
(2013) 12 CAL CK 0031

In the Calcutta High Court

Case No : A.P.D. No. 350 of 2012 and C.S. No. 246 of 2009

H.D.F.C. Bank Ltd.

APPELLANT

Vs

Chitra Gupta and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 2 CHN 543

Hon'ble Judges : Ishan Chandra Das, J;Debasish Kar Gupta, J

Bench : Division Bench

Advocate : Mainak Bose, Mr. Chayan Gupta, Mr. P.K. Srivastava and Ms. appabitra Saha, for the Appellant; Dhruba Ghosh, Sourav Mukherjee and Mr. Dipak Bhattacharya, for the Respondent

Final Decision : Partly Allowed

Judgement

Ishan Chandra Das, J.—This appeal, arose out of the judgment and decree dated 03.05.2012 and 7.06.2012 respectively passed in CS No. 246 of 2009, has a long chequered history. The case of the respondents No. 1 to 7 (the plaintiffs No. 1 to 7 of CS No. 246 of 2009 and hereinafter referred to as the principal respondents) is that one Sambhu Kumar Chowdhury, since deceased, the predecessor-in-interest of the respondents No. 8 to 10 (father of the defendants No. 1 to 2 and the husband defendant No. 3 and hereinafter referred to as the respondents No. 8 to 10) received a sum of Rs. 5, 11,000/- (five lakh eleven thousand only) from the principal respondents No. 1 to 7 for selling out plots of land measuring 28 Cottahs and 2 Chittaks and subsequently paid back Rs. 2,50,000/- (two lakh fifty thousand only) on two different dates. In August 2006, he offered to sell out land measuring 27 cottahs and 5 Chittaks from the said land for a consideration of Rs. 27,31,250/- (twenty seven lakh thirty one thousand two hundred fifty only) upon representation that the properties were free from all encumbrances. Rest of the amount from Rs. 5,11,000/- (five lakh eleven thousand only) was treated as earnest money. As per agreed terms, 4 (four) deeds of conveyance were duly executed and registered at Howrah on the 6th September, 2006 and on the next

day, i.e., on the 7th September 2006 when the agents of the principal respondents went to take possession of those plots, it was detected that those plots were already acquired by the Howrah Improvement Trust, on payment of compensation to the respondents/vendors (i.e., the predecessor of the respondents No. 8 to 10). Thereafter, the representative of the respondents No. 1 to 7 ascertained the factum of such acquisition by the Howrah Improvement Trust but the respondents No. 8 to 10 executed such sale deeds in favour of the principal respondents, received consideration from them though they (the respondents No. 8 to 10) did not have any right to transfer the land by sale.

2. The principal respondents No. 1 to 7 could recover a sum of Rs. 23,81,250/- (twenty three lakh eighty one thousand two hundred fifty only) from their vendors by an order of the High Court, dated the 5th March, 2009 but they were again entitled to recover Rs. 3,50,000/- (three lakh fifty thousand only), as incidental charges, costs and accrued interest at the rate of 18 (eighteen) per cent per annum in respect of Rs. 23,81,250/- (twenty three lakh eighty one thousand two hundred fifty only) with effect from the 6th September, 2006.

3. The principal respondents, to save themselves from serious prejudice and irreparable loss, sent Advocate's notice to the respondents No. 8 to 10, and their bankers asking them not to release the amount in their (vendors') favour and subsequently they had to file a Suit being T.S. No. 176 of 2006 before learned Civil Judge (Junior Division) at Howrah, seeking relief for realization of the amount, they had to pay, being misguided by the respondents No. 8 to 10, but ultimately an application under Order 23 Rule 3 of the C.P.C. was filed in that Suit (T.S. No. 176 of 2006), got a compromise decree where the respondents No. 8 to 10 agreed to return the amount to the respondents No. 1 to 7 by Bankers' cheques, kept in different banks including the appellant as well as the respondents No. 11, 12 and 13.

The respondents No. 11, 12 and 13 coupled with the appellant paid a sum of Rs. 23,81,250/- (twenty three lakh eighty one thousand two hundred fifty only) to the respondents No. 1 to 7, but denied to pay interest at the rate of 18 (eighteen) per cent per annum, from the 06th September, 2006 for which the respondents No. 1 to 7, had to take shelter of the High Court for seeking relief in the Writ Petition No. 31257 (W) of 2008 which was disposed of with a direction, giving a scope to the respondents No. 1 to 7/petitioners of that Writ Petition to realise interest from the Bankers for withholding the payment of the amount without apparent reason. The appellant and the respondents No. 11, 12 and 13 paid a sum of Rs. 23,81,250/- (twenty three lakh eighty one thousand two hundred fifty only) to the respondents No. 1 to 7, but denied to pay interest at the rate of 18 (eighteen) per cent per annum with effect from the 6th September, 2006.

The respondents No. 1 to 7, claimed that they were to realise Rs. 12,58,975/- (twelve lakh fifty eight thousand nine hundred seventy five only) from the appellant and the respondents No. 11, 12 and 13 (as stated in Para 23 of the

plaint of C.S. No. 246 of 2009) for which they have to take recourse of the High Court (Original Side), having pecuniary jurisdiction to try this Suit.

