IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1542-1992 (O&M)
Date of decision: 25.01.2023

Punjab National Bank

...Appellant

Versus

M/s Satluj Potteries and others

...Respondents

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

Present: None.

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H.S. MADAAN, J. (Oral)

Despite notices having been sent to the appellant-bank and service got effected through its clerk, there is no representation on its behalf. Similarly, nobody has turned up to appear for the respondents. Since the case relates to the year 1992, I do not find it proper to adjourn it further, rather, I proceed to decide it after going through the record.

2. Briefly stated facts of the case are that plaintiff Punjab National Bank having its head office at New Delhi and a branch amongst other places at Gurgaon now known as Gurugram, had filed a suit for recovery of Rs.4,33,448.35/- against the defendants M/s Satluj Potteries through its partner Narender Mohan Bakshi and others, on the averments that defendant No.1 firm working in the name and style of M/s Satluj Potteries of which defendants No.2 to 5 are partners had approached the bank to obtain a term loan facility of Rs.3 lacs and a cash credit limit of Rs.30,000/- for installation of a plant and machinery and constructing factory building for running its business. The plaintiff-bank accordingly sanctioned term loan of Rs.2,20,000/- on 12.08.1980 against mortgage of factory land building and hypothecation of the machinery. The requisite documents of the bank had been executed by defendants No.1 to 5. The defendants had agreed to repay the loan with interest @ 2% p.a. over the Reserve Bank of India rate with minimum of 11% p.a., in 15 quarterly installments. A cash credit limit of Rs.30,000/- was also granted by the plaintff bank to the defendants. Defendants No.1 to 5 has executed a hypothecation agreement of goods to secure that benefit on 16.12.1980 and agreed to repay the amount with interest @ 3.5% p.a., over the Reserve Bank of India rate with minimum of 12 ½ % p.a. Subsequently, on 18.04.1981 at request of defendants, the limit was enhanced to Rs.60,000/-. Requisite documents were executed by the defendants; rate of interest was also settled. The defendants had created equitable mortgage of their agricultural land measuring 12K-8M and had deposited title deed with the bank on 12.08.1980. Machinery installed in the factory was also hypothecated. Defendants No.6 and 7 stood as guarantors for repayment of the loan with interest and became jointly and severally liable with the borrowers. They had executed agreement of guarantee in favour of bank on 12.08.1980 besides an agreement of guarantee for enhancement of limit on 09.05.1981. However, the defendants failed to repay the loan amount in full as well as the amount of interest, which had accrued, although, they had been confirming the balance in their account from time to time. Repeated requests by the plaintiff to defendants to regularize their loan accounts and to pay the instalments in time failed to cut any ice, so did several registered notices sent by the plaintiff to the defendants. Feeling aggrieved, the plaintiff had brought the suit in question, seeking recovery of Rs.4,33,448.35/- as per details below:-

a. Term Loan Account No.105/2 - Rs.102677.35/-.
b. Term Loan Account No.107/2 - Rs.93539.50/-
c. Term Loan Account No.119/2 - Rs.136686.60/-
d. Cash Credit Limit Account - Rs.100544.90/-

3. On being given notice, the defendants had appeared and filed a written statement, contesting the suit. Inter alia, they had pleaded that previously there was a partnership firm in the name and style of M/s Satluj Potteries, of which defendants No.2 to 5 were partners. The defendants admitted that defendant No.1 had approached the plaintiff bank for getting some facilities. However, they alleged that in that process, their signatures were obtained on blank papers. They denied having availed of any loan facility or cash credit limit facility from the plaintiff bank. They alleged that whatever amount was received by defendant No.2, has been repaid to the plaintiff.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the suit has been instituted through a duly authorized person? OPP.
2. Whether defendant No.1 through its partners defendants No.2 to 5 obtained term loan facility of Rs.3 lacs and a cash credit limit of Rs.30,000/- from the plaintiff bank as alleged and executed necessary loan documents in this regard in favour of the bank? OPP.
3. Whether the cash credit limit was enhanced to Rs.60,000/- at the request of defendants No.1 to 5? OPP.
4. Whether defendants No.6 and 7 stood as guarantors and if so, to what effect? OPP
5. Whether defendants No.1 to 5 mortgaged their land and building and hypothecated machinery in favour of the bank? OPP
6. Whether the defendants are liable to pay interest and if so, at what rate? OPP
7. What amount, if any the plaintiff is entitled to recover from the defendant? OPD
8. Whether defendant No.1 has repaid the entire amount of loan? OPD.
9. Relief.

5. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Sub Judge Ist Class, Gurgaon, decided issue No.1 in favour of the plaintiff, holding that the suit has been instituted through a duly authorized person; issue No.2 was also decided in favour of the plaintiff and against the defendants, observing that defendants No.2 to 5 had obtained a term loan facility of Rs.2,20,000/- and a cash credit limit of Rs.30,000/- executing necessary loan documents in favour of the bank; issue No.3 was also decided in favour of the plaintiff and against the defendants, holding that the cash credit limit was enhanced to Rs.60,000/- at request of defendants No.1 to 5; issue No.4 was decided in favour of the plaintiff and against the defendants, holding that defendants No.6 and 7 stood as guarantors and made themselves jointly and severally liable with defendants No.1 to 5 for repayment of loan; issue No.5 was decided in favour of the plaintiff and against the defendants, observing that equitable mortgage was created by defendants No.1 to 5 in respect of their land described in the plaint in favour of the bank and further they had mortgaged machinery in favour of the bank; issues No.6 and 7 were decided observing that defendant No.1 is a sick unit and the remaining partners have already left, therefore, interest @ 9% p.a., was granted. The bank was found entitled to recover Rs.4,33,448.35/- including interest upto date of institution of the suit from the defendants with further interest @ 9% p.a., on the principal amount from the date of institution of suit till realization; issue No.8 was decided observing that no evidence has been produced to show that amount of loan has been repaid to the bank. Resultantly, vide judgment dated 31.01.1989, the trial Court passed a preliminary decree in favour of the plaintiff and against the defendants for recovery of Rs.4,33,448.35/- with costs of the suit, observing that the plaintiff shall be entitled to future interest on the principal amount @ 9% p.a., from the date of institution of the suit till realization and the defendants shall pay the decreetal amount within a period of six months and if they do so, the plaintiff shall deliver to them all documents in its possession or power relating to the property mortgaged by the defendants in its favour and in case the defendants failed to pay the decreetal amount during the specified period, the plaintiff shall be entitled to apply for final decree for sale of mortgaged property for recovery of the decreetal amount.

7. Feeling aggrieved by such judgment and decree passed by the trial Court, the plaintiff-bank had filed an appeal before District Judge, Gurgaon, who vide judgment and decree dated 03.03.1992 dismissed the appeal, affirming the judgment and decree passed by the trial Court.

8. Still feeling dissatisfied, the plaintiff-Bank has approached this Court by way of filing the present Regular Second Appeal, on the point of rate of interest. Notice of the appeal had been given to the respondents who had put in appearance through counsel initially. Subsequently, there has not been any representation on behalf of either of the parties, rather in particular, the plaintiff has not appeared through counsel or some authorized person despite the notice having been given to it and its service got effected through one of its employees. That shows the lack of interest on the part of appellant-bank in prosecuting this appeal. The appeal which is more than 30 years old cannot be kept pending any further.

On merits also, the appeal is bound to fail. Both the Courts below have given detailed findings while decreeing the suit in favour of the plaintiff-Bank except with regard to the rate of interest. I do not see any reason to differ with the reasoning given by the Courts below. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

25.01.2023 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No