(2000) 03 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4912 of 1999

Mohinder Singh, through his L.Rs. APPELLANT

Vs

Bank of India RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2000) 2 RCR(Civil) 388

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : O.P. Gauba, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This R.S.A. has been directed against the judgment and decree dated 3.8.1999 passed by the Addl. District Judge, Ferozepur, who, while dismissing the application u/s 5 of the Limitation Act of the Appellant, also dismissed the appeal.

2. Some facts can be noticed in the following manner:

Bank of India (Plaintiff) advanced a term loan to the extent of Rs. 67,760/- to Mohinder Singh deceased on the guarantee of Mohan Singh, Defendant No. 2. This loan was repayable to the bank in 14 half yearly instalments of Rs. 4,840/- each with effect from July, 1996. The Defendants also agreed to pay interest at the rate of 12-1/2 per cent per annum with half yearly rests subject the variation. The loan was granted for the purchase of tractor. Defendant No. I mortgaged his land measuring 82 kanals 16 marlas with the Plaintiff-bank as collated security. Defendant No. 2 stood guarantor and executed guarantee deed for the due repayment of the said loan. The Defendants also executed agreement for term loan and other necessary documents in favour of the bank. Tractor bearing registration No. PAD-5434 was purchased. However, the Defendants did not pay the loan amount. Mohinder Singh, original loanee, died and the suit was filed against his L.Rs. and the guarantor.

The suit was contested by the Defendants in the trial Court on the plea that the Defendants never agreed to pay interest @ 12-1/2 per cent per annum with half yearly rests, nor the bank has any power to enhance the rate of interest as claimed by it.

The trial Court framed the issues. Parties led evidence in support of their respective cases and ultimately the suit of the Plaintiff-bank was decreed on 31.3.1998 for a sum of Rs. 1,92,319.78 against the Defendants, who were directed to pay the amount jointly and severally with costs and interest at the rate of Rs. 15-1/2 per cent per annum with yearly rests from the date of filing of the suit till its realisation.

Aggrieved by the judgment and decree of the trial Court, the L.Rs. of Mohinder Singh filed appeal u/s 96 of the Code of Civil Procedure. The appeal was barred by 74 days. Along with the appeal, they also filed an application under the Section 5 of the Limitation Act. The first Appellate Court came to the conclusion that there was no sufficient cause for the condonation of delay, as a result of which the application was dismissed and the appeal was held to be time barred.

3. I have heard the learned Counsel for the Appellants. In this case the suit was decided by the trial Court on 31.3.1998. The Appellants filed the application for obtaining the certified copies of the judgment and decree-sheet on 19.5.1998, after a lapse of period of one month and nineteen days. The copies were ready for delivery to the Appellants on 27.5.1998. But the appeal was instituted on 21.7.1998 before the first Appellate Court. The plea which was taken up by the Appellants before the first Appellate Court was that they were supplied the copies of the judgment and decree on 20.6.1998, during vacations. This plea was found to be false. Even if this plea of the Appellants is taken as correct, then the appeal ought to have been filed by 16.7.1998 when the summer vacations in the trial Courts were over. But in the present appeal, the first appeal was instituted on 21.7.1998. Be that as it may, and by giving a liberal interpretation to the matter of delay, I have also to see the merits of the case before I formulate an opinion whether the application u/s 5 of the Limitation Act has been rightly rejected or not. During the course of submissions, the learned Counsel for the Appellants only wanted to attack the rate of interest which has been granted by the Courts below. He submitted that the loan was advanced for the agricultural purpose i.e. for the purchase of tractor and in these circumstances the rate of interest could not exceed beyond 6 per cent per annum. He further submitted that the compound interest was not permissible to the bank. Both these submissions of the learned Counsel for the Appellants have been considered but these are without any merit in view of the law laid down in State Bank of India Vs. Yasangi Venkateswara Rao, , where it was held by the Hon''ble Supreme Court in paras 7 and 8 of the judgment as under:

7. We are unable to understand as to how the High Court could come to the

conclusion that the Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21-A deals with the question of the rate of interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers the Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of the Parliament. The said Section applies to all types of loans which are granted by a banking company whether to an agriculturist or a non-agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted.

8. We also find it difficult to agree with the observation of the High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. Entering into a mortgage is a matter of contract between the parties. If the parties agree that in respect of the amount advanced against a mortgage compound interest will be paid, we fail to understand as to how the Court can possibly interfere and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is with a view to secure the loan and has no relation whatsoever with the quantum of interest to be charged.

4. A reading of the above paras would show that the banking companies are entitled to charge interest as per the contract and by virtue of Section 21-A this Section applies to all types of loans which are granted by banking companies to an agriculturist or a non-agriculturist. In this view of the matter, the trial Court rightly decided the issues in favour of the bank and against the present Appellants.

Resultantly, I find no merit in the present appeal and the same is hereby dismissed in limine.

