(2015) 03 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition(C) No. 4623 of 2013

Housing and Urban Development Corporation Limited — APPELLANT

Vs

Mayur Lime Products Limited and Others — RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 35-A
Civil Procedure Code, 1908 (CPC) — Section 34
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(20)

Citation : (2015) 2 AJR 595

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Indrajit Sinha and Rajeev Kr. Sinha, for the Appellant

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Challenging order dated 15.03.2013 in Appeal No. 09 of 2012 passed by the Debts Recovery Appellate Tribunal, the present writ petition has been filed.

2. The brief facts of the case are that, M/s. Mayur Lime Products Limited-respondent No. 1, for the production of hydrated lime pozzolana, availed term loan of Rs. 99.58 lacs from the petitioner-HUDCO. For availing the term loan, the respondent No. 1 created equitable mortgage by depositing the original title deeds in favour of the petitioner-HUDCO. The loan agreement was executed on 23.02.1987 and the loan was disbursed in full to the respondent No. 1. On the request of the respondent No. 1 for availing loan of Rs. 20 lacs as working capital, the petitioner-HUDCO permitted second charge on the mortgaged property in favour of respondent No. 4. The respondent No. 1 miserably failed and neglected to repay the term loan and the petitioner-HUDCO provided a fresh repayment schedule vide letter dated 02.04.1988. A recall notice dated 01.03.1993 was issued to the respondent No. 1 and vide letter dated 25.08.2003, the respondent No. 1 was directed to make payment of the entire

dues amounting to Rs. 1,98,21,344/- within 7 days. When the respondents failed to repay the outstanding dues, a mortgage suit being, M.S. No. 63 of 1996 was filed claiming Rs. 3,38,664.92/- as on 31.03.1996 with further pendente-lite interest @ 13.75% p.a. with half-yearly rests alongwith 2 1/2% penal interest p.a. from 01.04.1996, till realisation of the entire loan. The mortgage suit was transferred to the Debts Recovery Tribunal and it came to be numbered as P.T. Case No. 49 of 2002 in which, final order was passed on 24.11.2011 whereby, a certificate for Rs. 3,03,38,664.92 was issued to the petitioner. The Debts Recovery Tribunal awarded pendente-lite and future interest @10% p.a. simple from 01.04.1996, till its realisation. Aggrieved, the petitioner-HUDCO preferred Appeal No. 09 of 2012 claiming pendente-lite and future interest @ 13.75% p.a. with half-yearly rests alongwith penal interest @ 2 1/2% p.a. The appeal has been dismissed vide order dated 15.03.2013 and therefore, order dated 15.03.2013 has been challenged by the petitioner-HUDCO in the present writ petition.

3. Heard the learned counsel appearing for the petitioner and perused the documents on record.

4. The learned counsel for the petitioner submits that power under Section 19(20) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 must be exercised in accordance with the settled principles for exercise of discretion by the Tribunal/Court however, in the present case, reduction of interest to 10% p.a. simple is arbitrary. It is submitted that the ground that the interest rate has declined considerably, cannot be a ground to award lesser interest despite express contractual rate of interest.

5. I find that the facts of the case have been discussed in detail in order dated 24.11.2011 in P.T. Case No. 49 of 2002, which was filed by the petitioner-HUDCO claiming award of contractual rate of interest @ 13.75% p.a. with half-yearly rests alongwith penal interest @ 2 1/2% p.a. from 01.04.1996, till realisation of the entire loan amount. The grievance of the petitioner is to the award of simple interest @ 10% p.a. pendente-lite and future interest, from 01.04.1996. For awarding simple interest @ 10% p.a., the Debts Recovery Tribunal has observed as under:

1(n). "It is no longer res integra that the Courts/Tribunals have power to scale down the admissible debt due to the Creditor Financial Corporation and Financial Institution. However, the Courts/Tribunals, while adjudicating pecuniary matters have clear cut jurisdiction to impose pendente lite and future interest at such rate as it deems fit and proper. In view of the recent policy of Reserve Bank of India and the present trend of the economy of our country, the interest rate has been declined considerably. In the facts and circumstances, the present trend of declining rate of interest, this Tribunal feels that an award of interest @ 10% per annum (simple) for the pendente-lite and future period from 01.04.1996 (as the interest has been calculated and claimed by the Applicant Bank till 31.03.1996 in the matter) shall be just and proper and shall also meet the ends of justice, in the mater where the details shall be ordered by this Tribunal in the operative of the Order, in the said matter." 6. The award of simple interest @ 10% p.a. has been affirmed by the Debts Recovery Tribunal vide order dated 15.03.2013. From the order dated 24.11.2011 in P.T. Case No. 49 of 2002, it appears that the respondent No. 1 has claimed that M/s. HUDCO though assured further finance to rehabilitate the business of the respondent No. 1, it did not provide further finance due to which the business of respondent No. 1 was totally ruined. It further appears that due to lack of adequate fund, the respondent No. 1- M/s. Mayur Lime Products Limited became sick. The Debts Recovery Tribunal has observed that in view of the Reserve Bank of India policy and the present trend of the economy, the interest rate has considerably declined. The petitioner-HUDCO has not brought on record any evidence to dispute and contradict the observation of the Debts Recovery Tribunal that the interest rate has gone down in the recent times. The Debts Recovery Tribunal has referred to the provision under Section 19(20) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, which is extracted below:

19(20) "The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment for interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice". 7. In Central Bank of India Vs. Ravindra and Others, , the Constitution Bench of Hon''ble Supreme Court has held as under:

55. "(5) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

.... (8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner".

8. In view of Section 34 CPC, notwithstanding contractual rate of interest between the parties, award of pendente-lite and post-decree interest is the discretion of the Court and it is not the mandate of law that in every case the Court must award the contractual rate of interest. The reason given by the Debts Recovery Tribunal is an acceptable basis for reducing the contractual rate of interest. Since the Debts Recovery Tribunal as well as the Debts Recovery Appellate Tribunal have exercised their discretion, I am not inclined to interfere with such exercise of discretion by the Tribunals below.

9. In the result, this writ petition is dismissed. However, the order passed in the present case shall remain confined to the facts of the case.

