
(1998) 05 DEL CK 0064
In the Delhi High Court
Case No : S.No. 1536 of 1986

Corporation Bank

APPELLANT

Vs

M/s. Rama Industries and Others

RESPONDENT

Date of Decision : 12-05-1998

Acts Referred:

Citation : (1998) 5 AD 583 : (1998) 73 DLT 724 : (1998) 46 DRJ 797

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. A.B. Dial and Ms. Sumati Anand, for the Appellant; Mr. H.L. Tikku, for the Respondent

Judgement

J.B. Goel, J.—The claim made by the plaintiff in the suit is admitted and a statement has been made that the suit may be decreed but have claimed concession in interest. The only point thus left is about the rate of interest after the institution of the suit.

2. Briefly, the facts are that plaintiff a Banking Corporate Body filed this suit for recovery of Rs. 5,67,285.72 p. on 22.5.1986. Defendant No. 1 is a partnership firm and defendants 2 to 5 are its partners. The defendants for promoting their business had approached the plaintiff Bank for Cash Credit facility and for that purpose the defendants had submitted application dated 13.10.93. Cash Credit facility of Rs. 2,50,000/- was sanctioned for which various documents including a promissory note and the deed of hypothecation of their goods. The defendants duly availed this facility. Another facility of Rs. 40,000/- was allowed on 19.11.1983. When the defendants had represented that they had to discharge the liability of Haryana State Industrial Development. Corporation (HSIDC) and would create a mortgage on their property on discharge of their liability. This facility was availed but that mortgage was not created. First facility carried interest @ 6.5% per annum above the Reserve Bank of India rate subject to a minimum of 16.5% per annum compounded quarterly while in the second interest payable was 8.5% per annum above the Reserve Bank of India rate with

a minimum of 18.5 p.a. and further over due interest @ 2% per annum. The defendants failed to make payments inspire of various letters/notices of demand. In the first facility a sum of Rs. 5,09,563.47 and in the second a sum of Rs. 57,722.25 p. i.e. in all Rs. 5,67,285.72 p. became due on 20.5.1986 and this suit was instituted for recovery of these dues.

3. Written statement was filed on behalf of the defendants on 9.12.1986, raising various pleas legal and on fact disputing their liability. Even the constitution of the plaintiff as a Corporate Body was disputed and on merit it was inter alias stated that the signatures had been obtained on blank forms and that those documents have been mis-utilised. However, availing of the facility was not disputed. Later on, defendants 2, 4 and 5 came with the plea that they had not signed the earlier written statement and wanted to file a fresh written statement. After the institution of the suit some payments have been made. Detailed facts and circumstances are noticed below. On various dates defendant No. 3 had promised to clear the liability but failed to do so. The matter has been prolonged and dragged for 12 years. Now the defendants contend that they are not liable to pay any interest or in any case not more than 6% p.a. and the learned Counsel for the parties have stated that this controversy may be resolved by this Court.

4. I have heard learned Counsel for the parties.

5. Learned Counsel for the defendants has contended that the defendants have always been ready and willing to pay the dues and in fact during the pendency of the suit a substantial amount has been paid and considering the conduct of the defendants, plaintiff should be awarded any interest and in any case interest should not be more than @ 6% p.a. He has relied on some case law. Where as learned Counsel for the plaintiff has contended that the conduct of the defendants show lack of bona fides, they have not made payments according to the agreement before suit, even after the suit was filed inspire of their several promises payments were not made voluntarily but being pressed by circumstances. There is no reason or circumstance to waive interest or to reduce the interest less than the agreed rate. u/s 34 of the CPC (for short "the Code") interest after the institution of the suit should be awarded at the agreed rate of interest that the award of interest at the contractual rate is the rule unless there are any exceptional circumstances or justification justifying reduction in interest. No such exceptional circumstances exist in the present case. The discretion has to be exercised reasonably and not arbitrarily and there is no justification for not allowing the contractual rate of interest. He has also relied on some case law.

