
(2009) 09 P&H CK 0115
In the Punjab And Haryana At Chandigarh

Laxmi Narain and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2010) 2 BC 158 : (2010) 157 PLR 340 : (2010) 7 RCR(Civil) 764

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sham Sunder, J.—This appeal is directed against the judgment and decree dated 25.01.08, rendered by the Court of Civil Judge (Senior Division), Jind, vide which, it decreed the suit of the plaintiff/respondent, and the judgment and decree dated 01.09.08, rendered by the Court of Additional District Judge-III, Jind, vide which, it dismissed the appeal of the plaintiff/respondent, and accepted the cross-appeal of the defendants/appellants, to the extent of modifying the pendente lite and future interest @ 6% p.a., instead of 6% p.a. with half yearly interest awarded by the trial Court.

2. The facts, in brief, are that, Laxmi Narain (since deceased), and Raj Kumar, defendants/appellants, approached the plaintiff bank, plaintiff/respondent, on 07.02.96, and moved an application, for the grant of loan, for the purchase of tractor, for agricultural purposes. The plaintiff bank, on the written request of the defendants, sanctioned the agriculture term loan, in the sum of Rs. 1,69,000/-, on 19.02.96, for the aforesaid purpose. A hypothecation agreement, dated 14.12.96, and registered mortgage deed No. 651, dated 08.02.96, were executed, by the defendants, in favour of the plaintiff bank, vide which, they mortgaged their land. As per the agreement, the aforesaid loan amount, was to be repaid, in 18 half yearly, instalments of Rs. 9,700/- each, alongwith interest, as first instalment, and Rs. 9,400/- each, alongwith interest, as second instalment, and so on, till the entire payment of the amount. The defendants also

agreed to pay interest @ 2.5 per cent above/below the State Bank advance rate, rising and falling therewith with a minimum of 14 per cent per annum, with half yearly rests or any other rate of interest, varied by the plaintiff bank, under the directions and instructions of the Reserve Bank of India. However, subsequently, the defendants, failed to repay the loan amount, alongwith the agreed rate of interest. They were asked, many a time, to honour their commitment, but to no avail. Ultimately, a suit for recovery, was filed.

3. The defendants, put in appearance, and filed written statement, wherein, they took up various objections, and contested the suit. It was stated that Sh. V.K. Gupta, was not competent to file the suit. It was further stated that the defendants, approached the plaintiff bank, for borrowing the loan, for the purchase of tractor, but they never agreed, to pay interest @14 per cent per annum, and that too with half yearly rests. It was further stated that the loan, being meant for agricultural purpose, the rate of interest, on it, as per the directions of the Reserve Bank of India, was from 10 per cent to 12 per cent per annum. It was further stated that the defendants were made to sign and thumb mark, certain blank forms/documents, at the relevant time, which were never read over and explained to them. It was further stated that the defendants, did not mortgage their land. It was further stated that the defendants, neither executed any revival letters, nor did they acknowledge or confirm the loan, on 12.08.98 or 10.06.01. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues were struck:

(i) Whether the plaintiff is entitled for recovery of suit amount alongwith interest, as prayed? OPP

(ii) Whether the suit of the plaintiff is within limitation of time? OPP

(iii) Relief.

5. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, decreed the suit of the plaintiff, with pendente lite and future interest @ 6% p.a. with half yearly interest.

6. Feeling aggrieved, one appeal was filed by the plaintiff/respondent, for enhancement of the pendente lite and future interest to the extent of agreed rate, which was dismissed and the cross-appeal preferred by the defendants/appellants, for modifying the pendente lite and future interest from 6% p.a. with half yearly rests to 6% p.a., was accepted by the Court of Additional District Judge-III, Jind, vide judgement and decree dated 01.09.08.

7. Feeling dissatisfied, the instant Regular Second Appeal, has been filed by the defendants/appellants.

8. During the pendency of appeal, Laxmi Narain, one of the appellants, died, and his legal heirs, were brought, on record, vide order dated 07.05.09.

9. I have heard the Counsel for the appellants, and have gone through and

perused the documents, on record, carefully.

