376 dated 22.3.2007 as collateral security for the repayment of the loan amount; the loan so sanctioned was disbursed to the defendants; the defendants purchased a tractor and got it registered vide registration No.HR-15-A-2711; however the defendants did not adhere to the financial discipline of the plaintiff bank and failed to pay the loan amount with interest as per schedule. The plaintiff requested the defendants a number of times to adjust the loan amount but in vain. Service of legal notice by the plaintiff bank upon the defendants failed to cut any ice, therefore the plaintiff was constrained to file a suit against the defendants for recovery of Rs.7,47,372/- i.e. Rs.7,45,472/- in term loan amount and Rs.1,900/- in crop loan.

4. On notice the defendants appeared and filed written statement contesting the suit raising many legal pleas and on merits denying that the loan was to be repaid in installments with interest @ 12.25% per annum with half yearly rests. According to the defendants, the loan was to be paid with simple interest and no document was read over to them while obtaining their signatures on some proformas. Defendant No.1 paid installments of loan amount to bank in time but plaintiff bank started claiming excess rate of interest from the defendants in an illegal manner and imposed wrong penalty;

crops of defendants were severely damaged, therefore, they could not deposit some installments. The defendants are agriculturists having income from agricultural land only. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

5. On the pleadings of the parties, following issued were framed:

1. *Whether the plaintiff is entitled for the recovery of Rs.7,47,372/- along with interest from the defendants, jointly and severally, as prayed for? OPP.*
2. *Whether the suit of the plaintiff is not maintainable in the present form?OPD.*
3. *Whether thre plaintiff has concealed true and material facts before the Court and if so, its effect? OPD.*
4. *Relief.*

6. The parties led evidence in support of their respective claims.

In order to prove its case, the plaintiff examined Sh.Rakesh Kumar Jain, Branch Manager, Mokhra Branch as PW1, who in his affidavit reiterated on oath case of plaintiff as contained in the plaint. He proved various documents also.

In rebuttal, defendants examined Sh.Kuldeep as DW1, Sh.Yashwant as DW2, Sh.Joginder as DW3 and Sh.Dinesh as DW4, who tendered in evidence their affidavits as Ex.DA to Ex.DD, respectively. All these DWs had supported the case of the defendants on material points. The defendants tendered certain documents and thereafter closed their evidence.

7. After hearing the learned counsel for the parties, the trial Court decided all the issues in favour of the plaintiff and against the defendants. Resultanlty, the suit of the plaintiff was decreed with costs and a money decree for the sum of Rs.7,47,372/- along with pendente lite interest as well as future interest at the rate of 9% per annum from the date of filing of the suit till the date of actual realization of the amount was passed in favour of the plaintiff and against the defendants and the defendants were held liable to pay the same jointly and severally. It was further observed that it would be a composite decree i.e. preliminary and final and the amount would be recoverable from the sale of the mortgaged properties and in case sale proceeds thereof are found to be insufficient, then the plaintiff bank would be at liberty to recover the balance amount from the persons and other properties of the defendants. Such judgment and decree were passed on 3.5.2014.

8. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Rohtak, which was assigned to learned Additional District Judge, Rohtak, who vide judgment and decree dated 27.7.2016 accepted the appeal partly and modified the same to the extent that a money decree in the

sum of Rs.3,50,000/- along with costs and interest @ 12.25% per annum with half yearly rests till the date of the present suit and future interest as well @ 9% per annum from the filing of the suit till the date of actual realization of the amount after making adjustment of all the receipts and payments in the loan account in question was passed in favour of the plaintiff and against the defendants and their liability being joint and several. The First Appellate Court had rejected the claim of the plaintiff for recovery of Rs.50,000/- said to have been granted to the defendants under KCC scheme.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff bank appeared through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Both the Courts below by properly analysing the evidence and the pleadings of the parties has come to the conclusion that defendants had raised loan from the plaintiff. The trial Court had reached an inference that defendants had obtained a loan of Rs.3,50,000/- for the purpose of purchase of tractor, whereas Rs.50,000/- loan was taken under KCC scheme. Whereas the First Appellate Court though affirmed the findings recorded by the trial Court with regard to defendants raising loan of Rs.3,50,000/- for the

purpose of purchase of tractor, however nursed some doubts with regard to an amount of Rs.50,000/- having been advanced to defendants under KCC scheme. Therefore, the claim of the plaintiff with respect to recovery of Rs.3,50,000/- with interest and cost only was accepted. The defendants are challenging that finding. However, I find that this approach of the defendants is wrong and erroneous. A perusal of the written statement filed by the defendants goes to show that the defendants admit having raised a loan of Rs.3,50,000/- though claiming that the loan amount was to be paid with simple interest. The trial Court has been quite considerate with the defendants inasmuch as despite their being sufficient evidence to show advancing of Rs.50,000/- under KCC scheme by plaintiff to defendants, that part of the claim was rejected by the First Appellate Court, Rohtak. The bank has not filed any appeal with regard to the part of the judgment denying recovery of amount advanced under KCC scheme nor has the bank filed any cross-objections in the appeal preferred by the defendants. Therefore, as far as recovery of decree for recovery of Rs.3,50,000/- with interest @ 12.25% per annum with half yearly rests till date of filing of the suit and future interest at the rate of 9% per annum from the date of filing of the suit till the date of actual realization of the amount, that does not call for being differed with. The appeal filed by the defendants denying their liability to return any amount to the plaintiff bank towards principal or interest clearly lacks merit and is liable to be dismissed with costs.

Finding no merit in the appeal, the same stands dismissed accordingly.

23.11.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No