

B.G. Vasantha

v.

Corporation Bank, Mangalore & Another

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

(Supreme Court Of India)

Civil Appeal No. 6748 Of 1999 | 14-07-2004

1. This appeal is filed against the judgment dated September 25, 1998.
  
2. Briefly stated the facts are as follows:
  
3. The respondent-Bank had advanced a term loan of Rs. 60,000/- to the second respondent. On the same day it also advanced two cash credit facilities of Rs. 10,000/- each to the second respondent. The appellant executed deeds of continuing guarantee guaranteeing to repay the amount advanced to the second respondent along with interest thereon. Subsequently, the cash credit limits were extended to Rs. 20,000/- and Rs. 25,000/-.
  
4. The respondent-Bank filed a 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 at 15.5 per cent per annum in respect of the above-mentioned facilities.
  
5. 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.

6. We are also in agreement with the High Court that the guarantee is not only for repayment of the principal amount but also for interest thereon. However, we find that so far as the principal debtor is concerned the liability to pay interest is at 13.5 per cent per annum in respect of the term loan facility and 14 per cent per annum in respect of cash credit facility. Even though the guarantee documents mention interest at 15.5. per cent per annum, 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 the decree against the guarantor and the principal debtor for interest at 15.5. per cent per annum. To this extent the High Court judgment needs to be modified. We direct that the principal amount payable will be with interest at 13.5 per cent per annum in respect of the term loan facility and 14 per cent per annum in respect of cash credit facility.

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