

(2004) 01 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : CIA No. 44 of 1997

Canara Bank

APPELLANT

Vs

Waxofield

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 2004 J&K 123 : (2004) 2 JKJ 94 : (2004) 53 SCL 17

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : Anil Mahajan, for the Appellant; D.C. Raina, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and decree dated 14-5-1997 passed by the learned District Judge, Bank Cases, Jammu, where by the plaintiff/appellant-Bank was held to be not entitled to pendente lite interest on the suit amount, which stood fully satisfied by the defendants by payment of the entire suit amount by way of drafts. It appears that plaintiff/appellant-Canara Bank commenced a recovery suit for an amount of Rs. 16,84,559.56 along with future interest at the rate of 16% per annum and 2% penal interest with quarterly rests against the defendants/respondents based on documents accompanying the plaint. It was during the currency of the lis before the Bank Court that an application came to be initiated by the defendants admitting the claim of the Bank with regard to the suit amount. It was further recited that an amount of Rs. five lacs towards the liquidation of suit amount has already been deposited by the defendants during the pendency of the suit. In affirmation of the contents of the application, the Trial Court recorded the

statement of the counsel appearing for the defendants/respondents and also defendant-2, Mr. N.K. Jain. The Bank Court further found from the record that three drafts of Rs. five lacks, and further three drafts worth Rs. six lacs were handed over to the counsel appearing for the appellant/plaintiff-Bank in the open Court on 1-4-1997 and 4-5-1997 respectively.

This fact is further affirmed from the certificates obtained of the counsel appearing for the appellant/plaintiff-Bank on the margin of the minutes of the file. Defendant-2 further handed over two drafts in the sum of Rs. 3,21,625.50 to Mr. J.M. Bhatia, Chief Manager of the appellant/plaintiff-Bank in the Court on 10-5-1997 and in affirmation of the payment, signatures of Mr. Bhatia have also been obtained on the minutes of the file. As regards the balance amount of Rs. 2,62,934/- two FDRs were handed over by one Ajit Prashad Jain to the appellant/plaintiff-Bank for adjusting the deposit accounts of defendant-1, detail of which is explicated in the judgment of the Trial Court. The appellant/plaintiff-Bank, however, acknowledged the receipt of the FDRs and its adjustment in the name of defendants-M/s Waxofield and in its affirmation, the statement of Mr. Joginder Mohan Bhatia, Manager of the appellant/plaintiff-Bank, was recorded. The Bank Court found that the entire suit amount of Rs. 16,84,559.56 stood fully paid up and in relying the judgments of this Court reported as Punjab National Bank v. Ashoka Chemists and Ors., Civil Suit No. 291 of 1987 and of Calcutta High Court reported in All India Banking Law Judgment 1990 (1) 213, held that u/s 34 of the CPC to award or refuse to award the interest is in the discretion of the Court. The Bank Court, therefore, by waiving off pendente lite interest held that the suit amount having been fully paid up, the suit by the plaintiff-Bank is dismissed. Aggrieved by the judgment and decree passed by the learned District Judge, Bank Cases, the appellant/plaintiff-Bank has impugned its correctness in this appeal mainly on the ground that the Bank Court has waived off the interest in exercise of discretion without any justification. That the Bank Court has rewarded the party by waiving off the interest without taking note of the fact that it has contested the case for a period of seven years. No plausible reasons have been given for non-consideration of the plea of the appellant/plaintiff-Bank for grant of contractual rate of interest. The Court has not appreciated in proper

perspective the fact that the appellant/plaintiff-Bank is liable to pay interest on deposits and similarly to charge interest on the advances, as agreed.

2. I have heard the learned counsel appearing for the respective parties and considered their rival contentions in context of the material on record.

