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(2004) 10 SC CK 0036

In the Supreme Court Of India

Case No : I.A. No. 5 in civil Appeal No. 7426 of 1996 with I.A. No''s. 5-6 in civil Appeal No. 9063 of 1996

Citibank N.A. APPELLANT

Vs

Standard Chartered Bank
Canbank Financial Services Ltd. Vs Citibank N.A. RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Citation : AIR 2005 SC 94 : (2004) AIRSCW 6316 : (2005) 1 BC 53 : (2005) 2 BomCR 791 : (2005) 126 CompCas 351 : (2004) 4 CompLJ 452 : (2004) 9 SCALE 74 : (2004) 8 SCC 348 : (2004) 7 Supreme 735 : (2005) 1 UJ 248

Hon'ble Judges : S. K. Lahoti, C.J;Ashok Bhan, J

Bench : Division Bench

Advocate : T.R. Andhyarujina, Harish N. Salve and Shanti Bhushan and P.K. Samdani, Rashmi Virmani, R.K. Virmani, Sunita Dutt, Nilesh Parekh, Shailendra Bhardwaj, T.K. Cooper, Mahesh Agrawal, Manu Krishnan, Sanjay, Rishi Agrawal and E.C. Agrawala, for appearing partie, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Lahoti, C.J.—This order shall dispose of IA No. 5 filed by the respondent-applicant Standard Chartered Bank (hereinafter referred to as the "SCB") in civil Appeal No. 7426 of 1996 seeking clarification in the judgment dated 7.7.2004 and for further directions. I.A. No. 5 has been filed by the respondent Citibank N.A. (hereinafter referred to as the "Citibank") in civil Appeal No. 9063 of 1996 reporting compliance and recording satisfaction of the decree passed in the appeal.

2. Before adverting to the prayers made in the I.As. it is necessary to refer to few facts leading to the filing of the I.As.

3. Suit No. 24 of 1994 was filed by the SCB against Citibank seeking an order and decree against the Citibank to pay to SCB a sum of Rs. 55,73,92,241.57 p. with further interest on the principal sum of Rs. 48,27,91,095.89 p. @ 20 p.a.

from the date of filing of the suit till repayment. Citibank filed back to back suit being Suit No. 1 of 1995 against Canbank Financial Services Ltd. (for short 'CANFINA") with a prayer that in the event a decree is passed against the Citibank in Suit No. 24 of 1994 then CANFINA be ordered to deliver to the Citibank me 9% IRFC Bonds of the face value of Rs. 50 crores along with the difference between the amount that the Citibank may be ordered to pay to SCB in Suit No. 24 of 1994 and the market value of the said bonds on the day on which the same are handed over by CANFINA to the Citibank along with interest @ 20% on the principal amount of Rs. 51,07,12,328.77 from 1.1.1992 till the date of filing of the suit together with interest on the principal amount @ 20% p.a. from the date of filing of the suit till repayment and/or realization.

4. The two suits were tried by the Special Judge appointed under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, hereinafter referred to as 'the Act'.

5. Suit filed by the SCB being Suit No. 24 of 1994 was decreed by the Special Court by a judgment and decree dated 12/13th March, 1996, inter alia, directing the Citibank to pay the amount of Rs. 48,27,91,095.89 p. along with interest @ 20% p.a. till filing of the suit aggregating to Rs. 55,73,92,241.57 p. with pendente life interest @ 20%. Subsequently, the suit being Suit No. 1 of 1995 filed by the Citibank against CANFINA was also decreed by the judgment and decree dated 22.4.1996. The Special Court passed the decree in favour of the Citibank directing the CANFINA to deliver to the Citibank 9% IFRC Bonds of the face value of Rs. 50 crores within a period of 16 weeks along with the coupon interest @ 9% p.a. from 15.7.1991 till the bonds were delivered. Learned Judge awarded lower rate of interest by observing thus :-

"...The Court realises that in so granting interest the Court is making a difference from Suit No. 24 of 1994 and other suits where it has granted interest at 20%. But all those cases have been the cases where the Plaintiffs therein have had a strong case to which the Defendants therein had virtually no defence.... "

6. Citibank being aggrieved against the judgment and decree granted against it in civil Suit No. 24 of 1994 filed civil Appeal No. 7426 of 1996 and CANFINA being aggrieved against the decree passed in civil Suit No. 1 of 1995 filed civil Appeal No. 9063 of 1996. Both these appeals were heard together and have been disposed of by a common order.

7. civil Appeal No. 7426 of 1996 and civil Appeal No. 9063 of 1996 were allowed and the judgment and decree passed by the Special Court in Suit No. 24 of 1994 and Suit No. 1 of 1995 were set aside.

