IN THE COURT OF MS. RAJWANT KAUR, UID NO.PB0267
ADDL. CIVIL JUDGE (SENIOR DIVISION), KAPURTHALA.

CNR No. PBKP020008252022

Case No. CS/570/2022

Presented on : 02-11-2022
Registered on : 02-11-2022
Decided on : 22-07-2024

State Bank of India, a body corporate constituted under the State Bank of India Act, 1955, carrying on the business of banking and having branches at different places including a branch at the Mall, Kapurthala, through its Chief Manager Sh.Balbir Singh.

…......Plaintiff.

Versus.

1. M/s Sachdeva Garments, Near Khalsa Bakery, Sadar Bazar, Kapurthala, through its Proprietor Smt.Parminder Kaur wife of Sh.Harwant Singh, resident of H.No.B-31/82, Mohalla Neeche Banda, Kapurthala.
2. Smt.Parminder Kaur wife of Sh.Harwant Singh, resident of H.No.B-31/82, Mohalla Neeche Banda, Kapurthala, Proprietor M/s Sachdeva Garments, Near Khalsa Bakery, Sadar Bazar, Kapurthala,

.....Defendants.

Suit for recovery of ₹18,15,985.00 (₹ Eighteen Lakh Fifteen Thousand Nine Hundred Eighty Five Only) being the amount due in respect of the following accounts:-

i)	Cash Credit Limit	₹17,19,429.00/-
ii)	Term Loan (Funded Interest Term Loan)	₹96,556.00/-
	Total Recoverable Amount	₹18,15,985.00/-

along with future interest @ 10.60% p.a. with monthly rests, from 20.10.2022 till its full and actual realization.

Present: Sh. Vinay Garg, Advocate, for the plaintiff bank.
Defendants exparte.

JUDGMENT

The plaintiff bank has filed the present suit seeking relief of recovery of ₹18,15,985.00/- along with future interest, as prayed for in the head note of plaint.

2. In brief, the case of the plaintiff bank is that Sh.Balbir Singh is presently the Chief Manager and Principal Officer of the State Bank of India, the Mall, Kapurthala, who is fully conversant with the facts of this case, as such, is in a position to depose about the correctness or otherwise of the facts stated in the plaint. He is competent to sign and verify all types of pleadings, Vakalatnama, Affidavit, execution and various other applications and do all acts necessary for proper conduct of legal proceedings by and on behalf of the plaintiff in terms of Gazette Notification dated 26.09.1969 and 26.09.1972 issued by the Executive Committee of the Central Board in exercise of power conferred on it under General Regularion No.76 and 77 of the State Bank of India, exercising the conferred by Sub Section 3 of Section 50 of the State Bank of India, Act, 1955. It is further averred that defendant no.1 is a sole Proprietorship concern having its business of readymade garments at Sadar Bazar, Near Khalsa Bakery, Kapurthala, with defendant no.2 as its

Sole Proprietor. The defendant no.2 as sole proprietor of defendant no.1 approached the plaintiff bank at its Mall Road Branch, Kapurthala, through application dated 09.07.2019 for advancing her a Cash Credit Limit of ₹20,00,000/- in shape of working capital limit for expansion of her business of readymade garments etc. The plaintiff bank agreed for the same with interest @ 11.60% p.a. with monthly rests, with further condition that all the stocks of readymade garments etc. to be purchased from the limit amount and stored in the shop of defendant no.1, shall be hypothecated by the defendants, in favour of the plaintiff bank. The defendant no.2 on behalf of defendant no.1 executed documents i.e. letter of arrangement and agreement of loan cum hypothecation on 19.07.2019, in fvour of the plaintiff bank. In order to avail the said loan, a Cash Credit Card Account was opened on the said date in the books of the plaintiff. The said loan was repayable on demand and was sanctioned for 24 months from 18.07.2019 subject to review every twelve months. It is further averred that the defendants after having availed the said limit, again approached the plaintiff bank with application dated 25.06.2021 for restructuring/rehabilitation of the unit due to Covid-19 and the plaintiff bank sanctioned a funded interest term loan of ₹90,000/- in favour of the defendants, which was repayable by the defendants in 24 EMI, with a moratorium period of one month and for first eleven months only interest on this amount was payable and thereafter the principal and interest was payable in remaining installments by the defendants. It is further averred that the defendant no.2 on behalf of defendant no.1, in respect of Funded Interest Term Loan of ₹90,000/- executed an Arrangement Letter on 29.06.2021, whereby the defendant agreed to the terms and conditions of this Funded Interest Term Loan and to avail the said loan, an amount was opened on 29.06.2021 in the books of the plaintiff and defendants operated the loan account as per their requirements from time to time. It is further averred that the defendants have failed to adhere to the financial discipline of the plaintiff bank by non payment of the limit amount alongwith interest and have also failed to pay the regular monthly installments in their aforesaid Funded Interest Term Loan as agreed by them. The defendants have been called upon many times by the official of the plaintiff bank to deposit their regular business sale proceeds in their limit account and pay the monthly installments but they have failed to deposit the same. Hence, the present suit is filed.

