

(2009) 01 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 6029 of 1998

Indian Bank

APPELLANT

Vs

Alltune Electronics Pvt. Ltd.

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2009 Guj 121 : (2010) 7 RCR(Civil) 1804

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The short facts of the case appear to be that the petitioner Bank preferred O.A. No. 107 of 1995 against the respondent for recovery of the amount of Rs. 93,10,429.33 with the running interest until realisation. The Tribunal tried the O.A. And ultimately found that in the Books of Accounts of the Bank the amount shown outstanding was only Rs. 47,79,906.33 and as the interest was not charged after 1.7.1992 to 25.9.1995, the Bank was not entitled to claim interest during the said period. Therefore, the Tribunal decreed the application to the extent of Rs. 47,79,906.33 with the interest at the rate of 21.75% per annum for the period from 25.5.1995 i.e. the date of the application till the realisation of the amount and the cost. The petitioner Bank carried the matter in appeal before DRAT in Appeal No. 182 of 1997. The appellate Bench found that the Tribunal Committed error in not awarding the interest as per the contractual rate of interest of 21.75% per annum for the period from 1.7.1992 to 25.9.1995. Therefore, partly allowed the appeal by ordering the amount of Rs. 82,90,797.33 in place of Rs. 47,79,906.33 recoverable and the order for interest at the rate of 21.75% per annum was not disturbed. However, the appellate Bench did not permit the claim of interest on the basis of quarterly period and only permitted interest at the rate of 21.75% from 1.7.1992 to 25.9.1995. It is under these circumstances, the present petition before this Court.

2. Heard Mr. Shah, learned Counsel for the petitioner and Respondents No. 1 to 4 and 9 to 10, though served, have not appeared. I have also heard Mr. Banaji, learned Counsel respondents No. 5 and 6, and Mr. Atit Thakore for Mr. R.D. Dave, learned Counsel for respondent No. 8.

3. The only aspect deserves to be considered is the interpretation of Clause No. 2 of the agreement of loan transaction, which reads as under:

I hereby authorise you to charge and debit the said amount with interest at 7% per annum over the Reserve Bank of India rate with a minimum of 17% on daily balances with quarterly rest, such interest being added to the balance outstanding on the last working day of every calendar quarter and the said interest, if unpaid, will become part of the amount advanced and bear the interest at the same rate. I agree that the Bank is entitled to charge a higher rate of interest than the rate stated above as per RBI directives/Bank Rules and agree to pay interest at such enhanced rate of interest. Notice regarding the change of interest is waived by me.

4. The literal interpretation of the aforesaid as it is, if undertaken, would mean authorizing the Bank to charge and debit the interest on quarterly basis and if such interest (which is so authorised and charged by the Bank) remains unpaid, the same would become a part of the amount advanced and bear the interest at the same rate. The only question would be whether the Bank has charged and debited the interest accordingly? If the answer is yes, the liability would flow for paying the interest at the same rate of unpaid quarterly rest interest and if the Bank has not charged or debited such interest on quarterly rest, then can it be said as the liability accrued or not.

5. It is an admitted fact and the learned Counsel for the petitioner Bank has not been able to show any material on the basis of which it can be said that the interest on quarterly rest after 1.7.1992 was charged by the Bank in the loan account by the concerned respondent. Therefore, if the Bank has not charged and debited the interest on quarterly basis after 1.7.1992, it cannot be said that such amount would become a part of amount advanced as per the aforesaid clause. The condition precedent for treating the unpaid interest as part of the amount advanced is that it should have been charged and debited to the account of the loanee, which has not happened in the present case. Therefore, the appellate Bench of the Tribunal was justified in not awarding the interest, which remained unpaid on quarterly basis, treating as the amount advanced.

6. It deserves to be recorded that the scope of the petition under Article 227 of the Constitution of India is as such restricted to the error apparent on the face of record and also perversity in the findings, if any, by the lower authority. Reappreciation of the evidents in normal course is not permissible in a petition under Article 227 of the Constitution of India, more particularly when the literal meaning can be extracted and can be given effect to by the lower authority.

7. Applying the aforesaid test to the scope of the judicial review and facts of the

present case coupled with the reasons recorded hereinabove, it cannot be said that the appellate Bench has committed any error apparent on the face of record, nor can it be said that there is any perversity in the view taken by the Tribunal.

8. Hence, the petition is merit less. Therefore, dismissed. Rule discharged. No order as to costs. Record and proceedings be returned to the Tribunal.