(1998) 05 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : C.I.A. No. 30 of 1988

Bank of India APPELLANT

Vs

Rakesh Jain and Others RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1
Jammu and Kashmir Civil Procedure Code, 1977 — Order 20 Rule 11, 34

Citation : AIR 1999 J&K 50

Hon'ble Judges : G.D. Sharma, J

Bench : Single Bench

Advocate : Kamal Chopra, for the Appellant; Ajay Abrol, for M.K. Bhardwaj, for the Respondent

Judgement

G.D. Sharma, J.—This appeal is directed against the judgment and decree dated 27-4-1988 passed by the learned Second Additional

District Judge, Jammu whereby he decreed the suit of the appellant herein against the respondents in the amount of Rs. 1,19,234.68 paise. No

future interest was granted. The decretal amount was made payable by instalment to the tune of each instalment of Rs. 2000/- per month coupled

with the sate proceeds of the Mini Bus No. JKQ-1873, Engine No. 07-102132, Chassis No. 07-102132 which stood financed by the appellant.

In case of defaults of making two instalments, the whole decretal amount was made payable in lump sum.

2. The judgment and decree has been challenged on the simple question that the trial Court has committed a legal error in not awarding any future

interest and that the instalment is very meagre and the decretal amount can fetch more amount in the market if given on loan.

3. Heard the arguments. Counsel for the appellant has contended that trial Court has committed a legal error by ignoring payment of contractual

interest which was at the rate of 11.85%. The Court undoubtedly had the power of reducing the interest but reasons had to be assigned, but in the

case altogether no interest has been paid and no reason has been assigned for not making the payment of interest. In support of his arguments,

learned counsel has cited State Bank of India Vs. Surinder Singh and Others,

4. The counsel appearing for the respondents has contended that it is the discretion of the Court to grant interest and this discretion has rightly been

exercised in the present case. In support of his contention the counsel has cited State of U.P. Vs. Reishma Devi and Others, and State of

Rajasthan Vs. Raghubir Singh and Others, .

5. From the perusal of agreement entered into between the parties it is found that the contractual interestagreed between the parties was@

11.85% per annum. The impugned judgment of the trial Court reveals that the learned Judge had held that the business of defendant had dwindled

and he had the intention to make the payment. No future interest was paid and the instalments were fixed at Rs. 2000/- pm. In case of breach of

two instalments the whole of the remaining decretal amount was made payable in lump sum.

6. It is true that the Court has discretion to make departure from making the payment, of contractual interest but this can be done only in those

cases where it manifestly appears to the Court that the contract is unfair and unconscionable and its enforcement would be shocking to the

conscience of the Court. This Court in case State Bank of India Vs. Surinder Singh and Others, has held that ""the Court cannot and would not

vary the terms of contract and impose a new contract on the parties. This is the basic underlying principle contained in the provisions of the Section

34 of C.P. Code.

Again this Court in Bank of Baroda Vs. Shri Subhash Chander Dutta and Others, which is a Division Bench judgment given in the case titled Bank

of Baroda v. Subash Chander Dutta has observed as under :-

Profits in business far exceed the interest a business man has to pay to a nationalised Bank on the amount borrowed by him in connection with his

business. If the pedente lite and future interest are awarded at a rate much lower than the contractual rate, there could be no incentive to the

judgment debtor to liquidate the decree. He will comply with the decree only when he is compelled through execution. Therefore, it will not be a

reasonable exercise of discretion to award ped.ente lite and future interest in contractual rate except in exceptional circumstances, like business

suffering losses or profit in business not being substantial. In the instant case the borrower who had borrowed the money for establishment of Agro

Service instead of appering before the Court and pleading and establishing any exceptional circumstance chose to stay away from the proceedings

and the case against him proceeded ex parte. Therefore, there is no reason to absolve him from the liability to pay interest at the contractual rate till

the entire loan is liquidated. It was not alleged either against the guarantor or against the defendants who had become liable only as heirs of

guarantor that they were engaged in any trade, industry or business. They may therefore, be treated leniently. The liability to pay pendente lite and

future interest deserves to be confined to 6% only.

In the case of State of Rajasthan Vs. Raghubir Singh and Others, the trial Court had awarded interest pendente lite at the rate of 4 1/2% but had

given no reason. The High Court considered the matter in detail and having regard to various continuous defaults committed by defendant

enhanced the rate of interest to 6%. The Supreme Court had held that the High Court was justified in doing so. In the ease of State of U.P. Vs.

Reishma Devi and Others, it is held that awarding of future interest is in the discretion of the Court and in omitting to say anything about future

interest the Court will be presumed to have taken the view that, interest should not be awarded.

7. The circumstances as spelled by the trial Court for not awarding future interest arc that the business of defendant No. I has failed and he has

made an honest offer to make the payment. The impugned judgment does not speak how this opinion was formed because no basis for forming

such an opinion has been stated. It was only on the showing of the counsel of the defendant that it was held so. An instalment @ Rs. 2000/- p.m.

on the decretal amount which was in the sum of Rs. 1, 19.234.68 was an unfair instalment and it would have taken long years to liquidate the

amount without making any payment of interest. This Court in the Bank of

Baroda Vs. Shri Subhash Chander Dutta and Others, had fixed (he

liability to pay the pendente lite and future interest @ 6% per annum when the contractual rate was 11% per annum. On the facts and in the

circumstances of the case the said principle is made applicable to the present case and the future interest on the decretal amount is awarded @ 6%

per annum and the instalment of Rs. 4000/- per month is fixed. With these modifications the appeal is partially accepted and the judgment and

decree is modified. The other terms and conditions of the judgment and decree of the trial Court shall remain intact. Office is directed to send back

the record.

