
(2008) 10 P&H CK 0104
In the Punjab And Haryana At Chandigarh

Karan Traders and Another	Vs	APPELLANT
Punjab and Sind Bank and Others		RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2009) 1 CivCC 5 : (2008) 152 PLR 608 : (2009) 2 RCR(Civil) 640

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is defendant's second appeal challenging the judgment and decrees of the Courts below whereby the suit for recovery filed by the plaintiff-respondent No. 1 has been decreed.

2. Briefly stated, the plaintiff filed a suit for recovery of Rs. 1,72,260/- against the defendants on the basis of documents recoverable from the defendants by way of sale of hypothecated goods and mortgaged property. The case of the plaintiff-respondent No. 1 was that the defendants No. 1 and 2 applied for grant of cash credit limit of Rs. 30,000/- and agreed to pay interest at the rate of 19.50 per cent per annum compounded with quarterly rests which was subject to revision from time to time. The account of the defendants became irregular and they failed to make payment of due amount in spite of the legal notice. Hence, the suit for recovery of Rs. 1,72,260/- which included interest upto 27.10.1995 with future interest @ 19.25 per cent per annum with quarterly rests. Notice of the suit was given to the defendants. Defendants No. 1 and 2 contested the suit. Defendants No. 3 to 5 were proceeded against ex parte. In the written statement, defendants No. 1 and 2 took various preliminary objections. On merits, they admitted that they had made request to the plaintiff-Bank for the grant of loan but denied the agreement about the rate of interest at the rate of 19.50% per annum with compound quarterly rests. It has been stated by the defendants that grant of cash credit limit of Rs. 30,000/- was given to them and

they had agreed to pay simple interest at the rate of 10% per annum. It is their case that their signatures were obtained on blank papers and they never agreed to pay interest at the rate demanded by the plaintiff. After going through the evidence produced on the record and hearing both the sides, the trial Court decreed the suit vide judgment and decree dated 31.10.2005 by passing a preliminary decree for recovery of the amount by way of sale of mortgaged property.

3. Feeling aggrieved with the aforesaid judgment and decree of the trial Court, the defendants preferred an appeal before the District Judge, Amritsar which was dismissed vide judgment and decree dated 7.8.2007. Hence, the present appeal by the defendants.

4. I have heard learned Counsel for the parties and perused the record.

5. Sh. K.K. Bansal, learned Counsel for the defendant-appellants has vehemently argued that the rule of Damdupat is applicable in this case which debars the creditors to recover, at any given time, the amount of interest which is in excess of principal amount due at that time. In support of his case, learned Counsel for the appellant has cited the judgment of the Hon''ble Apex Court in Mhadagonda Ramgonda Patil and Others Vs. Shripal Balwant Rainade and Others, .

6. On the other hand, it has been argued by the learned Counsel for the respondents that no such plea had been raised by the appellants before the Courts below. It has been further argued that in view of the admitted fact that there was an agreement by the defendants to pay interest as claimed by the plaintiff-respondents, the Rule of Damdupat as argued by the learned Counsel for the appellant is not applicable in the present case. Learned Counsel for the respondent has also placed reliance upon the case of Supreme Court reported as Central Bank of India Vs. Ravindra and Others, wherein the Hon''ble Supreme Court has authoritatively held that the Banks can charge rate of interest as agreed between the parties.

7. I have heard learned Counsel for the parties and perused the record.

8. The rule of Damdupat is an equitable rule debarring the creditor to recover at any time the amount of interest which is in excess of the principal amount due at that time. The principle of Damdupat was evolved both as an inducement to the debtor to pay the entire principal and interest thereon at one and the same time in order to save interest in excess of the principal and as a warning to the creditor to take effective steps for realizing the debt from the borrower within reasonable time so principal amount due as in that case he would have to forgo the excess amount. In the case of Hukumchand Gulabchand Jain Vs. Fulchand Lakhmichand Jain and Others, , Rule of Damdupat was sought to be applied in the case of trustee who was to pay interest on the funds in his hands but the Hon''ble Supreme Court held as under:

There may be justification for the principle of Damdupat applying in the case of

an ordinary creditor and a debtor, but mere seems no justification for extending that principle to the case of a trustee who has to pay interest on the funds in his hand with respect to which on certain grounds he is held liable to pay interest. Therefore, the rule of Damdupat will not apply with respect to the interest adjudged payable by a trustee on his committing breach of trust with respect to the trust funds in his hands.

9. The judgment of the Hon''ble Supreme Court in Mhadagonda Ramgonda Patil's case (supra) is of no help to the appellant as there was no agreement to pay the specified rate of interest in that case whereas in the present case the appellant has specifically agreed to pay a specified rate of interest. Learned Counsel for the appellant has not shown any judgment to say that rule of Damdupat is also applicable in such cases where the borrower has agreed to pay a specified rate of interest on the basis of a contract/undertaking. In my view the Rule of Damdupat which is based upon equity is not applicable in the cases where the borrower has agreed to pay a specified rate of interest as it is well settled principle that one who demands equity must also be fair and equitable to others.

10. In Central Bank of India's case (supra), it has been authoritatively held that the expression "principal sum adjudged" includes the amount of interest, charged on periodical rests, and capitalized with the principal sum actually advanced as to become a amalgam of principal in such case where it is permissible as per contract between the parties and the principal sum so adjudged shall be treated as principal sum within the meaning of Section 34 CPC on which interest pendente lite and future interest may be awarded by the Court.

11. This judgment has further held that the RBI directions with regard to charging of rate of interest from time to time are binding and it has been further held that charging and capitalization of interest on agricultural loans cannot be permitted in India except on annual or six monthly rests.

12. No other point has been urged by the learned Counsel for the appellant.

For the reason recorded above, I find no merit in this appeal. No substantial question or law arises.

Dismissed.