Received on : 08/03/2006
Registered on : 08/03/2006
Decided On : 31/12/2024
Duration : DD-MM-YY

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BEFORE THE ADDITIONAL SENIOR CIVIL COURT AT UNA, DIST. GIR-SOMANATH.

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Special Civil Suit No. 98/2012
(Old Sp. C. S. No. 16/2006)
Exh.

State Bank of India
(Established under S.B.I. Act)
Corporate Office, Mumbai
Local Head Officer - Ahmedabad
Branch : S.B.I., Una.

::: PLAINTIFF

VS.

[1] Chirag Traders Properitor
Mr. Kantibhai Gokalbhai Chhag,
Age : Major, Occu.: Business,
R/O : Opp. Blood Bank,
Varsingpur Road, Una.

[2] Surety of Chirag Traders
Mr. Rasikbhai Dungarshibhai Patel
Age : Major, Occu.: Business,
R/O : Opp. Flour Mill, Station Road,
Veraval Road, Una.

[3] Mr. Kishorkumar Mathuradas Gatecha
Age : Major, Occu.: Business,
R/O : Below Milan Guest House,
Pankaj Traders, Una. ::: DEFENDANTS

Sub.: Suit for recovery of Rs. 9,06, 900-00.

Ld. Adv. Mr. J. N. BHATT FOR THE PLAINTIFF.

Ld. Adv. Mr. M. G. NAQVI FOR THE DEFENDANT NO. 1.

Ld. Adv. Mr. H. B. JAMANI FOR THE DEFENDANTS NO. 2 & 3.

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:: J U D G E M E N T ::

PLAINTIFF'S CASE ::

[1] The facts of the plaintiff's case in nutshell are that : the plaintiff is a corporate body established under State Bank Amelgmation Ordinance 1950 having its head office at Bhavnagar and branch office at Una; the bank is a subsidiary bank to the State Bank of India under Act No. 38/1959; the bank is known as State Bank of India in light of the Notification No. GSR 589(e), Dt. 13.08.2008 as notifide in the Government Gazatte; the defendant No. 1 is having oil seeds industry at Una and an account holder of the plaintiff bank under Cash Credit Hypothication Scheme; the defendants No. 2 & 3 are sureties of the defendant No. 1; the defendant No. 1 got the loan of Rs. Five Lakh upon an applicatiion made to the plaintiff for his oil seeds business in the name of Chirag Traders on Dt. 27.07.1999; the defendants executed hypothication agreement, Deposit Note, Agreement for Term Loan, etc. in favour of the plaintiff; the defendant No. 1 had hypothicated his goods lying in his industrial unit as well as Sub-plot No. 4-A (alongwith partial construction made over it) of R.S.No. 24 located at Shiloj Villege of Una Taluka; the defendants No. 2 & 3 had executed guarantee deed accepting the responsibility on behalf of the defendant No. 1, infavour of the plaintiff; the amount due from the defendant No. 1 is Rs. 9,06,900-00; the loan was sanctioned to the defendant No. 1 at minimum rate of interest @ 14.03 % ; the plaintiff is empowered to raise the periodical rate of interest and the defendant No. 1 is bound to pay; the entry of the loan sanctioned to the defendant No. 1 is made in the books of account; though the plaintiff has periodically asked the defendant No. 1 to pay the amount due, he has not paid any amount. Hence, the plaintiff has to file the suit with prayers that :

1. To recover the due amount of Rs. 9,06,900-00 alongwith 13.25 % rate of interest from the date of institution of the suit till realisation, from movable property as well as

from the immovable property mortgaged by the defendants;

2. To grant any other relief the Court thinks proper.

DEFENDANTS' REPLY ::

[2] On due service of summon, the defendants had appeared before the Court. The defendant No. 1 had submitted the reply vide Exh. 13 whereas the defendants No. 2 & 3 have submitted their reply vide Exh. 15. Read the reply.

INTERIM INJUNCTION ORDER ::

[3] On perusal of the record, it is clear that the plaintiff had not filed any interim injunction application.

