(1998) 10 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No''s. 26, 183 and 224 of 1991, 173 to 175 etc. of 1992 and 21 of 1996

Punjab National Bank and etc. APPELLANT

Vs

Vidya Hatchery, etc. etc. RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:
Banking Regulation Act, 1949 — Section 21, 35A
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1999 HP 24 : (1999) 2 CivCC 276 : (1999) 98 CompCas 409 : (1999) 3 ShimLC 194

Hon'ble Judges : Lokeshwar Singh Panta, J;Kamlesh Sharma, J

Bench : Division Bench

Advocate : Devyani Sharma, K.D. Sood, Pratima Malhotra and A.K. Sood and Praneet Gupta, in R.F.A. No. 21/96, for the Appellant; B.R. Verma, Bimal Gupta, G.C. Gupta, D.D. Sood and Ankush Sood, Praneet Gupta in R.F.A. No. 224/91 and 173/92, for the Respondent

Judgement

Kamlesh Sharma, J.—These appeals (R.F. As. No. 26/91, 183/91, 224/91, 173/92, 174/92. 175/92, 270/92, 304/92, 314/92, 380/92 and 21 of 1966) are being disposed of by a common judgment as these pertain to the same questions of law. However, on fuels each appeal will be dealt with separately. The common questions of law arc as under :

1. Whether in the case of commercial loan the Courts have the discretion to award lesser rate of interest than the contractual rate of interest for the period prior to the institution of the suit?

2. Whether in the case of commercial loan the Courts have the discretion to grant a lesser rate of interest than the contractual rate of interest for the period from the date of institution of the suit to the date of payment?

2. In order to reply these questions of law, reference to Section 34 of the CPC as well as the judgments of the Supreme Court and Division Benches of this Court

in respect thereof is necessary. Section 34. C.P.C. empowers :

"34 Interest :-- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to he paid on the principal adjudged, from the dale of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, (with further interest at such rate not exceeding 6 per cent per annum as the Court deems reasonable on such principal sum), from the date of the decree to the date of payment, or to such earlier date as the Court thinks lit :

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6 per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized Banks in relations to commercial transactions.

EXPLANATION-I-- In this sub-section "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

EXPLANATION-II-- For the purposes of this section, transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

3. From the language of Section 34 (1), it is clear that the Court has been given powers to award interest at reasonable rate on the principal sum adjudged for the period (i) prior to the institution of the suit (ii) during the pendency of the suit : and at the rate not exceeding 6% per annum and (iii) from the date of decree to the date of payment or to such earlier date as the Court thinks fit. By adding the proviso and Explanation-I, in commercial transactions the maximum rate of interest for the post-decretal period has been fixed as the contractual rate of interest, and where there is no contractual rate, at the rate at which loans are advanced by the Nationalized banks.

4. In Corporation Bank Vs. D.S. Gowda and Another, the learned Judges of the Supreme Court have held that in case where there is no agreement between the Banker and the customer in regard to the payment of interest, the claim for interest has to be supported on the ground of universal custom of Bankers or on the basis of implied agreement but where the loan or advance is made on certain terms reduced to writing, the parties would be governed by those terms and there would be no question of falling back on practice or custom. Referring to Sections 21 and 35-A of the Banking Regulation Act (hereinafter called "the Act")

it is further held that wide powers are conferred on the Reserve Bank of India to enable it to issue circulars/directions in public interest to regulate the charging of interest on loan or advances made from time to time by the Bankers. These circulars/ directions have statutory flavour and any banker committing breach of them is liable to be penalized u/s 47-A of the Act. The learned Judges have also referred to the letter dated 12-3-1976 of the Reserve Bank Governor whereby the banks were advised to charge interest with quarterly rests (in case of commercial loans) and also circulars on 13-3-1976. 28-2-1984 and 15-9-1984 of the Reserve Bank providing maximum rate of interest that could he charged. The learned Judges have further held in the context of Section 21-A of the Act that if the Reserve Bank has fixed the-maximum rate of interest in exercise of powers conferred under Sections 21/35-A of the Act, Section 21-A thereof would be attracted and the transactions would not be liable to be reopened on the ground that the rate of interest fixed is excessive, even though not exceeding the ceiling fixed by the Reserve Bank. However, if in any case it is shown that the Bank was claiming interest inexcess of that permitted by the circulars/ directions of the Reserve Bank, the Court can give relief to the aggrieved party notwithstanding Section 21-A to the extent of interest charged in excess of the rate prescribed by the Reserve Bank. A distinction must be drawn between Court''s interference on the premises that the interest charged is excessive and Court''s interference on the premises that the interest charged is in contravention of the circulars/ directions issued by the Reserve Bank.