4. The Appellant/HDFC Bank Limited (happens to be the defendant No. 6 of the Original Suit) filed a written statement to contest the same and denied the cause of action against it. Further challenging the Suit on the point of its maintainability and other legal disabilities, this appellant categorically denied the material averments of the plaint including its liability to pay interest at the rate of 18 (eighteen) per cent per annum. The appellant, being the defendants No. 6 of the C.S. 246 of 2009, also denied its willful delay in releasing the amount covered by the Bank draft of a sum of Rs. 10,00,000/- (ten lakh only) and further denying all other material averments, it prayed for dismissal of the Suit against it.

6. Learned Single Judge after conclusion of trial observed and held that the present appellant, being the defendant No. 6 of the CS No. 246 of 2009, instead of defending the Suit by filing the written statement, should have immediately paid interest as claimed against it by the plaintiffs (principal respondents No. 1 to 7) of the Original Suit for wrongfully withholding money covered by the said pay orders or rather the pay orders in question, rejecting the defence set up by the defendant No. 6 in the written statement on the ground that it was without merit and further directed to pay interest at the rate of 11 (eleven) per cent per annum on and from the date of institution of the Suit till the date of decree at the rate of 10 (ten) per cent of the decreetal amount with effect from 4th May, 2012 till the decree, passed against the defendants is satisfied.

7. Being aggrieved and dissatisfied by such judgment and decree dated 03rd May, 2013 and dated 7th June, 2012 respectively, the HDFC Bank (the defendant No. 6 of the Original Suit), preferred this appeal.

8. Learned Counsel representing the appellant/HDFC Bank at the very outset drew our attention to the cause title and prayer portion, as averred in the body of the plaint and pointed out that the principal respondents No. 1 to 7 filed the C.S. No. 246 of 2009 before the Original Side of this Court which had no jurisdiction to try the Suit. He also submitted that the plaint was drafted not in conformity with the law; rather the claims were clubbed for the purpose of invoking pecuniary jurisdiction of the court. To advance his argument on the point of payment of interest to the respondents in terms of the direction given in the impugned judgment was concerned, he submitted with reference to the relevant provision of the Interest Act, 1978 and urged that the money was kept with the Bank in the vendor's Savings Account for which they are legally bound to pay interest at the existing rate (3.5 per cent per annum) against the Savings Account holder and not more than that. He also submitted with reference to decision of State of Haryana and Others Vs. S.L. Arora and Company, and urged that there is no general discretion in Courts or Tribunals to award compound interest or interest upon interest. Further relying upon the decision of Union of India (UOI) Vs. Watkins Mayor and Co., , he pointed out that interest may be awarded for the period to the date of the institution of the Suit when there is an

agreement for the payment of interest at fixed rate or when the interest is payable by the usage of Trade having the force of Law, or under the provisions of substantive Law. And when no rate of interest is specified in the promissory note or bill of exchange, the Court may award interest at the rate of 6 (six) per cent per annum. He also relied upon the decision of Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, in support of his above submissions.

9. To further his argument, learned Counsel for the appellant/HDFC Bank drew our attention to a decision of AIR 1938 67 (Privy Council) and confidently urged that in order to invoke a rule of equity for exercising jurisdiction of the Court to allow interest, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction. In course of argument, he opined that his client should not be directed to pay interest at the rate of 11 (eleven) per cent per annum and other incidental charges and costs. Drawing our attention to the provisions of Section 34 of the Code of Civil Procedure, he also submitted with all fairness that the appellant/Bank received due intimation for releasing money in favour of the principal respondents but penalty cannot be imposed on it by directing payment of interest at the rate of 11 (eleven) per cent per annum for withholding payment since it was the Banker of the respondents/Savings Account holders and paid interest at the rate of 3.5 per cent per annum against the amount, deposited therein.

10. His learned counter-part representing the principal respondents No. 1 to 7 in course of his argument submitted that the Original Suit was maintainable in law. Countering the attack of his advisory on this point, he drew our attention to the provisions of Order 1 Rule 3 and Order 2 Rule 3 of the CPC and submitted that where causes of action are united, the jurisdiction of the Court as regards the Suit shall depend on the amount or value in aggregate of the subject matters, at the date of instituting the Suit. Justifying the action of his client, he pointed out that his clients filed the Suit before the Original Side of the High Court just to avoid multiplicity of Suits. In this context, he relied on a decision of Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and Another, to fortify his argument in this regard. Further justifying the claim of the principal respondents No. 1 to 7, he also pointed out that learned Single Judge was justified in passing a decree in favour of his clients and the appellant/bank was rightly asked to pay the interest, as directed in the impugned judgment.

11. So far as the issue of maintainability of the Suit is concerned, learned Counsel for the appellant submitted that the Suit was filed in this Court clubbing the different claims against some of the respondents for invoking pecuniary jurisdiction of the Court which was counter acted by his learned Counter-part. Learned Counsel for the respondents No. 1 to 7, in course of his impressive argument pointed out with reference to the provisions of Order 1 Rule 3 and Order 2 Rule 3 of the CPC to justify his contention.