PLAINTIFFS' EVIDENCE ::

[4.1] The plaintiff side has submitted his oral as well as documentary evidence to support the suit as under.

ORAL EVIDENCE ::-

NO.	NAME OF WITNESSES	DATE	EXH.
1	MR. Hareshkumar J. Devani	18.03.2013	36

2	**MR. Dayaram K. Meghani**	20.03.2014	48

DOCUMENTARY EVIDENCE ::-

NO.	PARTICULARS	DATE	EXH.
1	Letter of Hypothication	18.03.2013	37
2	Letter of general agreement	18.03.2013	38
3	Guarantee agreement	18.03.2013	39
4	Sole Proprietorship Letter	18.03.2013	40
5	Annexure - A	18.03.2013	41
6	Memorandum of deposit of Title Deeds	18.03.2013	42
7	Revival letter Dtd. 16.06.2002	20.03.2014	49
8	Revival letter Dtd. 10.03.2005	20.03.2014	50
9	Legal Notice Dtd. 25.02.2006	20.03.2014	51
10	Acknowledgement of defendant No. 1	20.03.2014	52
11	Acknowledgement of defendant No. 2	20.03.2014	53
12	Acknowledgement of defendant No. 3	20.03.2014	53
13	Ledger Copy of the defendant's account	20.03.2014	54

[4.2] The plaintiff side has submitted closing pursis vide Exh. 59.

DEFENDANT'S EVIDENCE ::-

[5.1] The defendant side has submitted his oral as well as documentary evidence to support his defence as under.

ORAL EVIDENCE ::-

NO.	NAME	DATE	EXH.
1	**MR. Kantibhai Gokalbhai chhag**	22.10.2018	97
2	**MR. Kirtibhai Kantilal Pandya**	04.02.2020	111
3	**MR. Rasikbhai Dungarshibhai Patel**	09.03.2021	121
4	**MR. Kishorbhai Mathurdas Gatecha**	28.07.2021	122

DOCUMENTARY EVIDENCE ::-

NO.	PARTICULARS	DATE	EXH.
1	Copy of notice to borrower	22.10.2018	91
2	Copy of acknowledgement	22.10.2018	92
3	Copy of Possession Notice	22.10.2018	93
4	Copy of Possession Notice	22.10.2018	94
5	Copy of Possession Notice	22.10.2018	95
6	Copy of Public Auction	22.10.2018	96
7	Copy of Case No. 112/2018	04.02.2020	112
8	Copy of Case No. 1/2019	04.02.2020	113

[5.2] The defendant No. 1 has submitted closing pursis vide Exh. 115 whereas the defendants No. 2 & 3 has jointly submitted their closing pursis vide Exh. 125.

ARGUEMENTS OF BOTH THE SIDES ::-

[6.1] The learned advocate for the plaintiff has submitted his written arguement vide Exh. 127 and further orally argued encircling the facts and circumstances stated in the plaint and written arguement and lastly, submitted to allow the suit considering the evidence led by the plaintiff side. The plaintiff side has, besides the judgement relied upon in his written arguement, also relied upon the judgements in the case of :

(1) State Bank of India Vs. Yumnam Gouramani Singh
{1994 AIR (SC) 1644}

(2) United Bank of India Vs. Naresh Kumar and others
{1997 AIR (SC) 3}

(3) State Bank of India Vs. Earnest Traders Exporters & Commission Agents
{1997 Legal Eagle (DEL) 101}

[6.2] The learned advocate for the defendant No. 1 has submitted his written arguement vide Exh. 144 and further orally argued encircling the facts and circumstances stated in the written arguement and lastly, submitted to reject the suit considering the evidence led by the defendant side.

[6.3] The learned advocate for the defendant No. 2 & 3 has also orally argued encircling the facts and circumstances stated in the reply as well as written arguement submitted by the defendant No. 1 and lastly, submitted to reject the suit considering the evidence led by the defendant side.

ISSUES FOR DETERMINATION ::-

[7] To decide the point in question, the Court (my predecessor in office) had vide Exh. 16 framed the following issues.