It is not in dispute that the entire suit amount has been paid up by the respondents/defendants. The only dispute remains with regard to the payment of pendente lite interest after filing of the suit. Mr. D.C. Raina, learned counsel appearing for the defendants/respondents vehemently urged that suit

has been filed for an amount of Rs. 16,84,559.56 inclusive of interest up to 12th October, 1990. So is also, according to Mr. Raina, borne out

from the statement of accounts annexed with the suit. This account was declared as Non-Performing Assets before 12-10-1990 for an amount of

Rs. 16,84,559.56 inclusive of interest up-to-date. Mr. Raina further submitted that the entire amount has been paid through drafts and FDRs

detailed in the judgment and decree impugned in appeal. Mr. Raina further submitted that revised guidelines for compromise settlement of chronic

Non-Performing Assets (NPAs) of the public sector banks have been issued by the Reserve Bank of India dated 29-01-2003. The revised

guidelines have covered Non-Performing Assets (NPAs) relating to sectors including the small sector. These guidelines for compromise settlement

covered the NPAs up to Rs. ten crores, which is in modification of guidelines set out in the Circular of 27th July, 2000. Mr. Raina has also

produced the revised guidelines of the RBI dated January 29, 2003. Mr. Raina further submitted that a communication dated 24-2-2003 has been

addressed by the appellant/plaintiff-Bank to the respondents/defendants for compromise settlement in terms of the new guidelines/scheme issued

by the Reserve Bank of India for one time settlement. This fact has not been disputed even by Mr. Anil Mahajan, learned counsel representing the

Bank. Mr. Anil Mahajan candidly conceded that the RBI scheme for one time settlement dated January 29, 2003 clearly provides a Settlement

Formula -- amount and cut off date. On going through the aforesaid RBI revised guidelines for compromise settlement of chronic NPAs, it is

clearly gatherable that under the heading ""Guidelines for compromise settlement (ii) (a)"" , the cases of NPAs are classified as doubtful or at Loss as

on 31st March, 2000, which read as under:

(ii) (a) The minimum amount that should be recovered under the revised guidelines in respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March 2000 would be 100% of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount as on the date on which the account was categorized as doubtful NPAs, whichever happened earlier, as the case may be.

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3. It is admitted by the parties that 100% of the outstanding balance in case of the defendants/respondents declared as NPAs in 1990 was Rs.

16,84,559.56. The RBI scheme dated 29-1-2003 has been floated during the pendency of the appeal. In the coverage column Clause (c) of the aforesaid scheme, it is provided as under:

(i) (c) The guidelines will cover cases on which the banks have initiated action under the Securitisation and Reconstruction of Financial. Assets and Enforcement of Security Interest Act 2002 and also cases pending before Court/DRTs/BIFR....

4. It further provides that revised guidelines will cover all NPAs in all sectors irrespective of the nature of business, which have become doubtful or at loses as on 31/03/2000 with an outstanding balance of Rs ten crores and below on the cut-off date. The cut-off date given in the aforesaid scheme is 31st March, 2000. The account of the respondents/defendants was declared NPAs as far back as in the year 1990.

5. Mr. Anil Mahajan, learned counsel appearing for the Bank, however, could not refute when carried through the revised guidelines for

compromise settlement of chronic NPAs issued by the Reserve Bank of India dated January 29, 2003 that the minimum amount that remains to be

recovered as on 31st March, 2000 classified as doubtful or at loss would be 100% of the outstanding balance in the account as on the date of

transfer of the protested bills account or the amount as on the date on which the said account was categorized, has been created doubtful as,

whichever is earlier. Mr. Anil Mahajan did not dispute the above communication having been referred by the appellant-Bank to the

defendants/respondents for a compromise settlement under the RBI scheme for one time settlement 2003. The case of the appellant, therefore,

even stands fully covered under the RBI scheme and the minimum amount of

outstanding balance in the account as on the date when it was declared NPAs, having already been stood fully satisfied and not disputed by the appellant's counsel, nothing remains to be recovered by the appellant/plaintiff-Bank even under the revised RBI guidelines dated January 29, 2003. This was done by the Trial Court even when the scheme at that time was not applicable for compromise settlement of chronic NPAs. Minimum amount recoverable under the settlement formally is 100% of the amount outstanding in the NPAs as on the date of the account was categorized as doubtful NPAs. The case of the respondents/defendants fully covered under the scheme on the cut-off date, and the suit amount having been fully satisfied, there remains no outstanding recoverable by the appellant/plaintiff-Bank from the defendants/respondents. That apart, the view expressed by the learned Bank Court is the view to which no exception can be taken.

In the result, the appeal, in my opinion, does not possess any merit and is, accordingly, dismissed.