

(2009) 10 MAD CK 0293
In the Madras High Court
Case No : C.S. No. 513 of 2001

Hatsun Agro Products Ltd.

APPELLANT

Vs

Industrial Development Bank of India

RESPONDENT

Date of Decision : 04-10-2009

Acts Referred:

Contract Act, 1872 — Section 23

Evidence Act, 1872 — Section 114

Foreign Awards (Recognition and Enforcement) Act, 1961 — Section 7(1)

Citation : (2010) 1 LW 489

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : T.R. Rajagopalan for T. Venugopalan, for the Appellant; T.V. Ramanujam for PL. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—The suit has been filed by the Plaintiff against the Defendant for declaration and other consequential reliefs.

2. The Plaintiff is a public limited company registered under Indian Companies Act, 1956. The Plaintiff has stated that it is one of the largest private sector manufacturers of ice cream and dairy products. The Plaintiff's company is marketing Arun (Ice Cream) and Arokya (Standardised Milk) and running business so as to maintain a standard. The Plaintiff company approached the Defendant, Industrial Development Bank of India on about 29.06.1998 to provide financial assistance for running a Modern Dhall Mill, a Bakery, cold storage for their Ice Cream products and for expansion of their Salem dairy, for which their loan request was for Rs. 700 lakhs and their total project cost was Rs. 1,050 lakhs.

3. The Defendant informed the Plaintiff that the term loan for the above said purpose was sanctioned vide their letter, dated 14.09.1998. Pursuant to the above, loan agreement dated 23.10.1998 was entered into at Chennai by the

Plaintiff with the Defendant, whereby the Plaintiff agreed to avail the term loan to the maximum extent of Rs. 700 lakhs on the terms and conditions set out in the loan agreement. The Plaintiff had also paid an up-front fee of Rs. 7.35 lakhs @ 10.5% on the loan amount being sanctioned at Chennai. The loan availed by the Plaintiff was repayable in accordance with the amortization schedule under Schedule III of the said agreement, dated 23.10.1998 starting from 01.10.2000 and ending on 01.07.2005 besides payment of interest periodically by the Plaintiff.

4. For the purpose of availing the above loan, the Plaintiff had provided adequate securities both movable and immovable to the satisfaction of the Defendant, besides establishing the technical feasibility and financial viability of the company and further, 12,90,500 equity shares for the face value of Rs. 10/- each held by the Chairman of Plaintiff's company was also pledged in favour of the Defendant by executing appropriate legal documents. The Plaintiff subsequently took a business decision not to implement their Bakery and Dhall Mill project and requested the Defendant to transfer Rs. 533 lakhs remaining undrawn amount for their upcoming projects relating to Salem Diary and for setting up a New Diary plant at Belgaum in the State of Karnataka.

5. The Plaintiff had been sanctioned a term loan of Rs. 700 lakhs, but availed only a sum of Rs. 167 lakhs from November 1998 till August 1999 under Term Loan No. I, though they had paid the Defendant an up-front fee of Rs. 7.35 lakhs towards the loan. The Defendant, instead of transferring the unavailed portion of the loan amounting to Rs. 533 lakhs as stated above, cancelled the same and sanctioned a fresh loan of Rs. 670 lakhs on 02.11.1999. The fresh loan agreement, dated 12.11.1999 was executed between the Plaintiff and the Defendant at Chennai for a term loan of Rs. 670 lakhs. The Plaintiff had also paid an up-front fee of Rs. 7.04 lakhs under the Term Loan No. II as directed by the Defendant.

6. According to the Plaintiff, out of the sanctioned amount of Rs. 670 lakhs, they availed and drew only Rs. 470 lakhs as on 07.08.2000 and as such, the Plaintiff had availed from the Defendant bank a total loan of Rs. 637 lakhs comprising of Rs. 167 lakhs under Term Loan No. I and Rs. 470 lakhs under Term Loan No. II, but had paid a total up-front fee of Rs. 14.39 lakhs in respect of Term Loan No. I and II.

