

(1997) 11 DEL CK 0038

In the Delhi High Court

Case No : Suit No. 602/87

Punjab and Sind Bank

APPELLANT

Vs

Deepak Chaudhary

RESPONDENT

Date of Decision : 24-11-1997

Acts Referred:

Citation : (1997) 11 DEL CK 0038

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. B.T.Singh, for the Appellant; Sh. Vikramjit Sen and Sh. P.B. Banerjee, for the Respondent

Judgement

K.S.Gupta. J.

1. plaintiff filled suit under the provisions of order XXXIV CPC, inter alia, alleging that late G.D.Chaudhary, father of defendants 1, 3 & 4 and husband of defendant No. 2 approached the plaintiff-Bank on April 6, 1981, for grant of loan in the sum of Rs.5 lakhs. He offered to create equitable mortgage of his property No. A-69, New Friends Colony, New Delhi. Defendant No.-1, also offered to stand as guarantor for G.D.Chaudhary for repayment of the loan amount. It is alleged that accordingly a sum of Rs.5 lakhs was sanctioned by way of loan on April 6, 1981, to said G.D.Chaudhary and the amount was placed in LAP account No. 11 of 1981 which he withdrew the same day. Aforesaid G.D.Chaudhary in addition to creating equitable mortgage of said property No. A-69, New Friends Colony, also executed documents as detailed in para 7 of the plaint. Loan amount was to be repaid in six quarterly installments of Rs.1 lakh commencing from October 1981. Loan was to carry interest @ 6% O.B.R. with minimum of 15% per annum. It is stated that a sum of Rs.6,54,712/50P was due from aforesaid G.D.Chaudhary as on March 6, 1987. It was prayed that a preliminary decree under order XXXIV CPC for Rs.6,54,712/50P together with pendente lite and future interest @ 20% per annum with quarterly rests be passed against the defendants.

2. Needless to say that the defendants have contested the suit by filing written statement.

3. On April 21, 1997 Shri Vikramjit Sen appearing for the defendants made statement that defendants have no objection to the decreeing of the plaintiff's suit for the suit amount minus Rs.1 lakh paid through pay order on April 30, 1991, to the plaintiff-Bank but at the same time defendants be permitted to pay pendente lite interest at reasonable rate instead of 20% per annum with quarterly rests as claimed by the plaintiff-Bank. Defendants are ready to pay the decretal amount in lump sum to the plaintiff-Bank Shri B.T.Singh appearing for the plaintiff stated that he leaves the rate of pendente lite interest at the discretion of the court and the suit be decreed against the defendants.

4. In the State Bank of India Vs. P.K. Sethi and Others, , taking note of the judgment dated January 21, 1986, of Chadha, J. passed in Suits No. 85-87 of 1990 filed by the Indian Overseas Bank and also the judgment dated March 27, 1986 of Mahinder Narain, J. passed in Suit No. 1512/86 filed by Punjab & Sind Bank. plaintiff was allowed pendente lite interest @ 6% per annum. In State Bank of India Vs. Jagdamba Packers and Others, , the plaintiff was allowed pendente lite interest on the suit amount @ 9% per annum (simple) as against 15% per annum as claimed by the Bank. u/s 34 CPC award of pendente lite interest is in the discretion of the court. Defendants are stated to have earlier offered to pay pendente lite interest @ 13.5% per annum. Considering the entire circumstances of the case it will be sound exercise of discretion to allow the plaintiff- Bank interest calculated @ 13.5% per annum (simple) from the date of the suit till payment instead of 20% per annum with quarterly rests as claimed by the plaintiff-Bank.

5. Consequently, under the provision of Order XXXIV CPC, a preliminary decree is passed for recovery of Rs. 5,54,712/50P with interest pendente and future @ 13.5% per annum (simple) and the full costs. plaintiff will, however, be entitled to pendente lite interest on Rs.6,54,712/50P up till the date of realisation of the pay order dated, April 30, 1997, for Rs.1 lakh. In case the defendants fail to pay the decretal amount within six months from today, the plaintiff-Bank will be entitled to apply for passing of a final decree against the defendants.