IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1113-2017(O&M)
Reserved on:-24.4.2023
Date of Pronouncement:-1.5.2023

State Bank of Patiala

...Appellant

Versus

Inderjit Kaushal and another

...Respondents

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

Present: Mr.Rahul Garg, Advocate for
Mr.D.K. Singal, Advocate
for the appellant.

Mr.P.S. Dhaliwal, Advocate
for respondent No.1.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff State Bank of India having its Head Office at The Mall, Patiala and branch office amongst other places, one at Barnala known as SD College Branch, Tehsil and District Barnala had brought a suit for recovery of Rs.8,21,811.30 paise including interest and cost against defendants

i.e. Inderjit Kaushal and Raghvir Parkash on the averments that on 28.11.2008 on an application having been filed by defendant No.1 Inderjit Kaushal with plaintiff – bank for grant of loan of Rs.1,50,000/- under Loan Against Property Scheme, the loan to the tune of Rs.3,30,000/- was sanctioned and disbursed to the defendant No.1 on his executing all the security documents to the bank undertaking to repay the amount in monthly installments; he had further agreed that the crops whatsoever and wherever raised or to be raised including standing crops on the land mortgaged with the plaintiff bank or cut or stocked or stored or in course of transit for all indebtedness or liabilities of the borrower to the bank together with all interest etc., payable to or incurred by the bank; defendants No.1 and 2 had also executed a demand promissory note on 28.11.2008; defendant No.1 also mortgaged his 2 kanals 3 marlas of land situated within the revenue limits of Jodhpur vide registered mortgage deed dated 20.11.2008 registered at the office of Sub Registrar, Barnala; defendant No.2 stood surety for repayment of loan amount, executing deed of guarantee in favour of the plaintiff bank.

The defendant No.1 had requested the plaintiff bank to extend more financial assistance and the plaintiff bank advanced loan of Rs.4,30,000/- on the security of fresh land and defendant No.1 further mortgaged his 2 kanals 16 marlas of land vide registered mortgage deed dated 14.1.2009; a current account was opened in the name of defendant No.1; at the time of filing of the suit, a sum o Rs.6,26,536.34 paise was due and outstanding against the defendant with interest up to 29.7.2009; besides another sum of Rs.1,95,274.9 paise as interest from 30.7.2009, total Rs.8,21,811.30 paise along w th interest from 30.7.2009 to 10.4.2011 up to the date of filing of he suit with future interest as agreed between the parties. When the defe dants failed to clear the dues of the plaintiff bank, it brought the s it in question.

2. On being put to notice, defendant No.1 appeared and filed a written statement raising various legal objections contending that plaintiff had materially altered the documents and produced the same with an intention to get undue advantage of the said documents; no cause of action arose to he plaintiff to file the suit. On merits, the answering defendant contended that plaintiff had not produced any authorisation of the Executive Committee of the plaintiff bank or order dated 15.3.1986 nor produced any gazette notification of the bank dated 7.6.1986 or for that matter minutes of meeting of the board of directors. According to the answering defendant, he had applied for loan of Rs.1,50,000/-, which was sanctioned. Such defendant denied that he ever applied for further loan of Rs.3.30 lakhs or he has executed any letter of undertaking for a sum of Rs.1.5 lakhs. He further denied that he had availed loan of Rs.4.30 lakhs from the bank. Refuting the remaining assertions, such

defendant prayed for dismissal of the suit.

3. In the separate written statement filed by defendant No.2, he had also raised various legal objections contending that plaintiff bank has altered the material documents. On merits, he submitted that defendant No.1 had applied for loan of Rs.1,50,000/- and not of Rs.3,30,000/-. In the end, such defendant also prayed for dismissal of the suit.

4. The plaintiff had filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

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

1. Whether plaintiff bank is entitled to recover suit amount from the defendant? OPP.
2. Whether plaintiff bank is entitled for interest if so at what rate? OPP.
3. Whether plaintiff bank has got no locus-standi and cause of action for filing the present suit? OPD.
4. Whether plaintiff had materially altered the documents? OPD.
5. Whether suit is not maintainable? OPD.
6. Relief.

6. Both the parties led evidence in respect of their claims.

During the course of its evidence, the plaintiff bank examined Sushil Nagar as PW1, Ramesh Kumar Arora as PW2 and Mewa Ram Syan as PW3.

On the other hand, the defendant No.1 Inderjit Kumar got his own statement recorded as DW1 besides examining Dr.Inderjit Singh as DW2.