7. According to the Plaintiff, their company approached the Defendant bank to sanction a fresh term loan to fund acquisition of a profit making company, Ajith Diary Industries Ltd., through the process of bidding under Court proceedings in the High Court of Judicature, Madras, for a total consideration of Rs. 10.50 crores. The Plaintiff had brought to the notice of the Defendant bank the urgency of processing their loan request, since the Hon'ble High Court had directed them to make payment for the acquisition of Ajith Diary Industries Ltd., on or before 29.09.2000. The Defendant was informed by the Plaintiff that they have also approached a couple of Banks and financial institutions for the above loan and

requested the Defendant bank to take immediate decision in the matter. Despite the urgency, as stated above, the Defendant failed to provide any positive response, hence, the Plaintiff was left with no other alternative, as the date was fixed by the Hon'ble High Court for making a payment of Rs. 10.50 crores.

8. Under the above circumstances, the Plaintiff approached the ICICI Bank for funding the acquisition of Ajith Diary Industries Ltd., and accordingly, ICICI Bank issued the Plaintiff a sanction letter and the Plaintiff had no other option but to foreclose the Term Loans amounting to Rs. 637 lakhs with the Defendant, otherwise ICICI bank would not have released the funds needed.

9. When the Plaintiff approached the Defendant to ascertain the modalities for foreclosure of their loan, it was informed that the Plaintiff was liable to pay a sum of Rs. 51,42,895/- as pre-payment premium to the Defendant before foreclosing the loan. According to the Plaintiff, the Defendant was demanding Rs. 51,42,895/- as pre-payment premium, taking undue advantage of the predicament in which the Plaintiff was placed and the Defendant exploited the situation. According to the Plaintiff, the claim of the Defendant was arbitrary, unjust and totally contrary to and not in accordance with the spirit with which Public Banks like the Defendant were established by a special statute. According to the Plaintiff, Clause 3.7 of the general conditions of the loan agreements, dated 23.10.1998 and 12.11.1999 respectively was opposed to public policy, arbitrary, discriminatory, void and not enforceable.

10. With the above pleadings, the Plaintiff is seeking decree

(a) to declare Section 3.7 of the general conditions of the loan agreements, dated 23.10.1998 and 12.11.1999 respectively as opposed to public policy, vague, arbitrary, discriminatory and declare the same as null and void and unenforceable.

(b) to declare that the Defendant had collected a sum of Rs. 51,42,895/- under duress, illegally and hence, not entitled to retain the same, but have to refund the same to the Plaintiff with interest.

(c) for a consequential relief of directing the Defendant to refund the Plaintiff a sum of Rs. 51,42,895/- paid by them towards pre-payment premium on 05.10.2000 together with interest at 18% from 06.10.2000 amounting to Rs. 6,69,562/- totaling in all a sum of Rs. 58,12,457/- together with interest at 18% from the date of the plaint till the date of realization and also for the costs.

11. Based on the pleadings of both the parties, the following issues are framed to decide the suit:

1. Whether Section 3.7 of the General conditions of the Loan Agreements, dated 23.10.1998 and 12.11.1999 respectively between the Plaintiff and the Defendant is null and void and unenforceable in law ?

2. Whether the Defendant had collected from the Plaintiff pre-payment premium

of Rs. 51,42,895/- under duress, illegally and hence, not entitled to retain the same. If so, whether the Plaintiff is entitled to such refund of the said sum of Rs. 51,42,859/- with interest from 06.10.2000 amounting to Rs. 6,69,562/- totalling in all a sum of Rs. 58,12,457/- together with further interest @ 18% p.a., from the date of filing the suit until its realization ?

3. Whether the Defendant had suffered any loss of income and are justified in law to claim the pre-payment amount of Rs. 51,42,895/-.

4. To what reliefs, if any, the parties are entitled ?

12. Issue Nos 1 and 2: Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the Plaintiff submitted that Section 3.7 of the general condition of loan agreement, dated 23.10.1998 and 12.11.1999 between the Plaintiff and the Defendant is void and unenforceable in law and the pre-payment premium not refunded by the Defendant is against public policy. According to the learned senior counsel appearing for the Plaintiff, the Defendant had collected the pre-payment premium of Rs. 51,42,895/- under duress, illegally and hence the Defendant is not entitled to retain the same, but on the other hand, the Plaintiff is entitled to get it refunded with interest from 06.10.2000. According to the Plaintiff adding 18% interest on the principle amount from 06.10.2000, the total amount on the date of filing of the suit would be Rs. 58,12,457/-, hence, the Plaintiff filed the suit, seeking a decree for the said amount to be refunded with interest and costs. In support of the claim made by the Plaintiff, the learned senior counsel relied on the decision, LIC of India and Another Vs. Consumer Education and Research center and Others, and argued that an action of the state instrumentality or public authority having public element must be just, fair and reasonable in public interest, in consonance with the constitutional conscience and socio-economic justice. Even, if the state/instrument/authority enters into any contract with private persons, writ petitions filed by the contracting private parties challenging the terms of the contract on the ground that the same is arbitrary, unjust and unfair and as such, the writ is maintainable and the Court has power to mould the relief appropriately to remedy the injustice. The learned senior counsel for the Plaintiff drew the attention of this Court to the said decision, wherein, at Page No. 509, the Hon''ble Apex Court has held as follows:

47. It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service for ever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract.

