
(2002) 02 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil First Appeal No. 142 of 1986

Punjab National Bank	Vs	APPELLANT
Rakesh Kumar and Others		RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2002) WLC 451 : (2002) 3 WLN 357

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This first appeal has been filed by the plaintiff-appellant-Bank against the judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur in Civil Suit No. 1/1984 by which he, on admissions of defendants- respondents, decreed the suit of the plaintiff-appellant-Bank for a sum of Rs. 1,68,587.45 and awarded pendente-lite and future interest at the rate of 6% p.a. on the principal amount of Rs. 1,45,000/- and further made defendants-respondents severally and jointly liable to make the payment of the aforesaid amount.

2. It arises in the following circumstances:

On 6.1.1984, the plaintiff-appellant-Bank filed a suit being No. 1/1984 in the Court of District Judge, Dholpur averring "inter-alia" that the plaintiff-appellant-Bank is a Banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at New Delhi and Zonal Office at Jaipur and it had one of the Branches at Mania District Dholpur. It was further averred in the plaint that on 10.4.1981, the respondent No. 1 Rakesh Kumar applied in Mania Branch, Dholpur for financial assistance under the Road Transport Scheme of the plaintiff-appellant-Bank for grant of term loan of Rs. 1,45,000/- to purchase Truck No. CPQ 8509 (New No.

RSD 2002) from one Ram Niwas for Rs. 2 lacs and out of Rs. 2 lacs, Rs. 55,000/- were to be paid by the defendant-respondent No. 1 and that application was marked as Ex.1. The letter of request made by the defendant-respondent No. 1 for grant of the aforesaid loan was marked as Ex.2. Pursuant to the said letter of request (Ex.2), the plaintiff-appellant Bank through order dated 25.4.1981 (Ex.5) sanctioned loan of Rs. 1,45,000/- in favour of the defendant-respondent No. 1 and that amount was to be repaid by the defendant-respondent No. 1 in 48 monthly equal instalments alongwith interest and in case of single default, the plaintiff-appellant-Bank was entitled to recover the entire amount with further compound interest of 3% more and in consideration of having obtained term loan, the defendant-respondent No. 1 executed and signed the agreement in favour of the plaintiff-appellant Bank. Thereafter, after execution of necessary documents, the plaintiff-appellant-Bank paid Rs. 1,45,000/- through debit transfer voucher to Ram Niwas.

The main case as put forward by the plaintiff-appellant Bank in the plaint was that the defendant-respondent No. 1 while executing necessary documents in favour of the plaintiff-appellant Bank, agreed to pay interest on the loan amount of Rs. 1,45,000/-, at the rate of 3.5% O.B.R. with a minimum of 12.5% per annum with quarterly rests or at such other rate of interest as may be fixed by the Bank from time to time and the defendant-respondent No. 1 had also executed and signed a Demand Promissory Note in favour of the plaintiff-appellant-Bank. To the loan, which was sanctioned and granted by the plaintiff-appellant Bank in favour of the defendant-respondent No. 1, the defendants respondents No. 2 and 3 stood guarantors and they also executed and signed separate letters of guarantee in favour of the plaintiff-appellant Bank and thus, they made themselves liable to pay the principal amount alongwith interest, as agreed.

The further case of the plaintiff-appellant Bank was that the instalments of loan were not paid by the defendant-respondent No. 1 and, therefore, plaintiff-appellant Bank sent letters and reminders to defendant-respondent No. 1 for depositing the payment of instalments, but he did not pay the instalments. In these circumstances, the present suit was ultimately filed for recovery of Rs. 1,68,587.45.

The written statement was filed by the defendants-respondents on 24.8.1984 and in that written statement, they had admitted execution of the documents by them in favour of the plaintiff- appellant Bank.

During the proceedings before the trial court, on 26.7.1986, the defendant-respondents filed an application before the trial court stating therein that since the plaintiff-appellant Bank had filed the suit for recovery of Rs. 1,68,587.45, they were ready to make payment of the said amount and, therefore, upto the period of 6.1.1984 (the date of filing of the suit), the suit of the plaintiff-appellant Bank be decreed for Rs. 1,68,587.45 and after 6.1.1984, during the pendency of the suit and till the amount was paid finally, the interest @ 6% be

charged on the principal amount.

Since admissions were made by the defendant-respondents in their written statement and application dated 26.7.1986, therefore, the learned District Judge, Dholpur through his impugned judgment and decree dated 26.7.1986 decreed the suit of the plaintiff- appellant Bank as per the terms and conditions mentioned by the defendants-respondents in their application dated 26.7.1986 and allowed the pendente-lite and future interest at the rate of 6% per annum and not at the rate agreed by the defendants- respondents while executing various documents in favour of the plaintiff-appellant-Bank.

