

(1995) 11 MP CK 0080
In the Madhya Pradesh High Court
Case No : L.P.A. No. 95 of 1986 (J)

Punjab National Bank

APPELLANT

Vs

Kishanlal Soni

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Banking Regulation Act, 1949 — Section 21A
Usurious Loans Act, 1918 — Section 3

Citation : (1997) 1 MPJR 177

Hon'ble Judges : A.K. Mathur, Acting C.J.; S.C. Pandey, J

Bench : Division Bench

Advocate : J.P. Sanghi, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This is plaintiffs appeal under clause 10 of the Letters patent against the judgment and decree dated 24.9.1986 passed by a Single Judge of this Court in First appeal No. 127/1990 arising out of judgment and decree dated 3.4.1980 passed by Shri R.C. Khare, District Judge, Bilaspur, in Civil Suit No. 8-B/1978.

The learned Single Judge has dismissed the appeal filed by the appellant. The appellant claimed that it was entitled to recover the loan taken on 11.1.1973 by the respondent No. 1 amounting to Rs. 33,600/- for purchasing a matador mini-bus. The rate of agreed interest was alleged to be at the rate of 5% above the rate fixed by the Reserve Bank of India or minimum 11% per annum. Accordingly, the respondent No. 1 executed a promote. The respondent No. 1 was required to repay the loan in 48 monthly instalments at the rate of Rs. 800/- per month. The respondent No. 2 was made the guarantor of the repayment of loan by executing a deed of guarantee. The mini-bus was hypothecated with the bank. The appellant further alleged that the respondent No. 1 did not pay loan as stipulated and was a defaulter. The rate of interest declared by Reserve Bank of

India was 7% up to 23.7.1974 and it was increased to 9% from that date. The appellant acknowledged his liability on 29.11.1993; 30.3.1974, 27.12.1976 and 21.12.1978 in writing. Thus, by these acknowledgments the period of limitation was enhanced. Even otherwise, the suit was filed within limitation. Thus, the total claim was for Rs. 55,003.47 on the date of suit. The appellant wanted a decree for aforesaid amount against the respondents jointly and severally. It was also claimed that the amount may be paid to appellant after auction of the hypothecated vehicle No. MPL 6281. There was further prayer for a grant of interest at the rate of 14% per annum pendente lite and by way of future interest from the date of decree.

The respondents No. 1 filed his written statement. He admitted to have taken the loan but denied that the rate of interest was the same as alleged by the appellant. He denied that he was liable to pay compound interest, he pleaded the suit was barred by the time and rate of interest was excessive. The respondent No. 2 denied his liability to pay on the ground that he was the guarantor.

In view of the pleadings of the parties, the trial court framed the following issues:-

- (1) whether the interest claimed was excessive.
- (2) Whether the suit was barred by time.
- (3) Whether the plaintiff was entitled to decree of Rs. 3,063,47.
- (4) Relief and costs.

The trial Court found that the suit was within limitation. However, it came to the conclusion that in view of the section 3 of Usurious Loans Act, the Court was entitled to scale down excessive interest. It was found that he was entitled to recover from the respondent No. 1, the balance of loan and the insurance premium paid by it. It found that in addition to the loan of Rs. 33,600/- on 11.1.1973, the appellant paid Rs. 691.50 on 11.3.1974, Rs. 691.50 on 14.2.1975, Rs. 387.78 on 25.2.1976, Rs. 518/- on 26.2.1977 and Rs. 439/- on 25.2.1978. The appellant was entitled to claim 11 % per annum simple interest from the date of advanced on each item till the date of filing of suit. The respondent No. 1 had repaid the amount between 12.2.1973 to 30.12.1976 as shown in the chart in paragraph No. 25. Accordingly, it was directed that this amount would be adjusted according to katta mitti system. After adjusting the amount accordingly, the appellant was entitled to recover from the respondent No. 1 the balance of amount with simple interest up to the filing of the suit. (31.8.1978) at the rate of 11 % per annum. The liability of Respondent No. 2 for interest was not extended beyond May 1977. On the decretal amount, the trial Court granted an interest of 6% per annum, from 1.3.1978 to the date of actual payment. The decretal amount was made a charge on matador mini-bus MPL 6191.