13. The learned senior counsel for the Plaintiff further contended that the Defendant bank was established by an Act of Parliament, namely the Industrial Development Bank of India, Act, 1964 (Act 18 of 1964) and as such is an instrumentality of the State. One of the objects for which, the Defendant Bank established was for providing Credit and other facilities for the development of Industries in the country. The learned Senior Counsel argued that Section 3.7 of the general conditions of the agreement is opposed to public policy and hence, the same is void and unenforceable in law, as the said section has conferred on the Defendant Bank, bank unguided, absolute, and arbitrary power against the purpose for which the Defendant Bank was created. The word "premia" has not been defined anywhere in the Contract between the Plaintiff and the Defendant and according to him, the Plaintiff was under a bonafide belief that it denotes "Reward" whereby, they would be entitled to incentive for prompt pre-payment of the Loans to the Defendant. The aforesaid section (clause) in the contract affect a large section of the industry and also injuries to the public interest, when any borrower desires for foreclosing the loan and therefore, Section 3.7 of the general conditions of the agreement is against public interest and as such, the same is opposed to public policy, hence, void u/s 23 of Indian Contract Act.

14. Learned Senior counsel appearing for the Plaintiff stoutly argued that Section 3.7 of the general conditions of the loan agreement is against public policy and as such the same is void and unenforceable in law. The learned Senior counsel drew the attention of this Court to Section 3.7 of the general conditions of the agreement signed by both the parties and marked as Ex.P.2, which reads as follows:

Section 3.7: Premature Repayment: The Borrower shall not repay the outstanding principal amounts of the loans in full or in part, before the due dates and except after obtaining the prior approval of the Lenders (which may be granted subject to such conditions as the Lenders may deem fit including payment of premia for such prepayment).

As per Section 3.7 of the general conditions of the contract, borrower shall not prepay the outstanding principal amount of the loan in full or in part before the due dates, except after obtaining prior approval of the vendor. Only on the aforesaid condition of the agreement, the Defendant did not return the prepayment premium to the Plaintiff.

15. Mr. T.V. Ramanujam, learned senior counsel appearing for the Defendant vehemently argued that the Plaintiff has no legal basis to challenge the provision of the contract, after accepting the general conditions of the loan agreement and having availed loan based on the general conditions. According to the learned Senior Counsel for the Defendant, the Plaintiff is estopped from raising a plea against the accepted conditions of the contract, after availing the loan and according to him, Section 3.7 cannot be against any public policy of the Government to be construed as illegal. In support of his contention, the learned Senior Counsel relied on the following decisions:

1. Indian Overseas Bank v. V. Vijayanthimala 1996 (I) CTC 724
2. Life Insurance Corporation of India and Another Vs. Smt. S. Sindhu,
3. Hotel Vrinda Prakash and Smt. Chitravrinda Shetty Vs. Karnataka State Financial Corporation,
4. Mahavir Ice and Cold Storage (P) Ltd. Vs. Small Industries Development Bank of India, IPICO House and Another,
5. U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. AIR 1993 SC 1435
6. T.T. Limited Vs. The Industrial Finance Copn. of India Limited,

16. In U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd., reported in AIR 1993 SC 1435, the Hon"ble Supreme Court has ruled that the State Financial Corporation is not like an ordinary lender or a Bank, which lends money and hence, the High Court cannot review the order, passed by the authority under State Financial Corporations Act (63 of 1951) in the recovery of loan as an appellate authority. It has been further held as follows:

10. It is true that the Appellant Corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the corporation is not like an ordinary money lender or a Bank which lends money. It is a lender with a purpose - the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business.

