(2000) 08 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 740 of 1998

M/s. Gupta Agricultural Udyog APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Banking Regulation Act, 1949 — Section 21
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 2, Order 34 Rule 2(1), Order 34 Rule 4, 34

Citation : (2001) 1 RCR(Civil) 309

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. Balbir Singh, for the Appellant; Mr. J.S. Bhatti, for the Respondent

Judgement

M.L. Singhal, J.—Punjab National Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 transacting banking business of various branches filed suit through its Adampur Branch Manager against M/s Gupta Agricultural Udyog, Mandi Adampur through its partner Suresh Kumar, Dev Karan and Gulzari Lal for the recovery of Rs. 1,48,155.80 on the allegations that M/s Gupta Agricultural Udyog, Mandi Adampur which is a partnership firm applied to it for the grant of certain credit facilities including term loan of Rs. 30,000/-, cash credit limit to the extent of Rs.50,000/-. Loan proposal was scrutinized. Loan to the extent of Rs. 30,000/- and cash credit limit to the extent of Rs. 50,000/- was sanctioned. Shri Gulzari Lal stood guarantor for repayment of the loan. Suresh Kumar and Dev Karan are partners of the said firm. Interest was agreed to be paid @ 11% per annum. Various loan documents were executed including the hypothecation deed and mortgage deed. Loan was to be repaid in instalments. Pronote dated 18.7.79 was also executed. Machinery was hypothecated. Defendants failed to repay the loan amount.

2. Defendants went ex parte. Additional Senior Sub Judge, Hissar vide order

dated 31.8.94 decreed the suit of the plaintiff bank with costs. Future interest was awarded at the agreed rate from the dale of suit till realisation of the decretal amount. It was directed that future interest shall be calculated only on the principal amount. Decretal amount was directed to be paid along with interest and costs within 6 months failing which the plaintiff bank would be at libety to realise the amount by way of sale of the mortgaged property and hypothecated property, it was also directed that in case the claim of the bank remains unsatisfied, the defendants would be personally liable for the repayment of the remaining amount. Punjab National Bank went in appeal. Appeal was allowed by the Additional District Judge, Hissar vide order dated 10.9.97. In appeal, the bank was allowed interest at the agreed rate on the amount of Rs. 1,48,155.80 which was adjudged to be principal sum while the trial court had allowed interest at the agreed rate on the amount of Rs. 80.000/-

3. M/s Gupta Agricultural Udyog, Mandi Adampur and others defendants have come up in Appeal to this court where through they have prayed that interest should not have been allowed on the amount of Rs. 1,48,155.80. It should have been allowed on Rs. 80,000/- which was the principal amount lent and interest from the date of suit till decree of the first court should not have been allowed at the agreed rate and further interest at the agreed rate should not have been allowed from the date of decree of the first court till realisation. It was also prayed that interest paid by the Industries Department to the bank towards this loan should have been ordered to be adjusted by the court towards this liability.

4. In this appeal, thus, two points arise : namely : (i) whether interest should have been allowed on Rs. 80,000/- or it could have been allowed on Rs. 1,48,155.80 ?; and (ii) whether interest at the agreed rate could have been awarded from the date of suit till the decree of the trial court and at this rate further from the date of decree till realisation or the court could have awarded interest at a lesser rate for these periods in the exercise of its discretion vesting in it u/s 34 of the CPC (CPC).

5. Learned counsel for the appellant drew my attention to a number of judgments in support of the contention that the expression principal sum adjudged in section 34 CPC means the original amount lent without addition thereto of any interest whatsoever. In Devinder Kumar and others v. Sydicate Bank and others 1994 1 PLR 1 : 1994(1) RRR 160 it was held that the expression principal sum adjudged in section 34 of the Code means the original amount lent, without addition thereto of any interest whatsoever. This will be the position notwithstanding any agreement between the parties or any prevailing banking or trade practice to the contrary. Interest pendents life is pay- able on the principal sum adjudged, but no interest is payable on the amount of interest adjudged on such principal sum. In Union Bank of India Vs. Dalpat Gaurishankar Upadyay, which was relied upon in Devinder Kumar and others v. Syndicate Bank and others (supra), Full Bench of the Bombay High Court observed as follows :-