5. Therefore, the legal questions under consideration are answered in terms of the law laid down by the Supreme Court in Corporation Bank v. D. S. Gowda (1994 AIR SCW 2721) (supra) that the Court has no discretion to grant different rate of interest than the comractual rate of interest from the date it is due and payable to the date it is actually paid. In case of commercial loans of the Banks. Section 34 of the C.P.C. is to be applied in the context of circulars/directions issued by the Reserve Bank of India under Sections 21 and 35-A of the Act.

6. It cannot be disputed that when a Bank advances loan on interest with quarterly rests, the interest is worked out at the close of every quarter and added towards the outstanding balance for the purpose of computation of interest after deducting the amount paid by the customer, if any. In such a case, the principal sum adjudged would be the original principal amount of loan and the amount of interest accrued thereon as held by the Supreme Court in Bank of Baroda Vs. Jagannath Pigment and Chem. and Others, No doubt, in Central Bank of India Vs. Ravindra and Others, the question of liability of borrower to pay interest on the principal sum to include interest that became merged with the principal sum adjudged or principal sum as lent. slands referred to a Bench of five Judges, yet till the reference is answered by the larger Bench either by setting aside or reversing or modifying the ratio of the judgment in Bank of Baroda v. Jagannath Pigment and Chemicals (supra), it continues to be the law of the land and binding on us. Following the said ratio in their judgments passed in R.F.A. No. 70 of 1987 titled Punjab National Bank v. Sh. Karam Singh R.F.A.

No. 73 of 1987 titled State Bank of India v. Himalaya Engineer Works and Uco Bank v. Mahesh Kumar 1997 (3) Sim LC 403, the Division Benches of this Court have held that principal sum adjudged would be inclusive of the amount of interest accrued on the principal amount of the loan.

7. Now we shall deal with the facts of each case separately.

8. In this case a facility of term loan for Rs. 54,750/- for setting up a hatchery farm was granted by the appellant Bank to the respondents at the rate of 17.5% simple interest as per the terms and conditions of the loan documents, which has also been awarded, and rightly so, by the trial Court. But in respect of facility of cash credit limit to the extent of Rs. 20,000/- according to the appellant Bank, the rate of interest as per the terms and conditions of the loan documents was 14% per annum with quarterly rests, whereas the trial Court has awarded simple interest, though at the rate of 14% per annum on the ground that no rate of interest is mentioned in the agreement of guarantee, copy of which is Ex. P.W-2/F whereas in the copies of confirmation letters Ex. PW-2/G and Ex. P.W-2/H, the rate of interest has been mentioned as compound interest @ 12.5% per annum with half yearly rests. In our view, these findings of the trial Court cannot be sustained as agreement of guarantee Ex. P. W.-2/F need not contain the rate of interest in view of its Clause 2, wherein it is, inter alia, provided that the guarantors had guaranteed jointly and severally to pay the Bank on demand all principal, interest, costs, charges and expenses due and payable to the Bank from the borrowers. So far Ex, P.W-2/G and Ex. P.W-2/H are concerned, these are not relevant as these are not the copies of confirmation letters for Cash Credit limit. The confirmation letters for Cash credit limit are Ex. P.W-2/J and Ex. P.W-2/K wherein the rate of interest mentioned is 14% per annum with quarterly rests (In Ex. P.W-2/K neitherof the monthly quarterly/half yearly has been tick marked). Moreover the loan documents in respect of Cash Credit limit are the deed for hypothecation of goods Ex. P.W-2/D and Promissory note Ex. P.W-2/E wherein the rate of interest has been mentioned as 14% per annum with quarterly rests.

