

(1996) 08 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 117 of 1989

Madhya Pradesh Financial Corporation

APPELLANT

Vs

Anoop Industries and Another

RESPONDENT

Date of Decision : 31-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 2
State Financial Corporations Act, 1951 — Section 32(6)

Citation : (2000) 102 CompCas 309

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : Samvatsar, for the Appellant; M.K. Dave, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.—This order shall also dispose of Miscellaneous Appeal No. 124 of 1989 (Anoop Industries v. M. P. Financial Corporation).

2. The appeal is directed against the judgment and order dated February 28, 1989, of the District Judge, Dewas, passed in M. C. C. No. 9 of 1981 whereby while accepting the application filed by the appellant M. P. Financial Corporation (hereinafter referred to as "MPFC") a direction to the defendant-respondent for payment of Rs. 20,000 and interest Rs. 74,027.37 accruing up to September 30, 1988, with a further direction of payment of interest at 10.25 per cent. on the principal amount of Rs. 20,000 has been issued. The plaintiff-appellant is aggrieved by the latter portion of this order.

3. The brief history of the case is that the plaintiff-appellant filed an application before the District Judge u/s 31 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"), for recovery of Rs. 50,132.57 plus interest accruing thereon from June 1, 1981.

4. On an application of the defendant-respondents a loan of Rs. 28,000 was granted and the defendants executed an English mortgage, vide document dated

May 22, 1974. The defendants were required to pay interest on April 1 and October 1, each year in six-monthly instalments. The defendants failed to pay back the amount of loan, as such, a decision for making an application was taken. Thereafter, an application u/s 31/32 of the Act was filed seeking a direction for sale of the mortgaged property and a further direction restraining the defendants from transferring the property.

5. The defendant-respondents contested the claim. The learned District Judge accepted the application and made a direction as above. The plaintiff-appellant is aggrieved by the order for payment of interest only on the principal sum of Rs. 20,000. Hence this appeal.

6. The respondents who are the appellants in M. A. No. 124 of 1989 (Anoop Industries v. M. P. Financial Corporation) have filed an appeal with the assertion that the direction issued by the learned District Judge is not supported by law and facts and the same deserves to be set aside.

7. The contention of learned counsel for the appellant is that the direction issued by the District Judge does not come within the purview of Section 31/32 of the Act and that the defendants were required to pay the amount with six-monthly rests and, therefore, the plaintiff-appellants are entitled to charge and recover compound interest. As such no bifurcation of principal amount and the interest amount could be made by the court.

8. As against it learned counsel for the respondents has submitted that the provisions of the CPC are attracted and in view of the provisions of Section 34 read with Order 34, Rules 2 and 11 of the CPC the interest only on the principal amount is directed to be paid.

9. Now, so far as the first contention of learned counsel for the appellant is concerned, the same cannot be accepted. Sub-section (6) of Section 32 of the Act reads as follows :

"If cause is shown, the District Judge, shall proceed to investigate the claim of the financial corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto."

10. The word "claim" in Section 32(6) of the Act does not mean only the monetary claim. It means the sum total of the facts alleged by the corporation with demand for relief under any of the three clauses of Section 31(1). Where the Corporation applied for sale of mortgaged property on the debtor's committing default the explanation by the latter justifying the default and asking for instalments can be investigated into by the Durlabh Kumar Vs. The District Judge, Indore and Another,

In our opinion, therefore the District Judge has got powers to ascertain the principal amount and the amount of interest accruing thereon.

11. The next contention of learned counsel for the appellant is that since there

was a specific contract regarding the payment of compound interest as the payment was to be made on six-monthly rests and, therefore, the court was bound to make a direction for payment of contractual interest.

Learned counsel for the appellant has made a reference to conditions D(2) and D(10) of the agreement exhibit P-I which read as follows :

"D(2). The rate of interest shall be 9 1/4 per cent. per annum and the interest would be payable half-yearly. This rate is subject to variation as may be decided by the board from time to time pending execution of the mortgage-deed. If the half-yearly instalment of interest is paid punctually on or before the due date and if all the instalments on account of principal due till that date have been punctually paid, a rebate of 1 per cent. will be allowed in respect of loan instalment and the interest in respect of such instalment shall be calculated at 6 1/4 per cent. per annum.

D(10). If you fail to avail of the entire loan or part thereof as the case may be, within a period of six months from the date of this letter, or according to the schedule of drawal, then at your request and on your agreeing to pay a commitment charge at the rate of 1 per cent. per annum on the amount of the loan to be availed of by you, the corporation may at its discretion grant you extension of time for a further period of three months to fulfil all the conditions and avail of the entire loan or part thereof. Your request to the corporation for such extension of time shall have to be accompanied with the necessary amount of commitment charge that may be chargeable in the matter. Such request shall also have to be made to the corporation at least before four weeks of the expiry of the period as aforesaid."