"A clear picture which emerges from reading of this section is that the Court while decreeing the suit will adjudge : (i) principal sum, and (ii) any interest on such principal sum prior to the date of institution of the suit. Both amounts adjudged by the court by way of "principal sum" as well as "interest" thereon for the period prior to the institution of the suit together may be termed as "aggregate amount adjudged" as payable on the date of the suit. But interest u/s 34 is not payable on such aggregate "amount". It is made payable only on the amount of interest adjudged on such principal sum. Interest, whether simple or compound, will remain "interest" for the purpose of Section 34 and shall never merge in the principal. The legislature while using the expression "in addition to the interest adjudged on such principal for any period prior to the institution of the suit" in Section 34 in contra-distinction to the expression "principal sum" has not made any distinction between the interest computed by way of simple interest or compound interest. The legislative scheme and intent being so clear, there is no scope for doubt that the expression "principal sum adjudged" would mean only the "principal sum". It will never include the interest whatsoever be the agreement between the parties. Interest u/s 34, therefore, can be allowed only on the principal sum and not on the principal sum plus interest accrued thereon till the filing of the suit, in view of the foregoing discussion. We hold that the "principal sum adjudged" used in Section 34 of the C.P.C. means the original amount lent without the addition thereto of any interest whatsoever. This will be the position notwithstanding any agreement between the parties or any prevailing banking or trade practice to the contrary. The first three questions are answered accordingly."

Rules 2 and 11 of Order 34, CPC were interpreted by Full Bench of the Bombay High Court as under :-

"From a reading of Rule 2 set out above, it is clear that it casts a duty on the court to order, inter alia, taking of account of what is due to the plaintiff at the date of the preliminary decree for "principal" and "interest on the mortgage". Under clause (b) the Court has to declare the amount so due at that date. A conjoint reading of clauses (a) and (b) of sub- rule (1) of Rule 2 makes it abundantly clear that the "principal" and "interest" have to be ascertained separately and declared to be due as such. Rule 2 does not contemplate merger of interest in the principal and determination of the agreement amount due on account of both. Rule 11 provides for award of interest from the date of decree up to the date fixed for payment, and in the event of same being not paid by such date, for further interest upto the date of realisation or actual payment. Interest under rule 11(a)(i) is payable on "the principal amount found or declared due on the mortgage". Under Sub- clause (iii) such interest is also payable on the amount adjudged due to the merger for costs, charges and expenses up to the date of the preliminary decree and added to the mortgage money. The Court thus has been empowered to award interest under Rule 11 (a) on all the "components of the amount found or adjudged due to the plaintiff except on the "interest". Similarly, subsequent interest upto the date of realisation or actual payment can also be awarded under rule 11(b) only on the "aggregate of the principal sums specified in clause (a)" thereof. Clause (a), as indicated above, specifically excludes interest due on mortgage from its purview. The principal amount referred to in clause (b) therefore means only the principal amount found or declared on the mortgage and the principal amounts adjudged due to the mortgagee for costs, charges and expense. Interest on any of these amounts, therefore, will not fall within the expression "aggregate of the principal sums" used in clause (b) of Rule 11. It is thus evident that interest under either of the two clauses of Rule 11 can be awarded only on the principal. Interest accrued due before the suit is not treated as principal. It is also evident from the fact that the amount of interest due to the plaintiff has to be determined separately (Rule 2(1)(a)(i) of Order 34)."

6. It was observed in para 15 of Devinder Kumar and others v. Syndicate Bank and others (supra) by this court that "a conjoint reading of Section 34 and Rules 2 and 11 of Order 34 of the Code would show that the expressions "principal sum adjudged", "Principal" and "aggregated of principal sum" specified in Section 34, Rule 2(1)(a)(i) and Rule 11(b) of Order 34 of the Code means only the "principal" and not "principal and interest". Subsequent interest can be awarded on principal only. No interest is payable under Rule 11 on the amount of interest.

7. In Mehar Chand v. Tulsi Ram 1997(1) All IJ 457 : 1996(2) RRR 336 it was held whether future interest is to be calculated on the principal amount or on the amount of principal and interest accrued till date of filing the'' suit, interest is to be calculated on the principal amount and not on principal and interest upto the date of filing the suit. In Hans Raj (died) through his LRs v. Surinder Singh 1997(1) RCR 205 it was held that future interest can be awarded only on the principal amount and not on principal plus interest on the principal.