[1] Whether the plaintiff proves that the plaintiff is entitled to recover the sum of amount Rs. 9,06,900-00 from the defendant ?

[2] Whether the plaintiff is entitled to recover the interest on the due amount from the defendant ? If yes, at what rate and since when ?

[3] What order and decree ?

[8] The answers to the above issues are as under :

[1] Partly Affirmative.

[2] Affirmative, as per final order.

[3] As per final order.

[9] The reasons for arriving at the above answers are as under.

<u>ISSUE NO. 1 ::</u>

<u>[A] ENTITLEMENT OF AMOUNT ::</u>

[9.1] The plaintiffs of the suit require to prove that the he is entitled to recover the sum of amount Rs. 9,06,900-00 from the defendant. Now, in this regard, it would be important for this Court to take into consideration that the plaintiff has filed the suit on hand against the defendants for the recovery of the loan sanctioned to the defendant No. 1 wherein the defendants No. 2 & 3 had submitted guarantee. To prove the issue on hand, the plaintiff side has examined Mr. Hareshkumar Jivanlal Devani vide Exh. 36 who has deposed the facts and circumstances as stated in the plaint. To avoid repeatation of the said facts, the same are not reproduced here. To support his stand, he has produced Letter of Hypothicatiion, Letter of General Guarantee, Guarantee Agreement, Memorendum of Title Deeds, etc. from Exh. 37 to 42. On perusal of the said documents, it becomes clear that the documents produced vide Exh. 37 & 38 - i.e. agreement for grant of advance as well as Hypothication agreement are duly signed by the plaintiff as well as the defendant No. 1. It is worth noting that on perusal of the said documents, it becomes clear that the defendant No. 1 had been sanctioned loan / cash credit of Rs. Five Lakh Rupees @ 14.03 % minimum rate of interest on Dt. 27.07.1999 and the assets as described on Page No. 2, Point No.1 were agreed to be hypothicated.

[9.2] Further, on perusal of the Guarantee agreement produced vide Exh. 39, it becomes clear that the said document is signed by the defendant No. 2 & 3. Moreover, on perusal of the Page No. 1 of the said document, it further becomes clear that the said loan was for Rs. Five Lakh to the defendant No. 1 which was secured by the guarantee furnished by the defendant No. 2 & 3 as they had signed on the last page of it.

[9.3] On perusal of the Sole Proprietorship letter signed by the defendant No. 1 and produced by the plaintiff side vide Exh. 40 makes it clear that the defendant No. 1 had executed the said document duly signed by him to state that he is the sole proprietor of the Chirag Traders for which the cash credit of Rs. Five Lakh was sanctioned.

[9.4] On perusal of the Annexure - A produced by the palintiff side vide Exh. 41 makes it clear that all the defendants had signed the said document which shows the terms and conditions on which the said cash credit was sanctioned. It is worthy to note that the said document contains 14.03 % p.a. rate of interest subject to revision from time to time.

[9.5] Further, on perusal of the Memorandum of Deposit of Title Dees produced vide Exh. 42, it trinspires that the said document is duly signed by the plaintiff as well as the defendant No. 1. On perusal of the Page No. 3 of the said document, it becomes clear that the defendant No. 1 had shown discription of his immovable property bearing S. No. 24, Industrial Non-agriculturarl Plot No. 4-A, Sq.M. 718.79 located at villege Shiloj.

