(2010) 09 AHC CK 0196

In the Allahabad High Court

Case No : First Appeal No. 29 of 2000

Indian Bank, Govt. of India	APPELLANT
Vs	
Ashwani Kumar Singh and Others	RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34, 34(1), 34(2), 96

Citation : (2010) 09 AHC CK 0196

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Sanjay Kumar, learned Counsel for the appellant.

2. By means of the present first appeal judgment and decree dated 19.11.1999 passed by 5th Additional Civil Judge (Sr. Div.), Lucknow in regular Suit No. 228 of 1995 Indian Bank v. Sri Ashwani Kumar Singh and Ors. is under challenge.

3. In brief, the facts as submitted by Sri Sanjay Kumar, counsel for the appellant are that the appellant/plaintiff (Indian Bank) is conducting banking business in India and for the said purpose it had various branches situated throughout in India, one of its branch is situated at Ashok Marg, Lucknow.

4. Sri Ashwani Kumar Singh who is the sole proprietor of the firm known as M/s Janus Polymers, situated at Village Natkur, Sarojini Nagar, Bijnore Road, Lucknow approached the plaintiff/appellant for sanction of the following limit/loan for carrying on his business:

(i) Medium Term Loan Limit Rs. 2,90,000/- on 25-9-89.

(ii) Open Cash Credit Limit Rs. 1,80,000/- on 25-9-89.

5. Thereafter the said loan/limit was granted by the appellant and in this regard an agreements were executed known as "Agreement for Demand Cash Credit on

the Hypothecation of Movable Property/Goods" and "Agreement of Hypothecation of Moveables, Plant and Machinery".

6. Sri Sanjay Kumar, counsel for the appellant further submits that for the said limit/loan granted in favour of Ashwani Kumar Singh. Phool Chand Gupta, Jaipal Singh, Baldeo Singh and Virendra Kumar stood as guarantor for due repayment of bank''s amount along with the charges and interest thereon. However, during the intervening period Sri Phool Chand died.

7. He further submits that the respondent No. 1 failed to repay the amount, as such the amount due against him along with interest on 10.07.1995 was as follows:

(a) Medium Term Loan : Rs. 391,556.50 (b) Open Cash Credit : Rs. 197,130.08 -------------------- Total Amount Rs. 5,88,686.58 (upto 10.7.95) --------------------

8. It is further submitted on behalf of the appellant that in spite of the legal notice dated 11.10.1993 sent to the principal borrower as well as to the guarantors, no steps were taken by them to repay the outstanding amount.

9. Having no other alternative, the appellant filed a suit for recovery of money (registered as Regular Suit No. 228 of 1995) in the court of Civil Judge (Sr. Div.) Lucknow, the relief claimed by the plaintiff/appellant is as under:

(A) That a preliminary decree for Rs. 588686.58 P. with costs of the suit and pendetelite and future interest @ 14% p.a. plus 2% penal interest compounding quarterly on M.T.L. And 17.75% p.a. plus 2% penal interest compounding quarterly on O.C.C. limit along with Insurance charges during the pendency of suit and future be passed in favour of the plaintiff and the defendants be directed to pay the same within the period to be allowed by the Hon''ble Court and in default the same amount be relised by the sale of mortgaged property of the defendants detailed in the suit.

(B) That if the sale proceeds of the above mentioned properties falls short of decreetal amount then the liberty be reserved to the plaintiff for a simple money decree against the defendants jointly and severally for the balance then due with costs and interests.

(C) Any other relief deemed just and proper by this Hon''ble Court may be granted to the plaintiff against the defendants jointly and severally.

10. Further, in spite of the summons/notices served on the respondents in the suit, they neither appear before the court below nor contest the same and put their defence, as such the trial court proceeded ex-parte against them, allowed the suit filed by means of the judgment and decree dated 19.11.1999 holding therein that plaintiff/appellant is entitled to recover the amount of Rs. 588686.58 p. along with the interest of 14 % per annum plus the cost of the suit.

11. Aggrieved by the said order dated 19.11.1999 the present appeal u/s 96 of

the CPC has been filed by the appellant before this Court.

