201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-176-1994(O&M)
Date of decision : 15.05.2024

Barkat Ram **...Appellant**

Vs.

UCO Bank and another **...Respondents**

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Reshabh Bajaj, Advocate
for the appellant.

Mr. Abhishek Batta, Advocate for
Mr. Ankush Thakral, Advocate
for respondent No.1.

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ANIL KSHETARPAL, J. (Oral)

1. In this second appeal, the defendant (guarantor) assails the correctness of concurrent finding of fact arrived at by the Courts below while decreeing Bank's suit for recovery of Rs. 11,291/-.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith requisitioned record.

3. Learned counsel representing the appellant contends that a suit against Sh. Harbans Lal was dismissed as it was found to have been filed beyond the prescribed period of limitation. He submits that the borrower committed default in the year 1982, hence, the limitation for filing the suit against the guarantor began to run from that date.

4. *Per contra,* the learned counsel representing the respondents submits that the letter of guarantee executed by the appellant was continuing

and the cause of action to recover the amount from the appellant accrued only when the Bank was unable to recover the amount from the borrower. He relies upon the judgment passed by the Hon'ble Supreme Court in ***'Mrs. Margaret Lalita Samuel vs. Indo Commercial Bank Ltd',*** **1979 (2) SCC 896.**

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. In case of a live guarantee, the Hon'ble Supreme Court in ***Mrs. Margaret Lalita Samuel's case (Supra)*** has held as under:-

> *"The guarantee is seen to be a continuing guarantee and the undertaking by the defendant is to pay any amount that may be due by the company at the foot of the general balance of its account or any other account whatever. In the case of such a continuing guarantee, so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, we do not see how the period of limitation could be said to have commenced running. Limitation would only run from the date of breach under Article 115 of the schedule to the Limitation Act, 1908."*

7. The attention of the Court has not been drawn to any specific recital in the letter of guarantee that the liability of the guarantor will come to an end if the borrower commits default.

8. Keeping in view the aforesaid discussion, no ground to interfere is made out.

9. Dismissed.

(ANIL KSHETARPAL)
JUDGE

15.05.2024

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