[9.6] Moreover, the said witness had also stated that in the document produced vide Exh. 37 & 38, the hand-writing is of Mr. G. M. Solanki who was serving as officer at the relevant point of time. He had also identified his signature in the said documents and also stated that the defendant No. 1 had singed in his presence. He had also identified the hand-writing of Mr. G. M. Solanki in the Guarantee Agreement produced vide Exh. 39. He had also deposed that the defendants No. 2 & 3 had signed in the said document in his presence which he had identified as well. He had also stated in his chief examination that the defendant No. 1 had executed the document of Sole Proprietorship produced vide Exh. 40 and signed the same in his presence which he had identified as well. He had also stated that in Annexure - A produced vide Exh. 41, the hand writing is of his officer Mr. G. M. Solanki. He had also stated that there is his signature as well as identified the signatures of the defendants who had singed in his presence. Further, he had stated that the document with regard to the deposit of the Title Deeds was executed by the defendant No. 1 as produced vide Exh. 42. Further he had deposed that in the said document, the hand writing is of his officer Mr. G. M. Solanki; he had also signed the said document and the defendant No. 1 had signed in his presence which he had identified.

[9.7] It is pertinent to note at his stage that during the cross examination, on question being asked to him, the said witness had confirmed that the documents vide Mark 3/2, Mark 3/3 & 3/6 are the zerox copies of the documents produced vide Exh. 37, 38 & 41 respectively. He has also submitted that at the time of instituion of the suit, the zerox of the aforesaid documents produced vide Mark 3/2, Mark 3/3 & 3/6 do not conain his name and signature. But, at the same time, it is required to be noted that during the cross examination of the defendant No. 1, he had admitted that he was having business in the name of Chirag Traders; took cash credit from the S.B.S. for his business; had a limit for cash credit of Rs. Five Lakh; had mortgaged his Plot No. 4-A located on S.No. 24 of the land located at villege Shiloj; he had signed the documents for the purpose of cash credit loan; had identified his signature in the documents produced vide Exh. 37, 38, 40, 41 & 42. Thus, when the defedant No. 1 had, during his cross examination, admitted all the aforesaid facts, the question raised by the defendant No. 1 as to the documents produced vide Mark 3/2, Mark 3/3 & 3/6 do not contain the siganture of the plaintiff does not help him.

[9.7] The plaintiff side had also examined Mr. Dayaram Khemchand Meghani vide Exh. 48. During his deposition, he has produced Revival Letters of Dt. 16.06.2002 & Dt. 10.03.2005 vide Exh. 49 & 50 respectively. On perusal of the said letters, it becomes clear that both these letters are signed by all three defendants and addressed to the plaintiff bank. Moreover, he had deposed that the defendants had signed the documents produced vide Exh. 49 & 50 before the concerned officer namely Mr. S. K. Mandal and Mr. M. K. Bheda respectively. He had also identified their signatures.

[9.8] Moreover, he has also produced legal notice sent to all the defendants on Dt. 25.02.2006 vide Exh. 51. On perusal of the said document, it also becomes clear that the said notice contains the amount due along with the applicable rate of interest. The said notice is also signed by the learned advocate for the plaintiff. The witness had also identified the signature of the learned advocate in the said notice.

[9.9] Further, he has also produced the acknowledgement receipts of the said notice sent to all three defedants vide Exh. 52 to 54 respectively. It is also required to be noted that during the course of entire suit, none of the defendants have raised any question as to the said notice was not received by him or them.

Hence, it is presumed that the said notice was received by them in due course.

[9.10] At the outset, the said witness had also produced statement of account of the defendant No. 1 vide Exh. 55. On perusal of the said account, it transpires that the same is certified by the Manager of the said bank. It also becomes clear that the said statement shows the withdrawal as well deposit made from and into the account. The balance as shown in the said statement is Rs. 9,06,900-00 at the end of February - 2006. Further, the said witness had deposed that the handwriting in the said document are of Mr. M. K. Bheda who was serving at the relevant point of time with him and subsequently got retired. He had identified his signature in the said document in the capacity of Manager.

[9.11] Further, he had deposed that the defendant No. 1 was sanctioned the loan or cash credit at he minimun 14.03 % rate of interest. He had further deposed that as the defendant had not paid the due amount, the suit was filed to recover Rs. 9,06,900-00 which includes interest.