12. Sri Sanjay Kumar, counsel for the appellant had challenged the judgment passed by the trial court on the following points:

(iii) Because the Learned Trial Court has also committed a manifest error of law while granting only 14% interest per annum to the plaintiff/appellant rather granting a rate of interest as mentioned in the relief clause of the plaint of suit as the said approach of the learned Trial Court is against the provisions of Section 34 of the C.P.C. as the Trial Court is having no jurisdiction to interfere with regard to the payment of rate of interest for a commercial transaction when there is agreement in between the plaintiff/appellant and defendants/ respondents.

(iv) Because the learned Trial Court while passing the Judgment and decree himself came to the conclusion that the plaintiff/appellant has succeeded to prove its case in toto and the said suit is liable to be decreed with cost in favour of the plaintiff/appellant, but in the concluding portion of the judgment the Trial Court has committed a legal error while granting only 14% interest per annum rather the plaintiff/appellant is legally entitled for the rate of interest as mentioned in the prayer/relief clause of the plaint of suit.

(v) Because the Trial Court has committed a manifest error of law while not allowing a Counsel fee of the suit as well as the Insurance charges paid by the Bank during the pendency of the suit.

13. I have heard Sri Sanjay Kumar, learned Counsel for the appellant and perused the material on record.

14. In order to adjudicate and decide the dispute which is involved in the present appeal, the following points are formulated.

(a) Whether the appellant is entitled to the interest as per the terms of the agreement entered into between the parties in view of the provisions as provided u/s 34 of the Code of Civil Procedure?

(b) Whether the court below has rightly not given the legal fees and insurance charges as claimed by the appellant?

15. Accordingly, the question which falls for consideration in the present case is whether the bank is entitled to get contractual rate of interest or not and whether the Court has a discretion to reduce the same.

16. In order to adjucate the same, it is necessary to have a look to the provisions of Section 34(1) of the CPC which reads as follows:

Section 34. Interest. - (1) Whether and in so far as a decree is for the payment of money, the Court may, in the decree, order interest of such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent, per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Provided that whether 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 percent, per annum, but shall not exceed the contractual rate of interest or whether there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transaction.

17. The aforesaid provision does not cast a mandate on the Court to grant interest at the contractual rate but only enables the Court to grant interest beyond 6% and not exceeding the contractual rate if the same is provided for.

18. Thus it is crystal clear that the Court has discretion u/s 34 of the C.P.C. to award interest but the nature of transaction has to be kept in view.

19. In the case of Union Bank of India Vs. K. Kumaranunni Nair and Another, it is held that learned Counsel for the plaintiff contended that under the proviso to Section 34 the Court is bound to grant contractual rate of interest in the case of a decree arising out of a commercial transaction. There is no merit in the above contention as it is clear from a reading of the proviso that the Court is given ample discretion to decide the rate of interest. Under the proviso the Court''s discretion can operate between 6% to the contractual rate of interest. In Catholic Syrian Bank Ltd. v. Varkey 1987 (2) KLT 789 a Division Bench of this Court held at page 790.

The proviso thus gives a discretion to the court. Under Sub-section (2) discretion has to operate subject to ceiling of 6 per cent per annum. Under the proviso discretion can operate between 6 per cent to contractual rate or in the absence of contractual rate at the rate adopted by nationalised banks in relation to commercial transaction.

In view of the above decision, contention of the plaintiff''s counsel that in every case where there is evidence regarding a contractual rate of interest that should be granted cannot be accepted.

20. In view of the abovesaid facts, proviso to Section 34 empowers the Court to grant interest which may exceed 6% per annum but not exceeding the contractual interest rate as such the submission as made by the learned Counsel for the appellant that the action on the part of the court below thereby granting interest @ 14% and not as agreed between the parties by way of agreement is wholly incorrect and wrong having no force and is rejected.

21. So far as the contention as raised by the learned Counsel for the appellant that the court below has not granted the counsel fee of the suit as well as insurance charges paid by the bank during the pendency of the suit. The said submission made by the learned Counsel for the appellant has also got no force

as it is the discretion vested on court to granted a particular relief or not. Further taking into consideration the pleading and material on record by means of the judgment and award which is under challenge in the present case the court below has not granted the relief claimed by the appellant in respect to grant of payment of insurance charges and counsel fees. As, the said action on the part of the court below does not suffers from any infirmity, as such the argument as raised by the appellant in this regard are misconceived and rejected having no merit.

22. For the foregoing reasons, the present appeal filed by the appellant lacks merit and is dismissed.

23. No order as to costs.

