

(1994) 09 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5141 of 1994

Bashishtha Narain Thakur and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Citation : (1994) 09 PAT CK 0017

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioners took a loan of Rs. 50,000/- from the State Bank of India for purchase of tractor and other appliances in January, 1979. The amount of loan was payable in ten instalments upto 1984. They paid in all Rs. 12,676/-. On August 13, 1986, the Branch Manager, Agriculture Development Branch, Parihar sent requisition in respect of sum of Rs. 95, 739.25 paise comprising of the dues on account of loan which had accumulated to Rs. 91,673.54 paise and the court fees of Rs. (sic) paise, u/s 5 of the Bihar Public Demands Recovery Act (in short, "the Act") to the District Certificate Officer, Sitamarhi. On the basis of the said requisition, Certificate Case No. 46 of 1986-87 was registered. The Petitioners filed objection u/s 9 of the Act which was rejected as time barred on May 15, 1987. The matter dragged on, on one ground or the other, for a long time. Finally, in January, 1994, a bailable warrant of arrest was issued showing sum of Rs. 1,80,017.79 paise as outstanding. Petitioner No. 1 was arrested and committed to Sitamarhi jail on March 7, 1994. He was released after a sum of Rs. 35,000/- was deposited on March 11, 1994. The Certificate Officer directed the Petitioners to pay the balance amount in instalments failing which they would be taken in custody again.

2. The Petitioners do not dispute their liability to pay the principal amount of loan or even interest and the amount of cost. According to them, calculation of pendente lite interest at the rate of 18 per cent, which comes to Rs. 84,240/- out of Rs. 1,80,017.79 paise is contrary to the provisions of Section 17 of the Act. According to the counsel, the rate of interest chargeable during the pendency of

the proceeding having been fixed at 12 per cent per annum under that section, the Certificate Officer has erred in law in charging interest at the rate stipulated in the agreement, namely, 18 per cent per annum. The question for consideration in this writ application is whether the liability to pay pendente lite interest is limited to 12 per cent, the rate mentioned in Section 17 of the Act or it may extend to the rate mentioned in the instrument.

3. Section 17 so far relevant to the question reads as follows:

17. Interest, costs and charges recoverable.--There shall be recoverable, in execution of every certificate filed under this Act,--

(a) interest upon the public demand to which the certificate relates at the rate of twelve per centum per annum from the the date of the signing of the certificate upto the date of realisation.

(b)

(c)

A bare perusal of the above provision leaves no room for doubt that the certificate debtor is liable to pay interest pendente lite i.e. during the pendency of the proceeding from the date of signing of the certificate upto the date of the realisation at the rate of 12 per cent per annum. According to the counsel for the Bank, however, the provision is applicable to only such cases where there is no such agreement between the parties. In case where the parties have agreed to pay/charge interest at a particular rate, the interest will be chargeable at that rate till the date of realisation i.e. during the pendency of the proceeding as well, Reference has been made to Section 79 of the Negotiable Instruments Act, 1881. That section runs as follows:

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the Principal money due thereon from the date of the instrument, until tender or realisation of such amount or until such date after the institution of a suit to recover such amount as the Court directs.

According to the counsel for the Bank, as per the above provision, the liability to pay interest at the rate specified in the instrument runs from the date of the instrument until realisation of the amount. The section does not envisage two different rates of interest, one prior to the proceeding and the other thereafter. The submission, in my opinion, is devoid of any substance.

4. In terms of Section 79 of the Negotiable Instruments Act, the liability to pay interest over the principal amount, no doubt, runs from the date of the instrument upto its realisation. However, while interest is to be calculated at the rate specified in the instrument from the date of the instrument until its realisation, after the suit has been instituted for recovery of the amount, the court has discretion to fix the rate after institution of the suit. The concluding

part of the section "or until such date after the institution of a suit...as the court directs makes it abundantly clear that where recourse is taken to suit for recovery of the amount on the basis of the instrument, the interest may be calculated either at the rate specified in the instrument or at such rate as the court may direct. Thus, even in Section 79 were to apply, it cannot be said that interest is to be charged at the rate specified in the instrument itself upto realisation of the principal amount. It is a matter of common knowledge that in suits for recovery of money on the basis of the promissory note or bill of exchange the court in its discretion allowed pendente lite interest at rates other than the rate specified in the interest.

