
(2013) 12 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : R.S.A. No. 310 of 1988 and Cross Objections No. 23-C of 1988

Punjab National Bank

APPELLANT

Vs

Satindra Industries

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 175 PLR 146

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Paramjit Singh Patwalia, J.—This judgment will dispose of R.S.A. No. 310 of 1988 and Cross Objections No. 23-C of 1988 which arise from the judgment and decree dated 23.09.1987 passed by learned Additional District Judge, Amritsar. This second appeal has arisen out of a suit for recovery of Rs. 36021-01 paisa brought by the appellant-plaintiff-Punjab National Bank through its Manager. The Court of first instance decreed the suit for recovery of Rs. 36021-01 paisa with pendente-lite and future simple interest at the rate of 12% per annum on the principal amount with costs. The defendants were held jointly as well as severally liable to pay the decretal amount. Against that, respondents-defendants preferred an appeal before the District Judge which was entrusted to the learned Additional District Judge, Amritsar. Learned Additional District Judge, Amritsar modified the decree by observing as under:-

The trial Court while passing the decree did not keep in mind that the principal outstanding amount had to be worked out again on the basis of 12% P.A. simple interest and the amount of penal interest charged had to be deducted therefrom. Under the circumstances the above rectification in the two accounts will have to be carried out and the decretal amount modified accordingly. In the result, I find no merit in this appeal and dismiss the same with costs. The decree of the trial Court is however modified to the extent that the decretal amount be worked out on the basis of simple interest @ 12% per annum and the amount charged on

account of penal interest be deducted therefrom. Decree-sheet be prepared accordingly.

2. Virtually the learned lower appellate Court has affirmed the findings of the Court of first instance except with small variation keeping in view the findings recorded by the Court of first instance itself. This regular second appeal has been preferred by the Punjab National Bank against the judgment and decree dated 23.09.1987 of the learned Additional District Judge, Amritsar, in which the cross-objections have been filed.

3. The facts of this case are simple and clear which are as under:-

4. The appellant-plaintiff bank sanctioned a term loan of Rs. 25,000/-, Cash Credit (hypothecation) of Rs. 16,000/- and Cash Credit (Pledge) of Rs. 20,000/- to the defendants. Defendants only availed of term loan of Rs. 25,000/- and cash credit (hypothecation) of Rs. 16,000/- on 28.04.1975 and 06.05.1975, on hypothecation of assets to secure term loan and stock in trade to secure cash credits respectively. The defendants executed various documents viz agreement and pronotes dated 28.04.1975 and 06.05.1975, in lieu of sanctioning of the aforementioned loan in their favour. The detail of these documents is mentioned in para. No. 3 of the plaint. The defendants agreed to pay interest calculated at the rate of 3% over the Reserve Bank of India's rate with a minimum of 12% per annum. The defendants undertook to pay the amount of loan in question in ten half-yearly installments of Rs. 2500/- each. Out of the amount of Rs. 25,000/- advanced as term loan, the defendants did not pay anything and balance outstanding at the time of filing the suit with regard to this loan came to Rs. 31,802-70 paise. Similarly, defendants did not deposit any amount in cash credit loan except Rs. 1000/- on 19.02.1979 and balance outstanding with regard to this account at the time of filing the present suit was Rs. 4218-31 paise.

5. On notice, defendants appeared and filed their written statement inter-alia alleging that the suit was not properly valued for the purposes of court fee and jurisdiction on the ground that the claim was made against the principal debtors and also against the guarantors and separate court fee was required to be paid. Further it was alleged that the suit was not within limitation and the suit was filed by unauthorized person. Plaintiff filed replication to the written statement controverting the contents of the written statement and reiterating the contents of the plaint. On perusal of the pleadings of the parties, the following issues were framed by the Court of first instance:-

1. Whether Sh. Manmohan Arora, through whom the present suit has been brought is duly authorized to sign and verify the plaint and institute the proceedings? OPP

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

3. Whether the suit is premature? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the plaintiff is entitled to interest and penal interest, if so, at what rate and to what amount? OPP
6. To what amount, the plaintiff is entitled to recover from the defendants? OPP
- 6A. Whether the plaintiff has already received the loan amount from the Credit Insurance and Investment Guarantee Corporation, if so, to what extent and to what effect? OPD
7. Relief.

6. The parties were afforded opportunity to lead their respective evidence. Thereafter, the Court of first instance recorded issue-wise findings, which have been affirmed by the learned lower appellate Court with modification to certain extent as observed herein above.

7. At the time of admission, no substantial question of law was framed. However, during the pendency of the appeal, the following substantial questions of law have been placed on record:-

1. Has the learned Additional District Judge not erred in law in holding that the principal outstanding amount had to be worked out on the basis of 12% simple interest and the amount of penal interest charged had to be deducted and thereby modifying the judgment and decree of the Id. Civil Judge that the decretal amount be worked out on the basis of simple interest @ 12% per annum and the amount charged on account of penal interest be deducted therefrom?