The appellant filed an appeal against the decree of trial court and the respondent

No. 1 filed a cross objection. The appellant claimed that trial court had granted a decree of Rs. 41,976.28 p. instead of Rs. 53083.43 p. claimed by the appellant. The scaling down of interest to the extent of Rs. 11107.10 was bad in law. In cross objection tiled by the respondents it was claimed that suit is liable to be dismissed as barred by time. However, it is clear from paragraph one of the judgment of learned single Judge that counsel for respondent No. 1 did not press the cross objection. Therefore, the only question remained to be decided by the learned Single Judge was that if the appellant was entitled to the interest claimed by it.

It was urged before the learned single Judge that the court had no power to scale down the interest charged by the Bank by applying Usurious Loan Act, 1918. (The Act for short). It was not applicable to the nationalized bank. The learned Single Judge declined to accept the appeal filed by the appellant.

The learned counsel for the appellant, Shri J.P. Sanghi sought to argue that the provisions of the Act are not applicable to the transactions of a nationalized Scheduled Bank like Punjab National Bank. For this purpose, the learned counsel referred to us section 21A of the Banking Regulation Act, 1949 which reads as under:-

21. A - Rates of interest charged by banking companies- Not to be subject to a scrutiny by courts. Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to company its debtor shall be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

It appears that this provisions was inserted by way of amendment in the Banking Regulation Act, 1949 with effect from 15.2.1984 by section 24 of Banking Laws (Amendment Act) 1983. The notification dated 14.2.1984 for this purpose was issued to the effect in Gazette of India Extra Ordinary Part-II Section 3 (ii) that Section 24 of the amendment Act inter alia shall come in force from 15.2.1984. Thus, the amendment in Banking Laws Act was not there when the transaction was entered into. However, it came to the force during the pendency of the first appeal, Thus, the question is whether in the first appeal, the Court can interfere with the decree of trial court on the basis of section 21A of the Banking Regulation Act, 1949, which came into force on 15.2.1984.

The learned Single Judge has taken the view that section 21A of Banking Regulation Act, 1949 was prospective in operation and therefore, did not apply in this case. On the other hand, a learned Single Judge of this Court in Hariya Prasad Vs. Punjab National Bank 1991 J.L.J. 263 has taken the view that Section 21A effects such a transaction. It is procedural section, and therefore, it should be retrospective in operation.

Section 21 of the Banking Regulation Act, 1949 effects the scope of provisions of Usurious Loans Act, 1918. Therefore, in order to interpret it must be read along with relevant provisions of the Act as amended in the State of M.P. It is Section 3

which reads as under:-

Re-opening of transactions. (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard exporter or otherwise, the court has reason to believe :-

(a) that the interest is excessive; or

(b) that the transaction was, as between the parties, thereto, substantially unfair, the Court shall exercise all or any of the following powers namely may -

(b) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just;

provided that, in the exercise of these powers, the court shall not-

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;

(ii) do anything which effects any decree of a court.

2 (a). In this section excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(i) Provided that compound interest in excess of ten percent, on any loan made after such date, as the local Government may, by notification fix, shall be deemed to be excessive.

(ii) Provided further that, where in any suit the Court finds the rate of interest exceeds twelve per cent, per annum in the case of a secured loan or eighteen per cent, per annum in the case of an unsecured loan or that there is a stipulation for rents at intervals of less than six months, it shall, until the contrary is proved, presume that such rent is excessive, but this provision shall be without prejudice to the powers of the Court under sub-section (i) where the Court is satisfied that the interest charged, though not exceeding twelve per cent, per annum or eighteen per cent per annum, as the case may be, is excessive.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premier, renewals or any other charges and if compound interest is charged, the periods at which it is calculated, and the total advantage which any reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, any way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

