

(2015) 02 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 69 of 2008 and Cross Objections No. 206 of 2008

Punjab National Bank

APPELLANT

Vs

Rohit Chemicals and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 02 SHI CK 0024

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; R.K. Gautam, Senior Advocate and Gaurav Gautam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chand Chaudhary, J.

1. This judgment shall dispose of the present appeal and also the Cross Objections arising out of the same judgment and decree.

2. Challenge herein is to the judgment and decree dated 21.1.2008, passed by learned Additional District Judge (Presiding Officer, Fast Track Court), Solan camp at Nalagarh, in Case No. 3FTN/1 of 6/2002, whereby the suit for recovery of Rs. 6,15,328/- filed by the appellant, hereinafter referred to as the plaintiff, as well as the counter claims qua recovery of Rs. 70,575/-, preferred by respondents No. 1 to 3, hereinafter referred to as the defendants, have been dismissed.

3. As per admitted case of the parties, the defendants approached the plaintiff-bank for the grant of cash credit limits and such facilities were made available to the defendants initially on 11.4.1989 on execution of various documents in favour of the plaintiff bank. The facilities so made available were subsequently upgraded again on execution of additional documents. Defendants No. 2 to 4 stood as guarantors on execution of documents to this effect in favour of the plaintiff bank in order to ensure the repayment of the due and admissible

amount under the cash credit limits availed by defendant No. 1. The said defendant allegedly failed to adhere to its commitments and became irregular in the matter of repayment of the due and admissible amount to the plaintiff-bank, hence the suit.

4. The only dispute, as disclosed from the pleadings of the parties, is qua the rate of interest, because according to the plaintiff-bank, the interest as agreed upon was payable on daily balance calculable on quarterly basis, subject to change from time to time without any notice to the loanee as per the instructions issued by the Reserve Bank of India from time to time, whereas as per the defence of the defendants, the interest was never agreed to be paid on quarterly basis nor at any such rates, notified by the Reserve Bank of India and rather at the rate of 14% per annum. It is under such claim and counter claims, the parties had undergone the trial.

5. Learned trial Court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiff is entitled to recover the suit amount from the defendants? OPP

2. Whether the suit is not properly instituted by the plaintiff? OPD

3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

4. Whether the defendants are entitled to recover Rs. 70,575/- on account of excess payment made to the plaintiff bank? OPD

5. Whether the counter claim is not maintainable? OPP.

6. Relief.

6. After holding full trial and taking on record the evidence consisting of oral as well as documentary, issue No. 1 was answered against the plaintiff-bank, whereas issues No. 2 to 5 against the defendants and consequently not only the suit but the counter claims were also dismissed.

7. The plaintiff bank has challenged the impugned judgment and decree on the grounds, inter alia, that the pleadings of the parties and also the evidence documentary as well as oral, have not been appreciated in its right perspective and to the contrary learned trial Judge has based the findings on conjectures and surmises. Plaintiff's case qua charging of interest as per Reserve Bank of India guidelines though was fully proved on record, however, erroneously discarded. The suit has, therefore, been sought to be decreed.

8. On the other hand, defendants-objectors No. 1 to 3 in cross-objections, however, have come forward with the version that there was ample evidence available on record to show that the payment of amount, more than due and admissible, was made by them to the plaintiff-bank and as such the counter

claims should have been decreed. Learned trial Court, however, while misconstruing and misappreciating the evidence so produced has erroneously rejected the same.

9. On hearing learned counsel on both sides and also going through the record, the only question which needs adjudication in the present lis is as to whether the dismissal of the suit and also the counter claim is the result of mis-appreciation of pleadings as well as the evidence produced by the parties on both sides. This question needs re-appraisal of the pleadings and also the evidence so produced by the parties for its adjudication.

10. In the judgment and decree under challenge it has rightly been observed that the facts are no more in controversy, as admittedly defendant No. 1 had approached the plaintiff bank for sanction of cash credit limits in its favour and the latter sanctioned such facilities in favour of the former, of course on execution of various documents. Although as per the stand of the defendants the column of documents which were got signed from them by the plaintiff bank were blank, yet they did not dispute their signatures on the documents so executed. Therefore, learned trial Court has not committed any illegality and irregularity while arriving at a conclusion that defendant No. 1 had applied for and availed the facilities of cash credit limits sanctioned in its favour by the plaintiff bank.

11. Statement of account Ext. P.W. 2/D, makes it crystal clear that the defendants had been dealing with the plaintiff bank by opening an account and depositing the amount therein towards repayment of the loan amount payable to the plaintiff bank. Plaintiff's claim, however, is that the defendant No. 1 became irregular in the matter of repayment of the outstanding amount and when failed to repay the same, the amount so payable was calculated which worked out as Rs. 6,15,328/- and the suit for its recovery together with future interest and cost was filed.