8. While doing so, it was held in civil Appeal No. 7426 of 1996 :-

"Citibank becomes entitled to restitution of the total amount paid by it to Standard Chartered Bank (principal and interest) along with interest @ 12% p.a. from the date of receipt of payment by SCB provided it is paid on or before

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01.09.2004 and in default to pay the interest @ 15% p.a. from the date of receipt of payment till it is repaid by the Standard Chartered Bank. Citibank would also be entitled to receive back the amount of costs it had paid to Standard Chartered Bank under the decree of the Special Court but the same would not carry any interest. Though the appellant had prayed that the interest be granted at the same rate at which it was granted by the Special Court (i.e. 20% p.a.) but we have reduced the same keeping in view that interest rates have come down substantially in the recent years."

9. While civil Appeal No. 9063 of 1996 was allowed by observing thus:-

As a consequence to the aforesaid CANFINA becomes entitled to restitution of the total amount paid by it to the Citibank (principal and interest) along with interest @ 9% p.a. from the date of payment provided it is paid on or before 01.09.2004 and in default to pay the interest @ 12% p.a. from the date of payment till it is repaid by the Citibank. Though the appellant had prayed for higher rate of interest but we deem it appropriate to grant the same rate of interest which had been granted by the Special Court, while decreeing the Suit No. 1 of 1995. We decline to grant costs in the appeal as the Special Court had not granted any costs while decreeing the suit of Citibank. The parties in this suit shall bear their own costs throughout."

10. I.A. No. 5 in civil Appeal No. 7426 of 1996 has been filed seeking clarification and direction with the averment that this Court by ordering restitution has directed the SCB to pay interest @ 12% per annum on the amount received by the SCB from the Citibank whereas the Citibank has been directed to pay interest only @ 9% per annum on the amount received by the Citibank which is inequitable thereby unjustly enriching the Citibank by payment of interest at a higher rate of 3% per annum. That Citibank is unjustly enriched to the extent of Rs. 21,81,44,923/-. That principle of compensation/restitution for SCB and Citibank has to be the same. While directing refund of monies the period for restitution to Citibank and to CANFINA is identical, i.e. 1996 to 2004. The interest @ 9% found reasonable to compensate CANFINA for 1996 to 2004 should have been applied to Citibank also. Citibank has filed its reply to the interlocutory application.

11. Counsel for the parties have been heard.

12. Comparison by SCB with the decree in favour of CANFINA and against the Citibank is wholly irrelevant, The decrees passed by the Special Court were for different amounts with different rates of interest. Contention of the SCB that Citibank was unjustly enriched is misplaced. In civil Appeal No. 7426 of 19% which arises from Suit No. 24 of 1994 filed by SCB against Citibank was decreed with interest @ 20% per annum by the Special Court whereas Suit No. 1 of 1995 was decreed with interest @ 9% per annum only. While reversing the judgment and decree passed by the Special Court we scaled down the rate of interest in Suit No. 24 of 1994 to 12% (although the lending rate of banks for commercial

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transaction was much higher) as the rate of interest had come down in the recent years. Award of interest @ 12% was deemed to be just and equitable. Though we were of the opinion that keeping in view the lending rates of the banks on commercial transaction the rate of interest should be awarded at 12% per annum in civil Appeal No. 9063 of 1996 as well but the same could not have been done as the Special Court had awarded interest in favour of Citibank at @ 9% per annum only. The Citibank could not be asked to pay interest at a rate higher than what was granted to it in the suit. Since the Citibank had been awarded interest @ 9% per annum we deemed it appropriate and upheld the award of interest at that rate of interest against Citibank.

13. Citibank as per decree of the Special Court was directed to pay interest at higher rate whereas the interest awarded in its favour was at a lower rate. Keeping that difference in mind we granted different rates of interest in the two appeals. The Citibank could not be asked to pay interest at a rate higher than as was granted to it by the Special Court while decreeing the suit. The Special Court had awarded interest @ 9% to Citibank and that is why Citibank could not be asked to pay interest at a rate higher than what was awarded to it by the Special Court. The decision taken by the Court was a conscious decision. The variation in the rate of interest ordered in the two appeals was keeping in view the rate at which the interest was allowed by the Special Court in the two suits. The order does not need any clarification or any further direction.

14. Mr. Shanti Bhushan, learned senior counsel appearing for the respondents relying upon the judgment of this Court in State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another, , submitted that this Court did not have the jurisdiction to order restitution. According to him, it is the trial Court which could order restitution as per law laid down by this Court in State Bank of Saurashtra, (supra). This point was not argued at the time of hearing of the appeals. This point has not been taken in the I.A. No. 5 either. Since this point was not raised the question of clarification of the order would not arise. I.A. filed in civil Appeal No. 7426 of 1996 is dismissed.

15. I.A. 5 in civil Appeal No. 9063 of 1996 has been filed by the Citibank reporting compliance and recording satisfaction of the restitution order in civil Appeal No. 9063 of 1996. Such an application cannot be entertained by this Court as this Court is not the executing Court. This I.A. is also dismissed reserving liberty with the applicant to report compliance and seek recording of satisfaction before the executing Court.

16. I.A. No. 6 for exemption from filing typed copies of annexures is allowed.

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