17. Similarly, in the decision, Life Insurance Corporation of India and Another Vs. Smt. S. Sindhu, , the Hon"ble Apex Court has held as follows:

When what is paid by LIC as refund of premiums, the question of treating the amount paid by LIC as refund of premiums paid and then directing payment of interest thereon from the respective dates of payment of premium does not arise. That would amount to treating the premiums paid in respect of a Policy which lapsed by default, as fixed deposits repayable with a hefty rate of interest. Surely, the intention is not to reward defaulting policy holders. Moreover, the Courts and Tribunals cannot rewrite and direct payment contrary to the terms of the contract, that too to the defaulting party. Be that as it may.

18. It has been made clear in the decision of the Hon"ble Apex Court reported in AIR 1933 SC 1435 (cited supra), that in an administrative decision, when a matter is between Corporation and its debtor, Court cannot sit over it as an appellate authority, except in two situations, (1) where there is a statutory violation on the part of the Corporation or (2) where the Corporation acts

unfairly, i.e., unreasonably.

19. In the decision reported in Life Insurance Corporation of India and Another Vs. Smt. S. Sindhu, , it has been made clear that the Courts cannot re-write the contracts by way of interpretation, contrary to the terms and conditions, that are agreed by the parties to the contract. In other words, when the terms of contract between the parties is clear and unambiguous and mutually agreed by the parties, Court cannot take a contrary view, by way of interpretation.

20. This Court in the decision, Indian Overseas Bank v. V. Vijayanthimala, reported in 1996 (I) CTC 724, has held that nothing remains in a case, except to reject the contention of the Defendants on the ground that the rate of interest claimed by the bank was excessive, relying on the decision, Corporation Bank Vs. D.S. Gowda and Another, , wherein it has been held as follows:

Unless the directives laying down the said policy are declared illegal and unenforceable, banks would be bound to follow them for otherwise they would be penalised.

21. In the instant case, unless Section 3.7 of the general conditions of contract is declared as illegal, the Plaintiff cannot challenge the same, after availing having agreed the condition imposed in the contract and availed the benefit under the contract.

22. The High Court of T.T. Limited Vs. The Industrial Finance Copn. of India Limited, , has decided the very same question relating to premature repayment, which reads as follows:

Premature repayment:

The Borrower shall not prepay the outstanding principal amounts of the loan in full or in part, before the due dates except (after the conversion right is exercised in full, or has lapsed (and) to be deleted if conversion clause not applicable after obtaining the prior approval of IFCI (which may be granted conditionally).

It has been further held as follows:

I have quoted the relevant provisions of the agreements, where the general conditions of contract provide for a right to the Respondent to make demands and it is at the discretion of the Respondent depending upon the time when the loan was granted and when the party availing the loan wanted pre-payment. Having regard to the circumstances, I am unable to accept the submissions made on behalf of the Petitioner. In my view, it cannot be said that the Respondent had acted arbitrarily or irrationally in making the demand of Rs. 51,49,392/- towards prepayment premium in respect of the four agreements.

23. In the decision, Puttanna and Another Vs. Lakshmana and Others, , the High Court of Karnataka, while deciding a similar issue has held that the borrowers are not entitled to repay the outstanding principal sum in full or in part before the

due date or dates prescribed for payment, except with the prior approval of the Corporation, subject to such terms and conditions that might be stipulated by the Corporation in this behalf at its sole discretion. In the decision, it has been further held as follows:

If an account is prepaid /foreclosed when the interest rates are falling, the Corporation may have to suffer loss. To overcome this situation, if a premium is charged on the outstanding loan being prepaid, the same cannot be found fault with. I am of the considered view that the Corporation has the power and authority to levy prepayment / foreclosure premium.

24. The High Court of Orissa, in the decision, Mahavir Ice and Cold Storage (P) Ltd. Vs. Small Industries Development Bank of India, IPICO House and Another, , with regard to premature repayment of SIDBI Loan has held that the borrower shall not prepay the outstanding principal amount of loan in full or part before the due dates except after obtaining prior approval of SIDBI in writing (which may be granted conditionally).