It may be stated here that no doubt the learned District Judge has not mentioned any of the Order or Rule of the CPC while passing the impugned judgment and decree dated 26.7.1986, they should have been passed under the provisions of Order 12 Rule 6 C.P.C. and from the impugned judgment, it is further clear that on the application dated 26.7.1986 filed by the defendants-respondents, he heard the arguments meaning thereby he heard the learned Counsel appearing for the plaintiff- appellant Bank in the trial court.

Aggrieved from the said judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur, this first appeal has been filed by the plaintiff-appellant Bank.

3. In this appeal, the main contention raised by the learned Counsel for the plaintiff-appellant Bank is that once the defendants-respondents accepted the terms and conditions as put forward by the Bank while sanctioning loan and furthermore, when they agreed to pay interest at the rate of 12.5% p.a. plus 2% penal interest on quarterly rests and the suit was decreed on the admissions of the respondents-defendants, therefore, in those circumstances, the learned District Judge should have awarded the interest at the agreed rate and not at the rate of 6% per annum. Thus, the impugned judgment and decree allowing interest @ 6% p.a. are erroneous one and should be set aside. Hence, it was prayed that this appeal be allowed and the interest on Rs. 1,68,587.15 be increased from 6% p.a. to 12.5% p.a. plus 2% penal interest from the date of filing of the suit till realization of the amount and to that extent, the impugned judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur be modified accordingly.

4. On the other hand, the learned Counsel appearing for the defendants-respondents supported the impugned judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur.

5. I have heard the learned counsel appearing for the plaintiff-appellant Bank and the learned counsel appearing for the defendants-respondents and perused the record of the case.

6. Order 12 Rule 6 C.P.C. provides for judgment on admissions.

7. The Court before whom admissions of facts have been made either in the

pleading or otherwise, whether orally or in writing at any stage of the suit, can decree the suit of the plaintiff or this power can be exercised by the Court even on the application of any party or of its own motion and without waiting for the determination of any other question between the parties.

8. It is made clear that a judgment passed on admissions is not a compromise decree.

9. In the present case, the application was moved by the defendants-respondents on 26.7.1986 making admissions and, therefore, from this point of view, if the learned District Judge had passed the impugned judgment and decree dated 26.7.1986 decreeing the suit of the plaintiff-appellant-Bank, he had committed no illegality in doing so. This is one of the aspects of the matter.

10. In this case, there is also no dispute on the point that agreed rate of interest on the loan amount was 12.5% plus 2% penal interest.

11. The rate of interest from the date of the suit to the date of the decree is in the discretion of the court, and this discretion is not excluded even if a fixed rate is mentioned in the contract as payable upto realisation. But, though the rate of interest for the aforesaid period is discretionary, the court should, in the exercise of that discretion award interest at the contract rate, unless it would be inequitable to do so.

12. Similarly, the rate of interest from the date of the decree to the date of payment is also in the discretion of the court and for that Section 34 C.P.C. may be referred to.

13. For commercial transactions, the proviso and two Explanations inserted in 1976 should be seen as to interest on decree passed for money due in respect of commercial transactions. The rate of such further interest may exceed six 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 nationalised banks in relation to commercial transactions.

14. Thus, except for commercial transactions, general rate of pendente lite and future interest is 6% p.a. from the date of the suit to the date of decree and from the date of decree to the date of payment, but in commercial transaction, this rate may increase from 6% p.a.

15. No doubt, as a general rule in a suit filed by the Bank for money decree, interest pendente lite and future should be granted at the agreed rate, but in some cases, if reasons persist interest can be awarded at the rate lower than the agreed rate.

16. In the present case, looking to the entire facts and circumstances of the case and that the suit of the plaintiff- appellant-Bank was decreed without recording the evidence and on the basis of the admissions made by the defendants-respondents in their written statement and further in their application dated

26.7.1986 in which it was clearly mentioned by them that interest may be charge at the rate of 6% p.a.; that as per the provisions of Section 34 C.P.C., even the liability arising out of commercial transactions, the rate of such further interest may exceed six per cent per annum and the word is may and not shall; and that as per the written statement of the defendant-respondent No. 1, he had already suffered a loss, this Court does not want to interfere with the impugned judgment and decree allowing interest at the rate of 6% per annum, after such a long period of time. Apart from this, the impugned judgment and decree allowing interest at the rate of 6% per annum were passed after hearing both counsel for the plaintiff-appellant-Bank as well as defendants respondents appearing before the trial court and it appears that learned counsel appearing for the Bank in the trial court did not raise any objection against allowing of interest @ 6% per annum. Furthermore, the granting of interest is a matter of discretion and this Court, in the facts and circumstances just narrated above, would not like to interfere with the discretion exercised by the learned District Judge while allowing interest @ 6% per annum.

17. Thus, the impugned judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur decreeing the suit of the plaintiff-appellant Bank and allowing interest at the rate of 6% per annum are liable to be confirmed and this first appeal deserves to be dismissed.

Accordingly, this first appeal filed by the plaintiff- appellant Bank is dismissed, after confirming the judgment and decree dated 26.7.1986 passed by the learned District Judge, Dholpur. No order as to costs.