6. The award of interest u/s 34 of the Code after the date of the institution of the suit is in the discretion of the Court. The discretion obviously has to be exercised according to established judicial principles and not arbitrarily. Proviso to Section 34 of the Code reads as under:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six

per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

7. In *Andhra Bank Vs. M/s. Manney Industries and Others*, 1993 ISJ 282:(1993) BC 318 Division Bench of Andhra Pradesh High Court has observed that the Courts, undoubtedly have got discretion but that discretion has to be exercised basing on the facts and circumstances that has been brought out therein. And further it was observed that:

"if the contract rate is 17% p.a. and transaction is for commercial purpose, where there are no sufficient reasons for reducing the same, granting of interest @ 6% p.a. from the date of suit till the date of realisation is ordinarily justified. A person who has contracted particular rate of interest having, failed in repaying the amount due on the ground of improper utilisation cannot be allowed to the minimum rate of interest from the date of institution of the suit. If it is so every person who contracted with higher rate of interest but defaulted will exercise that option though the amount borrowed was for commercial purpose."

8. In that case it was found as a fact that the defendant unit immediately after its commencement became sick and so they could not pay the due amount and another person took over the unit and created an equitable mortgage and under those circumstances and taking into consideration that they have not earned any yield or profit out of the transactions from the very inception of their unit and the unit having become sick, the award of interest by Trial Court at 6% p.a. instead of agreed rate of 17% p.a. was up held. These were obviously considered as exceptional circumstances.

9. In this case, inter alia reliance was placed by the trial Court on *Soli Pestonji Majoo and Others Vs. Gangadhar Khomka*, .

10. In that case the question was about pendente lite interest in case of a mortgage. Reliance in turn was placed on the case of Federal Court in AIR 1940 20 (Federal Court) , where it was held that Order 34, Rule 11 gives certain amount of discretion to the court so far as interest pendente lite and subsequent interest is concerned and it was no longer absolutely obligatory on the Courts to decree interest at the contractual rate up to the date of redemption in all circumstances even if there is no question of the rate being excessive or substantially unfair within the meaning of Usurious Loans Act, 1918. Following this principle the Supreme Court in the circumstances of that case reduced the interest from 12% p.a. with monthly rests which was agreed rate and allowed by the High Court to 6% p.a. simple interest after the date of the suit.

11. The reasons are not far to seek. The rate of interest generally depended on the risk involved in effecting recovery of the loan. In case of a mortgage the loan being secured, the rate of interest comparatively is less than the rate of interest in case of unsecured loan. In case of unsecured loan pendente lite interest and future interest till the amendment of Section 34 by the Amendment Act of 1976

maximum rate after the institution of the suit prescribed was 6% p.a. simple. It would have been unfair if the interest in case of secured loan pendente lite and future was to be more than 6% p.a. simple provided in case of unsecured loans u/s 34 of the Code. Section 34 of the Code has been amended w.e.f. 1.2.1977 and now in the case of commercial transaction the interest for this period is more than 6% p.a. but not exceeding the contractual rate of interest. The case of S.P. Majoo thus is not of much help.

12. The other case relied on behalf of the defendants is the case of Corporation Bank Vs. Mukesh K. Sharma, S. No. 1343 of 1986 and I.A. 3819/88, decided on 19.1.1995 by a learned Single Judge of this Court. In that case the defendant without filing the written statement and contesting the suit on the very first date admitted the suit amount and submitted that as he was not in a position to pay the entire suit amount in lump sum offered to pay in installments. This offer was repeated subsequently and on a subsequent date defendant offered to pay Rs. 3 lakhs in lump sum and in fact paid four cheques for a total sum of Rs. 3 lakhs on 6.12.1990 which were accepted on behalf of the plaintiffs. Subsequently, on 5.11.1993 one more cheque of Rs.1 lakh and on 8.3.1994 the balance amount due towards suit was paid. Learned Single Judge observed that the fact that the defendant made the payment shows that he was all along keen to make payments but matter dragged because of compromise talks or being before the Board of Directors of the Bank and in the facts and circumstances of the case pendente lite interest was disallowed.