25. In the instant case, admittedly the Plaintiff availed the loan through the Defendant, Industrial Development Bank of India, after having accepted the terms and conditions stipulated in Exs.P.1 to P.4. It is seen that Ex.P.5 is a copy of the letter dated 28.09.2000, addressed to the Chairman, Industrial Development Bank of India, Mumbai by the Plaintiff, wherein it was informed that the foreclosure premium demanded by the Defendant, Chennai branch is unreasonable and unfair. The Defendant, by letter, dated 03.10.2000 has informed the Plaintiff, referring the Plaintiff's letter, dated 03.10.2000 marked as Ex.P.7 and asked whether the Plaintiff company is agreeable for prepayment premium, which is worked out to Rs. 51,42,895/- to arrange and pay a sum of Rs. 6,80,98,747/- by close of business on the aforesaid day itself towards prepayment of the entire loan outstanding and interest on the term loan for October 1, 2000 to October 3,2000 by furnishing the details in the annexure.

26. Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the Plaintiff mainly argued that Section 3.7 is against public policy of the Government, since Industrial Development Bank of India, the Defendant herein was formed with the specific purpose of developing industries and industrial activities in the country. Per contra, Mr. T.V. Ramanujam, learned Senior Counsel appearing for the Defendant argued that there is no such public policy of the Government to declare void or to struck down the Section 3.7 of the general conditions of the agreement.

27. The Law Lexicon by P. Ramanatha Iyar, page number 1561 has given interpretation for the term Public policy as follows:

Public policy does not admit of definition, and is not easily explained; it is a variable quantity, which must vary and does vary, with the habits, capacities, and opportunities of the public (per Kekewich, J. Davies v. Davies, 1887, 36 Ch.D at p.364); but there are certain classes of contracts which have been dealt with by

the Courts as opposed to Public policy. Sir William Anson enumerates these classes as follows - (1) Agreements tending to injure the public service ; (2) agreements which injure the State in its relation with other States; (3) agreements which tend to prevent the course of justice; (4) agreements which tend to abuse of legal process; (5) agreements, which affect the freedom of security of marriage; (6) agreement in restraint of trade; and (7) agreements which in restraint of marriage etc., (Ency. of the Laws of England).

28. As per the Law Lexicon, it is clear that the term "Public policy" has no direct definition. In fact, the doctrine of Public policy cannot be tested by any straight jacket formula. As per the guideline available in the Law Lexicon referred to, there are certain classes of contracts, which have been dealt with by the Courts as opposed to public. Out of the seven classifications enumerated by Sir William Anson, as stated in the Law Lexicon, any agreement in restraint of trade, be construed against Public policy, so far as commercial transactions are concerned.

29. As held by the Hon"ble Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Public policy is not the polity of a particular government. It connotes some matter which concerns the public good and the public interest. The principles governing public policy must be and are capable, on proper occasion, of expansion or modification.

30. While interpreting Section 23 of the Indian Contract Act, 1872, the Hon"ble Apex Court in P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another, , has held that the concept of Public policy is varying and uncertain. It is described as "untrustworthy guide" "unruly horse" etc.

31. In Renusagar Power Co. Ltd. Vs. General Electric Co., , regarding Foreign Award (Recognition and Enforcement) Act (45 of 1961), Section 7(1)(b)(i), the Hon"ble Supreme Court has held that the term "public policy" referred to the public policy of India and having the view that the recognition and enforcement of an award of the Arbitral Tribunal cannot be questioned on the ground that it was contrary to the public policy of the State of New York. The term "Public policy" can be interpreted and applicable only in the Indian context.

32. In the light of various decisions of the Hon"ble Apex Court, it has been made clear that the Court cannot re-write any contract, by way of interpretation, contrary to the terms and conditions that are agreed by the parties to the contract. Similarly, unless the objectives, directives or policy involved in the contract are declared illegal and unenforceable. When the terms and conditions of the contract have been mutually agreed by both the parties to the contract, when one of the party is a Government undertaking, it cannot be construed that such a contract or any provision of the contract is against public policy, merely on the plea raised one of the party, who has reaped the benefits under a contract. In fact, a party to a contract, having agreed, signed the terms and conditions of contract, unless there is element for coercion for obtaining the said

contract, after getting the benefit under the contract is stopped from raising a plea contract to the acceptance of the contract by saying that the terms and conditions of the contract is against public policy.

33. In the instant case, it is not in dispute that the Plaintiff had paid the prepayment premium of Rs. 51,42,895/-, as per the terms and conditions of the contract, as agreed by both the parties to the contract. The Plaintiff has raised a defense that the said amount was collected from the Plaintiff, as prepayment premium illegally under duress. It is an admitted fact that the Defendant, Industrial Development Bank of India is a Government of India undertaking and the Plaintiff is also a public limited company and therefore, it cannot be said that the amount was collected under duress. The Defendant, being a public undertaking have no necessity to collect the money from the Plaintiff, a public limited company under duress. As per Section 114(e) of Indian Evidence Act, judicial and official acts have been regularly performed.

