
(1998) 04 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 1090 of 1997

Kayne Construction Pvt. Ltd. and Others	APPELLANT
Vs	
Syndicate Bank and Others	RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Contract Act, 1872 — Section 22, 4

Citation : (1998) 3 BLJR 1667

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioners seek appropriate writ(s), order(s) or direction(s) commanding the respondent bank and its functionaries to forbear from making any unauthorised deductions and/or refund the amount unauthorisedly deducted in purported liquidation of the loan of Rs. 12,00,000/-advanced by the bank to the petitioners" predecessor in interest for the construction of the premises for being leased back to the bank. According to the petitioners, the action of the bank in making endless deductions from the petitioners account is against the terms of the agreement, contrary to the stand taken by the bank itself from time to time and in violation of the circulars issued by the Reserve Bank of India and the law laid down by the Supreme Court in the light of those circulars. In other words, the action of the bank is highly high handed, unreasonable and arbitrary.

2. A partnership firm under the name and style of M/s. Sheohar Construction, the Predecessor in interest of petitioner No. 1 in this writ petition, started construction of a building, named, "Sheohar Sadan". It applied to the Syndicate Bank ("the bank", hereinafter) for a loan of rupees twelve lacs. (Rs. 12,00,000/-) for the construction of a portion of that building. The application for loan was accompanied with the proposal that the portion of the building (first and second floors) for the construction of which the loan was applied for would be leased back to the bank for setting up there the Patna Branch of the bank.

The bank accepted the proposal and sanctioned the loan and its Dy. General Manager by his letter dated 25.1.1984 (Annexure-1) informed the Manager, Patna Branch that the proposal for shifting the Patna Branch premises and to establish a "B" class currency chest attached to the branch was accepted by the Board of the bank on the terms and conditions recommended by the Branch Manager which were enumerated in that letter, The Branch Manager, patna Branch then wrote letter dated 22.5.1984 (Annexure 1/A) informing the firm regarding the acceptance of their proposal and reproducing the terms and conditions as contained in the letter of the Dy General Manager. The term concerning the repayment: of the loan (as mentioned at serial No. 10 in the letter of the Dy. General Manager and at serial No. 9 in the letter written to the firm by the Branch Manager was as follows:

Loan - Rs. 12.00 lacs at 15% interest per annum against the security of equitable mortgage of land and building. Repayment at Rs. 18,000/- per month to be liquidated within the first lease period of 10 years...

(emphasis added)

3. It is thus evident that according to the term of repayment, the loan of Rs. 12,00,000/- was to be liquidated (on payment of a total sum of Rs. 21,60,000/-) in monthly instalments of Rs. 18,000/- spread over a period of ten years or 120 months. It is also significant to note here that the term of repayment did not mention the charging of interest with quarterly rest, that is. the compounding of interest at intervals of three months.

4. The firm, by its letter dated 23.5.1984 (Annexure-2) gave its consent to the terms and conditions stipulated by the bank. In Clause 13 of that letter it specifically accepted the term of re-payment of the loan as quoted above.

5. The loan amount of Rs. 12 lacs was disbursed to the firm in six instalments with the final instalment of Rs. 4 lacs being paid on 12.9.1984.

6. The portion of the building for the construction of which the loan was obtained was constructed and was ready for occupation on 16.8.1984 and the bank took possession of the premises on 15.9.1984.

7. Shortly thereafter the partnership firm got dissolved and its assets and liabilities were taken over by the company, petitioner No. 1 in this writ petition. The petitioner company then made an application to the bank on 15.10.1984 requesting it to transfer the firm's liability to its name. After the bank moved into the leased premises there was some delay in the determination of the monthly rent and its payment to the lessor. But it appears that after the monthly rent was determined the bank credited the arrears of rent in the firm's current account on 28.2.1985 and from 30.3.1985 started payment of monthly rent, by crediting it to the firm's account, on a regular basis. The monthly rent payable by the bank on the last day of every month, according to the standing instructions given to it was credited in the firm's current account No. 779 (and

later in the company's account) and simultaneously deducted from it @ Rs. 18,000.00 per month for a period of 10 years towards the liquidation of the loan. The amount so deducted was shown in the deposits column of the firm's loan account No. ML 1/84.

8. On the basis of the Company's application dated 15.10.1984 the building on 10.3.1988 whereunder loan account No. ML 1/84 standing in the name of the partnership firm M/s. Sheohar Construction was closed and its balance was transferred, on the same terms and conditions as earlier, to the loan account being account No. OSL ML 1/88 in the name of the petitioner company. On that day, 10.3.1988 a fresh agreement was entered into and executed on behalf of the petitioner-company and the bank.

