

State Bank of India

Vs

Madras Bolts & Nuts (P) Ltd. and Others

Civil Appeal No. 1578 of 1977

(M.M. Punchhi, Sujata V. Manohar JJ)

11.01.1996

ORDER

1. The appellant-State Bank of India had filed this suit against M/s Madras Bolts & Nuts (P) Ltd. and its three Directors, Defendants 2 to 4, of which the 2nd defendant is the Managing Director. The suit was for recovery of a sum of Rs 2,47,797.18 with future interest as set out therein under a cash credit (Mundy Type) Account and Rs 22,133.40 under an overdraft against bills account. The three Directors of the first defendant Company had given personal guarantees and the 1st defendant Company had executed promissory notes as collateral security for repayment of the amounts due and payable by the first defendant Company under these accounts. Defendants 1 and 2 did not contest the suit. The only contestants were Defendants 3 and 4.

2. Defendants 3 and 4 had resigned as Directors of the Company w.e.f. 12-8-1966. At the hearing of the suit, it was conceded on behalf of the Bank that Defendants 3 and 4 would be liable only in respect of the liabilities of the 1st defendant Company as of 12-8-1966. Learned advocate of the Bank also pressed the claim of the Bank against them only under the cash credit (Mundy Type) Account and on the amounts due and payable in this account as of 12-8-1966. On the basis of this concession, the learned Single Judge passed a decree against Defendants 1 and 2, as prayed. He passed a decree against Defendants 3 and 4 for a sum of Rs 1,86,889.97 with simple interest at 8.25% per annum from 12-8-1966 up to date without any rest and with future interest at 6% per annum from this date to the date of realisation. He also made an order for costs as set out therein. He also said that after the filing of the suit, a sum of Rs 95,000 was realised by the plaintiff-Bank by selling the securities. Whatever amount had been realised, should go in partial satisfaction of the decree.

3. An appeal was filed against this judgment and decree by Defendants 3 and 4 before the Division Bench of the High Court. Defendants 3 and 4 contended that they would be entitled to the credit of certain payments received by the Bank from the Company after 12-8-1966. The other contention was that since they were required to discharge the liabilities of the Company as of 12-8-1966, they would be entitled to the benefit of the securities held by the Bank to cover the credit facilities granted by the Bank to the Company. Both the contentions were upheld by the Division Bench of the High Court. Hence the Bank has filed this appeal.

4. In respect of the first contention, the learned Single Judge has examined the nature of the credit entries in the account after 12-8-1966 and has held that the subsequent credit entries after 12-8-1966 amounting to Rs 91,877.80 were out of the bills deposited against drawings by cheques for purchasing raw materials, and these credit entries are appropriated towards the liabilities so incurred. Since the plaintiff-Bank has specifically appropriated these sums towards liabilities

subsequently incurred, Defendants 3 and 4 cannot get the benefit of these amounts subsequently paid to the Bank. We agree with this reasoning of the learned Single Judge.

5. The only other question which remains is in respect of the securities in the form of raw material, plant and machinery of the Company held by the plaintiff-Bank to secure the amounts advanced by the Bank to the Company. Obviously, these securities cover not merely the claim of the Bank against the Company up to 12-8-1966, but they also cover the claim of the Bank against the Company in respect of the liabilities arising after 12-8-1966 also, whether they be in the form of interest or in any other form. Since the securities cover the entire liability of the Company, these cannot be availed of by the original Defendants 3 and 4 only in respect of the liability of the Company up to 12-8-1966. It is also necessary to note that the securities have been subsequently sold and have realised only a sum of Rs 95,000. Looking to the claim which has been decreed against the Company, it is clear that the liability of the Company which covers the entire period is much larger than the liability of Defendants 3 and 4, and the difference is in excess of Rs 95,000. The finding of the Division Bench that the value of the goods available as security at the time when Defendants 3 and 4 resigned as Directors of the Company, should be taken into account while determining the liability of Defendants 3 and 4, is erroneous. Mr E. C. Agarwala, learned counsel for Defendants 3 and 4 has placed strong reliance on Section 141 of the Indian Contract Act, 1872. Section 141, however, envisages a case where the liability of the surety is coextensive with the liability of the principal debtor. It provides that such a surety would be entitled to the benefit of every security which the creditor had against the principal debtor at the time when the contract of suretyship was entered into. Such is not the case here. Moreover, the interpretation put on Section 141 by the Division Bench, in our view, is not correct.

6. In the premises, the judgment and decree of the Division Bench is set aside. Since the judgment and decree of the learned Single Judge has proceeded on the concession granted by the appellant-Bank that the would hold Defendants 3 and 4 liable only in respect of the liabilities of the Company as existing on 12-8-1966, we are not examining the merit of that finding given by the learned Single Judge. Hence, the judgment and decree of the learned Single Judge will stand.

7. The appeal is, accordingly, allowed with costs.