9. Therefore, we have no hesitation to hold that the trial Court has erred in granting 14% simple interest in respect of Cash Credit limit instead of 14% interest with quarterly rests, with the result that the appellant Bank is held entitled to the amount of Rs. 1,05,144.40 instead of Rs. 1,00,904.05 awarded by the trial Court. There is also no justification for granting simple interest @ 13% per annum from the date of institution of the suit till the realization and not the contractual rate i.e. simple interest @ 12.5% per annum on the principal amount of the term loan and interest @ 14% per annum with quarterly rests on the principal sum adjudged or on the facility of Cash Credit limit. Accordingly, we award interest from the date of institution of the suit till the date of payment.

10. In the result, the appeal is accepted with costs and the decree and judgment of the trial Court are modified in the terms stated hereinabove.

R.F.A. No. 183 of 1991.

11. In this case, the appellant Bank had filed a suit for recovery of Rs. 1,65,838.17 against the respondents on the allegations that they failed to repay the amount of term loan, which was granted to them on interest @ 12.5% per annum with quarterly rests but the trial Court has awarded simple interest @ 11.85 per annum and decreed the suit for Rs. 1,22,814.63 with simple interest at the same rate from the institution of the suit till the date of realization. The ground for granting this rate of interest is that different rates of interest are mentioned in the loan documents Ex. P.W-1/A, P.W-1/B. P.W-1/D and P.W-1/L. We have perused these documents. We find that under Clause 3 of Agreement for minimum term loan Ex. P.W-1/A, it is stated that the borrower shall pay interest @ 4.65% below the State Bank advance rate, minimum 11.85% rising and falling therewith calculated respectively on the daily balance of the amount due subject to enhancement as hereinafter provided. Under Clause 4 of this document, it is further provided that the Bank shall at any time be entitled to give notice to the borrower of its intention to charge and may thereafter charge interest at such higher rate than the rate hereinbefore mentioned as the Bank may specify. Accordingly, the interest at the higher rate of Rs. 12.5% per annum with quarterly rests was revised by notice Ex. P.W-1/L, which was accepted by the borrower by appending his signatures thereon. Ex. P.W-1/D is the sanction letter in which the rate of interest is mentioned as 11.85% with quarterly rests. In view of this document, the guarantee deed Ex. P.W-1/B is not of any consequence. Therefore, we have no hesitation to hold that the trial Court has gravely erred in reading and inferring loan documents Ex.P.W-1/A. P.W-1/B. P.W-1/DandP.W-1/L to hold that there was difference in the rate of interest mentioned in these documents, as a result of which simple rate of interest of 11.85% per annum has been awarded. We set aside these findings and hold that the appellant bank is entitled to interest at the rate of 12.5% per annum with quarterly rests and its suit is decreed for a sum of Rs. 1,65,838.17 as claimed, instead of Rs. 1,22,814.63 as decreed by the trial Court. There is also no justification for granting simple interest at the rate of 11.85% per annum on the decretal amount from the date of the suit till the date of realization in view of the contractual rate of interest. Therefore, these findings are also set aside and interest at the rate of 12.5% per annum with quarterly rests is awarded on the decretal amount of Rs. 1,65,838.17 from the date of institution of the suit till the date of payment.

12. In the result, the appeal is allowed with costs and impugned decree and judgments are modified in the terms stated hereinabove.

R.F.A. No. 224 of 1991.

13. In this case, the appellant Bank had filed a suit for recovery of Rs. 1,07,731.65 with interest at the rate of 12.5% per annum with quarterly rests for medium term loan account and Rs. 62,235.45 with interest at the rate of 13.5% per annum with quarterly rests for Cash Credit ac count of the

respondents but the trial Court has awarded decree for Rs. 1,26,356.26 towards the principal and interest by holding that agreed rate of interest in the case of medium term loan was 12.5% simple and in the case of Cash Credit loan 13.5% simple on the ground that there was variance in the rate of interest in the loan documents, namely, Ex.P-L, P-Z, P-N, P-O, P-Q, P-X and PZ/2.