On careful consideration of the facts and circumstances of the case, the reliefs sought for, we are of firm opinion that the plaint which has been drafted clubbing

the different causes of action against numerous persons to invoke pecuniary jurisdiction of the Court was justified. In this regard the relevant portion of the decision of Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and Another, is quoted below:-

Two provisions, namely, O. 1, R. 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined.

We find substance in the argument advanced by learned Counsel for the respondents No. 1 to 7, that the Suit (C.S. No. 246 of 2009) was framed in such a manner to invoke jurisdiction of the Court and we find nothing wrong in it.

12. A close scrutiny of the materials on record reveals that pursuant to an oral agreement the respondents No. 8 to 10 and their predecessor-in-interest agreed to sell out the plots of land to the principal respondents No. 1 to 7, who made payment of earnest money and those respondents agreed to purchase the property for a consideration of Rs. 27,31,250/- (twenty seven lakh thirty one thousand two hundred fifty only) out of which 3,50,000/- (three lakh fifty thousand only), already paid, was treated as earnest money.

13. It is also revealed from the averments of the plaint of the Original Suit (being C.S. No. 246 of 2009) that 4 (four) deeds of conveyance were executed and registered in respect of the said land; pay orders were issued by Bank of India worth Rs. 23,81,250/- (twenty three lakh eighty one thousand two hundred fifty only) and were made over to the vendors of the principal respondents No. 1 to 7 (plaintiffs of the original suit and out of these one pay order for Rs. 10,00,000/- (ten lakh only) was deposited with the appellant/HDFC Bank Limited (the defendant No. 6 of the C.S. No. 246 of 2009).

14. The principal respondents 1 to 7, in their plaint averred that they took it by surprise when their agent, who went to take possession of the said purchased property, detected that those property was already acquired by the Howrah Improvement Trust before-hand on payment of adequate compensation and that was accepted by the vendors.

15. It is not in dispute that the principal respondents No. 1 to 7, through their Advocates wrote to the Banks (i.e., the appellant and the respondents No. 11 to 13) asking the Banks not to make payment of the amount deposited in connection with this transaction. These averments were not disputed rather such facts were candidly admitted by learned Counsel for the contesting parties.

16. It is also manifested from the averments of the plaint of CS No. 246 of 2009 that the Title Suit No. 173 of 2006 was filed before learned Civil Judge (Junior Division) at Howrah, obtained an order of temporary injunction restraining the respondents No. 8, 9 and 10 from realising money from the Banks and

subsequently the Suit was decreed on compromise and the fact of such compromise, decree was duly communicated to the appellant and other Banks but yet to yield any fruitful result and that forced the principal respondents No. 1 to 7 to take recourse of the Court for filing WP No. 31257 (W) of 2008 (Exhibit E) and thereafter on 19th May, 2009, the appellant/HDFC Bank released the principal amount in favour of the principal respondents No. 1 to 7, who were also given liberty to claim interest and costs from the appellant/bank for withholding money without any justified reason. The appellant/bank failed to assign any justified ground for withholding Rs. 10,00,000/- (ten lakh only) with effect from the 24th April, 2008 to the 19th May, 2009, interest was charged on that amount for that period.

17. Learned Counsel for the appellant in course of argument submitted that learned Single Judge failed to appreciate that the appellant produced a certificate indicating that the interest at the rate of 3.5 per cent per annum was credited to the account of the respondent No. 9 (defendant No. 2 of the original Suit) which was the prevailing rate of the interest in the Savings Bank Account. The arguments as advanced by the learned Counsel for the appellant was not fully acceptable to us simply because we cannot approve the arbitrary Act of the Appellant/Bank for not complying the direction of the Court instantly without having any justified ground.

18. At the same time we cannot overlook the fact that the Bank, a Financial Institution dealing with public money should not be penalised harshly rather a lenient view can be taken considering the fact that the appellant complied with the order of the Court ultimately, though at a belated stage. In the background and in the light of the observation of the Hon"ble Apex Court in the matter of Watkins Mayor & Co. (supra) coupled with the provisions of the Section 34 of the Code of Civil Procedure, we are inclined to hold that the rate of interest has to be reduced to 6 (six) per cent per annum for the entire period, i.e., from the date of institution of the Suit till the decree passed against the defendants is satisfied, instead of interest at the rate of 11 (eleven) per cent or 10 (ten) per cent as referred to in the concluding part of the impugned judgment. The amount to the tune of Rs. 2,02,328/- (two lakh two thousand three hundred twenty eight only) as deposited, if any, in connection with this appeal and accrued interest thereon as per order dated the 30th August, 2012 shall be released in favour of the depositor/appellant (HDFC Bank) on realisation of the decretal dues from it.

19. This appeal thus succeeds partially to the extent as indicated above and other observations and directions of the learned Single Judge in the impugned judgment remain uninterferred.

20. Parties are directed to bear the respective costs of appeal. Urgent Xerox certified copy of this judgment, if applied for, be supplied to the learned Advocates for the parties upon compliance of all formalities.

Debasish Kar Gupta, J.

I agree,