Indian Bank

Vs

K. Nataraja Pillai and Another

Civil Appeal No. 2945 of 1981

(Kuldip Singh, N.M. Kasliwal JJ )

22.10.1992

JUDGMENT

KASLIWAL, J.

1. This appeal by grant of special leave is directed against the judgment of Madras High Court dated November 25, 1980.

2. The appellant-Indian Bank (in short 'the Bank') filed a suit for the recovery of an amount of Rs. 1,21,006.98 due under an equitable mortgage and pronote against three defendants namely, K. Nataraja Pillai (defendant 1 his wife N. Pappathi Ammal (defendant 2) and his son N. Narayanan (defendant 3). According to the Bank, the defendants 1 to 3 executed a promissory note for Rs. 1,00,000 on August 26, 1971 in favour of the Bank. They also executed two hypothecation deeds in respect of 'A' schedule properties and executed an equitable mortgage on August 28, 1971 for 'B' schedule properties. The consideration for the aforesaid transaction also included an amount of Rs. 71,000 granted by the Bank in favour of 37 persons by way of short terms loans. The defendants 1 had executed a guarantee agreement on June 14, 1971 in favour of the Bank in respect of the aforesaid short term loan in favour of 37 persons. The Bank had thus based its claim in the plaint on the promissory note and guarantee agreement for Rs. 1,00,000 as principal and Rs. 21,006.98 as interest.

3. The first defendant filed a written statement denying the execution of guarantee agreement as well as the promissory note. He pleaded inter alia that the defendants had not furnished any guarantee on June 14, 1971 with regard to the repayment of loans amounting to Rs. 71,000 to 37 persons. The defendants had not executed any promissory note in favour of the Bank for a lakh of rupees nor had executed any equitable mortgage nor deposited any documents of title towards any loan of Rs. 1,00,000. The defendant 1 also pleaded that the agent of the Bank Shri. Krishnamurthy Iyer in order to ward off his own prosecution and arrest for having advanced large amounts as loans to landless persons in an irregular manner obtained the signature of the defendants on a printed promissory note without the details having been filled up. The documents were got executed by exercise of fraud, undue influence, coercion and misrepresentation. The defendants 2 and 3 filed a separate written statement and took the same stand as taken by the defendant 1. The third defendant subsequently filed a separate additional written statement taking the ground that he was born on November 12, 1953 and as such being minor on the date of the alleged execution of the promissory note, the same was void as against him. The trail court by judgment dated April 29, 1975 decreed the suit in favour of the Bank and against the defendants 1 and 2 only and dismissed the suit against defendant 3 as he was found to be minor on August 26, 1971.

4. The defendants 1 and 2 filed an appeal in the High Court. The High Court though upheld the finding of the trail court that the promissory note Ex. A-1 dated August 26, 1971 was executed with the full knowledge that it was a promissory note for Rs. 1,00,000, but the same was void for want of consideration to the extent of the loan advanced to 37 borrowers. The High Court held that the loans amounting to Rs. 71,000 to 37 persons were advanced from December 17, 1970 to May 4, 1971 and as such there was no consideration for executing the guarantee agreement dated June 14, 1971 nor for executing the promissory note on August 26, 1971. The High Court further held that the promissory note Ex. A-1 can be taken to have been supported by consideration only to the extent of Rs. 21,616.25 which represented the amount due against defendants 1 and 2 on account of their personal borrowings from the Bank. The High Court also held that the trail court itself had found it established that the defendant 3 was a minor on August 26, 1971 and the Bank having not filed any appeal, no decree could have been passed against defendants 1 and 2 for an amount of Rs. 4,193.19, the amount advanced to the third defendant. The High Court as a result of the above findings allowed the appeal in part and passed a decree in favour of the Bank for an amount of Rs. 21,616.25 only with interest at the rate of 10 1/2 per cent per annum from the date of the plaint till the date of the decree of the trail court and at the rate of 6 per cent per annum from the date of the decree till the date of the recover of the amount. Aggrieved against the judgment and decree of the High Court the Bank has come in appeal before this Court.

