**(2005) 04 OHC CK 0024**

**In the Orissa High Court**

**Case No :** First Appeal No. 167 of 1993

Canara Bank APPELLANT

Vs

Vithal Das Chakubhai Company and Others RESPONDENT

**Date of Decision :** 12-04-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96
Interest Act, 1978 — Section 3

**Citation :** AIR 2005 Ori 155 : (2005) 4 BC 177 : (2005) 100 CLT 36 : (2005) 1 OLR 744

**Hon'ble Judges :** Pradip Mohanty, J;P.K. Tripathy, J

**Bench :** Division Bench

**Advocate :** G. Mukherji, D. Mohanty and J.P. Choudhury, for the Appellant; N.C. Pati, B. Sahoo, A.K. Misra and S. Ratho, (for Respondent No. 5), for the Respondent

**Final Decision :** Dismissed

## Judgement

Pradip Mohanty, J.—This is an appeal u/s 96 of the CPC filed by the plaintiff-Bank with a prayer to realise the future interest at the rate of 18% per annum with quarterly rests from the defendant-respondents.

2. The appellant, as plaintiff, filed Money Suit No. 191 of 1989 in the Court of the Subordinate Judge, Sambalpur for realization of Rs. 3,02,922.50 paise with pendente lite and

Decided on 12th April, 2005.

future interest at the rate of 18% per annum. The pleadings of the appellant-Bank are that it issued Bank Guarantees amounting to Rs. 2,77,000/- in the account of defendants and in favour of Orissa Forest Corporation Limited and respondent No. 1 executed counter guarantee in its favour. When the Orissa Forest Corporation Limited demanded the amount from the appellant, the appellant demanded the amount from respondent No. 1 but respondent No. 1 did not pay the same. However, the appellant-Bank made payment of Rs. 2,68,258.68 paise to Orissa Forest Corporation as per the Bank Guarantee. After adjustment of the margin money, the respondents acknowledged the debt for Rs. 1,85,514.63 paise. Thereafter, the respondents did not pay back the amount of the Bank Guarantee for which the appellant-Bank filed the suit for realisation of the same along with interest at the rate of 18% per annum.

3. The defendant-respondents filed written statement denying all the averments of the plaintiff-appellant. They also denied the execution of acknowledgement of debt and payment of interest. Their specific plea was that the suit is barred by law of limitation.

4. Learned Subordinate Judge after considering the pleadings of the parties framed as may as nine issues and after hearing the parties, decided the same as per his judgment 24.03.1993 holding that the respondents are jointly and severally liable to pay Rs. 1,85,514.63 paise with simple interest at the rate of 18% per annum thereon with effect from 27.02.1987 till realisation. Direction was also given to the respondents to pay the decretal dues to the appellant within two months from the date of judgment. The appellant, however, was not satisfied with the judgment and hence filed the present appeal.

5. Mr. Mukherjee, learned counsel for the appellant, submits that the Court below has erroneously decided issue Nos. 7 and 8 decreeing the suit in part in its favour. He contends that in respect of a commercial transaction, normally banks charge compound interest nearest according to the prevalent rate prescribed by the Reserve Bank of India. Therefore, the trial Court ought to have passed a decree for payment of compound interest at the rate of 18% per annum with quarterly rests instead of awarding simple interest.

Learned counsel for the respondents, while refuting the contentions raised by Mr. Mukherjee, submitted that in absence of any contract, the respondents are not liable to pay compound interest.

6. We have carefully gone through the plaint, written statement, evidence on record, the impugned judgment and decree and rival contentions. Admittedly, there is a commercial

transaction and the Bank charges interest at the rate of 18% per annum for such transaction. There is, however, no clause in the contract for payment of compound interest. Exts.4 to 9 are the counter guarantees executed by the defendant-respondents. They do not indicate that the Bank would charge compound interests. Exts. 11 and 12, the notices issued by the Bank to the respondents, do not disclose about charging compound interest. It has been specifically stated in those notices to pay the up to date interest. Therefore, the evidence is not clear in this connection. The relevant portion of Section 3 of the Interest Act, 1978 reads as follows :-

"3. Power of Court to allow interest.- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest........"

7. From a bare reading of the above provision, it is crystal clear that the Court cannot allow interest at a rate not exceeding the current rate of interest. In other words, if there is some specific clause in the counter guarantee or in any bond or contract, then the Court may pass higher interest than the interest specified in Section 3. In this view of the matter, the trial Court is correct in granting simple interest on the amount. There is no illegality or irregularity committed by the trial Court warranting interference of this Court.

8. In the result, the appeal fails and is hereby dismissed,

P.K. Tripathy, J.

I agree.

 