14. The learned counsel appearing for the appellant Bank has assailed these findings of the trial Court on the ground that it has misread and misinferred these documents. After perusing the loan documents, we find substance in these submissions. Ex.P-A is the sanction letter of medium term loan for Rs. 57,350/- in which the rate of interest is mentioned as 11.85% per annum with quarterly rests. Ex. P-L is Articles of Agreement for a medium term loan against pledge of movable machinery and in its Clause 6, it is mentioned that the borrower shall pay interest at the rate of 4,65% below the State Bank of India advance rate with a minimum of 11.85% per annum rising and falling therewith subject to enhancement as hereinafter provided calculated respectively on the daily balance of the amount due along with the repayment of instalments of the principal amount of the loan as aforesaid : and shall pay compound interest at the rate aforesaid in default of payment of any instalment of simple interest on the date fixed for payment thereof. Under Clause 5, the repayment of principal amount was by way of monthly instalment. Therefore, the joint reading of both these clauses makes it clear that in the event of default of payment of monthly instalment and interest both the amounts will be principal for the next month, which means that the rate of interest was 11.85% per annum compound. Another document, Ex. P-N, is the Deed of Guarantee which need not contain the rate of interest. In Ex. P-O whereby the rate of interest was increased from 11.85% per annum to 12.5% per annum in case of Medium term loan and Ex. P-Q whereby repayment schedule was refixed, it is not mentioned whether the rate of interest was simple or compound but these documents are to be read with Ex. P-L, according to which the rate of interest was compound as held hereinabove. Above all, in the Promissory note Ex. P-X, the rate of interest is mentioned as 11.85% per annum with quarterly rests. Again in another agreement for hypothecation and guarantee Ex. P-2, the rate of interest is mentioned as 11.85% per annum on daily balance charged in account on the last working day of each month in accordance with the practice of the Bank or on such other day as may be agreed to, which means compound interest. This rate of interest was increased to 13.5% by letter Ex. P-Z/2. It is correct that in Ex.P-Z/2, the rate of interest is neither mentioned simple nor compound but if it is read with Ex. P-2, the increased rate of interest was also compound.

Therefore we do not find any justification for awarding simple interest instead of compound interest by the trial Court and decree the suit of the appellant Bunk for Rs. 1.69,967.10. There is also no basis for granting 13.5% per annum simple interest from the date of institution of the suit till the date of payment. Henee, we award interest at the rate of 12.5% per annum with quarterly rests on medium term loan and 13.5% per annum with quarterly rests in the ease of Cash credit account, which is proved to he the agreed rate of interest on the basis of the loan documents.

15. In the result, the appeal is allowed with costs and the impugned decree and judgment are modified in the terms stated hereinabove.

R.F.A. No. 173 of 1992.

16. In this case, the suit of the appellant Bank for recovery of Rs, 1,74,039.15 with future interest with effect from 1-2-1990 at the rate of 18% per annum with quarterly rests was decreed for a sum of Rs. 43,610.67 with proportionate costs and future interest @ 14% per annum with effect from 20-2-1990 till the date of realization holding that the appellant Bank is entitled to interest at the rate of 12.5% per annum on the Medium Term Loan. 13.5% per annum in respect of Cash Credit facility of Rs. 50,000/- and 14% per annum on another Cash Credit facility of Rs. 1,00,000/- for the reason that varied rate of interest is mentioned in the various loan documents.