12. As noticed supra, the dispute is qua the rate of interest. The plaintiff-bank has based its claim in this regard on two documents i.e. agreement Ext. P.W. 2/B executed initially between the parties, which provides the rate of interest as 4% per annum over and above the Reserve Bank of India rates with minimum of 14% per annum. The interest was agreed to be calculated on daily balance due to the plaintiff-bank and to be charged on monthly/quarterly basis and as such there was no specific agreement that interest was to be charged on quarterly basis, as claimed. Had it been so, the word "monthly" in item No. 2 of this document should have been scored out and word "quarterly" clearly ticked to remove all doubts qua charging of interest on quarterly basis. This has, however, not been done and as such it cannot be said that the interest was agreed to be charged on quarterly basis.

13. Similar is the position with regard to the rate of interest as mentioned in hypothecation deed Ext. P.W. 2/C. On upgradation of the cash credit limits also,

though it was agreed upon that interest @ 3 1/2% per annum over and above Reserve Bank of India with minimum of 15.5% per annum had to be charged, however, there is no agreement that the same was to be charged on quarterly basis, because in the hypothecation deed also there is no specific agreement in this regard. A reference in this behalf can be made to item No. 10 of this document wherein again words "monthly/quarterly" both are intact and as such it cannot be believed by any stretch of imagination that the defendants agreed for payment of the interest on quarterly basis.

14. The next document is agreement Ext. P.W. 4/B. In item No. 2 thereof the rate of interest as finds mentioned in it is 3.5% per annum over and above Reserve Bank of India rates, with a minimum of 15.5% per annum. There is nothing in this document also that the defendants had ever agreed to pay the interest on quarterly basis.

15. Now, if coming to the evidence as has come on record by way of testimony of P.W. 5 Narender Sharma, the interest, while making calculation of the suit amount, has been charged quarterly. There was no such agreement. Therefore, no such calculation could have been made.

16. Significantly, there is again no cogent and reliable evidence to arrive at a conclusion that the defendants had agreed to pay the interest at such rates notified by the Reserve Bank of India from time to time and as per instructions issued in this regard, that too without issuance of any notice to the borrower, i.e. the defendants. True it is that in hypothecation deed Ext. P.W. 4/A below item No. 10 and in agreement Ext. P.W. 4/B below item No. 2, a stamp to the effect that "the interest is subject to change from time to time by instructions from Reserve Bank of India without notice" has been affixed, however, no evidence has come on record to show that this stamp was very much there at the time when the defendants were made to sign these documents and they were apprised about the contents thereof. None of the witnesses has uttered even a single word in this regard while in the witness box. Learned trial Judge, therefore, has not committed any illegality or irregularity while arriving at a conclusion that there was no such agreement arrived at between the parties whereby the defendants had agreed to pay the interest at such rates notified by the Reserve Bank of India from time to time and that too without any notice to them.

17. On the other hand, the balance confirmation letters Ext. P.W. 4/M, Ext. P.W. 5/A, Ext. P.W. 5/B and Ext. P.W. 6/A speak about charging of different rates of interest, which as per Ext. P.W. 4/M was 17.25%, as per Ext. P.W. 5/A, 21.25%, as per Ext. P.W. 5/B, 18% and as per P.W. 6/A, 16%.

18. As discussed hereinabove, the plaintiff-bank has failed to prove that the defendants had agreed to pay the interest at such rates notified by the Reserve Bank of India from time to time. What to speak of that, even the notifications, notifying such different rates of interest by the Reserve Bank of India from time

to time, have also not been produced in evidence. Therefore, the very basis on which the plaintiff-bank has calculated the suit amount is missing and as such the plaintiff-bank has rightly been refused the decree, as sought.

19. Now if coming to the counter claims, mere mention in the written statement that the defendants are entitled to recover a sum of Rs. 70,575/- from the plaintiff bank on account of over payment made by them and the version of defendant No. 3 Tilak Ram while in the witness box as D.W. 1 is not sufficient to hold that they in fact are entitled to recover this much amount from the plaintiff bank. The statement of account Exts. D3 and D4 seems to be a self serving document, hence cannot be relied upon to arrive at a conclusion that the defendants are entitled to recover a sum of Rs. 70,575/- from the plaintiff bank. Therefore, learned trial Judge has rightly rejected the counter claims also.

20. The reappraisal of the pleadings of the parties and also the evidence oral as well as documentary leads to the only conclusion that learned trial Court has appreciated the same in its right perspective. The contentions to the contrary are neither legally nor factually sustainable. Consequently, the judgment and decree under challenge is neither illegal nor invalid and rather deserves to be upheld.

21. Resultantly, the appeal and the cross-objections both fail and the same are accordingly dismissed. The Judgment and decree passed by learned trial Court is affirmed. The parties, however, to bear their own costs.