34. As contended by Mr. T.V. Ramanujam, learned Senior Counsel appearing for the Defendant, when the terms and conditions of the contract are clear and unambiguous, the Court cannot interpret the same, so as to change the terms of contract. In other words, Courts cannot re-write the contract, by way of interpretation, contrary to the terms and conditions mutually agreed by the parties to the contract, unless the contrary is proved by the party, who challenge the mutual agreement. Unless such terms and conditions are illegal or unenforceable, it cannot be challenged by a party to the contract, on the ground that the terms of the contract is against public policy.

35. Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the Plaintiff contended that the Defendant has not given any details to justify that the prepayment premium need not be refunded to the Plaintiff. According to the learned Senior Counsel, the Defendant had not sustained any loss on account of pre-closure by the Plaintiff and therefore, it would be an unjust enrichment and therefore, the Plaintiff is entitled to a decree as prayed for.

36. The Hon''ble Supreme Court in the decision reported in AIR 1993 SC 1435 (cited supra) has categorically held that U.P. Finance Corporation, the Appellant therein was instrumentality of the State created under the State Finance Corporation Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the State by encouraging small and medium industries by giving financial assistance in the share of loan and advance, repayable within a period not exceeding 20 years from the date of such loan, however, the said Corporation cannot be treated like an ordinary money lender or a Bank, which lends money, since the Finance Corporation is a lender without the purpose and the purpose is promoting the small and medium industries. However, the relationship between the Finance Corporation and the borrower is that of creditor and debtor and hence, the Corporation is not supposed to give loans once and go out of business. The Corporation has to recover the loan amount, so that it can give fresh loans to others and achieve its objects. The

ruling of the Hon"ble Apex Court is squarely applicable to the Defendant, which is also a government undertaking, having the purpose of promoting industrial development in the country.

37. Having admitted the terms and conditions of the contract, in the absence of any illegality, the terms of contract cannot be challenged by the Plaintiff, after reaping the benefits under the contract and therefore, I am of the view to answer the issues 1 and 2 against the Plaintiff and in favour of the Defendant herein and accordingly, the issues are answered.

38. Issue No. 3: Learned Senior Counsel for the Plaintiff argued that there was no loss sustained by the Defendant, hence, the prepayment premium made by the Plaintiff to the tune of Rs. 51,42,895/- shall be refunded by the Defendant. According to the learned Senior Counsel for the Plaintiff, the payment was made well in advance would be beneficial to the Defendant, hence, the Defendant could not have incurred any loss, on account of the foreclosure and therefore, the Plaintiff is entitled to get back the amount. On the other hand, the learned Senior Counsel appearing for the Defendant submits that as per law, considering various aspects and the loss being sustained by the Defendant, pre-closure is not encouraged by the Act itself. The Defendant is also getting financial assistance from various sources and liable to pay interest for the same, apart from incurring administrative and other legal expenses. Considering all these aspects and also the object of promoting industrial development, the terms and conditions of the contract were formulated and therefore, it is not open to the Plaintiff to seek exact loss of income suffered by the Defendant. Learned Senior Counsel also relied on the decisions referred to above with regard to the legality of not refunding the prepayment premium.

39. It cannot be said that no loss of income was suffered by the Defendant, on account of pre-closure, as the Plaintiff, public limited company, voluntarily entered into a contract with the Defendant, a Government undertaking and agreed for the general terms and conditions, stipulated therein, the Defendant cannot specify the actual loss of income, since it is not related only with the Plaintiff company. When there is no illegality in the terms of contract either on the ground of public policy or otherwise, when there is evidence to show that the contract was entered into by the Plaintiff without coercion, the claim of the Defendant, based on the agreement not to lend the amount claimed by the Plaintiff could be justified in law, accordingly, the third issue is answered.

40. Issue No. 4: In view of the findings given for the issues 1 to 3, this Court is of the view that the Plaintiff is not entitled to a decree as prayed for and accordingly, the suit is liable to be dismissed, however, considering the facts and circumstances and to meet the ends of justice, I find it just and reasonable to dismiss the suit without costs.

41. In the result, the suit is dismissed without costs.