5. Prior to Bihar Act 4 of 1974 amending Schedule I of the Act, any money payable to banks on account of the loan was recoverable through suits in the Civil Court. By the said amendment, Clause 15 was added to the Schedule of the Public Demands Recovery Act by reason of which any money payable, amongst others, to the State Bank of India or Banks specified in column (2) of the first Schedule to this Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, was made recoverable as "public demand" under the provision of the said Act provided that person concerned agrees by a written instrument that it shall be so recoverable. Thus, while any money due to the Bank, is ordinarily recoverable through suit in the Civil Court, where the person concerned has agreed by written instrument that the same may be recovered as public demand, the Bank may take recourse to the provisions of the said Act. It need hardly be emphasised that certificate proceedings under the Act are less cumbersome and complicated compared to ordinary suits under the provisions of the Code of Civil Procedure. Once the Bank has chosen the remedy by way of certificate proceeding under the Act for recovery of the dues, it cannot take recourse to the general provisions of the Negotiable Instrument Act. There can be no doubt that the Public Demands Recovery Act is a special statute for expeditious recovery of the particular types of dues enumerated in the Schedule, as against other types of dues which can be realised only by way of a suit. In that view, there cannot be any doubt that the provisions of the said Act including those contained in Section 17 shall apply in supersession of the general provisions of Section 79 of the Negotiable Instruments Act even if they were to apply. This however, provides only in additional reason for rejecting the contention of the Respondent. As I have already stated above, even Section 79 contemplates calculation of interest after institution of the suit at a different rate as the Court may direct. Thus in that sense, there is no conflict between the two provisions.

6. The submission of the learned Counsel for the Bank has to be rejected also in view of the definition of the term "public demand" in Section 3(6) of the Public Demands Recovery Act, which runs as under:

"Public demand" means any arrear of money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under part II.

(emphasis supplied)

Section 3(6) of the Act read with Section 17 makes it clear that the Act envisages chargeability of interest at different rates; one, applicable upto the stage of signing of the certificate and the other, thereafter. At the stage of signing of the certificate, either u/s 4 or Section 6, the authority may include the amount of interest "which may by law be chargeable". It may be calculated at the rate fixed in the instrument provided it does not impinge upon any law. However, after the certificate is signed, interest is recoverable at the rate of 12 per cent from the date of signing of the certificate upto the date of the realisation. The words "by law" occurring in Section 3(6) must be understood to mean any law other than the Public Demands Recovery Act. If the said words are understood as referable to Section 17 of the Act or if the idea was to prescribe the same rate of interest both before and after signing of the certificate then the provisions would not have occurred at two places, expressed in different phraseology, envisaging two distinct stages of the proceeding. It may be noted that Section 3(6) does not lay down or prescribe any rate of interest while Section 17 does.

7. Learned Counsel for the Bank also submitted that provisions of Section 17 of the Act amount to legislation upon the subject of banking, a central subject, which is already covered by the provisions of the Banking Regulations Act, 1949. I find no substance in this contention either. As already indicated above recovery of the dues by taking recourse to certificate proceeding is a matter of choice for the Bank. The Bank may as well elect to recover the money by filing suit in the Civil Court as was being done prior to 1974. Besides, no specific provision of Banking Regulation Act, which may be in conflict with the provisions of Section 17 of the Public Demands Recovery Act, was brought to our notice. In that view, it is not necessary to make further indepth examination of the point.

8. In fairness to the Counsel, he placed reliance on Utsav Lal Gupta Vs. Firm Mohan Brothers and Others, That was a case of civil suit. The point at issue in the instant case was not even remotely involved there. The decision is therefore, completely irrelevant in this case.

9. In view pf the discussions made above it has to be held in the instant case that calculation of pendente lite interest at the rate of 18% by the Certificate Officer is not in accordance with law. As indicated above and as mentioned in Annexure-5, the pendente lite interest has been determined at Rs. 84,240/- on original certificate dues of Rs. 95,739.29 paise as on January 29, 1994. As the amount of interest after signing of the certificate cannot exceed 12% per annum, the liability of the Petitioner in regard to interest has to be re-determined.

10. In the result, this application is allowed in part. The notice dated January 29, 1994 (Annexure-5) directing the Petitioners to deposit a sum of Rs. 84,240/- as interest and the consequential order dated April 30, 1994 directing issuance of warrant of arrest (Annexure-2) are quashed. The Certificate Officer is directed to

re-calculate the amount of interest in accordance with law after giving opportunity of hearing to the Petitioner. He may, however, take recourse to coercive orders for realisation of the original certificate dues of Rs. 95,739.29 paise for the present in accordance with law. In the circumstances of the case, there will be no order as to cost.

Narayan Roy, J.

11. I agree.