3. Upon notice, initially the defendants appeared through counsel and filed written statement with prayer to dismiss the suit by raising preliminary objections that the suit is not maintainable, plaintiff has got no cause of action to file the present suit, plaintiff is estopped by its own act and conduct, omission and commission to file the present suit, suit is hopelessly time barred, the suit has not been filed as per the amended provisions of CPC, plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court. The true facts are that the the defendants had availed Cash Credit Limit of ₹20

Lakhs from the plaintiff bank on 19.07.2019 and the said limit was repayable on demand of the plaintiff. It is settled that the plaintiff bank will charge interest @ 9.60% p.a. Thereafter, the defendants had been repayment the loan/limit to the plaintiff bank regularly but due to Covid-19, the business of the defendants was badly effected and thus the defendants fell into financial crises as such the defendants approached the plaintiff bank and requested to give some time and accordingly the defendants availed moratorium facility and then again the defendants started paying limit amount but instead of seeing the business condition of the defendants, the plaintiff has filed the present suit on false and frivolous grounds. The plaintiff bank is charging exaggerated interest over the amount and now again the plaintiff is claiming ₹18,15,985/- from the defendants. On merits, the other contents of the plaint were denied and prayer for dismissal of the same has been made.

4. Replication was filed by the plaintiff to the written statement filed by the defendants, reiterating the averments of the plaint and denying those of the written statement. From the pleadings of the parties, following issues were framed :-

(1) Whether the plaintiff is entitled for recovery of ₹18,15,985/- alongwith interest as prayed for/-?OPP

(2) Whether the suit is not maintainable in the present form ?OPD

(3) Whether the plaintiff has got no cause of action and locus standi to file the present suit?OPD

(4) Whether the plaintiff is estopped by its own act and

conduct and omission and commission to file the present suit?OPD

(5) Whether the suit is time barred(OPD

(6) Whether the plaintiff has not come to the court with clean hands?OPD

(7) Relief.

5. In order to prove its case, plaintiff bank examined Sh.B.B.S. Minhas-Manager, State Bank of India, Dandi Swami Chowk Branch, Ludhiana, as PW1, Sh.Balbir Singh, Chief Manager, SBI, Mall Road, Kapurthala, as PW2 and tendered documents i.e. application dated 09.07.2019 Ex.P1, Letter of Arrangement Ex.P2, Loan-cum-Hypothecation Agreement Ex.P3, application dated 25.06.2021 Ex.P4, Arrangement Letter dated 29.06.2021 Ex.P5, copy of Lawyer Notice Ex.P6, Postal Receipts Ex.P7 and Ex.P8, certified copies of statement of limit account of defendant no.1 Ex.P19, loan account of defendant no.1 Ex.P10, revival letter dated 29.06.2021 Ex.P11 and thereafter, the ld.counsel for the plaintiff closed the evidence on behalf of the plaintiff bank.

6. It is pertinent to mention here that when the case was fixed for evidence of the defendants, neither the defendants nor any bodyelse appeared on their behalf and accordingly the defendants were proceeded against exparte.

7. I have heard the learned counsel for the plaintiff and has gone through the record carefully.

<u>Issue No.1:</u>

8. The onus to prove issue No.1 was upon the plaintiff. In order to prove its case, plaintiff bank has examined Sh.B.B.S. Minhas-Manager, State Bank of India, Dandi Swami Chowk Branch, Ludhiana, as PW1, who tendered into evidence his duly sworn affidavit Ex.PW1/A and reiterated the contents of the plaint which need not to repeat here. During his cross-examination, this witness has deposed that he was posted as Deputy Branch Manager at the Mall Road, Branch of the plaintiff bank from September 2016 to September 2020. The sanctioning of the loan was within his period. He has taken the record pertaining to the constitution of defendant firm. He has not produced any such record in the judicial file. He himself has not visited the defendant firm. Voluntarily stated that his second officer has visited the premises of defendant firm. He has further deposed that Ex.P1 to Ex.P3 were filled by his subordinate officer Mr.Ankush Gupta, who is presently posted in Lucknow. There is no guarantor in the present case. He has admitted that column of guarantor in Ex.P2 is lying blank. He has also admitted that there are blank column at point A in the para no.2 regarding the period of advancement and repayment terms in Ex.P2. He has further deposed that during his posting in the same branch, he verified the constitution of the firm two/three times. During the verification, he did not take documents regarding the constitution of firm. In remaining cross-examination, this witness has denied the suggestions put to him.

9. The plaintiff bank has also examined Sh.Balbir Singh, Chief Manager, plaintiff bank as PW2, who tendered into evidence his duly sworn affidavit Ex.PW2/A and reiterated the contents of the plaint which need not to repeat here. Since counsel for the defendants did not cross-examine him, therefore, his cross-examination was dispensed with.

10. Learned Counsel for the plaintiff has argued that plaintiff bank has examined PW1 Sh.B.B.S. Minhas-Manager, State Bank of India, Dandi Swami Chowk Branch, Ludhiana and PW2 Sh.Balbir Singh, Chief Manager, plaintiff bank, who produced the record about the sanctioning of loan to the defendants and the above documentary evidence as well as oral evidence led on file by the plaintiff bank duly proved the case of the plaintiff bank, which is remained unrebutted by the defendants. With the above submissions, he made prayer for passing ex-parte decree in favour of the plaintiff bank.