5. We have heard learned counsel for both the parties and have thoroughly perused the record. So far as the execution of the promissory note Ex. A-1 and the execution of guarantee agreement Ex. A-8 is concerned, both the trail court as well as the High Court have found in favour of the Bank and the same being a finding of fact is not under challenge. The only question with calls for consideration before us is whether the view taken by the High Court that the promissory before us is whether the view taken by the High Court that the promissory note was void for want of consideration to the extent of loans of Rs. 71,000 advanced to 37 persons is correct or not. The High Court has taken the view that so far as the guarantee agreement Ex. A-8 is concerned, the same was executed on June 14, 1971 long after the loans amounting to Rs. 71,000 advanced from December 17, 1970 to May 4, 1971. None of the 37 borrowers were granted any loan on or after the execution of Ex A-8 by the first defendant. The High Court took the view that where the surety bond comes into existence after the original borrowing by the principal debtor, the creditor must prove, if he wants to proceed against the surety that he did something or refrained from doing something in order to be a valid consideration for the contract of surety or guarantee. The High Court in the facts and circumstances of the case observed that neither the amounts advanced to 37 persons had become due for payment on the date of execution of Ex. A-8 on June 14, 1971 nor the Bank had come forward with the case that the 37 persons are threatened with suits for recovery of the amounts borrowed by them nor the first defendant intervened and stood as a guarantee so as to prevent impending legal proceedings as against 37 borrowers. Thus, the Bank cannot be taken to have refrained from doing anything in respect of the said loan of Rs. 71,000 to form the same as consideration for the guarantee agreement. The High Court in this regard placed reliance on Nanak Ram v. Mehin Lal, Muthukaruppa Mudali v. Kathappudayan and on Bank of India v. Matha Gounder.

6. The High Court then examined the question of the liability of the defendants 1 and 2 on the basis of the pronote Ex. A-1 in respect of the sum of Rs. 71,000 borrowed by 37 persons on the principle of novation contract as contained under Section 62 of the Indian Contract Act. The High Court observed that Section 62 contemplates a new contract superseding or rescinding or altering the original contract. The new contract should extinguish the earlier contract and the liability under the earlier contract should come to an end otherwise the novation will fall for want of consideration.

The High Court held that in this case there was a subsisting debt between the Bank and the 37 debtors and as such the liability arising out of the debt could only be transferred to the first defendant, a third party to the original agreement only by a tripartite contract which will amount to novation. In this case, it has neither been alleged nor proved that all the 37 borrowers from the Bank were parties to the arrangement under which the first defendant is said to have taken over their liability. Even after the execution of the promissory note Ex. A-1, the existing debt due by the 37 borrowers to the Bank was not extinguished and the Bank was entitled to claim the amount from the 37 borrowers in spite of the pronote having been executed by the defendants.

7. The High Court in our view has taken a wrong approach to the entire case and has ignored the important relevant documents which prove beyond any manner of doubt that the promissory note Ex. A-1 the basis of the suit was executed with consideration and the defendants 1 and 2 were liable to pay the entire amount claimed by the Bank. Ex. A-1 dated August 26, 1971 is the promissory note executed by the defendants in favour of the Bank for a sum of Rs. One lakh which itself recites that it was executed for 'value received'. Section 118 of the Negotiable Instrument Act, 1881 provides for a statutory presumption of consideration of every negotiable instrument which includes a promissory note. It has been established on record that all the three defendants had taken loans from the Bank and those were outstanding against them at the time of execution of the pronote. The Bank had come forward with the case in the plaint that the first defendant had obtained a medium term loan of Rs. 10,000 on September 11, 1970 for the purpose of installing a pump set and an engine and digging a well and for which an equitable mortgage in respect of 7.86 acres of land was made in favour of the Bank. The defendant 1 further secured a short term loan of Rs. 2,000 on December 18, 1970 on the security of the crops raised in his lands. The second defendant who was wife of the first defendant had obtained a short term loan of Rs. 2,000 on March 26, 1970. The third defendant who was the son of the first defendant had also obtained a short term production loan of Rs. 2,000 on May 25, 1971 and a further sum of Rs. 2,000 on December 15, 1971. The defendant 1 had also executed a guarantee agreement on June 14, 1971 in respect of short term production loan granted to 37 persons amounting to Rs. 71,000. The total of the above outstanding came to Rs. 93,239.03. The defendants sought a sanction of loan for Rs. 1,00,000 and the head office of the Bank sanctioned the said loan to the defendants on August 18, 1971 in order to cover up the earlier loans. A sum of Rs. 6,760.97 was advanced to cover up the deficiency in the sanction loan amount of Rs. 1,00,000. On August 26, 1971 the defendants executed the promissory note for the sanctioned loan amount of Rs. 1,00,000 and to repay the amount with interest as mentioned in the pronote. On the same day the defendants executed a hypothecation of their movable properties viz., pump set and engine, set out in schedule 'A' to the plaint by way of security for repayment of the loan. They also executed another hypothecation bond in respect of the crops on the same day. On the same day, the defendants agreed to execute an equitable mortgage deed in respect of 27.02 acres of land set out in schedule 'B' of the plaint towards the loan of Rs. 1,00,000 and deposited the title deeds relating to the properties with the branch of the Bank at Madurai on August 28, 1971. The defendants had come forward with a plea that they did not execute the aforesaid documents had come forward with a plea that they did not execute the aforesaid documents Exs. A-1 and A-8 and Shri Krisnamurthy Iyer, agent of the Bank had perpetrated a fraud and that the transaction was vitiated on the ground of fraud, undue influence, coercion and misrepresentation. Both the trail court as well as the High Court found it established as a fact that the aforesaid documents were executed by the defendants knowing fully well the details of the transaction regarding the liability of Rs. 1,00,000. The present suit is based on the promissory note Ex. A-1 and the equitable mortgage deeds Exs. A-4 and A-37. Thus, so far as the question of any consideration of the guarantee agreement Ex. A-8 is concerned, the same is of no consequence in view of the subsequent execution of the promissory note Ex. A-1.