10. The Counsel for the appellants, submitted that interest was charged by the plaintiff/respondent, at the rate, higher than the one, which was agreed to, between the parties. He further submitted that, as such, the statement of account, was wrong. He further submitted that the Courts below, recorded perverse findings, that the interest, charged by the plaintiff/respondent, was not at a rate, higher than the one, agreed to, between the parties. He also placed reliance on *Central Bank of India v. Ravindra* (2001) 129 P.L.R. 837 (S.C.), in support of his contention. He further submitted that the judgments and decrees, being illegal, were liable to be set aside.

11. After giving my thoughtful consideration, to the contentions, advanced by the Counsel for the appellants, in my considered opinion, the appeal deserves to be dismissed, for the reasons to be recorded, hereinafter. It is settled principle of law, that this Court, in the Regular Second Appeal, cannot interfere into the concurrent findings of fact, recorded by the Courts below, even if, the same are grossly erroneous, until and unless, it comes to the conclusion, that the same are perverse, on account of misreading and misappreciation of evidence, or non-consideration of material pieces of evidence. There is no dispute with regard to the principal amount. The dispute is only with regard to the rate of interest. P5, is the agreement of hypothecation, which was executed by the defendants/ appellants, agreed to pay interest @ 2.5 per cent, above/below the State Bank advance rate, rising and falling therewith, with a minimum 14 per cent per annum, with half yearly rests. From P6, the mortgage deed, it was also revealed, that the appellants, agreed to pay interest at the rate aforesaid. The statement of account, was prepared by the plaintiff/respondent bank, on the basis of the books of account, maintained by it, in the regular course of its business. Presumption of correctness is, thus, attached to the statement of account, until otherwise proved. The appellants/defendants, could not produce any cogent and convincing evidence, to the effect, that interest, was charged by the plaintiff/respondent bank, at the rate, higher than the one, agreed to, between the parties, vide hypothecation agreement and mortgage deed. In case, there was any defect, in the statement of account, or the interest, had been charged by the plaintiff/respondent bank, at the rate, higher than the one, agreed to, between the parties, then, it could summon an official of the bank, alongwith record, and prove the same. In *Central Bank of India's* case (supra), it was held, that on the Court, being prima-facie satisfied, if a dispute is raised, in that regard, of the permissibility of debits, the onus will be, on the borrower, to show, why the amount of debit balance appearing at the foot of the account, and claimed as principal sum, cannot be so accepted and adjudged. The relevant entries of books of account, were also corroborated, through the other evidence, produced by the plaintiff/respondent bank. Under these circumstances, the Courts below, in my considered opinion, were right, in coming to the conclusion, that the interest, upto the filing of the suit, was charged, at the rate, which was agreed

to, between the parties, in the hypothecation agreement, as also the mortgage deed. The submission of the Counsel for the appellants, in this regard, being without merit, must fail, and the same stands rejected.

12. No doubt, vide agreement of hypothecation and the mortgage deed, the defendants/appellants, agreed to pay pendente lite and future interest, at the rate, higher than 6% p.a. However, relying upon the principle of law, laid down, in Central Bank of India's case (supra), that award of interest, pendente-lite and post-decree, is discretionary with the Court, as it is essentially governed by Section 34 of the Code of Civil Procedure, de-hors the contract between the parties, the first Appellate Court was right in modifying the pendente-lite and future interest @ 6 per cent per annum, instead of 6% p.a. with half yearly rests, awarded by the trial Court. This discretion, exercised by the first Appellate Court, by granting the pendente-lite and future interest, at the rate, lower than the one agreed to between the parties, vide the aforesaid documents, could not be said to be, in any way, arbitrary, as it was in consonance with the principle of law, laid down, in Central Bank of India's case (supra).

13. The concurrent findings of fact, recorded by the Courts below with the aforesaid modification, by the first Appellate Court on the aforesaid points, being based, on the correct reading and due appreciation of evidence, and law, on the point, do not suffer, from any illegality or perversity, and, therefore, warrant no interference, by this Court. The submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

14. No question of law, much less substantial, has arisen, in this appeal, for the determination of this Court.

15. For the reasons recorded above, the instant Regular Second Appeal, being devoid of merit, must fail, and the same is dismissed with costs.