[9.12] Thus, from the aforesaid evidence, it has come on record that the plaintiff has relied upon and produced the certified copy of the statement of the account of the defendant No. 1 vide Exh. 55. It is clear that under the provisions of Section 4 of the Bankers' books evidence act, subject to other provisions of the Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence. The view of this Court is fortified by the judgement of the Hon'ble High Court of Gujarat delivered in the case of [1]**Shivam Construction Corporation**. The relevant para No. 32 & 33 are reproduced as under :

> 32. Next it was contended that the plaintiff-Bank has failed to prove its suit dues. It is also contended that the Bank is not entitled to interest as claimed by the plaintiff-Bank. After having examined the facts and circumstances and the evidence on record, we have no hesitation in finding that the plaintiff-Bank has, successfully, established the suit dues. The bank has placed reliance on the certified true copy of the current account of defendant No. 1 firm under Section 4 of the Bankers' Books Evidence Act 1891. The certified true copy from the current account is produced and relied on. It is contended from the certified true copy that under Section 4 Bankers Books Evidence Act

1 **Shivam Construction Corporation Vs. Vijaya Bank (1995 Legal Eagle 417)**

1891, does not prove the dues of the Bank. It is true that under the provisions of Section 4 of the Bankers Books Evidence Act, subject to the other provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence. Section 4 of the Banker's Books Evidence Act, 1891, reads as under.

> "4. Mode of proof of entries in bankers' books:-- Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts, therein, recorded in every case where, and to the same extent as, the original entry itself is, now, by law admissible, but not further or otherwise."

33. The submission raised on behalf of the appellants that reliance is placed only on the certified entries in the Bankers' Books, is also not correct. The plaintiff-Bank has relied on the evidence of two witnesses. The plaintiffs witness Mr. D.P. Shah who was the concerned junior clerk at the relevant time is examined, at Exh. 70, and the Manager Mr. Shetty (as he then was) in the said Branch, is examined at Exh. 106. Taking into account the documentary evidence or certified entries under Section 4, coupled with the oral evidence of the two witnesses

of the bank, the Bank has, successfully, shown the dues of the bank. There is no reason to discard the evidence of the two witnesses of the plaintiff-Bank supported by certified copy of accounts in Bankers' Book. The trial court has, rightly, relied on the evidence of the plaintiff-bank while passing the impugned decree.

[9.13] Thus, it is clear that the certified copy of the books of account of the defendant No. 1 as produced by the plaintiff side vide Exh. 55 is a good piece of evicence to rely upon as far as the recoverable amount due to be paid by the defendant No. 1 towards the plaintiff is concerned.

[9.14] At the outset, it is also required to be noted that the plaintiff side had furnished one pursis vide Exh. 29 stating that he has filed the suit for the recovery of Rs. 9,06,900-00; after filing of the suit, the bank had sold the immovable property mortgaged by the defendant No. 1 as per Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and received Rs. 5,25,190.66; the balance amount require to be recover as on Dt. 12.08.2011 is Rs. 12,96,644.66. On the other side, it has been the contention of the defendant No. 1 that the plaintiff had received more amount than what is decalred by him by way of the aforesaid pursis. To support his stand, he has examined Mr. Kirtibhai Kantilal Pandya as his witness vide Exh. 111. The witness had also produced the relevant copies of the Land Case No. 112/2018 as well as No. 1/2019 vide Exh. 112 & 113 respectively. During the course of his cross examination, he had admitted that he cannot say the price of the acquired land prevailing from the year 1999 to 2013. Thus, when the plaintiff had sold the land mortgaged in his favour in the prior to the year when the land was acquired and subsequently award was drawn, the contention of the defendant No. 1 that the plaintiff had received more amount than what is declared by him by way of pursis, does not stand on it's feet.