The law enunciated in the rulings referred to above in order to hold that the guarantee agreement Ex. A-8 dated June 14, 1971 was without consideration as the loans to 37 persons had been advanced much earlier to the execution of Ex. A-8 will not render the promissory note to be without consideration. Now, so far as the consideration of the promissory note Ex. A-1 is concerned, the defendants had applied for sanctioning a loan of Rs. 1,00,000 from the Bank. The head office of the Indian Bank at Madras vide Ex. A-127 issued a sanction order to the Indian Bank, Sivaganga Branch granting a medium term loan of Rs. 1,00,000 to the first defendant on August 18, 1971. The loan was sanctioned on the condition of obtaining joint and several demand promissory notes and an equitable mortgage deed in respect of 27.02 acres of land and hypothecation bond of 2 electric pump sets from the defendants. It further stated that the liability of a sum of Rs. 89,000 with interest up to date should be got adjusted out of the loan of a lakh of rupees. The agent of the Indian Bank, Sivaganga Branch sent a communication to the first defendant on August 21, 1971 informing him of the sanction of the loan. Ex. A-36 was the office copy of the letter whereby the first defendant had been informed of the sanction of the medium term loan of Rs. 100,000 subject to the execution of promissory note and other documents as directed by the head office. Ex. A-37 dated August 26, 1971 is the agreement executed by the defendants in favour of the agent Indian Bank, Sivaganga Branch agreeing to create an equitable mortgage in favour of the Bank towards the loan of a lakh of rupees in respect of 27.02 acres of land. Ex. A-38 is the registered letter sent by the first defendant to the custodian of the Indian Bank, Head Office, Madras intimating that the balance amount that will be paid to him after adjustment of all his liabilities, as disclosed by him under the letter marked Ex. A-37 may not be sufficient for him to carry on his agricultural operations and as such requesting to sanction a medium short term loan of not less than Rs. 20,000 and also requested to direct the agent Indian Bank, Sivaganga Branch to return the promissory notes and other connected documents to enable him to collect the amounts from the concerned parties. Apart from the aforesaid documents, Ex. A-39 is the office copy of the letter sent by the agent Indian Bank, Sivaganga Branch to the first defendant asking him to take delivery of the promissory notes relating to 37 persons after passing a receipt for the same on September 13, 1971. It may be further noted that out of the amount of Rs. 6,760.97 credited in the account of defendants a sum of the Rs. 6,200 was withdrawn by the first defendant on October 7, 1971 through Ex. A-52, a cheque drawn in favour of self. This proves beyond any manner of doubt that the defendants had accepted the sanctioning of loan of Rs. 1,00,000 on the terms and conditions laid down by the head office of the Bank and as such sanctioning of loan clearly contained the adjustment of the liability of the 37 persons. Ex. A-126 is a true copy of the loan amount of the defendants as per ledger folio 4/168 of the Indian Bank, Sivaganga Branch, which shows a liability of Rs. 121,006.98. The trial court had relied on all the aforesaid documents and had recorded a finding that the suit promissory note was fully supported by consideration and the equitable mortgage deed created by the defendants were also true and valid documents. The High Court, in our view was wrong in arriving at the conclusion that Ex. A-1 failed for want of consideration to the extent of Rs. 74,190.56 and also for the amount advanced to the third defendant, the liability in respect of which came to Rs. 4,193.19.

8. We agree with the finding of the trail court that the pronote Ex. A-1 dated August 26, 1971 was executed with full consideration. The defendants knowingly and with fully knowledge had executed the pronote Ex. A-1 In the facts and circumstances of the case, there was no necessity of going into the question of novation of contract as contemplated under Section 62 of the Indian Contract Act. The defendants had executed the pronote and also created equitable mortgage in favour of the Bank and the ronote itself contained an endorsement of "for value received" As already mentioned above, there is also a statutory presumption of consideration in respect of the promissory note under Section 118 of the Negotiable Instrument Act, 1881. In these circumstances, we allow this appeal,

set aside the judgment and decree passed by the High Court and restore the judgment and decree of the trail court with costs.

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