9. It will be useful here to take a look at some of the clauses of this "Articles of Agreement". Clauses 3 of the agreement was as follows:

In consideration of a sum of Rs. 10,90,802/41 to be paid by the bank as mentioned in the First Schedule hereto.

The Borrower/s hereby confirms/confirm having agreed to repay to the bank the principal sum of Rs. 10,90,802/41 in instalments on the due dates mentioned in the Second Schedule hereto.

The borrower/s agrees/agree that the interest on the said principal sum of Rs. 10,90,802/41 or on so much thereof as shall from time to time remain unpaid, shall be repayable @ ... % above the Reserve Bank of India rate subject to the minimum 15% per annum on the 31st March, 30th June, 30th September and 31st December in each year and also so long as the principal or part thereof remains unpaid.

The 1st Schedule to the "Articles of Agreement" was as follows:

Amount of Rs. 10,90,802.41 to be released and credited to the OSL ML A/C. No. 1/84 of M/s. Sheohar Construction in full and final settlement of the said loan consequent of taking over the assets and liabilities of M/s. Sheohar Construction on account of reconstitution.

The 2nd Schedule to the Agreement contained the term of repayment of the loan which was as follows:

To be repaid at the rate of Rs. 18,000/(Rupees eighteen thousand) per month, the first of such instalment due on 31.3.88 and to be liquidated by 15.9.1994

(emphasis added)

10. From the "Articles of Agreement", it is evident that the re- payment of the loan continued to be on the same terms as in the earlier letter to the firm which stipulated its re-payment over a period of ten years. It is noted that the bank came into occupation of the premises on 15.9.1984 and the ten years period would, thus, come to an end on 15.9.1994 which was given as the date for the

liquidation of the loan in Schedule II of the "Articles of Agreement" It is further evident from the agreement that on the date of its execution 10.3.1988 the outstanding balance was Rs. 10,90,802.41 which was to be repaid in 79 monthly instalments of Rs. 18,000/- each, that is on payment of Rs. 14,22,000/-.

11. After the execution of the Articles of Agreement the petitioner company deposited the title deeds of the building as security towards the repayment of the loan and the bank on 19.3.1988 issued a certificate. (Annexure-6) stating that the loan A/c standing in the name of the firm was closed on 10.3.1988 in full and final settlement of the liability which was transferred to the petitioner company.

12. After a little while, in the statements furnished by the bank, the petitioner company noticed certain irregularities in the entries made in its loan A/c and noticed further that interest in its loan A/c was being charged at a rate higher than 15 % as stipulated in the term of repayment of the loan. The petitioner company protested and drew the attention of the bank to those irregularities and their charging of interest at a higher rate. It wrote letters, sent a number of reminders and its representative(s) also personally met the bank's officials in this regard. Its letters were acknowledged by the bank and from time to time assurance was given to look into the matter, there was some internal correspondence too in the bank on this matter but the irregularities in the loan A/c were not rectified to the petitioner's satisfaction.

13. Finally when the 10 years period for the repayment of the loan was at its fag ends the petitioner company received a letter dated 2.6.1994 (Annexure-14) from the Branch Manager of the bank. This letter stated that with reference to the petitioners' earlier letters and representations the Branch Manager was directed to inform that according to the Equated Monthly Instalment Factors Chart (A copy of which was enclosed with the letter), the equated monthly instalments (inclusive of interest) for repayment of a loan of Rs. 12,00,000 at 15% interest per annum over a period of 120 months would be Rs. 19,223.50 per month and not Rs. 18,000/-. The letter went on to declare that the petitioners' loan A/c therefore would not stand liquidated on payment of the 120th instalment of Rs. 18,000/-. The petitioner company protested by writing letter dated 15.11.1994 (Annexure-15). The Branch Manager acknowledged the letter but went on making deductions on the plea that the matter was under correspondence with their zonal office The petitioner then represented the matter to the Chairman-cum-Managing Director of the bank by letters dated 1.12.1994 (Annexure-17) and 29.1.1996 (Annexure-20). All that it got in response was an acknowledgment and an assurance that the matter was engaging the attention of the concerned officials vide letters dated 7.12.1994 (Annexure-18) and 18.4.1995 (Annexure-19). And in the meanwhile deductions continued from its A/c paying no heed to its protests.

