

&
C.A.No. 6748 OF 1999
ITEM No.105

Court No. 5

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6748/1999

B.G. VASANTHA Appellant (s)

VERSUS

CORPORATION BANK, MANGALORE AND ANR. Respondent (s)

(With Office Report)

Date : 14/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant(s) Mr. P. Krishnamurthy, Sr. Adv.
Mr. Romy Chacko, Adv.
Mr. Rajiv Mehta, Adv.

For Respondent(s)
Mr. S.N. Bhat, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties for about fifteen minutes.

The appeal is dismissed in terms of the signed order.

There will be no order as to costs.

Anita

(Jasbir Singh)
Court Master

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6748 of 1999

B.G. VASANTHA
...
Appellant (s)

Versus

CORPORATION BANK, MANGALORE AND ANR.

...
Respondent(s)

O R D E R

This Appeal is filed against the Judgment dated 25th September, 1998.

Briefly stated the facts are as follows:-

The Respondent-Bank had advanced a term loan of Rs. 60,000/- to the 2nd Respondent. On the same day it also advanced two cash credit facilities of Rs. 10,000/- each to the 2nd Respondent.

The Appellant executed deeds of continuing guarantee guaranteeing to repay the amount advanced to the 2nd Respondent along with interest thereon. Subsequently the cash credit limits were extended to Rs. 20,000/- and Rs. 25,000/-.

The Respondent-Bank filed suit for recovery of the amount. The Trial Court dismissed the suit on the ground that the plaint had not been signed by an authorised person. It also held that the Appellant-herein had also agreed to repay the principal amount and not the interest. As against this, the Respondent-Bank went in Appeal. The High Court by the impugned Judgment set aside the Judgment of the trial Court and decreed the suit. While decreeing the suit it has awarded interest @ 15.5% p.a. in respect of the above mentioned facilities.

We are in agreement with the view of the High Court that the suit was not barred by limitation. The guarantee being a continuing guarantee, so long as the principal debt remained due and payable the guarantor also remained liable.

We are also in agreement with the High Court that the guarantee is not only for re-payment of the principal amount but also for interest thereon. However, we find that so far as principal debtor is concerned the liability to pay interest is @ 13.5% p.a. in respect of the term loan facility and 14% p.a. in respect of cash credit facility. Even though the guarantee documents mention interest @ 15.5% p.a., in our view, the liability of the guarantor cannot exceed that of the principal debtor. The guarantor is only guaranteeing debt due by the principal debtor. The High Court thus erred in granting decree against the guarantor and the principal debtor for interest @ 15.5% p.a. To this extent the High Court Judgment needs to be modified.

We direct that the principal amount payable will be with interest @ 13.5% p.a. in respect of the term loan facility and 14% p.a. in respect of cash credit facility.

Save as above, the Appeal stands dismissed with no order as to costs.

.....J.

(S.N.Variava)

.....J.

(Arijit Pasayat)

New Delhi,
July 14, 2004.