12. What condition (2) speaks is that the interest would be payable half-yearly and if there has been regular payment a rebate of 1 per cent. will be allowed and the interest charge would be at 8 1/4 per cent. as against 9 1/4 per cent. agreed to by the parties while taking the loan. It nowhere provides for half-yearly rests.

13. Condition D(10) provides about the availing of loan by the loanee within a period of six months and further provides for extension of time. It also does not provide for any compound interest to be paid by the loanee even if he fails to take the loan within the period specified therein.

14. Learned counsel for the respondents has placed reliance on a case in Union Bank of India v. Dalpat Gaurishanhar Upadhyay, AIR 1992 Bombay 482 ; [1993] 76 Comp Cas 494 (a Full Bench decision) whereby it has been held that the words "principal sum adjudged", occurring in Section 34, means the original amount lent without the addition thereto of any interest whatsoever. The agreement between the parties or any prevailing banking or trade practice to the contrary is irrelevant. It has further been held in the case that the expression "principal" used in Rules (2) and (11), Order 34 of the CPC means only "principal" and not "principal and interest".

15. Learned counsel for the appellant in reply to this contention has referred to a case in *Renusagar Power Co. Ltd. Vs. General Electric Co., and Corporation Bank v. D.S. Gowda* [1994] 81 Comp Cas 842 (SC) ; [1995] Bank J 217:1994] 81 Comp Cas 171

In paragraph 92 of *Renusagar Power Co. Ltd.*'s case [1994] 81 Comp Cas 171, their Lordships have held (page 231) :

"This would show that award of interest on damages or interest on interest, i.e., compound interest is not regarded as being against public policy in these countries."

It has further been held in para. 93 of that judgment as follows (pages 231-32) :

"This would show that there is no absolute bar on the award of interest by way of damages and it would be permissible to do so if there is usage or contract, express or implied, or of any provision of law to justify the award of such interest. Merely because in Section 3(3)(c) of the Interest Act, 1978, the court is precluded from awarding interest on interest does not mean that it is not permissible to award such interest under a contract or usage or under the statute. It is common knowledge that provision is made for the payment of compound interest in contracts for loans advanced by banks and financial institutions and the said contracts are enforced by courts. Hence, it cannot be said that award of interest on interest, i.e., compound interest, is against the public policy of India. We are, therefore, unable to accept the contention that award of interest on interest, i.e., compound interest is contrary to public policy of India and the award in respect of compensatory damages awarded under items Nos. 2, 4 and 6 cannot be enforced u/s 7(1)(b)(ii) of the Act."

In the case in *Corporation Bank Vs. D.S. Gowda and Another*, it has been held as follows (page 864) :

"True it is that while the universal banking practice is usually to charge interest with half-yearly rest, there is nothing to prevent the parties from agreeing to quarterly rest and such an agreement would be perfectly valid unless it is shown to be opposed to public policy."

It has further been held in para. 12 of the judgment (page 860) :

"There is no ambiguity about it. In regard to loans belonging to the non-agricultural category, the circulars dated March 13, 1976, February 28, 1978 and September 15, 1984, clearly state that the banks may charge interest with quarterly or longer rests. Therefore, loans advanced for construction of flats would fall in the latter category against which interest can be charged with periodical rests."

16. Thus, from these two decisions of the Supreme Court what virtually comes out is that if there is an agreement the bank can charge compound interest with six-monthly or quarterly rests, as the case may be. Therefore, the compound

interest has been found to be permissible and to that extent the Full Bench decision in Union Bank of India's case [1993] 76 Comp Cas 494 of the Bombay High Court does not state the correct law. But in this case it is to be seen as to whether there has been any agreement regarding the payment of compound interest with six-monthly or quarterly rests.

17. The two conditions, i.e., D(2) and D(10) referred to above do not contain any provision regarding half-yearly or quarterly rests and, therefore, the provisions of Section 34 read with Order 34, Rules (2) and (11) of the CPC would be attracted and the court can, therefore, adjudge the principal amount and the interest amount and accordingly the court can further make a direction for payment of interest on the principal amount only.

18. In the opinion of this court, therefore, the direction of the learned District Judge about payment of interest only on the principal amount with effect from October 1, 1988, appears to be correct and calls for no interference.

19. The learned District Judge has discussed the evidence at length and found that the respondents entered into an agreement and took a loan of Rs. 28,000. The learned judge has further found that an English mortgage of the property as described in the document was also made by the respondents.

20. The finding of fact is based not only on appreciation of evidence but is further supported by documentary evidence. This court finds no illegality or perversity in that finding. That finding is, therefore, affirmed.

As a result, both these appeals fail and are hereby dismissed with costs. Counsel fee Rs. 1,000.