14. What is surprising, however, is that the deductions at the rate of Rs. 18,000/- per month continued even after the differential amount on the basis of the higher equated monthly instalment of Rs. 19,223.50 was fully realised. This

is evident from the fax message dated 30.3.1996 (Annexure-21) sent by the Manager, Patna branch to the General Manager at the bank's Head Office at Manipal. The message reads as follows:

We have recovered Rs. 24,66,000/- between 1.10.1984 and 29.2.1996 at the rate of Rs. 18,000/- P.M. towards OSL (ML) A/c of M/s. Kayne Constructions Pvt. Ltd. our landlord. As per EMI chart supplied from your office they have to pay at the rate of Rs. 19,223.52 for 120 months which works out to be Rs. 23,06,822.40. Hence, we have already recovered excess amount of Rs. 1,59,177.60. Proposal for refund of excess interest on their account pending since 1994. Matter had turned very serious as landlord has strongly objected further deduction towards their loan A/c.

On the same day a similar message was sent to the Dy. General Manager, Zonal Office, Calcutta.

15. It appears that the Branch Manager was advised by the Zonal Office, Calcutta to carry on the rent adjustments that is, deductions till the liquidation of the liability. The Branch Manager accordingly informed the petitioner company by letter dated 11.11.1996 (Annexure-22) with a word of pacification that it should bear with the bank (in other words, bear with the deduction) till objections raised by it were finally decided by the concerned officials in the bank.

16. As there was no end in sight to the monthly deductions by the bank even at this stage, the petitioner came to this court with this writ petition.

17. In pursuance of the notice issued by the court the respondent bank filed a counter affidavit on 13.3.1997. In this counter affidavit "after questioning the maintainability of the writ petition it justified the rent adjustments which were on going even on the date of filing the counter affidavit. A copy of the complete Loan A/c was also enclosed as Annexure-B which showed an outstanding amount of Rs. 1,60,546 after the last adjustment of Rs. 18,000/- was made on 28.2.1997. The rent adjustments being made even after the period of 10 years for the repayment of the loan were justified mainly on two grounds. One, that the Government of India had introduced Interest Tax, w.e.f. 1.10.1991 through Finance Bill No. 2/91. Following the introduction/revival of interest tax the Bank had issued circular, dated 30.10.1991 in terms of which interest at the rate of 1/2% was payable on the outstanding loan dues in addition to the interest @ 15%. The second reason assigned was that due to a bona fide mistake in calculation the equated monthly instalment was wrongly fixed at Rs. 18,000/- instead of Rs. 19,223.50 paise per months. It was further stated that as a result of the incorrect determination of the equated monthly instalment at Rs. 18,000/- the bank was short charging the petitioner by Rs. 1,223.50 paise every month which added up to the total sum of Rs. 1,46,820 at the expiry of the 10 year's period for the repayment of the loan on 30.9.1994 and it was in those circumstances that the bank continued to make the monthly deductions of Rs. 18,000/- even after 30.9.1994.

18. Leaving aside the legal question raised by Mr. Navaniti Prasad Singh regarding the bank's authority to unilaterally change the term of repayment in a concluded contract in purported correction of the figure of equated monthly instalment, the problem with the stand taken by the bank in this counter affidavit was that its figures simply did not add up correctly. It is noted above that according to the bank due to mistake in calculation it has short charged the petitioner by a sum of Rs. 1,46,820 as on 30.9.1994. Even assuming this statement as correct, by making monthly deductions @ Rs. 18,000/- the aforesaid sum would be satisfied in slightly over 8 months, that is to say, by June, 1995 and it was apparently on that basis that in the fax message, dated 30.3.1996 from the Manager, Patna Branch (Annexure-12) it was said that the bank had already recovered from the petitioner an excess amount of Rs. 1,59,177.60 paise. Yet in paragraph 13 of the counter affidavit, as also in the copy of the Loan A/c Annexure-B, it was shown that the petitioner had an outstanding balance of Rs. 1,60,546.00 after the last deduction of Rs. 18,000/- was made on 28.2.1997. This patent discrepancy in the bank's stand could not be explained away even by allowing the additional interest @ 1/2% on the outstanding loan w.e.f. 1.10.1991.

19. Mr. Shailesh Kumar Sinha, learned Counsel appearing for the bank was completely at a loss to explain this apparent discrepancy in the figures given by the bank.

20. Moreover, one could find without much effort several irregularities in the Loan A/c. a copy of which was enclosed as Annexure-B. For example, on 29.12.1989 and 31.3.1990 the interest amount on the outstanding balance was calculated @ 18% for which there was admittedly no sanction. Later, on 25.9.1990 the interest amount on the outstanding balance was once again calculated (r) 15% but no adjustments were made for the excess charge made earlier. There were other irregularities also in the account.

