SUPREME COURT OF INDIA

Central Bank of India

Vs.

Virudhunagar Steel Rolling Mills Ltd. & Ors.

C.A.No.3654 of 2006

(Vikramajit Sen and Shiva Kirti Singh,JJ.)

29.12.2015

JUDGMENT

Vikramajit Sen, J.

1.This Appeal assails the concurrent findings of the Trial Court as well as the High Court absolving the Respondents, other than Respondent No.1 which is the company which received various credit facilities from the Appellant Bank, of a total amount of ?12 lacs against security of moveable as well as raw materials. These facilities were subsequently secured in favour of the Appellant Bank by means of continuing guarantee by the Directors of the Respondent Company, who are Respondent Nos. 2 to 4 herein, in terms of Promissory Notes, Letters of Guarantee, Letters of Hypothecation and Letters of Continuity all dated 30.8.1974. On 30.6.1977 and again on 31.12.1977, by means of separate letters from the Respondent Company to the Appellant Bank, the entire balance due, stood confirmed. Eventually, the Appellant filed a suit on 2.5.1980 for recovery of ?3,94,805.42 with future interest at the rate of 14 per cent per annum. In the interregnum another creditor of the Respondent Company, namely Respondent No. 5, had already initiated recovery proceedings in the Court in the course of which the properties of Respondent Company came to be auctioned and were purchased by Respondent No. 6 on 26.10.1979.

2. As many as ten issues were framed by the Trial Court which went on to decree the suit against the Respondent Company, but dismissed it as against Respondent Nos. 2 to 4. The conclusions of the Trial Court so far as they are germane to decision in this Appeal were that the liabilities incurred by the Respondent Company prior to the execution of the personal guarantees by Defendant Nos. 2 to 4 were not recoverable from the latter. The Trial Court placed reliance on two judgments of the Madras High Court, namely J.J. *Harigopal Agarwal v. State Bank of India*[1] and D. *K. Mohammed Ehiya Sahib v. R.M.P.V. Valliappa Chettiar*[2]. In the latter case it was held that if there is any variation in the original contract the legal consequence would be that the surety stood absolved.

3. The impugned Judgment notes that the main submission on behalf of the Appellant Bank was that all the documents executed by the Respondent Company, including those dated 30.8.1974 and the acknowledgement of liability dated 30.6.1977 and 31.12.1977 had to be taken together in fastening the liability of the Directors of the Company with regard to their personal guarantees. It also noted that in none of the documents relied upon by the Respondent Company had Respondent Nos. 2 to 4 acknowledged or undertaken their personal liability and/or stood guarantee for repayment of any specific and liquidated amounts already advanced by the Appellant Bank to the Respondent Company prior to 30.8.1974. The High Court also returned the finding that there was no cogent evidence to establish that the claims raised in the suit pertained to advance or credits made subsequent to 30.8.1974, the date on which Respondent Nos. 2 to 4 had executed the documents relied upon by the Appellant Bank.

4. The learned Counsel appearing for the Appellant Bank had raised arguments, firstly to the question of limitation, secondly to the discharge of surety by variance and thirdly on priority claims in respect of Rollers. Since the question which engaged the attention of the High Court in the impugned Judgment revolved around the fastening of the liability on the Respondent Nos.2 to 4 in respect of transactions prior to the date of the execution of those documents, i.e. 30.8.1974, we shall restrict our attention only to this point. It will be a relevant reiteration that the entire claim of the Appellant Bank had been decreed against the Respondent Company.

5. So far as the factual matrix is concerned, the Respondent Company was a constituent of the Appellant Bank for a considerably long period and had availed of various facilities including cash credit, etc. It is not in dispute that of the limit of ?12 lacs sanctioned by the Appellant Bank in favour of the Respondent Company, the balance on the close of the business on 29.8.1974 was ?7,68,853.39, and the latter stood indebted to the former for the aforesaid sum. Learned counsel for the Appellant Bank had sought to rely on Montosh Kumar Chatterjee v. Central Calcutta Bank Ltd. (1952-53) 57 CWN 852, the ratio of which appears to be that a creditor is not bound to volunteer to a surety information as to the state of the principal debtor’s account; and that a creditor is entitled to appropriate payments received subsequent to the execution of a guarantee bond, even so far as a pre-existing debt of which the surety had no knowledge; that there can be no presumption that the surety will be efficacious for prior as well as current and future debts. We note that in the case in hand, the Letter of Guarantee signed on 30.8.1974 by Respondent Nos. 2 to 4 makes no mention of any old transactions, although it specifically records that the liability of the guarantors cannot exceed ?12 lacs. The Letters of Guarantee could easily have recorded the liabilities outstanding against the Respondent Company on 30.8.1974 with an affirmation from Respondent Nos. 2 to 4 that they were guaranteeing these outstandings. Woefully for the Appellant Bank, there is no such acknowledgment or assumption of liability in the subject Guarantee. The High Court has pithily noted the statement of P.W.1, Accountant of the Appellant Bank, who has deposed to the effect that the Deed of Guarantee made no mention of any prior transactions. It appears to us that if any doubts in this regard still persisted, they stood dispelled by the testimony of D.W.1, who has stated in his cross-examination that the

Appellant Bank obtained the Guarantee Deed on the understanding that it would be effective and relevant only with regard to debts subsequent to 30.8.1974. This very witness had also clarified that the Guarantee arrangements made no mention whatsoever that they were effective in respect of prior debts.

6. The decision in *Sita Ram Gupta v. Punjab National Bank*[3] is of no advantage to the Appellant Bank. That decision concerns the possibility of a guarantor revoking his continuing guarantee, with the objective of escaping his liability. This is not the case before us inasmuch as the defence of Respondent Nos. 2 to 4 is that they had agreed to stand surety only for transactions after 30.8.1974. Our attention was also drawn to *B. G. Vasantha v. Corporation Bank, Mangalore*[4] as also *M.S. Anirudhan v. Thomco's Bank Ltd*[5]. but these decisions do not call for a detailed analysis. It is the Appellant Bank which drafted the Guarantee Deed, and in case of doubt, the document would be read against it. This is the contra proferentem rule, which is of a vintage which brooks no contradiction.

7. In view of the foregoing discussion, there appears to be no controversy as to the fact that the Guarantee Deeds executed by Respondent Nos. 2 to 4 on 30.8.1974 rendered them personally liable for any transactions or advances made by the Appellant Bank to the Respondent Company after 30.8.1974. There is also no controversy whatsoever that the Bank account lay dormant after this date, all dealings having been transacted much prior thereto. Such being the position, it is not open to the Appellant Bank to pursue Respondent Nos. 2 to 4 for recovery of debts incurred by the Respondent Company in favour of the Appellant Bank. We may clarify that our decision is founded on the evidence that has been recorded in this suit. We should not be misunderstood to have held that a guarantor can, in no circumstances be fastened with liabilities which had been incurred in the past which the guarantor assumed liability for.

8 We accordingly dismiss the Appeal by affirming the concurrent findings arrived at by both the Courts below. There shall however be no order as to costs.

Judgment Referred.

[1]*AIR 1976 MAD 0211*
[2]*AIR 1976 MAD 0536*
[3]*(2008) 5 SCC 0711*
[4]*(2005) 10 SCC 0215*
[5]*AIR 1963 SC 0746*