
(1995) 08 KL CK 0008
In the High Court Of Kerala
Case No : A.S.W. 151 of 1989

Nedungadi Bank Ltd.

APPELLANT

Vs

M/s. Aswathi Starch and Glucose (P) Ltd. and Others

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1996 Ker 112 : (1995) 3 ILR (Ker) 793

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : K.P. Balasubramanian, Sally Thomas, K.M. Kurian and K.R. Reghunath, for the Appellant;

Judgement

K.G. Balakrishnan, J.—This is an appeal preferred by the plaintiff Bank against the decree and judgment in O.S. 62 of 1983 on the file of Sub Court, Manjeri. The short facts are as follows: Plaintiff Bank advanced money to the first defendant company under various transactions such as cash credit facility, term loan etc. Defendants 2 to 7 are the members of the Director Board of the company and defendants 17 to 21 are the legal heirs of deceased 4th defendant. The suit was for realisation of Rs. 21,64,796.22. Originally Rs. 12 lakhs was granted as term loan and under cash credit facility Rs. 3.5 lakhs was granted. It was subsequently enhanced to Rs. 5 lakhs. In the plaint it was alleged that as on 31. 3. 1982 Rs. 17,51,474.04 was due from the defendants and the plaintiff claimed interest at 18.5%. First defendant had filed a written statement disputing the plaint claim. But later first defendant filed a statement admitting the plaint amount. On 17th August, 1988 the court below decreed the suit for Rs. 21,64,796.22 with costs on confession rate and future interest at the rate of 18.5% per annum on the principal sum of Rs. 13,57,000/- from the date of suit till realisation. Six months" time was given to the defendants to pay the amount and half the court fee also was ordered to be paid to the plaintiff.

2. Plaintiff-appellant contended that the court below went wrong in granting

future interest only for the amount of Rs. 13,57,000/- and that the court should have granted interest for 17,51,474.04. It is pointed out by the appellant's counsel that these defendants have entered into a contract with the plaintiff Bank and agreed to pay interest at 18.5% on the basis of quarterly rest and, therefore, they are liable to pay interest for the entire amount of Rs. 17,51,474.04 which was adjudged as principal on 31.3.1982. When the defendants had agreed to pay interest with quarterly rest the interest payable by them would form part of the principal and the plaintiff bank was justified in treating that part of the interest as principal. In a decision reported in *Nafeesumma v. Indian Overseas Bank* (1974 KLT 853) a Division Bench of this Court held as follows: As per the agreement between the parties the interest has accrued due at the end of the quarter is added on the principal and becomes the principal and never thereafter ceases to be the principal.

Section 34 of the C.P.C. says that in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit the court is competent to grant interest at such rate not exceeding the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions provided the liability had arisen out of a commercial transaction. u/s 34, the term used is "principal sum adjudged". That indicates that it is not the original principal amount but it could be an amount so adjudged as principal. If, as per the contract between the parties, interest also is to be treated as principal, the amount so adjudged is to be taken as principal for granting future interest.

The court below erred in not granting interest for the principal sum so adjudged. We modify the decree passed by the court below and direct that the plaintiff is entitled to a decree for Rs. 21,64,796.22 with cost at confessional scale and future interest at the rate of 18.5% per annum on the principal sum which is adjudged Rs. 17,51,474.04 from the date of suit till realisation. The appellant is also entitled to get costs.

Appeal is disposed of as above.