21. Taking full advantage of the aforesaid lacunae in the bank's counter affidavit, which was apparently filed without much application of mind Mr Navaniti Prasad Singh severely criticised the bank's stand. In the affidavit filed on behalf of the petitioners in reply to the bank's counter affidavit it was pointed out that the interest tax w.e.f. 1.10.1991 was levied @3% and not @ 1/2 as stated incorrectly in the bank's counter affidavit. However, with regard to the interest tax it was submitted that its payment was primarily the liability of the bank as it was a tax imposed on the interest receivable by a bank by virtue of Section 4 of the Act. it was further stated that even assuming that the interest tax was payable by the loanees, the petitioners, the annual tax liability on that account would come to only Rs. 6,480/- per year and for three years i.e. 1.10.1991 to 31.9.1994 the liability would be Rs. 19,440.00.

22. As regards the stand of the bank that the equated monthly instalment of Rs. 18,000/- was determined wrongly the petitioners assailed it both on facts and in law. On facts it was pointed that the action of the bank was not in accord with its

stand because as against a sum of Rs. 1,46,820.00 paise, allegedly short charged till 30.9.1994, the bank had realised a sum of Rs. 5,22,000.00 and still claimed an outstanding balance of Rs. 1,60,546 as on 28.2.1997.

23. On the question of law Mr. Navaniti Prasad Singh strongly argued that in view of Section 22 of the Indian Contract Act the action of the Bank in unilaterally modifying the term of repayment of the loan, in purported correction of an error in calculation, was quite illegal and the bank's action in making endless deductions, heedless of the petitioner's protests, amounted to taking unfair advantage of its dominant position. In support of his submission learned Counsel relied upon a decision of the Supreme Court in I.T.C. Limited Vs. George Joseph Fernandes and Another, . Learned Counsel also cited several other decisions e.g. (i) ILR (1892) 16 bom 561, (ii) AER1949(2) 1107 and (iii) A.I.R. 1982 Ker 90.

24. I find considerable force in Mr. Singh's submission but I feel no need to examine that submission in much detail in view of the fact that the Bank itself has practically abandoned its stand taken in its counter affidavit, filed on 13.3.1997.

25. It may be noted that as the aforementioned contradictions in the counter affidavit filed on behalf of the bank came to light when this case was heard on 11.4.1997 its counsel Mr. Shailesh Kumar Sinha prayed for adjournment stating that on the next date either the Branch Manager or any competent and suitable officer from the bank would be present in court to explain the petitioner's Loan A/c at Annexure-B to that counter affidavit. Later, when the case was taken up a supplementary counter affidavit was filed on behalf of the bank on 8.5.1997 stating that the petitioners Loan A/c was re-examined specially with regard to the charge of interest. It was further stated that on re-calculation of interest a fresh statement of account, indicating the details regarding the loan disbursed to the petitioner, the payment made towards loan dues as well as the interest charged as per the terms of the loan agreement was recast. A photo copy of the recast A/c was enclosed as Annexure-C. According to the recast A/c there was a negative balance of Rs. 2346.67 in the petitioner's Loan A/c as on 31.7.1997 after readjustment of the monthly rent of Rs. 18,000/- on that date. The only feature of the recast account is that the interest has been calculated at the rate of 15% with quarterly rest, i.e. by compounding interest at intervals of three months.

26. It is thus evident that the bank has dropped the stand taken in the earlier counter affidavit filed by it and has come out with a new case in the supplementary counter affidavit filed on its behalf.

27. A question now arises regarding the validity of charging interest with quarterly rest on a loan advanced for construction of the premises which, in terms of the proposal under which loan was given, was to be leased back to the bank. It has been noted above that in the letter dated 22.5.1984 (Annexure-1 A) by which the firm, the original loanee, was informed about the sanction of the

loan and its terms and conditions, there was no mention of charging interest with quarterly rest.

28. Mr. Sinha, learned Counsel for the bank, however, placed reliance on Clauses 3 of the "Articles of Agreement" executed by the bank and the petitioner company when it stepped into the shoes of the original loanee, the firm. Mr. Sinha relied upon the following portion of Clauses 3 of the agreement.

The borrower"s/agrees/agree that the interest on the said principal sum of Rs. 10,90,802.41 or on so much thereof as shall from time to time remain unpaid, shall be repayable @ ...% above the Reserve Bank of India rate subject to the minimum 15% per annum on the 31st March, 30th June, 30th September and 31st December in each year and also so long as the principal or part thereof remains unpaid.