A study of the aforesaid sections would reveal that the court is directed to reopen the account where the interest charged is excessive. This is to say, that there is mandate of legislature on the court to pass a decree in all loans cases in accordance with the provisions of section 3(2) of the Act. The Act does not prohibit charging of high rate of interest. It only bars the court from granting a decree at high rate of interest if the debtor proves the circumstances for granting relief in accordance with the provisions of the Act. The mandate therefore, is to the Court to reopen the account under certain circumstances. Naturally, this power under the mandate is to be exercised in a pending case. If this power was taken away at the time of exercise of power, then the court cannot grant relief under "the Act". The power under "the Act" was cut down by section 21 of Banking Regulation Act, 1949 with effect from 15.2.1984 in respect of Banking Companies on the ground that the interest is excessive. The power of trial court was not taken away when it passed the decree on 3.4.1980. During the pendency of the first appeal, Section 21A of the Banking Regulation Act, 1949 came into force. When learned Single Judge passed his judgment in year 1986, the power stood withdrawn. It is well established that an appeal is the continuation of the suit and therefore, the section 21A of the Banking Regulation Act, 1949 would apply to facts of the case when the learned Single Judge exercised his appellate power u/s 96 of the Code of Civil Procedure. Section 107(2) of the CPC gives power to an appellate court almost the same powers as that of trial Court. It has also power to notice the subsequent events. Therefore, the learned Single Judge should have applied section 21A of the Banking Regulation Act, 1949 and held that "the Act" of 1918 was not applicable to a transaction between the appellant and respondents. Otherwise, the result would be startling in case the learned Single Judge remanded the case, the trial court

would be compelled to take notice of section 21A of the Banking Regulation Act, 1949, and pass decree accordingly. The result would be incongruous and vagarious if we do not hold that the Court was bound to take notice of amendment in law at the time of passing decree at appellate stage and very the decree of the trial court according to the law obtaining after the amendment. We therefore, hold that amended section 21A of the Banking Regulation Act, 1949 would be applicable at the appellate stage to and the court must pass a decree in accordance with the changed law. In the case of Amarjit Kaur Vs. Pritam Singh and Others, the Supreme Court approved the judgment of Punjab High Court which allowed the appeal in a pre-emption case on the basis of mandate of legislature directing that the decree shall be passed in a pre-emption suit. The act came into force during the pendency of the appeal. The decision of the Supreme Court is crystallized in the following words:-

5. As an appeal is re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for when the appellate Court confirm a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal.

The pleadings of the appellant shows that the principal amount claimed by it was for Rs. 33,600/-. It claimed interest on it as per contractual rate i.e. 5% more than the rate fixed by R.S.I. from time to time. The appellant was entitled to 5% plus 7% i.e. 12% upto 23.7.1974 and 9% plus 5% i.e. 14% from 23.7.1974 by way of interest. Similarly, it was pleaded that appellant was entitled to refund of the amount deposited by it by way of insurance on various dates. Obviously, the appellant shall be entitled to interest on these amounts from the date they have been paid. Since we have held that Section 21A of the Banking Regulation Act, 1949 applied at the time of passing decree - Appeal, the Cannot apply "the Act" for any purpose. In view of the above conclusion, the appellant was entitled to charge agreed rate of interest on the principal amount advanced. It was also entitled to recover the premium charges it was required to deposit with interest at the agreed rate from the date of deposit. The agreement dated 11.1.1973 is in form of promissory note. It clearly provides for quarterly rests. The letter of hypothecation also shows that agreement was for quarterly rests. In view of such a situation, the appellant was clearly entitled to charge on principal sum interest at contractual rate with quarterly rests.

In view of the above situation, the appellant will be entitled to a decree for Rs. 53,063.47 p. after excluding the notice charges disallowed by the trial court. Thus, the amount includes the principal sum as well as the interest prior to filing of suit. For exercising our powers u/s 34 of the Code of Civil Procedure, we find that in absence of an express plea that Rs. 53,063.47 is the principal sum as per

agreement because interest was added to principal sum and by this addition is part-took the character of principal. We see no option but to award interest on Rs. 36,527.76 at the rate of 9% more than Reserve Bank of India rate from time to time subject to minimum of 10% per annum during the pendency of the suit from 31.8.1978 and thereafter, till realization. This amount includes interest on the premium charges paid by the appellant.

In view of the aforesaid discussion, the appeal succeeds and is allowed. The judgment and decree of the courts below is set aside. Instead a decree for recovery of Rs. 53,063.47 shall follow. However, so far as interest pendente lite and future interest is concerned, it will be recovered on Rs. 36, 527.76 at 9% more than Reserve Bank of India from time to time subject to minimum of 11% subject to further condition that appellant shall produce the relevant notification at the time of execution if it claims more than 11 % on this amount during the pendency of the suit and thereafter till realization. The decocted amount shall be a charges on HLP 6281. The respondent No. 2 however, shall not be liable for interest beyond May 1977. The appellant shall be entitled to proportionate costs in the suit. First Appeal and in this Letters patent Appeal. Counsel's fee as per schedule, if certified.