17. After hearing the learned counsel for the parties and going through the record, we find that the trial Court has misread and misinformed the loan documents for coming to its conclusion. Ex. P-3 is the Articles of Agreement executed between the appellant Bank and the respondent defendant No, 1 in respect of the Medium Term Loan and its Clause 6 pertains to rate of interest stating that the borrower shall pay interest at the rate of 4% below the State Bank of India Advocate Rate with a minimum of 12.5% per annum rising and falling therewith subject to enhancement as hereinafter provided calculated respectively on the daily balance of the amount due along with the repayment of instalments of the principal amount of the loan as aforesaid : and shall pay compound interest at the rate aforesaid in default of payment of any instalment of simple interest on the date fixed for payment thereof. The perusal of this clause shows that besides daily rests, it is mentioned that in case of default compound interest will be charged. Therefore, the trial court is not right in coming to the conclusion that rate of interest was without any rests. If this document is read with the Sanction Letter Ex. P-5, it becomes clear that the agreed rate of interest was 12.5% per annum with quarterly rests. So far the Guarantee deed Ex. P-4 is concerned, it need not contain the rate of interest. Similarly, in Ex. P-6, the promissory note, for Cash Credit limit of Rs. 50,000/- and Ex. P-12, Promissory Note in respect of Cash Credit Limit of Rs. 1,00,000/-, the rate of interest mentioned is 13.5% and 14% per annum respectively with quarterly rests. With respect to the documents Ex. P-5/A and Ex. P-11 which are the respective Agreements for these Cash Credit Limits, the trial Court is not right in holding that the rate of interest mentioned therein is simple without any rests. We find that in the respective clauses of these documents pertaining to rate of interest, it is clearly mentioned that interest will be calculated on daily balance payable by the borrower and charged in account on the last working day of each month in accordance with the practice of the Bank or such other day as may be agreed to which means monthly rests whereas the appellant-Bank has

charged interest with quarterly rests as per the instructions of the Reserve Bank of India referred to hereinabove. It is further fortified by the letters sanctioning the said limits in which it was specifically mentioned that interest would be charged with quarterly rests. So far the Deeds of Guarantee Ex. P-10. Ex. P-15 and Ex P-16 are concerned, the rate of interest need not be mentioned therein. In view of these documents and the oral evidence on record, there was no justification for not granting interest to the appellant Bank with quarterly rests as claimed by them in the suit.

17. Therefore, we allow this appeal and decree the suit of the appellant Bank for Rs. 1.74,039,15 with costs and future interest at the agreed rate of interest @ 12.35% per annum for Medium Term Loan : 13.5% per annum in respect of Cash Credit Limit of Rs. 50,000/- and 14% per annum in respect of Cash Credit Limit of Rs. 1,00,000/- with quarterly rests with effect from 1-2-1990 till the date of payment. The prayer of the Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the basis of the material on record.

R.F.A. No. 174 of 1992.

18. In this case, the suit of the appellant Bank was decreed for Rs. 1.07.554.43 with proportionate costs with future simple interest at the rate of 12% per annum with effect from 30-10-1987 till the date of realization on the principal amount of Rs. 38.849.45 instead of its claim for the recovery of Rs. 1,90,897.66 with future interest at the rate of 18% per annum with quarterly rests on the basis of the loan documents and also as per the averments made in the plaint.

19. After hearing the learned counsel for the parties and going through the record, we find that though in the prayer clause the words "with quarterly rests" are missing, yet, in Para 3 it is mentioned that as per the Agreement between the parties, the interest was to be calculated on the daily balance of the amount due. So far the loan documents are concerned. Ex. P.W-1/B is the Agreement for Medium Term Loan wherein the rate of interest mentioned is 6.25% above the State Bank Advance rate minimum 10.25 per cent per annum rising and falling therewith calculated respectively on the daily balance of the amount due which was revised vide letters Ex. P.W.-1/N and Ex. P.W.-1/T from 10.25% to 12.5% per annum which was also accepted by the borrower by signing those letters. In the letter of Guarantee Ex. P.W.- 1/C, the rate of interest mentioned is 10.25% per annum but a joint reading of all the terms and conditions stated therein makes it clear that liability of the guarantors was similar to that of the borrowers. Therefore, in the totality of averments made in the plaint, the loan documents and the oral evidence, our conclusion is that the agreed rate of interest was with quarterly rests which the respondents-defendants are liable to pay.