[9.15] At the same time, the defendant No. 2 & 3 had also deposed before the Court vide Exh. 121 & 122 respectively. During the course of their evidence, they have submitted that they have not signed the documents but the plaintiff in abatement with the defendant No. 1, had fabricated their signature. Now, in this regard, when both the guarantors were cross examined by the plaintiff side, the defendant No. 2 had admitted that when he came to know about his fabricated signature, he had not initiated any procedure against the plaintiff bank. Further he had admitted that he had neither inquired into the bank nor even intimated the bank about this aspect in written. On the other hand, when the defendant No. 3 was cross examined by the plaintiff side, he had stated that as long period of time has lapsed, he can't say as to whether there exists his signature in Guarantee Deed vide Exh. 39. He had also admitted that after receiving the notice from the Court, he had not gone to the bank for any inquiry as to his guarantee. He had also admitted that he had not lodged any police complaint against bank for making his signature. He had also admitted that he had not intimated the bank for forged signature. Thus, it has come on record, that even after having knowledge to the defendant No. 2 & 3, neither of them had initiated any procedure or lodged any complaint against the bank for what they are saying as their forged signature made by the bank in abatement of the defendant No. 1. Thus, though both the defendants No. 2 & 3 are not admitting thier signatures, but as they have done nothing after knowing everything, there is reason to believe that they have accepted the position on record and consequently, there is reason to believe that the the documents produced by the plaintiff side which contain the signatures of the guarantors, are made by them only. Moreover, it is also on record that the defendant No. 1 had already admitted the cash credit loan sanctioned to him. Thus, when the defendant No. 1 had admitted the loan sanctioned to him, the contentions of the defendants No. 2 & 3 with regard to their fabricated signature makes no differece on record.

[9.16] At this stage, it would be important to look into the point raised by the defendants that the suit is not filed by the authorised person of the plaintiff bank; the director or principal officer of the plaintiff bank had not given any authority to the officer signing the suit or making verification in the suit. Now, in this regard, it is important to note that the suit was filed by the then Manager, State Bank of Saurashtra, Una on Dt. 08.03.2006. It is required to be noted that the suit was filed not in an individual capacity but in the capacity of the Manager of the plaintiff bank which was a corporate body as stated in the title of the suit by the plaintiff. The Court has also discussed above that the averments made by the plaintiff on record as to the defendant No. 1 had been sanctioned cash credit loan, the defendants No. 2 & 3 had executed an agreement of guarantee, the defendant No. 1 had paid some part of the amount due to the plaintiff bank, etc. have been proved on record by the plaintiff. In light of this background, it would be advantageous for this Court to take into consideration the ratio laid down by the Hon'ble Supreme Court of India in the case of [2] **United Bank of India Vs. Naresh Kumar and others {1997 AIR (SC) 3}.** The relevant para(s) are reproduced here.

> *8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.*
>
> *9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.*
>
> *10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading*

2 **United Bank of India Vs. Naresh Kumar and others {1997 AIR (SC) 3}**

is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be *express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by it's officer.*

11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27 (1) (b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

12. The Courts below having come to a conclusion that money had been taken by respondent no.1 and that respondent no.2 and husband of respondent no.3 had stood as guarantors and that the claim of the appellant was *justified it will be a travesty of justice if the appellant is to be non suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.*

13. The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.

[9.17] Thus, in view of the aforesaid ratio laid down by the Hon'ble Supreme Court of India, the present contention of the defendants does not weaken the evidence produced by the plaintiff side on record.

[B] LIMITATION ::

[9.18.1] Now, as far as the point of limitation is concerned, it is required to be noted that the cash credit loan was sanctioned to the defendant No. 1 on Dt. 27.07.1999. The suit was filed on Dt. 08.03.2006. During this time, it is required to be considered that the plaintiff had produced Revival Letters vide Exh. 49 & 50 respectively. On perusal of the said letters, it also becomes clear that the first revival letter of Exh. 49 is duly signed by all the defendants on Dt. 16.06.2002. The second revival letter of Exh. 50 is also duly signed by all the defendants on Dt. 10.03.2005. At the same time it would be advantageous for this Court to take into consideration Section 18 of the Limitation Act, 1963 which reads as under :

> **18. Effect of acknowledgment in writing.—**
> (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.— For the purposes of this section,
(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

[9.18.2] Thus, it becomes clear on record that within three years from the date of sanctioning of the cash credit loan i.e. Dt. 27.07.1999, the revival letter of Exh. 49 was executed on Dt. 16.06.2002. Moreover, within the period of three years from the date on which first revival letter was executed, the second revival letter was also executed on Dt. 10.03.2005. On Dt. 25.02.2006, the plaintiff sent notice to all the defendants which is produced vide Exh. 51, and the suit came to be filed on Dt. 08.03.2006. Thus, it is clear from the record that the suit amount is well within the time frame prescribed by the law of limitation.