11. The plaintiff bank has claimed that defendants have availed the Cash Credit Limit of ₹20,00,000/- and Funded Term Loan of ₹90,000/- and executed letter of arrangement and agreement of loan cum hypothecation and also agreed to repay the said loan amounts on demand by the plaintiff bank with interest. However, the defendants after availing the said loan amount failed to repay the said loan amounts i.e. ₹18,15,985/ and thus are liable to be paid by the defendants to the plaintiff bank.

12. On the other hand, defendants by filing the written statement

admitted that they have availed the said loan facilities but due to financial crises, they could not repay the loan amount.

13. To prove the case of plaintiff bank, plaintiff bank has examined PW1 Sh.B.B.S. Minhas-Manager, State Bank of India, Dandi Swami Chowk Branch, Ludhiana and PW2 Sh.Balbir Singh, Chief Manager, plaintiff bank, who proved the documents i.e. loan applications dated 09.07.2019 Ex.P1, letter of arrangement Ex.P2, hypothecation agreement Ex.P3, another application dated 25.06.2021 Ex.P4, arrangement letter dated 29.06.2021 Ex.P5, copy of lawyer notice Ex.P6, postal receipts Ex.P7 & Ex.P8, copies of statement of Loan/Limit account of defendants Ex.P9 and Ex.P10 and revival letter dated Ex.P11. All the above evidence led on file by the plaintiff bank is remained unrebutted and unchallenged. The plaintiff bank has led on file reliable evidence and has proved on record material documents regarding sanctioning of loan i.e. the Cash Credit Limit of ₹20,00,000/- and Funded Term Loan of ₹90,000/-in favour of defendants. Further as statement of account Ex.P-9 and Ex.P10, loan amount i.e. the Cash Credit Limit of ₹17,19,429/- and Funded Term Loan of ₹96,556.00/-, total amounting to ₹18,15,985/- is reflected to be paid by the defendants to the plaintiff bank.

14. Plaintiff bank tendered the revival letter and the same is dated 29.06.2021 and the present suit is filed on 02.11.2022 i.e. Ex.P11, which proved that defendants had acknowledged their debts in the year 2021 and thereafter, plaintiff bank filed the present suit on 02.11.2022, which is

filed within the period of limitation.

Hence, from the evidence led on file and documents placed on record on behalf of plaintiff bank, claim of plaintiff bank stands duly proved against defendants no. 1 & 2. As such, plaintiff bank is held entitled to recover the amount of ₹18,15,985/- from defendants 1 & 2 as claimed in the plaint. Regarding the future interest claimed by the plaintiff, this Court is of view that as per the letter of arrangement Ex.P2, the rate of interest shown as 11.6% per annum only therefore, plaintiff is entitled to take interest only at the rate of 10.60% per annum from the date of filing of the present suit i.e. 02.11.2022 till realization of the decreetal amount from defendants. Hence, issue no.1 is decided in favour of the plaintiff bank and against the defendants accordingly.

Issues No.2 to 6:

15. Onus to prove these issues were upon the defendants. Upon these issues, when defendants were proceeded against exparte when the case was fixed for evidence of the defendants and no evidence is led on file by the defendants to prove these issue. Hence, in absence of any evidence, these issues no. 2 to 6 are decided against the defendants and in favour of plaintiff accordingly.

Issue No.6 (Relief):-

16. In view of the above findings, the suit of the plaintiff succeeds and is decreed exparte against defendants accordingly. The plaintiff bank is held entitled to recover the the amount of

₹18,15,985/- along with future interest only at the rate of 10.60% per annum from the date of filing of the present suit i.e. 02.11.2022 till realization of the decreetal amount on the basis of loan documents against the defendant No.1 & 2. The plaintiff bank shall bear its own costs. Decree-sheet be prepared. File be consigned to the Judicial Record Room, Kapurthala after due compliance.

Pronounced in the open Court
Dated:22.07.2024.
(Mohinder Kumar)

(Rajwant Kaur),
Addl. Civil Judge (Sr. Divn.),
Kapurthala (UID No.PB0267)

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State Bank of India Versus M/s Sachdeva Garments

Present: Sh. Vinay Garg, Advocate, for the plaintiff bank.
Defendants exparte.

Arguments heard. Vide separate detailed judgment of even date, passed by this Court, the suit filed by the plaintiff bank has been decreed exparte, as detailed therein. Decree-sheet be prepared. The plaintiff bank shall bear its own costs. Unexhibited documents and unmarked documents are directed to return as per rules. Any miscellaneous application, if pending is disposed off being not pressed. File be consigned to the Judicial Record Room, Kapurthala after due compliance.

Pronounced in the open Court
Dated:22.07.2024.
(Mohinder Kumar)

(Rajwant Kaur),
Addl. Civil Judge (Sr. Divn.),
Kapurthala (UID No.PB0267)