8. Learned counsel for the respondent-Bank on the other hand submitted that the learned Additional District Judge has correctly allowed future interest on the principal sum adjudged which means Rs. 80,0007-which was originally advanced plus interest that accrued thereon till the date of suit i.e. Rs. 1,48,155.80 in view of the plain language of section 34 of the Code. In Bank of Baroda v. Jagannath Pigments and Chemicals and others 1995 1 SJ 57 the Hon''ble Supreme Court interpreted the principal sum adjudged as used in Section 34 CPC as the principal amount of loan and the amount of interest accrued thereon. In that case, the Bank had filed suit for the recovery of Rs. 1,66,759.29 with interest and costs. Trial Court decreed the suit for the said amount with costs. Future interest was awarded @ 13.5% per annum on the said amount of Rs. 1,66,759.29 from the date of suit till payment or realisation. In appeal to the High Court by the defendant borrower, a contention was raised that bank was not entitled to claim compound interest and convert the principal sum claimed as inclusive of interest and that the trial court was not justified in granting future interest on the principal sum adjudged. The High Court accepted the contention and modified the decree and allowed future interest on the principal sum borrowed i.e. Rs. 1,20,675.59. Bank carried appeal before the Apex Court. The decision of the

High Court was reversed and that of the trial court restored. In the view of the Apex Court, the principal sum adjudged, therefore, would include the principal amount of loan and the amount of interest accrued thereon till the filing of the suit.

9. In view of the fact that the Hon''ble Supreme Court in Bank of Baroda v. Jagannath Pigments and Chemicals and others (supra) has held that interest has to be allowed to a bank on the principal sum adjudged which means the amount of loan originally advanced plus the interest that accrued thereon till the institution of suit, Additional District Judge had rightly allowed interest to the Bank on the sum of Rs. 1,48,155.80.

10. Faced with this position, learned counsel for the appellants submitted that this court should not decide the appeal and keep it pending till the decision of the question which has been referred to a Bench of five Judges by the Hon''ble Supreme Court in Central Bank of India v. Ravindra 1996(2) RRR 659. Suffice it to say, the appeal cannot be kept pending till the decision of this question by a Constitution Bench of five Judges of the Hon''ble Supreme Court as the matter has to be decided according to law holding the field at present (C.M. No. 7116-C of 1999 thus stands disposed of). In view of the decision of the Hon''ble Supreme Court in Bank of Baroda v. Jagannath Pigments and Chemicals and others (supra) it has to held that the learned Additional District Judge had rightly awarded interest on the principal sum adjudged which was Rs. 1,48,155.80P=Rs.80,000/- the amount of loan originally advanced + interest that accrued thereon till the date of suit.

11. Learned counsel for the appellant submitted that the court should not have awarded interest at the agreed rate to the bank. In Devinder Kumar v Syndicate Bank and others (supra) it was observed that interest upto the date of suit is a matter of substantive law and Section 34 CPC does not referto payment of interest under the first head. It applies only to second and third heads. Interest pendents lite is one of procedure within the discretion of the court. Interest on the principal amount adjudged from the date of decree to the date of payment cannot be allowed on a rate higher than 6% per annum under the first head under proviso to Section 34 CPC. Future interest exceeding 6% can be granted if the liability adjudged has arisen out of a commercial transaction and in no event it shall exceed the contractual rate of interest and if contractual rate of interest is not established, the court can grant interest at a rate allowed by the nationalised bank in relation to commercial transactions. It was submitted that the court should not have allowed interest at the rate exceeding 6% per annum from the date of suit till the decree of the first court and from the date of decree of first court till realisation which is the scheme of Section 34 CPC.

12. Learned counsel for the respondent, on the other hand, submitted that interest was rightly allowed by the courts below at the agreed rate from the date of suit to the decree of the first court and then from the date of the decree of the first court till realisation in view of the provisions of Order 34 Rule 11 CPC. It was

submitted that to this suit section 34 CPC was not applicable. It was a mortgage suit to which the provisions of order 34 rule 11 CPC will apply. In support of this submission, he drew my attention to State Bank of India Vs. Yasangi Venkateswara Rao, where it was held that there can be no occasion for the court to reduce the rate of interest which the borrower had contracted to pay to the bank in view of the provisions of section 21A of the Banking Regulation Act. It was held in Santa Singh v. Punjab National Bank, 1996 ISJ (Banking) 114 that provisions of section 34 CPC would not be applicable. It is a mortgage suit to which the provisions of Order 34 Rules 4 and 11 CPC would apply.

13. Even otherwise, it was a commercial transaction. In case of commercial transaction, even the provisions of section 34 CPC authorise the charging of interest at a contractual rate. Defendant firm was carrying on the business of manufacturing iron chasis, trunks, iron spare parts and agricultural implements etc. at Mandi Adampur. Defendant firm applied for the grant of certain credit facilities including the term loan of Rs. 30,000/- for the construction of building and for tht purchase of machinery, a cash limit to the extent of Rs. 50,000/- which was a commercial transaction.

14. In view of what has been above, this appeal fails and is dismissed with costs. Counsel fee Rs. 5,000/-.

15. Appeal dismissed.