13. In State Bank of India Vs. P.K. Sethi and Others, , the defendant paid the amount claimed during the pendency of the suit. A learned Single Judge while awarding pendente lite interest @ 6% p.a. against the interest claimed at the rate of 12.5% p.a. with quarterly rates has observed that "Since the defendants have paid the amount claimed in the suit during the pendency of the suit and having regard to the overall circumstances it will be just and appropriate if the defendants are asked to pay simple interest.... at the rate of 6% p.a....."

14. With all respect it may be mentioned that in both these cases the learned Single Judge who has decided these two cases have not considered and discussed the provisions of Section 34 of the Code, the principles governing the exercise of discretion under the said provision nor relied on any relevant precedent. It was held in Municipal Corporation of Delhi Vs. Gurnam Kaur, that a judgment delivered without argument, without reference to the relevant provisions of the Act and without any citation of authority would not amount to a precedent.

15. Discretion by judicial authority has to be exercised on sound judicial principles. There is no established principle of law nor keeping in view the provisions of Section 34 can be that in variably where the suit amount is paid during the pendency of the suit, interest should be totally disallowed or should not exceed 6% p.a. Proviso to Section 34 provides that where the liability in relation to the sum so adjudged in decree had arisen out of a commercial

transaction, the rate of such further interest may exceed six percent per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised Banks in relation to commercial transactions.

16. This proviso has been added by Amendment Act of 1976 with effect from 1.2.1977. Earlier the maximum rate of interest u/s 34 was 6% p.a.

17. Interest is awarded to the plaintiff for his being kept out of the money which ought to have been paid to him. And if, rate of interest is agreed, there seems to be no reason that if the amount is not paid on due date, the rate of interest should be less than the agreed rate for overdue period so long as law permits it. It will be not only inequitable and unjust but rather penalising the creditor for approaching the Court to award interest less than the agreed rate and rewarding the delinquent debtor and encourage a dishonest debtor to deliberately and unreasonably in prolonging the litigation by taking all sorts of untenable and on many occasions even blatantly false pleas. It is the fundamental principle of judicial propriety that a Court should not do a thing which may encourage dishonesty and perpetuate injustice to a party to a litigation, One should not be given occasion to feel at the end of litigation that he has achieved his object and has been benefited by dishonest means adopted in litigation.

18. In *Bhagwanti Vs. Atma Singh*, AIR 1934 Lah 32, a Division Bench has held that though the rate of interest for the pendente lite is discretionary, the Court should in exercise of that discretion, award interest at the contract rate, unless it is exorbitant or penal in its nature or offends against any other provision of law. Interest pendente lite was awarded at the contractual rate of 15% p.a. In *Orde Vs. Sikinner*, (1880) 3 All 91 also it was held that the rate of interest up to the date of the decree ought to be that which has been fixed by contract express or implied, between the parties. In *The United Commercial Bank, Silchar Vs. Satish Chandra Ghosh and Another*, , a Bank had advanced loan for the purchase of truck. The minimum rate of interest was fixed at 13 1/2 p.a. Defendant having failed to pay the amount in terms of the agreement a suit was filed and the hypothecated property, namely, the truck was attached by the order of the Court. The defendant in order to get released the attached vehicle, admitted his liability and offered to pay the full amount. On such admission, the suit was decreed without costs and without interest. It was held in appeal that there could not be any justification for relieving the defendant from liability to pay interest which on the outstanding amount from the date of filing of the suit till the date of payment he was bound to pay even in terms of the agreement. Refusal to award interest affects the right of the claimant. Courts should apply their minds judiciously and order payment of interest unless "there is justification for not doing so. Arbitrary refusal to order payment of interest is not justified".