[C] RECOVERABLE AMOUNT ::

[9.19] Now, when it has come on record that the suit is filed within the time frame prescribed by the law, the Court is required to acertain the exact amount due to the plaintiff. It is important to note at this juncture, that the suit is filed by the plaintiff for the recovery of Rs. 9,06,900-00. During the pendency of the suit, the plaintiff had filed one pursis stating that he has filed the suit for the recovery of Rs. 9,06,900-00; after filing of the suit, the bank had sold the immovable property mortgaged by the defendant No. 1 as per Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and received Rs. 5,25,190.66; the balance amount require to be recover as on Dt. 12.08.2011 is Rs. 12,96,644.66. At the same time, it is important to note that the aforesaid amount of Rs. 12,96,644.66 includes interest. Thus, considering the record, this Court is of the opinion that the plaintiff should be entitled to recover the balance amount i.e.

the amount of recovery for which the suit is filed ***less*** the amount already received by the bank through the procedure under SARFAESI Act (i.e. Rs. 9,06,900.00 - Rs. 5,25,190.67) i.e. Rs. 3,81,709.33 from the defendants. Hence, in view of the aforesaid discussion of point No. **[A] to [C]**, this Court holds that the plaintiff has succeeded to prove this issue partly as discussed above.

ISSUE NO. 2 :

[9.20] The plaintiff also require to prove that he is entitled to recover the interest on the due amount from the defendant. And If yes, at what rate and since when. Now, in this regard, it would be important to note that the plaintiff had prayed to get the interest @ 13.25 & p.a.. Now, it is also required to be considered that the plaintiff had produced the letter of hypothication vide Exh. 37 & Annexure - A vide Exh. 41. Both these documents contains the rate of interest @ 14.03 % p.a.. Thus, it is on record that the parties to the suit had agreed upon the rate of interest to be paid by the defendant No. 1 to the plaintiff @ 14.03 & p.a. for the cash credit facility which was sanctioned to him. Moreover, it is also on record on perusal of the copy of the account of the defendant No. 1 that Rs. 25000-00 was paid / deposited by him into the said account on Dt. 10.04.2003. Moreover, the defendant No. 1 had, in his examination in chief, on Page No. 1, Para (1) has stated that he had deposited Rs. 9,49,100-00 from Dt. 27.07.1999 to Dt. 22.03.2000. Thus, it has clearly come on record that the parties to the suit were well aware as far as the rate of interest is concerned. Thus, when the plaintiff had prayed o get 13.25 % p.a. rate of interest, this Court has no hasitation to hold that the plaintiff is entitled to receive the interest at the rate of 13.25 % p.a., which actually is lower than what has been agreed upon by the parties, from the date of filing of the suit till realisation. Hence, this issue is decided accordingly.

ISSUE NO. 3 :

[9.21] Hence, in view of the aforesaid discussion, with regard to the Issue No. 3, following final order is passed in the interest of justice.

:: **O R D E R** ::

[A] The suit filed by the plaintiff stands partly allowed.

[B] The plaintiff bank is entitled to recover the amount of Rs. 3,81,709.33 (Rupees Three Lakh Eighty One Thousand Seven Hundred Nine and Thirty Three paise only) with interest @ 13.25 % p.a. from the date of filing of the suit till realisation.

[C] Parties to bear their own cost.

[D] Decree to be drawn accordingly.

Pronounced today in the open Court on this 31^{st} day in the month of December, 2024.

Place : Una.　　(Hardiv Kiritkumar Vachharajani)
Date : 31.12.2024　　Additional Senior Civil Judge
Una. {GJ 01231}