

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

C.R.P. NO. 2757 of 2000

Date of Judgment: 3.12.2012

Between:

M/s. Canara Bank

...Petitioner

and

Gulam Siddiqui and another

..Respondents

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

C.R.P. NO. 2757 of 2000

ORDER:

Heard learned counsel on either side.

The petitioner is the plaintiff who filed a small cause suit No. 24 of 1996 before the Senior Civil Judge, Bhongir seeking to recover an amount of Rs.6,262-60 ps from the respondents/defendants on the basis of a pronote/agreement.

While the first defendant is the borrower, the second defendant is the guarantor. The plaintiff produced evidence of its bank manager being P.W.1 who produced and marked Exs.A1 to A8 which show that the first defendant executed a demand promissory note under

Ex.A1, issued revival letter-Ex.A3, while Exs.A4 and A5 are the certified copies of loan account and original ledger account respectively maintained by the bank, Ex.A6 is the interest suspense account and Ex.A7 is the Savings Bank Account of first defendant. The defendants' defence is mainly of full satisfaction of the suit amount and the receipt of loan is not disputed under promissory note and consequently the liability to pay the interest thereon. While taking the plea of discharge of the suit amount, the first defendant stated that he paid the loan in 1991 and paid instalments upto 13.11.1995 which, in fact, turned out to be an excess amount deposited by the first defendant which was credited to his savings bank account. The Court below framed four issues and out of that, first and second issue relate to as to whether the bank is entitled to suit amount and as to whether the defendant has successfully pleaded the discharge.

The Bankers' Books Evidence Act raises a strong presumption in favour of the plaintiff bank with respect to Ex.A5-original ledger account maintained by the bank which shows the liability recoverable from the first defendant. It is also admitted fact that the interest is payable as per the circular of the Reserve Bank of India dated 9.10.1991, which was also marked as Ex.A8. While considering the first defendant's plea of discharge, the court below has only considered the contentions of the first defendant that he had deposited the interest

component and consequently an amount of Rs.280/- deposited in excess was credited to his savings bank account, thereby the court below came to the conclusion that no amount is due and payable to the plaintiff bank and dismissed the suit.

The said judgment and decree is under revision before this Court. It is evident from the record and the judgment of the trial Court itself that any payments made by a debtor which are not specified would first get adjusted against the interest payable on the loan and accordingly the part payments made by the plaintiff as pleaded were credited to the interest account and thereby the principal amount of Rs.5,000/- as well as interest of 1262-60 ps remained still payable even after adjustment of all the amounts paid by the first defendant. The Court has, however, not appreciated that the original statement of account which raises a statutory presumption in favour of the plaintiff bank was not rebutted by any evidence by the first defendant, but merely taking advantage of the credit of Rs.280/- to his savings bank account, the first defendant claimed that he has discharged the loan amount over and above the liability. Since the statement of account clearly shows the liability against the first defendant, the findings of the court below on that aspect are clearly vitiated and perverse. The liability to repay the loan together with interest payable thereon subsists with the first defendant as long as the terms and conditions of

the loan are not fully discharged. The payments spread over several years after taking the loan would not enable the plaintiff to claim full discharge of his liability, when admittedly the loan account shows that the loan amount is still recoverable from the first defendant. The findings of the court below being perverse and unsustainable, are liable to be interfered with.

The revision petition is accordingly allowed and S.C.No. 24 of 1996 shall stand decreed as prayed for with costs.

VILAS V. AFZULPURKAR, J

Dt. 3.12.2012
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