19. A Division Bench of the Madras High Court in *K. Appa Rao Vs. V.L. Varadaraj* (since deceased) and Others, ; has also held that the rate of interest pendente lite should be at the contract rate, unless there are circumstances, disentitling

the plaintiff to have the same. The burden is on the defendant to show such circumstances.

20. In *State Bank of Travancore, Tirupur Branch Vs. K. Vinayachandran and Another*, , also it was held that discretion under the proviso to Section 34 must be exercised on sound judicial principles. Future interest at contractual rate should not be refused, except for sufficient reasons. Refusal to award future interest at the contractual rate is only the exception and not the rule.

21. A Learned Single Judge of this Court in *Syndicate Bank Vs. West Bengal Cements Ltd. and others*, considering the scope of proviso to Section 34, has held that in commercial transactions, the grant of interest at the contractual rate ought to be the rule and the grant of interest at reduced rate "a rare exception". The defaulting borrower cannot be given the benefit of reduced rate of interest only because the Bank had to resort to legal recourse on account of non payment by borrower except, of course, in exceptional circumstances. In this case interest was awarded at the contractual rate of 16.5% p.a. u/s 34.

The same principle has been followed in a recent case by another learned Judge of this Court in the case of *Canara Bank Vs. Marshall Cucles & Ors.*, 73 (1998) DLT 44, also.

23. plaintiff is a scheduled Bank and is bound by the directives issued by the Reserve Bank of India in pursuance of statutory powers vested in it in the matter of charging of interest. It was held by the Supreme Court in *Corporation Bank Vs. D.S. Gowda and Another*, , where the Reserve Bank of India keeping in view the economic scenario of the country and the impact that interest rates would have on the economy, fixes the minimum and the maximum interest rates that banks can charge on loans/advances, the same cannot be termed to be unreasonable or excessive. Thus the principle that seems to be well established is that in commercial transactions ,for the period after the institution of the suit till realisation contractual rate ought to be the rule and a reduced rate should be an exception.

24. Coming to the facts of the present case, the defendants approached the plaintiff Bank for giving financial credit help for the purpose of its commercial unit. This was accepted. The loan was advanced for which the defendants inter alias had executed a promissory note as partners of defendant No.1 on 13.10.1983 in the sum of Rs. 2.5 lakhs agreeing to repay it with interest @ 6.5 % p.a. above the Reserve Bank of India rate, subject to a minimum of 16.5% p.a. compounded quarterly Request for further loan of Rs. 40,000/- to repay the debt due from HSIDC was also granted on 13.11.1983 which was payable in 3 years in yearly installments, first two of Rs. 13,000/- each and third of Rs. 14,000/- carrying interest @ 8.5% p.a. over the Reserve Bank of India rate subject to a maximum of 18.5% p.a. Plant and machinery and goods were hypothecated. Except a few small payments made the debit account remained constantly increasing and on 20.5.86 dues swelled to Rs. 5,09,563.47 in first

