IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.109

Case No. : RSA-2444-2018 (O&M)

Date of Decision : September 11, 2023

Punjab and Sind Bank .... Appellant

vs.

Ashok Kumar Sethi .... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ranjit Singh Kakkar, Advocate for the appellant.

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GURBIR SINGH, J. :

1. **CM No.6475-C of 2018 :** This is application under Section 5 of the Limitation Act, 1963 for condonation of delay of 14 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 14 days in filing the present appeal is condoned. The application stands disposed of.

2. **CM No.6474-C of 2019 :** This is application under Section 151 CPC for condonation of delay of 191 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 191 days in re-filing the present appeal is condoned. The application stands disposed of.

3. **Main Appeal :** This is Regular Second Appeal filed against the concurrent findings of both the Courts below.

4. The plaintiff-appellant filed a suit for recovery against the defendant-respondent on the ground that the defendant-respondent, on 25.05.1998, stood guarantor for return of loan amount advanced to one Daljit Singh (since deceased), who died on 26.11.1998. His father namely Surjit Singh gave an undertaking to repay the loan taken by Daljit Singh and executed various documents on different dates i.e. on 29.03.2001, 20.03.2004, 20.02.2007, 11.02.2010 and 18.10.2012 to do the needful. Thereafter, Surjit Singh also died leaving behind no legal heir. As such, it is alleged that the defendant has been liable to pay the outstanding amount against the loan account advanced to Daljit Singh (since deceased)

5. The defendant-respondent appeared in the suit and contested the same mainly on the ground that after death of principal borrower, the plaintiff-appellant got executed fresh loan documents from his father. No notice was given to the defendant-respondent. He did not give any consent for continuation of his guarantee in favour of fresh borrower. With the change of principal borrower, his liability was no more existing. Moreover, suit has been filed after three years of death of Daljit Singh. The liability of defendant-respondent could be, at the most, three years from his death. Thereafter, suit against defendant is barred by limitation.

6. Learned counsel for the appellant-Bank has argued that liability of the respondent was till the loan account of borrower was adjusted. The respondent cannot say that he is not liable to pay the loan amount and the learned Courts below have wrongly held that there is no liability of the respondent.

7. I have heard learned counsel for the appellant and perused the case file.

8. There is no merit in the contentions raised by learned counsel for the appellant. The original borrower Daljit Singh died on 26.11.1998. Thereafter, appellant-Bank got executed fresh documents from his father Surjit Singh, who undertook to repay the loan amount. It is not the case of the appellant that any consent of the respondent was obtained for continuing his guarantee or a notice was given to the respondent about the execution of fresh documents by the father of the original borrower. After the death of Daljit Singh, the liability of the guarantor was only to repay the loan amount within limitation. Since he died on 26.11.1998 and this suit was filed in October 2015, so, the respondent cannot be held liable, as a guarantor, to pay the amount outstanding in the loan account of Daljit Singh. The appellant-Bank got fresh documents executed from the father of Daljit Singh and the respondent had not stood as a guarantor for the same.

9. In view of the aforesaid, I find no merit in the instant second appeal. The concurrent finding recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

10. Pending applications, if any, shall stand disposed of along with this judgment.

September 11, 2023 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*