RAJASTHAN HIGH COURT

State Bank of Bikaner

Vs.

Madan Gopal

Civil R. F. A. No. 41 of 1983
(Harbans Lal, J.)

17.02.2006

JUDGEMENT

Harbans Lal, J.

1. The instant civil regular first appeal under Section 96, Civil Procedure Code is directed against the judgment and decree dated 17-12-1982 passed by the learned District and Sessions Judge, Jaipur City, Jaipur in Civil Original Suit No. 53/80 whereby, the suit for recovery of Rs. 54,642.89/- was dismissed. However, the cost was made easy.

2. Briefly stated, the relevant facts are that the plaintiff-appellant filed a civil suit against the defendants with the averments that on the request of defendant No. 1 Madan Gopal, who deals in the business in the name of Goyal Crusher, the plaintiff-bank agreed to advance loan for a sum of Rs. 28,000/- to defendant No. 1 for the purchase of machinery. He was advanced medium term loan of Rs. 13,657/- on 13-6-1970 and Rs. 14300/- on 26-6-1970. Defendant No. 1 executed a hypothecation agreement on 13-6-1970 in favor of the plaintiff- appellant agreeing to pay the loan amount in the quarterly installments. Defendant No. 2 Janki Nath furnished guarantee for the aforesaid loan and stood as a Guarantor. He also executed a surety bond on 13-6-1970 in favor of the plaintiff-bank, the appellant. Madan Gopal, defendant No. 2 made another application to the plaintiff-bank after some time for cash credit facility to the extent of Rs. 10,000 whereupon, the plaintiff-appellant agreed to do so. Madan Gopal Defendant No. 1 executed a promissory note in favor of defendant No. 2 and defendant No. 2 endorsed the same in favor of the plaintiff- appellant. They also executed D.P. Note, letter of Waiver, Agreement of Hypothecation and Surety Bond dated 30-7-1970. Defendant No. 1 repaid Rs. 26,255 paise 47 against the aforesaid

medium term loan. A sum of Rs. 35,801 paise 53 came to be outstanding including the principal amount and the interest against the defendants. On account of the medium term loan, Rs. 18,841 paisa 36 remained outstanding on account of cash credit hypothecation. It was averred that the defendants made acknowledgments from time to time of the aforesaid amount of loan due against them but they did not make payments as demanded by the plaintiff-appellant. The defendants denied having executed any of the aforesaid documents and having taken any loan from the bank.

3. The trial Court framed as many as 13 issues on the basis of the pleadings of the parties and after affording opportunity of leading evidence to both the parties and after hearing both the sides, held that the suit was barred by limitation. Accordingly, the suit was dismissed, as indicated above.

4. Aggrieved by the said judgment and decree, the plaintiff has filed the instant civil first appeal.

5. Although, learned counsel for the plaintiff-appellant has severely criticized the judgment of the learned Court below but even a cursory look of the materials on record would reveal that no fault can be found with the approach of the learned Court below. It is evident from the record that the medium term loan was advanced on 13-6-1970 and 26-6-1970 and the first acknowledgment of the outstanding amount appears to have been executed on 11-5-1973 (Annexure 10) but no one has been examined before the trial Court to prove this acknowledgment having been executed by the defendants-respondents. Similarly, the cash credit facility advanced on 30-7-1970 vide Exh. 6 and the outstanding amount in this account appears to have been acknowledged on 31-12-1977 i.e. after about 7 years vide Exh. 13. First of all, the acknowledgment so made being time barred, does not save limitation. Besides this, Exh. 13 has not been duly proved by examining any witness.

6. In this view of the matter, the suit of the plaintiff-appellant pertaining to both accounts viz. Medium Term Loan and Cash Credit Account is clearly time barred. The learned Court below has rightly held so.

7. I do not find any infirmity or illegality in the approach of the learned Court below. The judgment of the learned Court below is not only detailed but is well considered as well as based on proper appreciation of the evidence on record which does not call for, warrant and justified any interference whatsoever.

8. Consequently, this appeal being devoid of merit and substance deserves to be dismissed.

9. In the result, this appeal is dismissed, however, without any order as to costs.
Appeal dismissed.