account and Rs. 57,722.25 in the other account. The dues remained outstanding in spite of letters and legal notices of demand. A Local Commissioner made inventory of the goods lying at the factories of defendants on 6.8.1986. A written statement was filed on 10.12.1986 taking various pleas denying and disputing their liability. Defendants 2, 4 and 5, denied having signed that written statement and desired to file separate written statement. For ascertaining truth, defendants were directed on 8.12.1987 to be present in Court in person. Except defendant No. 3 other defendants did not appear in spite of service of notice. On 29.4.1988, defendant No. 3 made statement in Court admitting the claim in the suit and on that date paid a sum of Rs. 50,000/- by means of a Bank Draft in the hope that further payment will be made, on 22.8.1988 another sum of Rs.30,000/- was paid. Assurances were given in Court to make further payments but no payments were made. On 17.2.1989, again defendants were directed to appear in Court in person. They did not so appear. A sum of Rs. 30,000/- was paid (Rs. 20,000/- by means of a draft and Rs. 10,000/- by cheque) on 5.4.1989. The Manager of the plaintiff was asked to go to the factory of the defendants at Gurgaon on 15.4.1989 obviously to find out the assets of the Company. Direction was given to defendant No. 3 to be present with books of accounts for his inspection. The Bank Manager was not given such inspection for which I.A. 2716/89 was filed. Nothing happened thereafter. On 7.12.1989 application (IA No. 4321/86) under Order 40, Rule 1 for appointment of a Receiver came for hearing before Court. This application was kept pending, on the undertaking of defendant No. 3 to make payments in monthly installments of Rs.15,000/- regularly from 15.12.1989. The defendants did not keep this promise. Till 6.4.1992 only Rs.60,000/- were paid after this undertaking. On 19.10.1992, a Receiver was appointed to take possession of two factories of defendants at Gurgaon and Rewari. It appears that some proposal for settlement was made in the meantime seeking some concession in interest. Defendant No.3 again on 18.1.1994 made a statement promising to pay the entire amount within six months. On this, the defendants were directed to pay the entire amount to the Bank within six months. The Bank was to expedite the consideration of proposal of waiver of part of interest. On this assurance, the two factories were released from the Receiver. A cheque of Rs. 1 lakh was given on 10.8.1994 but it was dishonoured and then a Bank Draft of Rs.1 lakh was given in Court on 21.11.1994. Some settlement had been arrived at between the parties and as appears from letter dated 16.8.1993 of defendant No. 3 available on record, the Bank also in their letter dated 17.9.1993 had agreed to accept Rs. 9.50 lakhs in full and final settlement of the claim, provided that:

1. Rs. 1 Lakh was paid immediately; and
2. Rs. 8.50 lakhs was paid within next 45 days.

25. As noticed above, cheque of Rs.1 lakh was given but was dishonoured and only on 21.11.1994 Rs. 1 lakh was paid by means of Bank Draft. The dues thus remained outstanding in spite of several promises/undertakings and orders of the

Court. On 17.3.1998, on another application under Order 40, Rule 1, Receiver was again appointed. Defendant No. 3 who was present in Court then came forth and undertook to pay Rs. 5 lakhs within 15 days and the balance amount within 30 days of determination of question of interest by Court. This amount of Rs. 5 lakhs has been paid. Adjournment was again sought on 2.4.1998. It was further ordered that another sum of Rs. 2 lakhs be paid with four weeks. This has not been paid. Till now Rs. 8.70 lakhs have been paid after institution of the suit on 22.5.1986, i.e., during last 12 years. Can it be said that the defendants have been ready and willing to pay after the institution of suit or before. Payments have been made by compulsion of circumstances. The defendants seek exemption from payment of interest or in the alternative reduction in interest at the rate not more than 6% p.a. after the institution of the suit. Do these circumstances justify exercise of discretion in favor of defendants or it will be unjust and inequitable to do so.

26. Taking into consideration the facts and circumstances, the conduct of the defendants during all these 12 years and the legal position noticed above, in my view, it will not be inequitable, unreasonable and unjust to exercise discretion in favor of the defendants either in waiving the interest completely or reducing the rate of interest lower than the agreed rate after the institution of suit. It would crown the defendants and give an occasion to like minded unscrupulous debtors to misuse the process of the Court likewise. Public money is involved and public interest demands that it will not be sound exercise of discretion to disallow interest or to reduce it to merely 6% per annum after the institution of the suit.

27. The plaintiff has claimed interest after institution of the suit at the agreed rate in accordance with the directives of the Reserve Bank of India. This being so has not been disputed. The Bank's rates of interest have been fluctuating and during the last 12 years they have increased and also recently decreased.

28. Taking into consideration the totality of the circumstances, I allow interest @ 16% p.a. on the sum of Rs. 5,67,285.72 p. per annum for the period after institution of the suit.

29. The suit of the plaintiff is accordingly decreed and a decree for the recovery of Rs.5,67,285.72 is passed against the defendants with costs of the suit and pendente lite and future interest @ 16% per annum thereon. Due credit shall be given to the amounts paid by the defendants after the institution of the suit.