In rebuttal, counsel for the plaintiff tendered documents Ex.P17 to Ex.P22.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge(Sr.Divn.), Barnala vide judgment and decree dated 21.7.2015 gave issue-wise findings and resultantly suit of the plaintiff was decreed and a preliminary decree was passed in favour of the plaintiff bank, which was found entitled to recover Rs.1,50,000/- from the defendant No.1 and defendant No.2 jointly along with interest @ 9% per annum from the date the said amount was due till the date of decree and future interest @ 6% per annum payable on the principal amount from the date of decree till its realization and plaintiff bank was also entitled to recover Rs.4,30,000/- from the defendant No.1 along with interest @ 9% per annum from the date the said amount was due till date of decree and future interest @ 6% per annum payable on the principal amount from the date of decree till its realization. The defendants were directed to make the payment to the plaintiff bank within the period of 3 months from date of decree, failing which the plaintiff bank

would be at liberty to get their amount from the sale of hypothecated property as well as other property of the defendant No.1.

8. Defendant No.1 was aggrieved by the said judgment and decree and he had filed an appeal before District Court at Barnala, which was decided by Additional District Judge, Barnala vide judgment and decree dated 16.9.2016 inasmuch the said appeal was partly accepted and suit of the plaintiff regarding the claim of second loan of Rs.4,30,000/- along with interest and other charges was dismissed. The appeal of the defendant qua the remaining relief was dismissed observing that plaintiff bank was entitled to recover the amount of Rs.1,50,000/- advanced to the defendant No.1 on 28.11.2008. Both the defendants were found to be jointly and severally liable to discharge the liability and plaintiff bank was entitled to recover the amount of Rs.1,50,000/- along with interest and other charges as awarded by the trial Court.

9. Now it was the turn of the plaintiff to feel aggrieved and it had knocked at the door of this Court by way of filing present regular second appeal, notice of which was issued to the respondents. However, only respondent No.1 has put in appearance through counsel.

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

11. Though the trial Court had decreed the suit of the

plaintiff in toto, the Court of Additional District Judge, Barnala by misappraisal of evidence and wrong interpretation of law had rejected the claim of the plaintiff with regard to second loan of Rs.4,30,000/- mainly for the reason that no application for grant of loan of Rs.4,30,000/- moved by the defendant No.1 was available in the bank record. The approach of the Additional District Judge, Barnala was erroneous and misdirected. He very conveniently ignored the mortgage deed dated 14.1.2009 brought on record as Ex.P14. If the second loan had not been advanced, where was the question of execution of mortgage deed dated 14.1.2009. Learned Additional District Judge, Barnala had adopted a hyper-technical approach in rejecting the claim of the plaintiff with regard to advancement of second loan of Rs.4,30,000/-. The fact that date of advancement of second loan is not mentioned in the plaint seems to have weighed very heavily on the mind of learned Additional District Judge, Barnala. A lapse here and there on the part of the counsel in drafting the plaint does not mean that the case of the plaintiff is to be rejected for such like reasons. Whereas, the trial Court by proper appraisal and appreciation of evidence and correct interpretation of law had found merit in the case of the plaintiff, in the process decreeing the suit.

12. It has to be taken into view that defendant No.1 had availed of the loan under Loan Against Property Scheme. The

plaintiff had led enough oral and documentary evidence to establish its case. PW3 Mewa Ram Syan, Ex.Branch Manager had proved the sanction Ex.P16 deposing that mortgage deed No.4054 dated 20.11.2008 for Rs.1,50,000/- Ex.P12 and mortgage deed No.5366 dated 14.1.2009 for Rs.4,30,000/- Ex.P13 bear his signatures. The entries with regard to both the mortgage deeds were found to be there in the register of Deed Writer PW2 Ramesh Kumar. There was little possibility of the officers of the bank indulging in forgery and fabrication of record to that extent. Although as per the claim of the defendants, the plaintiff bank had materially altered the documents and they had examined a Document Expert Dr.Inderjit Singh as DW2, who had reported that there are material alterations in the documents. But keeping in view the totality of the circumstances there was no reason for learned Additional District Judge, Barnala to interfere with the judgment and decree passed by the trial Court, which is quite detailed and well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law and I do not find any illegality or infirmity therein.

13. Learned Additional District Judge, Barnala fell in error in rejecting the claim of the plaintiff with regard to advancement of second loan of Rs.4,30,000/- by the plaintiff bank to defendant No.1. A registered mortgage deed fortifies the claim of the plaintiff with regard to advancement of Rs.4,30,000/- by plaintiff bank to

defendant No.1 and no explanation is coming forth from the side of defendants in that regard.

14. With regard to certain cuttings and alterations in loan application Ex.P16, that aspect has been properly dealt with by the trial Court in para No.15 of the judgment with which I do not see any reason to disagree.

15. Therefore, the appeal has got merit. The same is allowed and the impugned judgment passed by Additional District Judge, Barnala modifying the judgment and decree passed by the trial Court with regard to advancement of second loan of Rs.4.30,000/-, is set aside, whereas judgment and decree passed by the trial Court are restored.

Since the appeal stands allowed, the miscellaneous application(s), if any stand disposed of accordingly.

1.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No