20. Accordingly, the appeal is allowed and the suit of the appellant Bank is decreed for Rs. 1.90.897.66 with future interest at the rate of 12.5% per annum with quarterly rests from 30-10-1987 till the dale of realization.

21. The prayer of the appellant Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the material on record.

R.F.A. No. 175 of 1992.

22. In this case, on the basis of admission of the respondents-defendants, the trial Court awarded interest at the rate of 13.5% per annum with quarterly rests and decreed the suit for Rs. 1,20.047.09 as prayed for by the appellant-plaintiff Bank. However, future simple interest at the rate of 13.5% per annum has been granted without giving any reasons. In view of the specific findings of the trial Couri that in the loan documents, the rate of interest mentioned was 13.5% per annum with quarterly rests, without any variation, there was no justification to grunt interest at the simple rate for future.

23. In the result, the appeal is allowed with costs and the impugned decree and judgment are modified to the extent that the appellant Bank is entitled to future interest at the rate of 13.5% per annum with quarterly rests.

24. The prayer of the appellant Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the material on record.

R.F.A. No. 270 of 1992.

25. In this case, the suit of the appellant Bank was decreed for Rs. 58.827.31 with proportionate costs and future interest at the rate of 12% per annum from the date of decree till the date of realization instead of the claim of the Bank for Rs. 1,43,718.10 with future interest at the rate of 18% per annum with quarterly rests by holding that as per the averments made in the plaint as well as the terms and conditions of loan documents, simple interest at the rate of 12.5% per annum was due and payable by the respondents defendants.

26. After hearing the learned counsel for the parties and going through the record, we find that the terms and conditions of the loan documents in respect of the rate of interest as well as the averments made in the plaint arc identical to those of R.F.A. No. 174 of 1992. Therefore, by following the reasoning given while deciding that appeal, we allow this appeal and decree the suit of the appellant Bank for Rs. 1,43,718.10 with costs and future interest at the rate of 12.5% per annum with quarterly rests.

27. The prayer of the appellant Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the material on record.

R.F.A. No. 304 of 1992.

28. In this case, the suit of the appellant Bank was decreed for Rs. 34,622.41 with proportionate costs and future simple interest at the rate of 12.5% per annum against the demand of the appellant Bank for recovery of Rs. 1,00,812.12

with future interest at the rate of 12.5% per annum by holding that there is no stipulation of interest with quarterly rests in the loan documents.

29. After hearing the learned counsel for the parties and going through the record, we find substance in the submissions made on behalf of the appellant Bank that the trial Court has misread and misinferred the loan documents. Again, we find that the terms and conditions in respect of the rate of interest in the loan documents Ex. P. W.-1/B, Agreement for Medium Term Loan, Ex. P. W.-1/D, Third Party Guarantee agreement and the averments made in the plaint are identical to those of R.F. A. No. 174 of 1992. Therefore, by following the reasoning given while deciding that appeal, we allow the contention of the appellant Bank that they were entitled to interest at the rate of 12.5% per annum with quarterly rests.

30. So far the Revival letters and Balance Confirmation letters are concerned, these need not mention the rate of interest as the loan amount mentioned therein was calculated with quarterly rests.

31. In the result, we allow this appeal and decree the suit of the appellant bank for Rs. 1,00,812.12 with costs and future interest at the rate of 12.5% per annum with quarterly rests.

32. The prayer of the appellant Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the material on record.

R.F.A. No. 314 of 1992.

33. In this case, the suit of the appellant Bank was decreed for Rs. 93,366/- with proportionate costs and future simple interest at the rate of 15% per annum from the date of filing the suit till the date of realization instead of the claim of the Bank for Rs. 1,08,148.20 with future interest at the rate of 18% per annum by holding that varied rate of interest is found mentioned in the various loan documents.