2. Whether when the loans were advanced for commercial purposes and in the demand promissory notes Ex. P18 and Ex. P19 in respect of two transactions the rate of interest is mentioned @ 3% over the Reserve Bank of India guidelines with minimum @ 12% per annum with half yearly rests in respect of term loan and monthly rests in respect of Cash Credit hypothecation amounts, have the Id. Courts below not erred in law in not awarding interest at the aforesaid rates of interest?

8. I have heard learned counsel for the appellant and perused the record.

9. The only question which needs to be answered in the present case is "whether the Additional District Judge erred in law in holding that the principal outstanding amount has to be worked out on the basis of 12% simple interest and the amount of penal interest charged has to be deducted and therefore, the judgment and decree of the learned lower appellate Court modifying the judgment and decree of the Court of first instance is not sustainable?"

10. The onus to prove issue No. 5 which is with regard to interest and penal interest was upon the plaintiff. In order to prove issue No. 6, the plaintiff has examined Suraj Parkash Kapoor as PW 2, who proved various balance

confirmation slips executed by the defendants in favour of the plaintiff vide which they admitted liability of the outstanding loan against them. Similarly Kul Bhushan Chopra (PW 3) also proved various documents on record to prove the liability of the defendants. Ajit Kumar Jaitli (PW 4) also proved various balance confirmation slips executed by the defendants in favour of the plaintiff. Ex. P33 is the certified copy of the statement of account showing that a sum of Rs. 31,802-70 paise was due to the plaintiff bank against the defendants, in the term loan account, whereas Ex. P34 is certified copy of another statement of account according to which a sum of Rs. 4218-31 paise is shown to be due against the defendants to the plaintiff bank in the cash credit account No. 159. The Court of first instance has considered the contention of the defendants that so long as the plaintiff is in possession of the hypothecated and pledged goods of the defendants, the suit for recovery of the debt is not maintainable. This contention of the defendants was rejected. In the present case, various documents were executed by the defendants in favour of plaintiff-bank in lieu of sanctioning of loan. Ex. P15 is the agreement of hypothecation of assets to secure term loan. According to clause 16 of the said agreement, the bank has been given a right to recover from the borrower the balance for the time being remaining due from them upon the said account notwithstanding that all or any of the said security may not have been realized or even proceeded against. Plain reading of clause 16 of the agreement, therefore, clearly goes to show that it is for the bank to decide as to in which manner it wanted to recover the loan from the defendants. Even without realization of amount of debt proceedings against the securities, the plaintiff bank can file a suit for recovery of the debt. There is no bar in this regard.

11. The Court of first instance has recorded the following finding on issue No. 5:-

11. There was, therefore, a written agreement between the parties regarding the payment of interest at the rate of 12% P.A. No worthwhile rebuttal evidence has been produced by the defendants to prove that they are not liable to pay interest at the rate of 12% P.A. There is, however, no evidence, on record, to prove that the plaintiff was also entitled to penal interest over and above 12% P.A. It is, therefore, held that the plaintiff is entitled to interest at the rate of 12% P.A. The plaintiff, however, is not entitled to penal interest. This is partly found and decided in favour of the plaintiff and partly in favour of the defendants.

12. Perusal of this finding clearly indicates that there is no evidence on record that plaintiff is entitled to penal interest over and above 12% interest per annum. Therefore, the plaintiff is only entitled to simple interest @ 12% per annum. The finding of the Court of first instance was not challenged in the appeal by the plaintiff nor any cross-objection was filed. The learned lower appellate Court taking into consideration this fact has modified the decree, however, other findings of the Court of first instance have been affirmed.

13. The findings of the lower appellate Court are based on the evidence which is on record, specifically with reference to Section 23(a) of Banking Laws

Amendment Act, 1933 which provides that a transaction between a bank and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the bank was excessive. In the present case, the Court of first instance has categorically observed that interest payable is simple interest @ 12% per annum. This finding has not been challenged by the defendants before the lower appellate Court on any ground whatsoever. Once there is no finding with regard to compound interest, then there being no challenge to the same before the lower appellate Court the rate of interest will be as per the decree which has been ordered to be worked out by the lower appellate Court. Even otherwise, second appeal is not maintainable on issue of interest. Reference in this regard may be made to Bhagat Singh v. Jai Ram and others, AIR 1915 Lahore 113 and Ram Singh Narain Singh Vs. F. Dewan Chand Nand Kishore and Another,

14. In view of above, I do not find any illegality or perversity in the impugned judgment and decree.

15. Dismissed. No costs. So far as the cross-objections are concerned, the same are also not sustainable in the eyes of law. Cross-objection is only with regard to rate of interest @ 6% instead of 12%. Both the Courts below have appreciated that interest is as per the contractual agreement between the parties. Hence, the cross objections are also dismissed. No costs.