(emphasis added)

29. In my view the reliance is misconceived as it overlooks the fact that in that agreement the manner of repayment of the loan was specifically provided in the 2nd Schedule which said that the outstanding amount of Rs. 10,90,802.41 would be repaid @ 18,000/- per month with the first of such instalment due on 31.3.1988 and to be liquidated by 15.9.1994.

30. Further, the action of the bank in charging interest with monthly rest is in teeth of the law laid down by the Supreme Court in *State Bank of Patiala and Another Vs. Harbans Singh*, . In paragraphs 7 and 8 of that decision the Supreme Court held as follows:

7. In the light of these intrinsic factual material, directions by the Reserve Bank and circumstances, it is clear that there is no liability of the landlord, who had taken loan for constructing the premises and leasing back to the bank for commercial purpose, to pay interest at more than 15% and he need not pay interest at quarterly rest. The letter of RBI dated 13.3.1976 also indicates that the obligation to pay quarterly rest was not with reference to the loans taken by the landlords commercial purpose. The word term loan was used for the commercial purpose and it did not include the loan advanced to the landlords for construction of the buildings. Term loan would mean the loan advanced for commercial purposes and not the loans given to the landlords for the use by the bank itself. It was not so intended would be clear from Clause 1(ii) of the better relied on by the bank (Ex. P-7) as extracted earlier. It would indicate that in respect of commercial loans, they appear to have intended to charge quarterly rest. The Reserve Bank at nowhere indicated that the term of the buildings to lease back to the commercial banks should be intended to be charged with interest with quarterly rest. On the other hand, they have reduced sufficiently from time to time even the lending rate of interest in favour of landlords/lessors.

8. It is true, as contended by Shri Goel, learned Senior Counsel, that the State Bank of Patiala, Head Office while addressing the letter to the Manager of the

State Bank of Patiala at Tripurari Sadan, Patiala (Annexure P-6) have referred to the rate of interest at 15% per annum plus interest tax with quarterly rest. But in the light of the directions given by the Reserve Bank which the commercial banks are bound to follow and the bank itself adopted that policy and reduced the rate of interest, the liability to pay quarterly rest is obviously illegal. The trial court and the district court, therefore, are quite right in limiting the liability of the respondent only to pay simple interest on the loan advanced by the bank at 15% p.a without quarterly rest. We do not find any illegality warranting interference.

31. It may be noted that in the case of State Bank of Patiala, in the promissory note and the documents executed by the respondent landlord it was specifically agreed that the term loan granted by the bank would carry not only the interest at the rate stipulated therein but also quarterly rest. Notwithstanding the stipulation in the contract the Supreme Court held that the liability of the landlord was limited to pay simple interest on the loan advanced by the bank at 15% per annum without quarterly rest. The present case stands on a much stronger footing as in this case there was no such stipulation in the documents executed by the lessor and the bank's insistence on charging interest with quarterly rest is also contrary to the term of repayment of the loan as contained in the agreement.

32. It must, therefore, be held that the petitioner's account as recast by the bank (Annexure-C) is not in accordance with law and is, therefore, liable to be set aside.

33. I feel sorry to note that for years the bank did not pay any heed to the protests repeatedly made by the petitioners and did little in the way of having the petitioners' account examined in the light of the term of repayment and the relevant rules. When the matter came to this court the bank appeared and tried to Justify its action on the basis of the pleas that came first to mind. When it transpired that the pleas taken by it could not stand a moment's scrutiny it changed its stand and tried to make out an entirely new case which not only was not its case earlier but was also contrary to the terms of the agreement and in violation of the decision of the Supreme Court. In doing so. the bank did not do any credit to itself.

34. For the reasons discussed above, it must be held that both the accounts furnished by the bank as contained in Annexures B and C are unsustainable in law and the bank has been making unauthorised deductions from the petitioners' account and the petitioners are entitled to the relief claimed in this writ petition. It must accordingly be held and declared that the petitioners' loan would be deemed to have been fully satisfied on payment of the 120th monthly instalment of Rs. 18,000/- at the end of 10 years on September 15/30, 1994, plus the additional amount on account of interest tax on the outstanding dues w.e.f. 1.10.1991 till 15.9.94 The Bank is directed to recast the petitioner's account in the light of this direction and to refund the excess amount deducted

by it with interest. The interest would be payable at the rate applicable to fixed deposits for a period beyond three years. The refund of the deducted amount along with interest must be credited to the petitioners" account within a month from today.

35. In the result, this application is allowed with costs quantified at Rs. 2200/-