34. After hearing the learned counsel for the parties and going through the record, we find that the material loan documents on record are Ex. P.W.-1/B, Ex. P.W.-1/C and Ex. P.W.-/O. Ex. P.W.-1/B is the Agreement for Medium Term loan Hypothecation of Vehicles/Vessels wherein the column pertaining to interest is blank but a stamp has been affixed in the margin staling that the borrower shall pay interest at the rate of 1.5% below the State Bank Advance Rate rising and falling herewith with a minimum of 15% per annum subject to enhancement as hereinafter provided. In the Sanction letter Ex. P.W.-1/O also the rate of interest is mentioned as 1.5% below SBAR minimum 15% per annum with quarterly rests. So far Ex. P.W.-1/C, which is Third Party Guarantee Agreement is concerned, the rate of interest mentioned is 15% per annum but in view of the other stipulations, the liability of the guarantor was that of the borrower and non mentioning of the words "quarterly rests" is of no consequence. Therefore, in the

totality of loan documents, oral evidence and the averments made in the plaint, we hold that the appellant Bank is entitled to interest at the rate of 15% per annum with quarterly rests and set aside the findings of the trial Court to this extent.

35. In the result the appeal is allowed and the suit of the appellant-plaintiff is decreed for Rs. 1,08,148.20 with costs and future interest at the rate of 15% per annum with quarterly rests.

36. The prayer of the appellant Bank for future interest at the rate of 18% per annum with quarterly rests is rejected as no case is made out for it on the material on record.

R.F.A. No. 380 of 1992.

37. In this case, the suit of the appellant Bank was decreed for Rs. 59,194.20 with proportionate costs and future simple interest at the rate of 12.5% per annum from the date of the suit that is 30-11-1990 till the date of payment instead of the claim of the appellant Bank for Rs. 1,45,870.00 with future interest at the rate of 12.5% per annum with quarterly rests on the ground that the agreed rate of interest was 11.85% per annum with quarterly rests up to 22-6-1982 and thereafter 12.5% per annum with quarterly rests. The appellant Bank has not disputed the rate of interest awarded by the trial Court and its precise grievance is that wrong calculations have been made while arriving at the amount of interest due and payable by the respondents-defendants and also that Guarantee fee of Rs. 14,907.75 has been disallowed without any legal and valid reasons. In view of this statement of the learned counsel for the appellant Bank, we have asked him to file a Statement of Account calculating the amount due and payable by the respondents-defendants on the basis of interest at the rate of 11.85% per annum with quarterly rests up to 22-6-1982 and thereafter at the rate of 12.5% per annum with quarterly rests till the filing of the suit, that is, 29-11-1990. As per this statement, the amount due and payable comes to Rs. 59,377.66 instead of Rs. 59,194.21 decreed by the trial Court. In view of the marginal difference of about Rs. 200/- we are not inclined to interfere in this appeal. In so far as the claim with regard to Guarantee fee is concerned, it has also not been substantiated from the evidence on record and it is rejected.

38. In the result, the appeal is dismissed. Costs easy.

R.F.A. No. 21 of 1996.

39. !n this case, the suit of the appellant Bank was decreed for the loan amount with simple interest at the rate of 10.25% per annum throughout instead of the claim of the appellant Bank for the recovery of an amount of Rs. 3,71,074.45 with future interest at the rate of 12.5% per annum.

40. After hearing the learned counsel for the parties and going through the record, we find that the rate of interest mentioned in Clause 3 of Ex. P.W.-1/A, Agreement for Medium Term Loan, is 6.25 percent above the State Bank Advance

Rate minimum 10.25% per annum rising and falling therewith calculated respectively on the daily balance of the amount due subject to enhancement as hereinafter provided which was further reiterated by letter Ex. P.W.-1/G. So far the revival letters and balance confirmation letters are concerned, these need not mention the rate of interest as we have already interpreted hereinabove that interest is calculated on daily balance which means compounding it on daily rests whereas the appellant Bank has charged interest with quarterly rests as per the instructions of the Reserve Bank of India. Accordingly, we hold that the appellant Bank is entitled to interest at the rate of 10.25% per annum with quarterly rests and there was no justification for the trial Court to grant simple interest only.

41. In the result, the appeal is allowed with costs and the impugned decree and judgment are modified in the terms stated hereinabove.

